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VIA ELECTRONIC MAIL
Signe Sugiyama
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RE: Response to Protests of Award for County of Sonoma's Request for Proposal for Emergency Ground Ambulance Transport, No. SC001-0000001592 / 22-023

Dear Ms. Sugiyama:

Sonoma County Fire District ("SCFD") appreciates the opportunity to respond to the protests of award for the County of Sonoma's ("County") Request for Proposal for Emergency Ground Ambulance Transport, No. SC001-0000001592 / 22-023 ("RFP") by disappointed proposer American Medical Response West ("AMR") and non-proposer United EMS Workers Local 4911 ("UEMSW"). County should deny both protests and move forward with SCFD.

EXECUTIVE SUMMARY

AMR's protest fails and should be denied for the following reasons:

First, AMR does not and cannot show it was aggrieved or prejudiced by the alleged procurement errors, which is required under County's protest procedures and case law.

- AMR's proposal received fewer points than SCFD's proposal because AMR proposes to increase its service rates by 27-50% and charge about $1,200-$1,300 more for representative ambulance transports than SCFD.

- AMR's proposal received fewer points for another reason: it admittedly failed to submit necessary documentation to show the financial sustainability of its Sonoma County operation.

- Nothing in AMR's protest would change or modify the point totals or SCFD's margin of victory.

- Because the outcome would remain the same despite its allegations, AMR's protest must be denied.

Second, AMR is ineligible for an award under the RFP's terms and therefore lacks standing to bring its protest because its proposal is nonresponsive, AMR is not a responsible proposer, or both.

- AMR's proposal is nonresponsive because it failed to properly perform, and is in breach of, its existing contract with County.

- AMR's proposal is also nonresponsive because it currently owes County at least $205,000 in unpaid financial penalties for deficient ambulance service.

- AMR is a non-responsible proposer and/or its proposal is nonresponsive because its proposal contains materially false and misleading representations and estimates.

- For 2024-2026, AMR proposal estimated $25.2-26.7 million in annual revenues, $22.5-24 million in annual expenses, and $4.6-4.8 million in annual net income. But financial statements provided by AMR to County for non-RFP purposes one week after the proposal submission date show that, in 2022, AMR had $33.4 million in revenues, $35.5 in expenses, and $1.9 million in losses. In other words, AMR estimates a 239-250% increase in profits, based on 20-25% and 32-36% lower revenues and expenses, respectively. These numbers do not make sense.

- AMR's proposal represented that its proposed 27-50% rate increases were necessary because its 2024-2026 expenses would be higher due to the RFPs' requirements and inflationary pressures. This representation is false because the proposal estimates 32-36% AMR will incur fewer operating expenses in 2024-2024 than its actual operating expenses in 2022.

- AMR misclassifies "uncompensated care" as an operating expense in its actual financial statements for 2022. This accounting sleight of hand effectively transforms $9 million in profit to a $1.8 million loss.

- Yet uncompensated care is not counted as an operating expense in AMR's proposal, which means AMR was untruthful in its proposal estimates or in the 2022 financials it provided County, or both.

Third, AMR's allegations regarding a purported conflict of interest by award-winning Proposal Review Committee ("PRC") member and Amy Gnojek are demonstrably false and legally spurious.

- Ms. Gnojek is a "founding advisor" of Women in Emergency Services ("WiES"), a nonprofit that supports women's careers in emergency medical services ("EMS").

- Medic Ambulance ("Medic"), SCFD's subcontractor, is a founding sponsor of WiES and donated $10,000 to the nonprofit.

- Medic did not donate to WiES in exchange for special treatment by the PRC. Medic is a family- and majority women- owned company, a recognized pioneer in supporting women in EMS, and committed to donating to WiES at least one month before Ms. Gnojek agreed to serve on the PRC.

- Medic's interactions with WiES have been through persons other than Ms. Gnojek and neither SCFD nor Medic knew Ms. Gnojek was on the PRC until after County issued the notice of intent to award.

- Ms. Gnojek does not have a conflict of interest under Government Code section 1090 ("Section 1090") or County's EMS Ordinance because neither she nor WiES would be parties to the ambulance services contract in the procurement and SCFD and Medic did not make any promises to Ms. Gnojek in exchange for scoring SCFD's proposal higher than AMR's proposal.

- Even if there were a conflict (there is not), AMR cannot show prejudice. AMR's theory is that following Medic's donation to WiES, what AMR disparagingly refers to as a "passion project," Ms. Gnojek was biased against AMR and in favor of SCFD/Medic and analyzed their proposals differently. This theory is patently absurd.

- AMR contends that if Ms. Gnojek were not biased, it would have been allowed to cure its admittedly defective proposal by untimely submitting four years of missing audited financial statements. But the RFP expressly prohibited AMR from submitting additional material after the deadline for submitting proposals. Thus, AMR argues it was prejudiced because County did not allow it to fix its mistakes in violation of the RFP and general competitive bidding law.

- AMR also contends that Ms. Gnojek's purported bias caused her to overlook Medic's submission of five years of reviewed, not audited, financial statements. But the RFP required SCFD and/or Medic to submit such audited financial statements. SCFD satisfied the RFP's requirements by submitting its, and its predecessor agency's, audited statements for the five years. Medic submitted its financials in the interest of transparency and because the PRC would be evaluating proposers' financial sustainability.

- Because AMR admits that its proposal was defective and its theory is that County did not bend the rules for AMR so that it could fix such defects because of Ms. Gnojek's purported bias, AMR cannot show it was prejudiced.

Fourth, AMR's challenge to SCFD's proposed fees and rates under Proposition 26 is legally and factually wrong and defies common sense.

- Proposition 26 essentially prohibits SCFD from charging fees in excess of the reasonable cost to provide services and using any surplus fees for general revenue. Such fees are considered a "tax" and must be approved by voters.

- AMR argues that SCFD's proposed fees represent an unlawful tax under Proposition 26 because SCFD's anticipated revenue exceeds the actual cost of providing services in EOA-1, on a per transport basis.

- AMR's argument fails under the legal standards for analyzing Proposition 26 issues. Most importantly, SCFD is not limited to recovering the actual costs to provide services and the SCFD Board of Directors has properly determined that ambulance transport revenues will cover the costs of the entire continuum of EMS provided by SCFD, including revenue-generating ambulance services and generally uncompensated non-transport, first response EMS by fire engines.

- Moreover, SCFD and AMR must provide EMS without regard to a patient's ability to pay and cannot collect all amounts owed to them from indigents or from Medicare and Medi-Cal. SCFD does not discriminate between payors and its proposed fees will ensure the viability of its services and the EMS system as whole, which is permissible under Proposition 26.

- Finally, AMR cannot show prejudice because, under its incorrect legal theory, SCFD must charge service rates that are even lower than its proposed rates. If AMR's theory is correct (it is not), then the PRC would have scored SCFD's proposal even higher than it did and AMR would still lose due its proposed 27-50% rate increases.

Fifth, SCFD did not violate the so-called violate the "gag order" in RFP section 2.7(B).

- RFP section 2.7(B) prohibits proposers or their representatives from influencing or attempting to influence the County Board of Supervisors, County employees, or the PRC regarding the contract award through ex parte communications during the time between the deadline to submit proposals and issuance of the notice of intent to award.

- AMR contends that SCFD violated that RFP section 2.7(B) through safersonoma.com and online advertisements for the website because the website allows users to send an automated petition to the County Board of Supervisors and Sonoma County Health Care Services Agency Director Tina Rivera urging them to award the contract to SCFD.

- But AMR does not actually allege that SCFD was responsible for the website or the online advertisements. It was not. AMR's own evidence shows that the website and advertisements were made and paid for by the Professional Fire Fighters of Sonoma County Local 1401 ("Local 1401"), the labor union that represents SCFD's and other fire agencies' firefighter employees, as part of its political activities.

- In other words, Local 1401 represents SCFD's employees, not SCFD. The notion that Local 1401 was somehow representing both SCFD and its employees is absurd on its face and AMR has no evidence to support it.

- Furthermore, Local 1401's political activities are not attributable to SCFD. SCFD cannot lawfully limit, control, or direct the political activities of its employees or their union. AMR does not show any evidence to the contrary.

- Nor did safersonoma.com and online advertisements prejudice AMR in any way. The website's automated petitions were not, and could not be, aimed at PRC members because County kept their identifies secret until after the results were announced. Moreover, the PRC members were all from outside of Sonoma County and, thus, unlikely to be exposed to the online advertising. Because they were not and could not be directed at the PRC members, the safersonoma.com website and online advertisements did not and could not affect their scoring of SCFD's and AMR's dueling proposals.

- AMR also mischaracterizes three social media interactions involving Ms. Gnojek and Jimmy Pierson, Medic's President and COO to argue that they violated RFP § 2.7(B).

- But AMR's evidence consists of three "likes" to social media posts by Ms. Gnojek or Mr. Pierson. These interactions are innocuous and unrelated to the RFP or Sonoma County. It strains credulity to believe that these "likes" amount to an attempt to influence Ms. Gnojek into recommending *SCFD* for the contract award.

- Nor does AMR show prejudice from the three social media "likes." AMR submitted an admittedly incomplete proposal that was more expensive than SCFD's proposal. The PRC's scoring reflected the deficiencies in AMR's proposal. AMR fails to show how the three social media "likes" influenced the outcome or that it would have scored higher but for the three social media "likes."

UEMSW's protest should also be denied.

First, UEMSW has no standing to submit a protest.

- UEMSW is not a proper protestor under County's procedures and general competitive bidding laws because it did not submit a proposal on its own.

- Nor did UEMSW comply with all of the procedures to be eligible to submit a proposal.

- Non-bidders, including unions like UMESW, have no standing to protest an award.

Second, UEMSW contends that County should not award the contract to SCFD based on its mistaken belief that AMR's compensation package is purportedly better than Medic's package.

- UEMSW does not point to anything in the RFP or County's procedures that would authorize County to refuse to the contract award to SCFD on those grounds.

- Nor does UEMSW show that the PRC incorrectly scored the proposals' sections on employee compensation or that the results would be different if County accepts its arguments.

- UEMSW does not say where it obtained its information on employee compensation and that section of AMR's proposal is misleading because it did not use the County's mandatory form or follow the RFP's instruction.

- An apples-to-apples comparison of the compensation packages shows that Medic pays its entry-level paramedics and EMTs more than AMR by about $300 or $200, a week, respectively, and $15,125.76 and $10,496.20 a year, respectively.

- Furthermore, the medical insurance offered by Medic provides better coverage, with no or little co-pays or deductibles and is superior to the similar coverage offered by AMR.

For all these reasons, County should deny AMR's and UEMSW's protests.

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SCFD'S RESPONSE TO AMR'S AND UEMSW'S PROTESTS

I. AMR's Protest Must Be Denied.

The AMR protest rests on essentially three grounds: (1) Ms. Gnojek had an allegedly undisclosed, material, and disqualifying conflict of interest; (2) SCFD's proposed pricing, which is significantly lower than AMR's proposed pricing, allegedly imposes an unlawful tax under Proposition 26 (Cal. Const., arts. XIII A, XIII C, XIII D); and (3) SCFD's alleged violation the so-called "Gag Rule" in RFP section 2.7.

None of these grounds hold water, legally or factually, and defy common sense. More importantly, AMR fails to show that it would have won the competitive bidding but for the alleged problems with the process. It cannot. AMR lost because its proposed prices were too high and because it could not establish its financial sustainability. Because none of the grounds in AMR's protest would change the scoring of its proposal or otherwise change the result, the protest must be denied.

A. None Of AMR's Asserted Grounds Would Change The Result Because AMR Submitted A More Expensive And Admittedly Deficient Proposal.

Competitive bidding laws "are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) Thus, before County or the courts may sustain it, AMR's protest must show that, but for the alleged defects in County's RFP process, it would have won. (*SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1053-57; *Monterey Mechanical Co. v. Sacramento Regional County Sanitation Dist.* (1996) 44 Cal.App.4th 1391, 1414; see also *L-3 Global Communs. Solutions, Inc. v. United States* (2008) 82 Fed.Cl. 604, 608.)

SCFD achieved a higher score on its proposal (341.4) than AMR did on its proposal (328). The margin of victory came down to RFP sections 4.10(A) (patient fees) and 4.10(B) (budget and fiscal sustainability). (See **Exhibit 1**.[1]) AMR fails to show that the various grounds it asserts would have affected, in any way, the PRC's scoring of these sections of AMR's or SCFD's proposals. It cannot, and thus, its protest must be denied.

1. Nothing In AMR's Protest Changes The Fact That AMR Scored Lower Because It Wanted To Charge Patients Thousands Of Dollars More Than SCFD For The Same Ambulance Services.

Section 4.10(A) of the RFP evaluated AMR's and SCFD's proposed ambulance service rates and fees. The following chart shows the ambulance rates (save for medical supplies) proposed

[1] All exhibits to this response were voluntarily provided to all proposers by County, were obtained by SCFD from County pursuant to Public Records Act requests, or are documents in the public domain.

by SCFD and AMR, as well as how much higher AMR's proposed rates are than SCFD's proposed rates in dollars and as a percentage:

	SCFD Proposed Rates	AMR Proposed Rates	Difference ($)	Difference (%)
Advanced Life (ALS) Base / ALS Rendezvous	$3,100.00	$3,900.00	$800.00	21%
Basic Life Support (BLS) Base	$2,850.90	$3,900.00	$1,049.10	27%
Oxygen	$225.00	$395.00	$170.00	43%
Mileage (ALS/BLS Transport)	$70.00	$96.00	$26.00	27%

(Compare AMR Proposal Ex. 12 at p. 1039, with SCFD Proposal Ex. 12 at p. 1229).

In other words, AMR's proposed ambulance service rates were 21% to 43% higher than SCFD's proposed rates.

AMR's proposed rates were also significantly higher than the rates approved by the County Board of Supervisors, effective July 1, 2022:

	AMR Current Rates	AMR Proposed Rates	Difference ($)	Difference (%)
Advanced Life (ALS) Base / ALS Rendezvous	$2,707.96	$3,900.00	$1,192.04	31%
Basic Life Support (BLS) Base	$2,443.43	$3,900.00	$1,456.57	37%
Oxygen	$291.11	$395.00	$103.89	26%
Mileage (ALS/BLS Transport)	$75.33	$96.00	$20.67	22%

(Compare RFP Ex. 11 with AMR Proposal Ex. 12 at p. 1039). And, AMR's proposed charges for medical supplies represent a 50% across-the-board increase over what it currently charges. (PRC Pre-Proposer Presentations Meeting, Mar. 9, 2023, at 0:22:55 to 0:23:20)

Stated differently, AMR proposed increasing its ambulance service rates by 22-50% above the FY2022-2023 rates the County Board of Supervisors approved one year ago.

The difference between rates means that patients would pay thousands of dollars more per transport and millions of dollars a year if AMR's proposal is selected. To illustrate how the proposed rates would affect patients, the RFP required proposers to calculate the specific and routine charges to patients for ambulance services in three representative scenarios.

Scenario #1 contemplated an ALS response and transport for a 66-year-old female complaining of chest pain, whose home is 22 miles from the receiving hospital. The following table shows the difference between SCFD's and AMR's proposed pricing under Scenario #1:

Scenario #1: ALS Ambulance Transport		
	SCFD	AMR
Base rate	$3,100.00	$3,900.00
Mileage	$1,540.00	$2,112.00
Oxygen	$225.00	$395.00
Treatment, non-transport	--	--
Medical Supplies	$1,025.00	$802.63
Total	$5,890.00	$7,209.63

(Compare AMR Proposal Ex. 12 at p. 1040, with SCFD Proposal Ex. 12 at p. 1231).

Thus, AMR proposed to charge the hypothetical patient in Scenario #1 $1,319.63 more than SCFD for the exact same services.

Scenario #2 contemplated a BLS response and transport for a 46-year-old female tennis player complaining of ankle pain with no additional associated injuries, requesting transport to a hospital 15 miles away. The following table shows the difference between SCFD's and AMR's proposed pricing under Scenario #2:

Scenario #2: BLS Ambulance Transport		
	SCFD	AMR
Base rate	$2,850.90	$3,900.00
Mileage	$1,050.00	$1,440.00
Oxygen	--	--
Treatment, non-transport	--	--
Medical Supplies	$390.00	$117.91
Total	$4,290.90	$5,457.91

(Compare AMR Proposal Ex. 12 at p. 1041, with SCFD Proposal Ex. 12 at p. 1231).

In Scenario #2, AMR proposed charging the hypothetical patient $1,167.01 more than SCFD for the exact same services.

Scenario #3 contemplated an emergency response without ambulance transport for an 18-year-old unconscious diabetic treated with glucose and shortly thereafter refuses transport against medical advice. The following table shows the SCFD's and AMR's proposed pricing for Scenario #3:

Scenario #3: Treatment, Non-Transport		
	SCFD	AMR
Base rate	--	--
Mileage	--	--

Scenario #3: Treatment, Non-Transport		
	SCFD	AMR
Oxygen	--	--
Treatment, non-transport	$550.00	$459.00
Medical Supplies	--	$780.10
Total	$550.00	$1,239.10

(Compare AMR Proposal Ex. 12 at p. 1041-42, with SCFD Proposal Ex. 12 at p. 1231).

For the hypothetical patient in Scenario #3 who refuses ambulance transport, AMR proposed charging $689.10 more than SCFD for the exact same services.

Unsurprisingly, the PRC, and each PRC member, gave AMR a "Poor" rating on patient fees worth 6 out of 30 points. In contrast, the PRC, and SCFD obtained a "Minimally Satisfactory" rating on patient fees worth 18 out of 30 points.

Nothing in AMR's protest suggests that the PRC evaluated this section of AMR's proposal incorrectly or that AMR would have submitted lower pricing but for the alleged defects in the RFP process.

2. Nothing In AMR's Protest Changes The Fact That AMR Scored Lower On Budget And Fiscal Sustainability Because It Failed To Include The Required Five Years Of Audited Financial Statements For Its Parent Company.

RFP Sections 3.1(B)(1) and (3) required AMR and SCFD to submit "evidence that documents the financial history of the organization including financial interests in any other related business and demonstrates that it has adequate cash on hand to finance startup costs and the first three months of operations," including "audited financial statements for the most recent five years" for the proposer or its parent company. If it submitted its parent company's audited financials, AMR was required to submit its own financial statements, which "must either be separately shown as a part of those financial statements or submitted separately in the same format and for the same period." In turn, RFP Section 4.10(B) "evaluates the Proposers [sic] submitted budget and other submitted financial documents."

AMR's proposal included only one year of audited financial statements for its parent company, AMR HoldCo, Inc. ("Holding Co.") (**AMR Proposal pp. 996-1023**.) AMR's protest admits its proposals did not include the other four years of audited financial statements for Holding Co. (**AMR Protest at pp. 7-8**.)

Because of AMR's defective proposal, three out of five PRC members (Raters #1-#3) found AMR did *not* meet the minimum qualifications in RFP Sections 3.1(B)(1) and (3) necessary to even be considered for an award. (See **Exhibits 2-6**.) County apparently did not follow their recommendation and instead required PRC members to consider AMR's failure to produce these required documents in scoring Section 4.10(B) of AMR's proposal. (See **PRC Presentation to DHS Director Rivera, Apr. 20, 2023, at 0:04:28 to 0:05:00**.)

In addition, the financial statements for AMR were not submitted in the same period or in the same format as Holding Co.'s audited financials, which effectively prohibited an apples-to-apples comparison of AMR's internal and parent financials. (Compare **AMR Proposal pp. 996-1023**, with ***id.* at 1024-1026**; **AMR Oral Presentation at 1:26:50-1:28:15**.)

Furthermore, AMR could not explain the source and terms for financing the first three years of Sonoma County operations under the new contract. Its proposal stated all startup costs and contingencies would be funded via "an intercompany loan." (**AMR Proposal pp. 196-197**.) But such "intercompany loan" is not reflected on AMR's financials or its proforma estimates for the first three years of operations. (**AMR Proposal pp. 1024-1026, 1048-1049**.) When asked by the PRC during AMR's presentation on April 20, 2023 about the "intercompany loan" referenced in its proposal, AMR's Sonoma County management and financial team confessed they had no knowledge of the loan, the amount of the loan, or the loan's terms and conditions. (**AMR Oral Presentation at 1:31:33-1:32:10**.)

AMR's average score on RFP Section 4.10(B) is 7.2 out of 20 points, while SCFD's average score was 15.2. Because AMR cannot show how any of the alleged defects in the RFP process would have changed these scores, and therefore changed the result, AMR's protest must be denied.

B. Because AMR's Proposal Was Nonresponsive, AMR Lacks Standing To Challenge The Award In Favor Of SCFD, And Its Protest Must Be Denied.

The law is clear: where a proposer submits a nonresponsive proposal, the proposer lacks standing to protest the contract award and the protest must be denied. (*SJJC Aviation Services, supra*, 12 Cal.App.5th 1053-57; see *MCI Diagnostic Ctr., LLC v. United States* (2020) 147 Fed.Cl. 246, 273.)

AMR's proposal should be deemed nonresponsive for several reasons.

1. AMR Failed To "Perform Properly" On Its Existing Contract With County.

RFP Section 2.1 provides: "The County may reject the proposal of any proposer who previously failed to perform properly . . . [on] contracts of a similar nature." County should deem AMR's proposal nonresponsive because AMR has failed to properly perform, and is currently in breach of, its existing contract with County.

On March 8, 2023, County served AMR with a notice that it was in default of its contractual obligations and afforded AMR 30 days to cure the default. (**Exhibit 7**.) On March 27, 2023, AMR responded in a letter from its counsel demanding County provide "an outline, with specificity, of what remains uncured from the perspective of the County so that AMR can have the opportunity to cure the issues within the 30-day cure period." (**Exhibit 8**.) On April 7, 2023, County replied that AMR had refused to pay financial penalties, refused to provide timely financial reports and audits, and performed the contract in a manner that achieved "technical compliance" but otherwise failed to achieve or comply with "the highest levels of performance" required under the contract or "operate services in a manner which enables the EMS Agency and Contractor to remain in substantial compliance with the requirements of applicable federal, state and local laws, rules and regulations." (**Exhibit 9**.)

The existing AMR-County contract provides that "[AMR] shall provide the personnel, equipment and materials necessary to provide Emergency Ground Ambulance Services . . . and other services as described herein to persons in need thereof within the EOA." (**2009 AMR Contract, § 1.1(A)**.) Furthermore, the contract provides: "[AMR] shall be responsible for providing one hundred percent (100%), twenty-four (24) hour per day coverage for all requests for Emergency Ground Ambulance Services for the term of this Agreement within the EOA." (***Id.*, at § 1.3(A)**.) Finally, the contract "requires the highest levels of performance by [AMR]. Mere demonstration of effort, even diligent and well intentioned effort by [AMR], shall not substitute for performance results required under this Agreement." (***Id.*, at § 6.1(A)**.)

One performance metric under the contract is "Level 0" status. Level 0 refers to when there are no AMR ambulance units available to respond to a 911 request for emergency medical care in EOA 1. The contract requires AMR keep track of and report on Level 0 incidents and may have financial penalties imposed against it for when it reaches Level 0 status for greater than 5 minutes. (***Id.*, at §§ 1.6(A), (F), 6.4**.) Referred in practice as "Level 0 > 5 Minutes," this status is incredibly important because irreversible damage may occur in some categories of untreated patients beginning at five minutes after injury (e.g., brain damage for cardiac patients).

SCFD's analysis of AMR's performance reports for April 2022 through February 2023 (**Exhibit 11**), shows that AMR did not "properly perform" the Level 0 provisions of its contract with County. The following table summarizes the Level 0 reporting in those compliance reports:

	Level 0 Events	Level 0 > 5 Minutes Events
Apr-22	70	31
May-22	85	41
Jun-22	41	22
Jul-22	55	28
Aug-22	161	86
Sep-22	Not Reported	Not Reported
Oct-22	Not Reported	Not Reported
Nov-22	Not Reported	Not Reported
Dec-22	Not Reported	Not Reported
Jan-23	42	18
Feb-23	47	13
Total	501	239

In other words, from April 2022 through February 2023—the exclusive provider in that area—had no ambulances available to dispatch to medical emergencies within EOA 1, on 501 separate events. For 239 of those events, AMR had no ambulances available for five or more minutes. Despite a contractual requirement that it report all Level 0 events, AMR's compliance reports for September to December 2022 are entirely silent on Level 0 events. Because AMR has concealed records of its performance, the magnitude of AMR's deficient performance and the accompanying risk to the public health, safety, and welfare, are still unknown.

2. AMR Failed To "Complete On Time" Its Existing Contract With County.

RFP Section 2.1 also provides: "The County may reject the proposal of any proposer who previously failed to . . . complete on time, contracts of a similar nature." County should deem AMR's proposal nonresponsive because AMR failed to perform the full, agreed-upon term of its contract with County when it claimed the contract was no longer effective and it repudiated its obligations under the contract.

The existing contract between AMR and County expires on January 15, 2024. On March 29, 2023, AMR filed a complaint against County in *American Medical Response West v. County Of Sonoma*, No. SCV-272948 (Sonoma County Superior Court) ("*AMR Contract Litigation*"). AMR's first cause of action for rescission and restitution alleges, among other things, that due to certain actions by the Emergency Medical Services Authority ("EMSA"), the State's EMS regulatory agency, the consideration supporting the existing contract between it and County failed and thus, the contract is no longer effective. Because the contract is no longer effective, AMR contends it is no longer bound by the contract or required to perform its contractual obligations and is entitled to have returned to it monies it paid to County after the effective date of EMSA's action.

When a contract fails for lack of consideration, a contracting party has two choices under the law: (1) the "party may disaffirm the contract, treating it as rescinded, and recover damages resulting from the rescission"; or, alternatively, (2) "the party may affirm the contract, treating it as repudiated, and recover damages for breach of contract." (*Wong v. Stoler* (2015) 237 Cal.App.4th 1375, 1384.) AMR chose the first option in the *AMR Contract Litigation*.

In other words, regardless of whether it ultimately prevails against County, AMR made the choice to treat the contract as having no legal effect and no longer binding on it, when it could have chosen to stand on the contract and continue performing it through January 15, 2024, while simultaneously litigating against County to prove the latter breached the contract.

AMR *voluntarily* chose the former route and thus repudiated any obligation it had to complete the contract, i.e., perform its contractual obligations through the end of the contract's term on January 15, 2024.

Accordingly, County should deem AMR's proposal nonresponsive under RFP.

3. AMR Owes County More Than $205,000.

RFP Section 2.1 further provides: "The County may reject the proposal of any proposer who is in default of the payment of taxes, or other monies due to Sonoma County."

According to its own calculations, AMR currently owes County at least $205,950 in delayed response and Level 0 penalties. (**Exhibit 9, at p. 1**.) County should deem AMR's proposal nonresponsive.

C. Because Its Proposal Contains False And Misleading Statements And Estimates, AMR Is Not A Responsible Proposer And Lacks Standing To Protest The Award.

Pursuant to RFP Section 2.5(B)(2)(c), AMR certified under penalty of perjury that "all statements in [its proposal] are true."

On March 8, 2023, one week after it submitted its proposal, AMR provided County with financial documentation regarding its operations in Sonoma County for 2022. (**Exhibit 10**.) Its actual numbers for 2022 bear no reasonable or rational relationship to its anticipated revenues, expenses, and net income it reports in its proposal.

The following table compares the actual revenues, expenses, and net income reported in AMR's 2022 financials against its estimated revenues, expenses, and net income for the first three years of operations in its proposal:

	2022 Actual	2024 Estimate	2025 Estimate	2026 Estimate
Total Revenues	$33,450,907	$25,224,520	$25,993,133	$26,798,564
Total Expenses	$35,375,365	$22,548,606	$23,101,851	$24,034,162
Net Income (Loss)	**$(1,924,458)**	**$2,675,914**	**$2,891,281**	**$2,764,372**

(Compare **Exhibit 10**, with **AMR Proposal, Exhibit 7, pp. 1048-1049**.)

In other words, AMR's proposal estimates the following differences between 2024-2026 and 2022:

- $6.6-8.8 million less annual revenues, equal to reductions of 20-25%.
- $11.3-12.8 million less annual expenses, equal to reductions of 32-36%.
- $4.6-4.8 million more annual net income, equal to increases of 239-250%.

None of this makes any sense. While it proposes to increase rates by 22-37%, AMR would have to bring in significantly more, not less, revenue to achieve a 239-250% increase in annual net revenues.

But that is inconsistent with AMR's proposal, which represents that it seeks to charge significantly more patient fees to offset significantly higher expenses:

> 37% of rate change due to County RFP additional fees & requirements which includes increase in County fees, RFP cost recovery fee, Image Trend, and depreciation related to asset purchases. 63% of rate change due to crew wage inflations, fuel, expense inflations, and changes to reimbursement in the market.

(AMR Proposal pp. 1039.)

If AMR's representations in its proposal regarding its fee increases were true, then its annual revenues and expenses would be greater, and its net income would be more or less the same, for 2024-2026.

There is another significant difference between AMR's 2022 financial statement and the 2024-2026 estimates in its proposal. The 2022 financial statement identifies operating expenses of $10,979,144 for "uncompensated care." (**Exhibit 10**.) But the proposal's 2024-2026 estimates do not include similar operating expenses. (**AMR Proposal pp. 1039**.)

Presumably, that it because it is wholly improper to account for "uncompensated care" as a separate operating expense. AMR's inability to collect payment for care provided to someone without the ability to pay is reflected in AMR's total revenue. AMR's expenses in providing such care is already accounted for in its operating expenses, generally. AMR does not incur additional expenses when it provides uncompensated care; it fails to obtain compensation for the services it has provided. Indeed, AMR claims that it costs more to provide "uncompensated" care ($10,979,144) than it does to pay the wages of field personnel providing such care ($10,060,857). (**Exhibit 10**.)

When the bogus "uncompensated care" operating expense is removed, AMR realized $9,054,686 in pretax profits in Sonoma County in 2022, which is considerably more than the $1.9 million it claimed to lose during the same period or the $4.6-4.8 million it anticipates making in 2024-2026 if it is awarded the contract.

Assuming *arguendo*, that "uncompensated care" is properly classified as operating expenses, then AMR should have included it as a category of expenses in its proposal's proforma estimates. It did not.

Thus, AMR's omission of "uncompensated care" operating expenses from the proposal's 2024-2026 estimates means that it was untruthful in its 2022 financials, in its proposal, or in both its 2022 financials and its proposal.

AMR has not shown itself to be a responsible proposer eligible for an award. (*Inglewood-Los Angeles County Civic Center Authority v. Superior Court of Los Angeles County* (1972) 7 Cal.3d 861, 867 (responsible refers to a proposers' trustworthiness, quality, fitness, and capacity to perform the proposed work). Because it is not eligible for an award, AMR lacks standing to protest County's award to SCFD.

D. AMR's Allegations Regarding Ms. Gnojek's Purported Conflict Of Interest Have No Merit.

AMR alleges that Ms. Gnojek had an undisclosed, material, and disqualifying conflict of interest that infected the entire RFP process. The conflict purportedly arose when Medic donated $10,000 to WiES, which Ms. Gnojek founded. According to AMR, Ms. Gnojek did not recuse herself and instead rewarded SCFD's and Medic's commitment to her "passion project," a nonprofit dedicated to increasing women in EMS, by skewing the PRC review of AMR's financial statements. According to AMR, Ms. Gnojek used her clout to foreclose AMR's opportunity to cure its admittedly defective proposal by belatedly submitting four years of audited financials and overlook the fact that Medic did not submit audited financial statements for itself.

AMR's contentions are contrary to the facts, the law, and common sense.

1. AMR's Speculative Allegations Regarding Ms. Gnojek, WiES, And Medic Are Contrary To The Facts.

Relying entirely on out-of-context screenshots of social media posts, AMR argues that Medic donated at least $10,000 to WiES "while Ms. Gnojek was reviewing the [proposals]. . . . After SCFD submitted its proposal, and on April 19, 2023 – one day before Medic made an oral presentation to Ms. Gnojek in connection with the RFP, WiES announced that Medic had just become a 'Founding Sponsor' thus confirming to the world that Medic had just paid $10,000 to Ms. Gnojek's passion project, WiES. . . . It is thus reasonable to conclude that Medic paid WiES its founding donation of at least $10,000 on or about April 19, 2023." (AMR Protest at 6.)

AMR is wrong. Medic's President and COO, Jimmy Pierson, learned about WiES in January 2023 based on social media posts by Page, Wolfberg & Wirth, one of Medic's law firms and another WiES Funding Sponsor. On January 18, 2023, Mr. Pierson wrote an email to WiES National Account Executive Julia Heitz, stating Medic's interest in sponsoring WiES. (**Exhibit 17 at p. 7**.)

After Ms. Heitz emailed twice with "an invoice for the WiES $10,000 founding sponsorship" and various logistical questions on January 19 and 20, 2023, Mr. Pierson responded on February 1, 2023, writing:

> [W]e are family owned business with a majority women owned by family.
>
> Helen Pierson (mom),CEO
> Cynthia McBride (my sister), VP-Quality, CCTRN, MSN, FN-P
> Sandra Whaley, (my sister), VP – Communications, EMD-Q
> Kristi Kendall (cousin), VP – Finance
>
> So the success of this organization is very important to us and want to help in any way possible!

> Wire should go through today! Sorry for delay in getting back to you. Working on a county ambulance proposal and has tied me up.

(**Exhibit 17 at pp. 4-7**.)

On March 15, 2023, Ms. Heitz notified Mr. Pierson that WiES had not yet received the $10,000 wire transfer from Medic. (***Id.* at p. _**.) Medic discovered that, due to inadvertence, it had not sent the wire transfer and completed the transaction on March 16, 2023. (***Id.* at pp. 1-3**.)

All of Mr. Pierson's and Medic's interactions with WiES were with Ms. Heitz, not Ms. Gnojek. Mr. Pierson and his family members do not know Ms. Gnojek and did not know she was on the PRC until the day after the notice of intent to award was issued, because County kept secret the identity of PRM members.

Neither SCFD nor Medic know why WiES waited until April 19, 2023 to post about Medic's donation to the non-profit.

Despite AMR's insinuations, there is nothing untoward about Medic's and SCFD's support of WiES:

> WiES' mission is to support and advance women's careers in the emergency services industry, from field providers to national leadership, through four "pillars" -- empowerment, networking, mentorship, and education. WiES' vision is to create a platform for women in emergency services to provide resources needed to achieve their full potential in their careers, connect with peers, and empower others.
>
> WiES believes through its pillars, defined below, it will be able to influence and impact the lives of thousands of women working in the emergency services industry.
>
> - Empowerment: We celebrate women in emergency services and create an inclusive environment for women to be their true selves. Women will grow their personal and professional networks through self-empowerment and mutual support.
>
> - Networking: By providing unique opportunities for women to connect and learn from others, they will be able to create strong and supportive networks amongst peers to gain knowledge and advance their careers.
>
> - Mentorship: Women will develop relationships to mentor and empower women in the emergency services industry. Women will feel confident to advocate for themselves and achieve excellence in their careers.
>
> - Education: Create high-quality learning opportunities for women to build successful careers in the evolving emergency services industry. These

> educational opportunities will focus on professional development, self-advocacy, and technical expertise.

(**AMR Protest, Ex. 3, p.24**.)

As noted, Medic is a family-owned business and, except for Mr. Pierson, all of the owners are women. Helen Piersen, Cynthia McBride, Sandra Whaley, and Kristi Kendall Jones have worked in the ambulance industry for decades, and they and other women employees of Medic have been recognized for their work in the industry and improving Solano County communities. (**Exhibit 12**.) As recently as March 30, 2023, the American Ambulance Association, in collaboration with WiES, announced that Ms. Pierson is one of twenty-three inaugural Vanguard Award winners, which "honor those who blazed the trail for fellow women EMS professionals" and "who have made significant contributions to mobile healthcare." (**Exhibit 13**.)

Given the Pierson family's experience and demonstrated support of women in their field, there can be no dispute that Medic would have donated to WiES regardless of the RFP. Rather than an attempt to influence the PRC, Medic's and SCFD's stated desires in the SCFD proposal to work with WiES to support women with career advancement resources and mentorship opportunities (see **AMR Protest at pp. 6-7; SCFD Proposal at pp. 119-120**), reflect deeply-held beliefs about the need to boost opportunities for women in the EMS ambulance industry, in direct support of SCFD's commitment to diversity, equity, inclusion, and belonging..

Medic's and SCFD's support of WiES reflects their commitment to, and support of, women in the EMS and ambulance industry. AMR's efforts to tarnish and trivialize the beliefs and efforts of WiES, Ms. Gnojek, Medic, and SCFD should be seen for what they are: a cynical attempt to preserve the status quo contrary to the values of Sonoma County communities.

2. AMR's Allegations Regarding Ms. Gnojek And The RFP Process Mischaracterize The Facts Known To AMR.

Throughout its protest, AMR makes various factual allegations regarding Ms. Gnojek and the RFP process that are contrary to the plain language of the RFP and County records that AMR obtained through a Public Records Act request.

First, AMR repeatedly asserts that Medic failed to submit audited financial statements, despite a requirement in the RFP that it do so. (**AMR Protest at pp. 3, 7-8**.) This is not accurate. RFP Section 3.1 provides: "The Proposer, ***and/or*** any subcontractor must meet the following minimum qualifications . . . " (emphasis added). As to the audited financials requirement, RFP Section 3.1(B)(3) expressly provides: "Public Sector agencies that have been formed as the result of consolidation of agencies may use the audited financial statements of its constituent agencies to meet the five-year audited financial statement requirement."

SCFD's proposal fully satisfied this requirement by including five years of audited financial statements for itself and its predecessor fire district, the Windsor Fire Protection District. (**SCFD Proposal at pp. 918-1118**.) SCFD also submitted five years of reviewed financial statements for Medic (***id.* at 1119-1196**), even though they were not required under RFP Section 3.1(B)(3), in the interests of full transparency and to assure the PRC and County of SCFD's solid financial foundation. SCFD's proposal therefore met and exceeded the RFP's financial disclosure requirements.

Second, AMR asserts "there was no reason why AMR should not have been given an opportunity to provide the missing [audited] financials" for Holding Co., and thereby fix its admittedly deficient proposal. (**AMR Protest at pp. 3 & fn.4, 7-8**.) This is false. RFP Sections 2.1 and 2.8 expressly state that County will not accept any modifications to submitted proposals after the March 1, 2023, proposal due date. Consistent with these sections of the RFP and its general procurement standards and guidelines, County (not Ms. Gnojek or the PRC) determined that AMR would not be allowed to modify its defective proposal by belatedly submitting the required five years of audited financial statements. (**PRC Pre-Proposer Presentations Meeting, Mar. 9, 2023, at 0:35:40-0:37:24**.)

Third, AMR alleges that Ms. Gnojek "significantly docked" its score on RFP Section 4.10(B)'s budget and financial sustainability requirements for failing to submit the required financial documentation but that her statements during AMR's oral presentation "do not comport with the scores that AMR ultimately received." (**AMR Protest at pp. 7 fn.5, 8**.) These allegations are false, too. While the PRC members' individual scoring sheets are anonymized (**Exhibits 2-6**), one can deduce Ms. Gnojek's scoring sheet from the record. She revealed during the PRC's meeting that she scored SCFD "minimally satisfactory" on patient fees and "very good" on budget and financial sustainability and scored AMR "poor" on patient fees and "fair" on budget and financial sustainability. (**PRC Pre-Proposer Presentations Meeting, Mar. 9, 2023, at 0:28:42-0:33:12**.) Those scores are the same as the scores given AMR and SCFD by "Rater #5" (**Exhibit 6**), who scored AMR higher on budget and financial sustainability than the average score of all PRC members (compare ***id.***, with **Exhibit 1**.) Ms. Gnojek was also the only PRC member who found that AMR satisfied the "minimum qualifications" for financial condition in RFP Section 3.1(B), despite AMR's failure to submit all the required documentation. (Compare **Exhibit 6** with **Exhibits 2-4**.) Furthermore, Ms. Gnojek's scoring of AMR's proposal on Sections 4.10(A) and (B) is entirely consistent with the repeated, and at times painful, inability of AMR's presenters to answer Ms. Gnojek's questions regarding its proposed pricing, budgeting, and finances. (**AMR Presentation, Apr. 20, 2023, at 1:18:30-1:34:51**.)

Fourth, AMR alleges that Ms. Gnojek used her "clout" to skew the PRC's scoring of AMR's proposed pricing and financial sustainability, despite her duty to act as an objective and impartial scorer and subject matter expert. (**AMR Protest at pp. 3, 8**.) Again, these allegations are untrue. During the pre-presentation PRC meeting, Ms. Gnojek objectively, impartially, and candidly discussed the proposals, presented her findings, and answered questions regarding the financial issues, pointing out the strengths and weaknesses of both proposals. (**PRC Pre-Proposer Presentations Meeting, Mar. 9, 2023, at 0:01:50-0:57:24**.) She not only avoided making any unfair or partial statements, but also revealed her own scoring of the financial portions of the dueling proposals only after she was asked to so do by PRC members and County's facilitator. (***Id.* at 0:28:18-0:28:58**.) Her conduct, observations, questions, and analyses throughout the RFP review process were consistent with her duties under the County's Ambulance Ordinance and

Services Agreement with the County (**RFP § 2.11(B), Ex. 19, p. 107; AMR Protest Exhibit 7, pp. 54**), and exemplifies the character and integrity that led to her recieving the 2022 Government Finance Officers Association Hero Award. (**AMR Protest Exhibit 5, p. 34**; **Exhibit 14**.) The record shows that Ms. Gnojek was not biased against AMR, AMR's real complaint with her is that she saw through AMR's fuzzy math and misleading financials and objectively and impartially revealed the financial weaknesses of its proposal to the chagrin of AMR's management and financial team. (See **AMR Presentation, Apr. 20, 2023, at 1:18:30-1:34:51**.)

Fifth, AMR suggests that County's postponement of the proposers' presentations to the PRC improperly favored SCFD, and disfavored AMR. (**AMR Protest at pp. 4, 8**.) But the presentations were postponed from March 10, 2023 to April 20, 2023 because one or more of the PRC members were unable to attend the presentations due to their involvement in disaster relief efforts occasioned by the "atmospheric river" storm event that hit California on March 10, 2023. (**AMR Presentation, Apr. 20, 2023, at 0:02:08-0:02:32; Exhibit 15**.) For AMR to suggest otherwise is simply dishonest.[2]

3. AMR Cannot Show It Was Prejudiced By Ms. Gnojek's Alleged Conflict of Interest Because Its Theory—It Was Treated Unfairly When County Did Not Allow It To Fix Its Defective Proposal In Violation Of The RFP—Is Absurd.

Before County or the courts may sustain its protest on the instant ground, AMR must show prejudice from Ms. Gnojek's involvement such that AMR would have submitted the winning proposal but for her alleged conflict of interest. (*SJJC Aviation Services*, *supra*, 12 Cal.App.5th at 1053-57; *Baldwin-Lima-Hamilton Corp. v. Superior Court of San Francisco* (1962) 208 Cal.App.2d 803, 824-825; see *Labatt Food Serv. v. United States* (Fed. Cir. 2009) 577 F.3d 1375, 1378.)

AMR does not, and cannot, show prejudice from Ms. Gnojek's alleged conflict of interest. According to AMR, Ms. Gnojek provided SCFD an unfair advantage because AMR was not allowed to cure the defects in its proposal by belatedly submitting Holding Co.'s missing audited financials and Medic's submission of unaudited financials was "overlook[ed]" by the PRC and County. (**AMR Protest at pp. 3 & fn.4, 7-8, 10-11**.)

Nonsense. County "must comply with the requirements in [the RFP]" regarding the contents of proposals, the evaluation process, and award of the corresponding contract. (*Schram Construction, Inc. v. Regents of University of California* (2010) 187 Cal.App.4th 1040, 1060.) Here, the RFP expressly prohibits any modification to submitted proposals after the March 1, 2023, proposal due date. (**RFP §§ 2.1, 2.8**.) County, not Ms. Gnojek, determined AMR would not be

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[2] AMR also states that County "previously delayed the RFP to accommodate SCFD." (**AMR Protest at p. 4**.) This statement is untrue. County cancelled an earlier version of the RFP in part because various pandemic related supply shocks meant that no proposer other than AMR could satisfy the RFP's timeline for beginning performance on a new contract. SCFD and five other then-interested proposers raised this issue with County during a mandatory proposer's conference on December 2, 2021. While this issue is outside of the scope of the instant RFP and AMR's protest, SCFD is happy to provide a copy of the digital video recording of that proposer's conference made by County.

allowed to cure its defective proposal by belatedly submitting the required five years of audited financial statements. (**PRC Pre-Proposer Presentations Meeting, Mar. 9, 2023, at 0:35:40-0:37:24**.) If County had allowed AMR to cure its defective proposal in violation of RFP Sections 2.1 and 2.8 and such cure resulted in AMR obtaining a higher score, SCFD would have been disadvantaged and the contract award to AMR would have been unlawful and void. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1443 [reversing judgment and finding contract invalid because winning bidder was allowed to cure otherwise nonresponsive bid in violation of specifications in city's solicitation].)

Furthermore, it would have been improper to allow AMR to cure its defective proposal pursuant to RFP Section 2.5(B), which provides that County may waive immaterial or inconsequential errors in proposals. Assuming the truth of AMR's representation that the omission of Holding Co.'s audited financial statements from the proposal was inadvertent, such error was material and uncurable.

"A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted." (*Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1188.) "However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential." (*Id.*)

Here, all five years of the audited financial statements were both a "minimum qualifications" requirement (**RFP § 3.1(B)(3)**, and a scored component of the proposal (**RFP § 4.10(B)**. The omission of the financial statements rendered AMR's proposal nonresponsive, as three of PRC members found. (See **Exhibits 2-4**.) County made the discretionary decision to not reject[3] AMR's proposal and instructed the PRC to evaluate the defective proposal as submitted. (See **PRC Presentation to DHS Director Rivera, Apr. 20, 2023, at 0:04:28 to 0:05:00**.) Had County allowed AMR to cure its defective proposal after the submission deadline, the PRC likely would have scored AMR's proposal differently, which would have afforded AMR an unfair advantage in violation of the RFP and competitive bidding laws. (*DeSilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1423-24 (affirming judgment vacating contract award because state agency improperly allowed presumptive winning bidder to cure nonresponsive bid after bid submission deadline]; *Valley Crest, supra,* 41 Cal.App.4th at 1443 [city could not use power to waive irregularities to allow bidder to cure material elements of bid].)

Furthermore, as discussed in section I.D.2, above, AMR did not suffer prejudice from Medic submitting reviewed, as opposed to audited, financial statements. RFP Sections 3.1 and 3.1(B)(3) required SCFD "and/or" Medic to submit five years of audited financial statements and expressly allowed SCFD to submit audited financial statements of its predecessor fire district, the Windsor Fire Protection District. SCFD satisfied the minimum qualifications requirements by submitting five years of its and the Windsor Fire Protection District, without relying on Medic's financial statements. SCFD submitted both its audited financial statements *and* Medic's reviewed

[3] SCFD respectfully disagrees with County on this point. AMR's proposal was nonresponsive under the express terms of the RFP and should have been rejected.

financial statements in the interest of transparency and to allow the PRC to properly evaluate their combined financial sustainability under RFP Section 4.10(B).

Unlike AMR, SCFD followed the RFPs instructions and submitted a responsive proposal and provided information in excess of the RFP's requirements. SCFD was not afforded any special treatment or unfair advantage.

In sum, County adhered to the RFP's terms and competitive bidding laws by not allowing AMR to cure its defective bid and did not afford SCFD any special treatment regarding the latter's financials. AMR cannot show prejudice on these facts. Because it maintains that County should have disregarded the plain terms of RFP Sections 2.1, 2.5(B), and 2.8, and thereby afforded it special treatment and an unfair advantage over SCFD, AMR's attempt to show such prejudice is frivolous and absurd.

4. AMR's Government Code Section 1090 Arguments Fail As A Matter Of Law Because Ms. Gnojek Is Not Financially Interested In The EOA 1 Contract And Her Role With WiES Is Not A Non-Interest For Purposes Of The Statute.

AMR contends that, as a result of Medic's $10,000 donation to WiES, Ms. Gnojek had a conflict of interest within the meaning of Section 1090, and thus the contract award to SCFD is void and unenforceable.

AMR is wrong. Section 1090 prohibits public officers and employees, and certain independent contractors of public agencies, from making contracts in which they have a *financial interest* when they act in their official capacities. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 233.) Courts "focus on whether the contract in question could confer some type of pecuniary advantage to the target of a section 1090 inquiry." (*Torres v. City of Montebello* (2015) 234 Cal.App.4th 382, 402.) "Section 1090 is triggered when a public official receives any profit from a public contract and includes the acceptance of a bribe in return for influencing the public entity to enter into a particular contract." (*Id.*) "'The phrase 'financially interested' broadly encompasses anything that would tie a public official's fortunes to the existence of a public contract.'" (*Id.*) "Put in ordinary, but nonetheless precise, terms, an official has a financial interest in a contract if he might profit from it." (*Id.*)

Torres involved a claim that a city waste hauling contract violated Section 1090 because the awardee made donations to a nonprofit drug treatment center founded by a city councilmember who voted to award the contract. Not only did the city councilmember fail to disclose the awardee's donations when she voted, but she was also a paid officer of the nonprofit at the time of her vote. (*Id.* at 400.)

The trial court found no violation of Section 1090 and the court of appeal affirmed. The appellate court explained that the city councilmember did not have a "financial interest" in the city waste hauling contract because the nonprofit was not a party to the contract and the awardee had not made any promises of financial gain to the city councilmember in exchange for voting to approve the contract award. (*Id.* at 400-02.)

Torres completely disposes of AMR's allegations. As in *Torres,* neither Ms. Gnojek nor WiES are parties to the EOA-1 contract. AMR does not show that, as WiES's "founding advisor," Ms. Gnojek owns a financial interest in the nonprofit or that she would somehow personally profit from County awarding the EOA-1 contract to SCFD. AMR does not and cannot show that SCFD or Medic made Ms. Gnojek any promises in exchange for scoring SCFD's proposal higher than AMR's proposal because they did not know she was on the PRC until after County issued the notice of intent to award and Medic donated for reasons unrelated to the RFP. Even if Ms. Gnojek's role in scoring the proposals and advising the PRC is analogous to a city councilmember voting on a final contract award, Ms. Gnojek is not "financially interested" in the County's EOA-1 contract under *Torres*.

E. AMR's Proposition 26 Arguments Have No Basis In Law Or Fact And Fail To Show Prejudice.

All taxes imposed by any local government are subject to voter approval. Cal. Const. art. XIII C, § 2. Proposition 26 expands the definition of tax to include "any levy, charge, or exaction of any kind imposed by a local government," with seven exceptions. (Cal. Const. art. XIII C, § 1(e).) Relevant here is the second exception, which excepts "[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product" from the definition of "tax." (Cal. Const. art. XIII C, § 1(e)(2); see Gov. Code, § 50076.)

AMR contends that SCFD's proposal is unlawful because SCFD's proposed fees allegedly violate the limits on service fees that SCFD may charge without voter approval under Proposition 26. AMR is wrong on the law, on the facts, and fundamentals of public financing under Proposition 26. Finally, AMR cannot show prejudice because, under its theory, SCFD should be proposing even lower fees than AMR, which would have increased SCFD's score and margin of victory over AMR.

1. AMR's Proposition 26 Challenge Fails Because It Attacks SCFD's Proposed Fees, Not The Fees Approved By SCFD's Board Of Directors In 2020.

Whether SCFD's proposed fees are reasonable is not measured by individual charges. (*616 Croft Ave., LLC v. City of W. Hollywood* (2016) 3 Cal.App.5th 621, 631.) Instead, the reasonableness inquiry asks whether the fee schedule adopted by SCFD is reasonably related to governmental activity. (*Id.* at 631-32.)

In 2020, SCFD's Board of Directors adopted SCFD Ordinance No. 2020-02, which sets forth the fee schedule for EMS provided by SCFD. (See **Exhibit 16**.) AMR is aware of the ordinance because it is referenced on the protest. (See AMR protest at p. 12.) Because AMR challenges SCFD's proposed fees in its proposal, not the fee schedule in SCFD Ordinance No. 2020-02, AMR cannot show that SCFD's fees are unreasonable under Proposition 26. This ground of its protest fails.[4]

2. AMR's Arguments Fail Because It Misconstrues How Reasonable Fees Are Determined For Proposition 26 Purposes.

AMR's legal challenge to SCFD's proposed pricing fails on the merits because AMR does not understand that whether a fee is reasonable under Proposition 26 is measured by different standards than ordinary business accounting and SCFD's fees comply with Proposition 26.

To qualify for the exception in Cal. Const. art. XIII C, § 1(e)(2), a service fee charged by a local government must satisfy two requirements: (1) the fee must "be fixed in an amount that is 'no more than necessary to cover the reasonable costs of the governmental activity'"; and (2) "the manner in which those costs are allocated to a payor [must] bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1214 , quoting Cal. Const. art. XIII C, § 1(e).)

California courts examine the reasonableness of service and regulatory fees for Proposition 26 using the same legal standards. *City of San Buenaventura, supra*, 3 Cal.5th at 1211-12.) Those standards provide:

> The scope of a [service] fee is somewhat flexible and is related to the overall purposes of the regulatory governmental action. A [service] fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the [action]. . . . [F]ees are valid despite the absence of any perceived benefit accruing to the fee payers. [Citation.] Legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the [service] fee. [Citation.] Simply because a fee exceeds the reasonable cost of providing the service or regulatory activity for which it is charged does not transform it into a tax. [Citation.] A [service] fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors. [Citation.] The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors. [Citation.]
>
> Thus, permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual

[4] AMR erroneously attempts to shift the burden of proving the propriety of SCFD's proposed fees to SCFD and County. (**AMR Protest at pp. 4, 13**.) Because County's resolution of the protest will be presumed correct and supported by substantial evidence, AMR bears the burden of proof on its protest to show that County's decision to award the EOA-1 contract to SCFD is "arbitrary or capricious, entirely lacking in evidentiary support, or whether it failed to follow proper procedures or failed to give notice as required by law." (*Taylor Bus Serv. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1340.)

> fee payor might derive. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.

(*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438 [internal quotations omitted], followed by *City of San Buenaventura, supra,* 3 Cal.5th at 1214.)

AMR's various arguments fail when the proper legal standards are applied.

First, AMR contends that SCFD's estimated net revenues of over $10 million in the first three years of operation "establishes a prima facie violation" of the foregoing legal standards because such net revenues "exceed the 'reasonable costs of the governmental activity.'" (**AMR Protest at pp. 12**.)

But ambulance transport services are not the relevant governmental activity as determined by the SCFD Board of Directors. (*California Farm Bureau, supra,* 51 Cal.4th at 438 [determination of fee is matter for legislator's sound judgment].) As demonstrated by SCFD Ordinance No. 2020-02, the SCFD Board of Directors determined that the governmental activity is not only ambulance transport services, but the entire continuum of prehospital EMS, including non-transport, first response EMS. (**Exhibit 16**.) AMR does not view the entire continuum of prehospital EMS as a single governmental activity. Ambulance transport services, which are generally the only revenue generating aspect of EMS because of Medicare and Medi-Cal regulations and industry custom. Ambulance transport services are therefore the portion of prehospital EMS for which prehospital EMS providers may obtain reimbursements. AMR's business model focuses on ambulance transport services, which is generally the only revenue generating activity in the EMS system. As a result, AMR strips the revenues out of EMS systems, while relying on fire agencies to effectively subsidize its operations by deploying fire engine-based EMS personnel to stabilize and treat patients before transport, usually at no cost to AMR.

Rather than adopt AMR's narrow focus on ambulance transport services within the EMS system (which, unfortunately, is how County designed the RFP), SCFD and its Board of Directors view the entire continuum of prehospital EMS holistically and as a single government activity for Proposition 26 purposes. Thus, the net revenues obtained by SCFD will go toward: (1) recovering the costs of providing ambulance transport services; (2) recovering the significant and otherwise unreimbursed cost of providing non-transport, first response EMS via firefighters on fire engines; (3) ensuring the financial stability and sustainability of SCFD's non-transport and transport EMS through adequate reserve and contingency funding; (4) funding all necessity capital expenditures to provide such services; and (5) funding much needed EMS system improvements, innovation, and integration that County seeks (as described in the RFP), and which have been largely neglected by AMR's strip mining approach to EMS system revenues. These are not the kind of general revenues prohibited by Proposition 26. (*California Farm Bureau, supra,* 51 Cal.4th at 438 [permissible fees must be reasonable in light of, and related to, the overall cost and purposes of the governmental activity].)

Second, AMR argues that patients and payors will pay an illegal tax because, under SCFD's proposed fees, they will be charged a $3,100 base rate for ALS ambulance transports, while SCFD's actual cost per transport is below $900. (**AMR Protest at pp. 12**.) AMR is wrong.

Whether SCFD's fees comply with Proposition 26 turns on its "reasonable costs" to provide the service, not its actual costs. (Cal. Const. art. XIII C, § 1(e); *City of San Buenaventura, supra,* 3 Cal.5th at 1214.) Indeed, a fee may still exceed "the reasonable cost of providing the service" without transforming the fee into a tax. (*California Farm Bureau, supra,* 51 Cal.4th at 438.) Nor does a service fee "become a tax simply because the fee may be disproportionate to the service rendered to individual payors." (*Id.*). "The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors." (*Id.*)

In other words, AMR is wrong to look to SCFD's cost to provide transport services to individual payors; rather, the inquiry must look to whether SCFD's fees *collectively* cover the reasonable costs of providing the entire continuum of prehospital EMS, *taking into account all rate payors*. (*Id.*; *City of San Buenaventura, supra,* 3 Cal.5th at 1214).

State law requires EMS providers to provide such services to all patients, without regard to their "insurance status, economic status [or] ability to pay" and without first questioning patients about their ability to pay. (Health & Saf. Code, § 1317, subds. (a), (b), (d); *Sierra Med. Servs. All. v. Kent* (9th Cir. 2018) 883 F.3d 1216, 1224-26; *YDM Management Co., Inc. v. Sharp Community Medical Group, Inc.* (2017) 16 Cal.App.5th 613, 623.)

Prehospital EMS patients are varied, particularly with regard to their ability to pay for care. They may include indigent persons (who cannot afford to pay for services rendered), Medicare and Medi-Cal beneficiaries (and such health programs reimburse providers at or below actual costs), persons with commercial insurance, persons with other forms of government-provided care or insurance (e.g., TriCare and Veterans Affairs), and persons paying out of pocket. While they charge patients the same rates, ambulance service providers, including AMR and SCFD, are reimbursed at different rates depending on the payor and applicable laws and regulations. This phenomenon is illustrated in both proposals. (See **AMR Proposal at p. 1049; SCFD Proposal at 1235**.)

SCFD's rates for ambulance transport services are therefore designed to generate sufficient revenue to cover the costs of providing the full continuum of EMS to all patients, regardless of their ability to pay or government-mandated levels of reimbursement at or below cost. The fees are necessary to cover the costs and ensure the economic viability of services and the entire EMS system, making them permissible under the first prong of *San Buenaventura*. (*California Farm Bureau, supra,* 51 Cal.4th at 438; *City of San Buenaventura, supra,* 3 Cal.5th at 1214) SCFD's fees also satisfy *San Buenaventura*'s second prong in that SCFD's rates do not discriminate between different categories of patients and/or payors, and while some payors ultimately pay more than others, such allocation of costs is fair and reasonable in light of federal and state laws requiring SCFD to provide services to all patients, regardless of their ability to pay, and limiting SCFD's cost recovery for Medicare and Medi-Cal patients. (*Id.* at 1213 ["[i]n pursuing a constitutionally and statutorily mandated . . . program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity"]; see *City of San Buenaventura v. United Water Conservation Dist.* (2022) 79 Cal.App.5th 110, 120 [affirming trial court's finding that three-to-one ratio between groundwater pumping rates for municipal uses and agricultural uses failed second prong of *San Buenaventura* test because SCFD cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity." (*City of San Buenaventura, supra,* 3 Cal.5th at 1213.)

Fourth, AMR challenges the statement in SCFD's proposal that "Proposition 26 does allow public agencies the ability to create enterprise funds and maintain reserve accounts," by arguing Cal. Const. art. XIII C, § 1(e) contains no such authorization, the courts have not considered this proposition, and "the notion is not logically sound" because Proposition 26 was intended to curb "local governments' quest for additional revenues disguised as fees." (**AMR Protest at p. 13**.)

AMR misunderstands the purpose of Proposition 26 and the statement in SCFD's proposal. Proposition 26 allows local governments to establish fees that exceed the reasonable cost of providing the service without voter approval, provided that any surplus generated by such fees is not "used for general revenue collection." (*California Farm Bureau, supra,*.51 Cal.4th at 438.)

Enterprise funds are a means to properly account for service costs and revenues while ensuring any net revenues are not used for general revenue purposes. Enterprises and enterprise funds are maintained separate from a local agency's operations and general fund and are used to account for services that are financed and operated in a manner similar to private business enterprises, with the intent that the costs of providing such services to the general public on a continuing basis be financed or recovered primarily through user charges. (See Gov. Code §§ 25261; Cal. Code Regs., tit. 2, § 921.) State law expressly allows local agencies such as SCFD to operate ambulance service enterprises. Gov. Code §§ 25261, 54309, 54309.1, subd. (f).

Finally, AMR argues that "SCFD has failed to pass an enacting legislation for such [an enterprise] fund that the County and AMR could review during the RFP process." (**AMR Protest at p. 13**.) SCFD had no reason to create an "EOA-1 contingency fund" prior to January 16, 2024, when it will begin performing services as County's exclusive contract provider in EOA-1. And, unlike submitting five years of audited financial statements for AMR's parent company, the RFP did not require SCFD to establish such a fund prior to submitting its proposal.

3. AMR Cannot Show Prejudice Because It Argues That SCFD Should Be Charging Even Lower Fees Than AMR.

This ground of AMR's protest fails for another reason: AMR cannot show prejudice. Assuming AMR's argument is correct (it is not), then SCFD is required to charge *even lower rates* for ambulance services than it proposes to charge. It follows that the results would not change, as SCFD would have earned even higher scores on RFP Section 4.10(A) than it did, because SCFD's proposed fees would be even lower than the prices AMR proposed. Because AMR would have lost by an even greater margin, AMR cannot show that it was prejudiced by SCFD's failure to propose lower rates. AMR's bid protest must fail. (*SJJC Aviation Services, supra*, 12 Cal.App.5th at 1053-57.)

AMR's argument suffers from this fatal flaw because AMR does not invoke Proposition 26 out of concern over Sonoma County taxpayers. Rather, AMR seeks to use the law to straightjacket SCFD and other public providers to eliminate any public sector challenge to its dominant share of California's markets for ambulance services. But nothing in Proposition 26 alters the legal proposition that "when "a governmental entity is authorized to exercise a power purely proprietary, . . . it has full power to perform it in the same efficient manner as a private person would." (*Citizens for Fair REU Rates, supra* , 6 Cal.5th at 18.) And while it does not apply to private entities, Proposition 26 was never intended to allow AMR, the largest provider of ambulance services in the United States, to maximize profits for its private entity owners by increasing prices to consumers by 22-50% from one year to the next.

At the end of the day, AMR lost because *AMR* proposed higher prices to patients and *AMR* could not show a solid financial foundation. Its Proposition 26 arguments are pure gaslighting: if AMR was really concerned with the burdens of Sonoma County taxpayers, it would not be looking to charge them $1,200-$1,300 more for ambulance services than their local fire agency.

F. SCFD Did Not Violate The "Gag Order."

AMR alleges SCFD violated the so-called "gag order" provisions of RFP Section 2.7(B), which provides, in pertinent part:

> <u>Violation of the following prohibitions may result in a Proposer being found non-responsible, barred from participating in this or future procurements, and becoming subject to other legal penalties</u>. . . .
>
> B. Any party submitting a proposal or a party representing a proposer shall not influence or attempt to influence any member of the selection committee, any member of the Board of Supervisors, or any employee of the County of Sonoma, with regard to the acceptance of a proposal. Any party attempting to influence the RFP process through ex-parte contact may be subject to rejection of their proposal. . . .

County should *not* exercise its discretion to deem SCFD nonresponsible or reject SCFD's proposal because AMR fails to prove that SCFD violated RFP Section 2.7(B) or that the result of the RFP would have been different but for the alleged violations.

1. Local 1401 Is Not SCFD's "Representative" And SCFD Cannot Lawfully Control Local 1401's Political Advocacy.

AMR alleges that SCFD violated RFP Section 2.7(B) through the safersonoma.com website and online advertisements for the website. The safersonoma.com website has functionality that enables site users to send automated petitions to the County Board of Supervisors and Sonoma

County Health Care Services Agency Director Tina Rivera. (**AMR Protest pp. 13-15; *Id.*, Ex. 9 at Exs. A-C, pp. 71-78**.) AMR's protest fails on this ground because it assumes the very facts it must prove to show SCFD violated RFP Section 2.7(B).

As noted, RFP Section 2.7(B) applies to "a proposer," such as SCFD, or "a party representing a proposer." While it describes the content of the website and online advertising, AMR somehow fails to allege that SCFD or "a party representing [SCFD]" is responsible for safersonoma.com. (**AMR Protest pp. 13-15; *Id.*, Ex. 9 at pp. 66-69**, **Exs. A-C, pp. 71-78**.

It cannot. The exhibits attached to the protest confirm that the website and online advertising constitute political advocacy by "Paid for by I.A.F.F. Local 1401 - Committee for a Safe Sonoma County ID #: 1228510," i.e., Local 1401.

Local 1401 does not represent SCFD. It is a labor union bargaining unit that represents the fire fighters, fire engineers, fire captains, and fire prevention personnel employed by SCFD, the Santa Rosa Fire Department, Rancho Adobe Fire Protection District, and Goldridge Fire Protection District. The notion underlying AMR's arguments—that a labor union somehow represents both an employer and its employees—is absurd on its face. Indeed, AMR has not come forward with any evidence showing that SCFD authorized Local 1401 to speak to the County Board of Supervisors or Director Rivera on SCFD's behalf.

Nor are Local 1401's activities fairly attributable to SCFD. SCFD cannot lawfully limit, control, or direct the political activities of its employees, such as SCFD Fire Captain and Local 1401 President Mike Stronetta, or the employees' representatives, such as Local 1401; such political activity is protected by the free speech clauses of the Federal and California constitutions and California statutes. (*Fort v. Civil Service Comm'n* (1964) 61 Cal.2d 331, 334-35, 336-38; see also Gov. Code, § 3203; Lab. Code §§ 1101-1102.)

AMR has not shown that Local 1401 represented, or was authorized to speak on behalf of, SCFD through the safersonoma.com website and online advertisements. County should deny its protest as to this ground.

2. AMR Cannot Show That It Was Prejudiced By Local 1401's Alleged Conduct Because There Is No Proof That It Influenced The PRC's Scoring Of AMR's Higher-Priced, Defective Proposal.

Assuming Local 1401 somehow violated RFP Section 2.7(B) (it did not), AMR cannot show prejudice from the safersonoma.com website and online advertisements. When interpreting RFP provisions like the "gag order" in RFP Section 2.7(B), courts look to whether the alleged violations conferred an unfair advantage on one bidder over another and defer to the procuring agency's judgment on whether disqualification is appropriate. *Hyundai Rotem Co. v. Mass. Bay Transp. Auth.* (May 27, 2015, Nos. 143055, SUCV2015-00790-BLS1) 2015 Mass. Super. LEXIS 2455, at *18-19; *ALB Rests., LLC v Albany County Airport Auth.* (Sup.Ct.) 2018 NY Slip Op 50949(U), ¶¶ 5-6.)

AMR cannot make such showing. The website's automated petition feature directed communications to the County Board of Supervisors and Director Rivera. (**AMR Protest Ex. 9 at Ex. B, p. 74**.). It did not direct any communications to the PRC members, whose identities were kept secret by County until after issuance of the notice of intent to award. Moreover, consistent with Sonoma County Code § 28-17(f)(4), the PRC members were not Sonoma County residents.

Because they were not and could not be directed at the PRC members, the safersonoma.com website and online advertisements did not and could not affect their scoring of SCFD's and AMR's dueling proposals. As such, AMR cannot show it would have won the RFP but for the alleged violations of RFP Section 2.7(B). Absent such a showing, AMR's protest fails as to this ground. (*SJJC Aviation Services, supra*, 12 Cal.App.5th at 1053-57.)

3. Despite AMR's Mischaracterizations Of Their Innocuous Social Media Interactions, Medic Did Not Attempt To Influence Ms. Gnojek.

AMR also alleges that social media interactions by Ms. Gnojek and Mr. Pierson violated RFP Section 2.7(B). (**AMR Protest at p.15**.) AMR misses the mark.

AMR's evidence consists of: (1) Ms. Gnojek's "like" of a WiES social media post dated April 19, 2023, announcing Medic as one of WiES's founding sponsors; (2) Ms. Gnojek's "like" of a social media post by Rob Lawrence, Executive Director of the California Ambulance Association ("CAA") dated January 12, 2023, commenting on CAA President Mr. Pierson's preparations for CAA's "upcoming legislative campaign"; and (3) Mr. Pierson's "like" of a social media post by Ms. Gnojek dated "3mo" ago, expressing her pride at the work that WiES is doing. (**AMR Protest Ex. 4**.)

Neither Mr. Pierson nor Ms. Gnojek communicated anything other than their "likes," which are, at best, innocuous expressions of approval or support for WiES and the CAA. It strains credulity to believe that these "likes" amount to an attempt to influence Ms. Gnojek into recommending *SCFD* for the contract award, which is the type of communication prohibited by RFP Section 2.7(B). AMR is desperately grasping for straws.

4. Medic and Ms. Gnojek "Liking" Each Other's Social Media Posts Did Not Afford SCFD An Unfair Advantage And Would Not Have Changed The Results.

Ms. Gnojek's and Mr. Pierson's "likes" on three social media posts do not change the fact that AMR submitted a more expensive proposal that omitted required financial information and the PRC's scoring reflected the deficiencies in AMR's proposal. Because its fails to show prejudice, AMR's protest must be denied. (*SJJC Aviation Services, supra*, 12 Cal.App.5th at 1053-1057.)

II. UEMSW's Protest Must Be Denied.

A. Because It Is Not A Proposer, UEMSW Lacks Standing To Protest.

UEMSW asserts, without any supporting analysis or evidence, its belief that it has "standing to submit a protest being the incumbent workforce and consider our providers as a 'directly affected party' as outlined in the protest instructions in the RFP."

Not so. County's protest procedures allow "[a]ny directly affected party who is aggrieved in connection with the solicitation or award of a contract" to file a protest." Neither UEMSW nor its members are "directly affected part[ies]," because they did submit a proposal or comply with the RFP's mandatory requirements for submitting a proposal, such as submitting a notice of intent to respond or attending the mandatory proposer's conference. To the extent it has any interest in the contract award, such interest is indirect, and derivative of, AMR's interest.

Only parties with a direct interest in a contract have standing to challenge the award of such contract. (*DeSilva Gates Construction, LP*, *supra*, 242 Cal.App.4th at 1421.) Courts regularly deny protests by nonbidders such as UMESW for lack of standing. (*Waste Management of North America, Inc. v. Weinberger* (9th Cir. 1988) 862 F.2d 1393, 1398 [only parties that submit a bid or file a pre-award protest to the government's solicitation have standing to protest contract award]; *Transactive Corp. v. New York State Dep't of Soc. Servs.* (1998) 92 N.Y.2d 579, 587 [non-bidders cannot protest contract award because they "[have] no direct stake in the outcome of the bidding process"].) Indeed, the courts that have considered the question have found that unless they are actual or prospective bidders, unions lack standing to make a bid protest. (*AFGE, Local 1482 v. United States* (Fed. Cir. 2001) 258 F.3d 1294, 1302.)

UEMSW's protest must be denied for lack of standing.

B. UEMSW Misrepresents The Compensation And Benefits Medic Will Offer To The Incumbent Workforce, Which Are Superior To What AMR Offers.

UEMSW also argues SCFD should not be awarded the EOA-1 contract based on its mistaken belief that AMR's compensation package is purportedly better than Medic's package. UEMSW does not point to anything in the RFP or County's protest procedures that support such relief. Nor does UEMSW show that the PRC scored employee compensation sections of the proposals incorrectly or the results would be different if County accepts its arguments.

SCFD addresses UEMSW's arguments because they are based on AMR's false and misleading description of its compensation package and to reassure County that Medic will be providing the incumbent work force with better wages and benefits than AMR.

First, UEMSW claims that paramedics and EMTs employed by AMR will see a pay cut of roughly $24,000 and $8,000 a year if they are employed by Medic. This is false and appears to stem from false and misleading numbers supplied by AMR in its proposal.

RFP Exhibit 7 is a form that proposers were required to use to show the compensation packages for paramedics and EMTs.

Among other things, proposers were required to identify the following:

Year one average number of hours *per week* for full-time [paramedics and EMTs].

Year one average gross earnings *per week* for full-time [paramedics and EMTs].

(**RFP Exhibit 7, pp. 84-85,** emphasis added.)

AMR did not follow instructions or use the mandatory form. Instead of providing the requested information on a weekly basis, it provided such figures on an annual basis, which created the false impression that AMR pays its personnel more than Medic does.

The following table shows an apples-to-apples comparison of this information on a weekly basis, as is required by the RFP:

	Medic	AMR
Year one average number of hours per week for full-time paramedics	44	42
Year one average gross earnings per week for full-time paramedics	$1,378.68	$1,087.80
Year one average number of hours per week for full-time EMTs	44	42
Year one average gross earnings per week for full-time EMTs	$1,050.25	$848.40

(Compare **SCFD Proposal Exhibit 7 at pp. 1221-1222**, with **AMR Proposal Exhibit 7 at pp. 1034, 1036**.)

In other words:

- Medic pays entry-level paramedics, on average, $290.88 more per week than AMR; and
- Medic pays entry-level EMTs, on average, $201.85 more per week than AMR.

On an annual basis, that means entry level paramedics and EMTs will make $15,125.76 and $10,496.20 more working for Medic than they currently do working for AMR (and under the collective bargaining agreement negotiated by UEMSW).

UEMSW also misreads SCFD's proposal and mistakenly applies AMR's less favorable overtime policies to erroneously calculate the wages Medic pays. Exhibit 7 requires proposers to state the hourly, straight time wages for paramedics and EMTs. (**RFP Exhibit 7, pp. 84, 86**.) This mandatory format creates a misleading picture of wages offered by Medic due to Medic's overtime practices. Medic chooses to pay overtime based on daily, not weekly, hours. Ambulance workers ordinarily work twelve-hour shifts. Medic pays such workers straight time wages for the first eight hours of their shift, overtime for hours eight through twelve, and double-time for anything past twelve hours. In contrast, AMR starts paying overtime after ambulance workers perform 40 hours of work per week.

To make an apples-to-apples comparison of the different wages paid by Medic and AMR, the following table shows the average hourly wage of paramedics and EMTs working day shifts for the two providers, using the data[5] from Exhibit 7 to their proposals:

	Average Hourly Wage for Paramedics					
	Medic			AMR		
	New Employee	After 2 Years	After 5 Years	New Employee	After 2 Years	After 5 Years
Lowest	$26.83	$29.03	$32.54	$25.90	$27.07	$28.30
Highest	$33.62	$37.42	$42.09	$34.04	$35.06	$37.20
Median	$32.03	$35.64	$40.09	n/a	n/a	n/a

(Compare **SCFD Proposal Exhibit 7 at p. 1221**, with **AMR Proposal Exhibit 7 at p. 1034**.)

	Average Hourly Wage for EMTs					
	Medic			AMR		
	New Employee	After 2 Years	After 5 Years	New Employee	After 2 Years	After 5 Years
Lowest	$22.75	$22.75	$24.61	$20.20	$20.81	$21.97
Highest	$25.71	$28.62	$32.19	$21.12	$21.64	$22.74
Median	$24.49	$27.25	$30.65	n/a	n/a	n/a

(Compare **SCFD Proposal Exhibit 7 at p. 1222**, with **AMR Proposal Exhibit 7 at p. 1036**.)

UEMSW is simply wrong to argue that paramedics and EMTs will make less working for Medic than they currently make under AMR. And that is before the transition retention bonuses Medic offers to the incumbent workforce's paramedics ($5,000) and EMTs ($3,500) and quarterly retention bonuses for all EMS personnel (1-5%). (**SCFD Proposal § 4.6, p. 115; § 4.6(A), p. 118**.)

UEMSW also misrepresents the healthcare benefits offered by AMR and Medic. AMR's proposal states that medical insurance is "Covered 85/15% cost share (employer/employee)," but is silent on coverage for dependents, employee co-pays, or deductibles,[6] and offers to cover only 50% of vision and dental coverage for employees. (**AMR Proposal at Ex. 7 pp. 1035, 1037**.) In contrast, Medic offers so-called "Cadillac" medical insurance plans to employees, which requires slightly more cost-sharing of premiums by newer employees, but provides coverage for dependents

[5] AMR did not include the median hourly wages for its personnel, which raises questions about how representative their "highest" wage rates are in comparison to their "lowest" wage rages.
[6] The AMR-UEMSW collective bargaining agreement referenced in the RFP shows that AMR's 85% cost share applies only to employee premiums.

with no or small co-pays or deductibles, and pays for 100% of vision and dental coverage for employees. (**SCFD Proposal at Ex. 7 p. 1223.**)

The remainder of Medic's compensation package is either competitive with, or superior to, AMR's compensation package. The proof? Medic's Solano County paramedics and EMTs are represented by UEMSW. Rather than choose the AMR compensation package negotiated by UEMSW, they opted for Medic's compensation package.

Finally, the wages and benefits detailed in SCFD's proposal are not the final compensation package Medic will offer to the incumbent workforce. Medic is currently in negotiations with Local 1401, which represents its Sonoma County employees, and expects the final package to be even more generous than the wages and benefits detailed in the proposal. UEMSW would know the details had it not refused to represent Medic's Sonoma County employees because it has become beholden to AMR.

III. CONCLUSION.

AMR's and UEMSW's protests are without merit. None of their allegations withstand even the slightest scrutiny and, more importantly, do not show any prejudice to AMR because AMR submitted a defective, incomplete, and misleading proposal, which included rate increases between 22-50% over its current rates and ambulance transports that are $1,200 to $1,300 more expensive than under the SCFD proposal. AMR and UEMSW also lack standing to bring their protests because AMR's proposal was nonresponsive in several respects and UEMSW never submitted a proposal of its own. SCFD reserves its right to supplement its response should AMR and UEMSW be allowed to supplement their protest.

County should deny AMR's and UEMSW's protests and immediately begin negotiations on the EOA-1 contract and work on a smooth transition with SCFD.

Sincerely,

Andrew E. Schouten
Special Counsel for the Sonoma County Fire District

Enclosures
cc: Fire Chief Mark Heine, Sonoma County Fire District
William L. Adams, Esq., Counsel for Sonoma County Fire District
Director Tina Rivera, Sonoma County Health Care Services Agency
Jordan Kearney, Esq., Counsel for the County of Sonoma
Director Elizabeth Basnett, the Emergency Medical Services Authority
Walter Landen, Esq., General Counsel for AMR
Pamela Johnston, Esq., Outside Counsel for AMR
Nate Duvardo, Chief Steward, UEMSW Local 4911
Jason Brollini, Executive Director, UEMSW Local 4911