



HGPII INDEPENDENT EVALUATION

PURPOSE

HGPII and its member GPOs promote the use of competitive contracting processes to maximize value and quality to GPO Members in a way that insures all Vendors are treated in a fair and unbiased manner. (The contracting processes utilized by each individual GPO to competitively solicit proposals from and award contracts to Vendors or to evaluate New Technology submissions from and award New Technology contracts to Vendors is referred to as the “GPO Contract Process”.) In order to provide Vendors with a forum to voice complaints regarding award decisions, each GPO, as a condition of its membership in HGPII, has agreed to participate in a two step review process. The first step is a formal, published process established by each GPO to review Vendor concerns (the “GPO Grievance Process”).

Although individual GPO Grievance Processes vary, each is designed to provide Vendors with an understanding of the bid process, foster respect for member decision making, and provide an opportunity for Vendors to raise discrepancies that might have occurred during the process. In the vast majority of instances, this process will be sufficient to address a Vendor’s concerns. Where a Vendor continues to have concerns, a Vendor may request an independent and unbiased third party evaluation through the HGPII Independent Evaluation (HGPII Evaluation).

It is important to note the HGPII Evaluation is not intended to resolve contractual disputes or review clinical evaluations or other decisions that are the purview of a GPO Member Council. Because GPO Members are both the final decision makers and the ultimate purchasers of product, actions taken pursuant to a HPGII Evaluation outcome may be subject to review and final approval by a Member Council. (Vendors should review each GPO Vendor Grievance Process and/or code of conduct for information regarding Member Council review.)

INDEPENDENCY OF HGPII EVALUATION

In order to facilitate the HGPII Evaluation and insure independency, HGPII utilizes the services of the American Arbitration Association® (“AAA”), an organization that provides alternative dispute resolution services. A Neutral is chosen by AAA from a list of neutral experts maintained by AAA. The Neutral evaluates the issues in dispute and provides an unbiased opinion. By following the process outlined herein and utilizing neutral experts vetted and selected by AAA, the Vendor is assured a fully independent review.¹

¹ For more information about AAA, see www.adr.org.



SCOPE OF HGPII EVALUATION

The role of the Neutral is to review Vendor complaints and provide an evaluation as to whether the Vendor failed to receive an award as a result of a failure of the GPO to follow principles of the applicable GPO Contract Process. The Neutral may make recommendations regarding a GPO Contract Process, applying a reasonable business standard. The Neutral will not review business decisions or decisions that are the purview of a Member Council, such as clinical evaluations or scoring. Further, the Neutral shall have no authority to provide an evaluation regarding the legality of a GPO Contract Process or GPO Grievance Process.

The HGPII Evaluation is available for vendor complaints associated with awards for GPO national contracts. Bids or New Technology submissions conducted and/or reviewed by a GPO at the request of and exclusively for an individual hospital or a distinct group of identifiable hospitals are conducted pursuant to criteria and processes that are established and overseen by such hospital or group. Accordingly, such processes and awards are not subject to review through the HGPII Evaluation.

All HGPII member GPOs have agreed to participate in the HGPII Evaluation. HGPII will facilitate requests for HGPII Evaluation brought against a non-HGPII member provided such GPO has also agreed to participate.

TYPES OF VENDOR COMPLAINTS ELIGIBLE FOR REVIEW

Pre-award – Occurs when a Vendor has been informed prior to a contract award announcement that it will not receive an award relative to a competitively-bid RFP (e.g., the vendor failed to meet minimum bid requirements).

Post-award – Occurs when a Vendor is informed concurrently with or after the award announcement that it will not receive an award.

New Technology – Occurs when a Vendor is denied a contract award following submission of a request for a contract award for New Technology.

PROCESS FOR HGPII EVALUATION

1. Prior to initiating a HGPII Evaluation, the Vendor must first submit its complaint to and complete the GPO's formal, published grievance process ("GPO Grievance Process").
2. Within five business days following receipt of the decision rendered by the GPO as a result of the GPO Grievance Process, the Vendor shall send to AAA (with a copy each to the HGPII Coordinator and to the applicable GPO's ethics and compliance officer) the following information:
 - o The Vendor's executed agreement relative to HGPII Evaluation in the form attached;
 - o The names, addresses and telephone numbers of the parties and their representatives;
 - o A copy of the decision rendered by the GPO at the conclusion of its formal grievance process;
 - o An executed Confidentiality Agreement
 - o The case setup fees as set out below.
3. The HGPII Evaluation will be conducted pursuant to the rules of the HGPII Evaluation process and the AAA's Early Neutral Evaluation Procedures.
4. AAA will facilitate communication among the parties, insure that AAA is in possession of all necessary documentation, and provide other assistance as necessary to facilitate the prompt conclusion of the HGPII Evaluation.
5. AAA will select a single Neutral, and will provide biographical information on the proposed Neutral to the parties.

No person shall serve as a Neutral in any dispute in which that person has any financial or personal interest in the result of the HGPII Evaluation, except by the written consent of all parties. Prior to accepting an appointment, the prospective Neutral shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, AAA shall either replace the Neutral or immediately communicate the information to the parties for their comments. In the event that a party objects to the Neutral or the appointed Neutral is unable to serve promptly, AAA will appoint another Neutral.

The Neutral will work with the parties in setting forth an appropriate schedule for exchanging initial written statements and submitting those to the Neutral. The initial statement shall describe the substance of the complaint, the parties' view of the issues, key evidence and any other information that may be useful to the Neutral. The GPO shall also provide to the Neutral any assertions of Disqualifying Factors, as set out below. The Neutral and the parties will decide on the length and extent of the initial written statements. Each party shall provide copies of its initial written statement and Disqualifying Factors, if any, to the other party. The parties may mutually agree to have the Neutral make a determination based on their written submission.

6. Prior to the start of an Evaluation Session the Neutral shall review the assertions of Disqualifying Factors and may, based on the written submissions, make a determination that a Disqualifying Factor exists, in which event no further review by the Neutral will take place. The Vendor may, at its discretion, submit to the Neutral its written response in opposition to the GPO's assertion of Disqualifying Factors, which shall be taken into consideration by the Neutral in making a determination. The Neutral may, at his/her discretion, refrain from making an initial determination of Disqualifying Factors, but continue to take the GPO's assertion of Disqualifying Factors into consideration throughout the process. If at any time during the process the Neutral determines that a Disqualifying Factor exists, the Neutral shall advise the parties of such determination, at which point the HGPII Evaluation shall be deemed concluded. Notwithstanding a determination of a Disqualifying Factor, the Neutral may, in his/her sole discretion, make recommendations, utilizing a reasonable business standard, regarding the GPO Contract Process or GPO Grievance Process.
7. An in person Evaluation Session with the Neutral is preferred; however, the parties may meet with the Neutral by teleconference or videoconference upon the mutual agreement of the parties. The Neutral shall facilitate communication amongst the parties to identify a convenient location for the in person Evaluation Session or teleconference or videoconference. Such Evaluation Session shall be scheduled at an agreed upon time and place, each party to bear its own travel and other costs. At such meeting, teleconference, or videoconference, each party will verbally and through documents or other media present its claims or defenses and describe the principal evidence on which they are based. The Evaluation Session is informal and the rules of evidence do not apply. Each party shall have in attendance throughout the Evaluation Session a representative with settlement authority. There is no formal examination or cross-examination of witnesses and the presentations and discussions will not be recorded.

8. Unless the parties and Neutral agree to another timeline, a written evaluation will be rendered within five business days after the conclusion of the proceedings and no later than 60 calendar days following AAA's receipt of the request for a HGPII Evaluation. The Neutral may also present his/her HGPII Evaluation verbally upon the consent of both the request of any party. After the receipt of the HGPII Evaluation, the parties can make further inquiry about issues and points made in the evaluation.

TIMELINES

The timelines established within the HGPII Evaluation process are designed to insure a prompt and expedient resolution of the complaint.

CONFIDENTIALITY OF HGPII EVALUATION

Neither the Neutral, the Coordinator, nor any party hereto shall divulge confidential information disclosed to them by the parties or by witnesses in the course of the HGPII Evaluation. All records, reports or other documents received by the Neutral while serving in that capacity shall be confidential.

Neither the Neutral nor the Coordinator shall be compelled to divulge such records or to testify in regard to the HGPII Evaluation in any adversary proceeding or judicial forum. Notwithstanding the above, the Neutral and the Coordinator may make available information related to a HGPII Evaluation, including a copy of the Neutral's evaluation, pursuant to the request or inquiry of a duly authorized governmental body, provided that prior notice is provided to each party whose documents/information is being requested along with a copy of the specific materials that are to be disclosed, and provided further that confidentiality is requested for the materials being disclosed.

The parties shall maintain the confidentiality of the HGPII Evaluation and shall not rely on or introduce as evidence in any arbitral, judicial or other proceeding:

- Views expressed or suggestions made by another party with respect to a possible settlement of the dispute which takes place during the HGPII Evaluation;
- Admissions made by another party in the course of the HGPII Evaluation proceedings;
- Proposals made or views expressed by the Neutral; or
- The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Neutral.

APPLICATIONS TO COURT AND LIMITATION OF LIABILITY

Neither HGPII, AAA, nor any Neutral is a necessary party in judicial proceedings relating to the subject of the Evaluation. Neither HGPII, AAA, nor any Neutral shall be liable to any party for any act or omission in connection with any HGPII Evaluation.

DISQUALIFYING FACTORS OF A HGPII EVALUATION

The following Disqualifying Factors shall be taken into consideration by the Neutral, as set out herein:

- Complaints that are general in nature and do not state a specific failure to adhere to the GPO Contract Process.
- An allegation that the GPO Contract Process or award decision is in violation of law, is inadequate or otherwise inappropriate. Allegations of this nature should be brought to the attention of the Coordinator.
- A failure by the Vendor to submit a response to a RFP (or other required documentation) by the deadline specified in the RFP instructions, or other failures to satisfy procedural or minimum requirements, including but not limited to a failure of the parties to reach mutually agreeable contract terms.
- Failure of a Vendor to meet established time lines for filing a request for HGPII Evaluation (as set forth above).
- Any complaint related to a request for a New Technology award where Vendor failed to respond to a previous RFP for that product which met the description of the Vendor's product and the Vendor's product was being marketed by the Vendor at the time of the RFP.
- The Vendor has failed to cooperate with the Neutral during the HGPII Evaluation, including without limitation the failure to provide requested information in a timely manner.
- The Vendor failed to complete the GPO Grievance Process.
- Any complaint relative to a RFP and/or award that already has been the subject of a HGPII Evaluation in relation to the same Vendor.
- Complaints related to award decisions or other actions associated with the RFP that are the subject of litigation. If, during the course of the HGPII Evaluation process, either party files suit against the other, then the HGPII Evaluation shall immediately cease and all submitted materials will be immediately returned to the submitting party.



OUTCOMES

The HGPII Evaluation is designed to provide a Vendor with an independent evaluation of its complaint. The evaluation shall reflect the Neutral's opinion regarding the Vendor's response to the RFP and the GPO's review and evaluation of such response in relation to the underlying RFP, the GPO Contract Process, and the GPO Grievance Process. The Neutral will not, however, provide any opinion relative to decisions reached by a Member or Member Council in connection with the applicable RFP. In addition, the Neutral may, in his/her discretion, provide recommendations regarding the GPO Contract Process and/or the GPO Grievance Process.

In the event the Neutral issues an opinion that (i) the GPO Contract Process was not followed AND (ii) as a result of not following the GPO Contract Process the Vendor was denied a contract award, then the GPO shall, subject to the individual GPO Contract Process, either (x) award a contract to the Vendor, (y) bid or re-bid the product or product category, (z) or submit the HGPII Evaluation to the appropriate GPO Member Council for reevaluation of the award decision, taking into account the HGPII Evaluation. Within five business days following receipt of the Neutral's evaluation, the GPO shall notify the Vendor and the Coordinator of whether the GPO is awarding a contract, bidding or re-bidding the product or product category, or submitting the HGPII Evaluation to the appropriate GPO Member Council. In the event the GPO submits the HGPII Evaluation opinion to its Member Council, the GPO shall make all reasonable efforts to facilitate a prompt meeting and decision of such Member Council. Notification of the Member Council decision shall be provided to the Vendor and Coordinator within five business days of the Member Council reaching a decision.

In the event the Coordinator, upon receipt of the Neutral's evaluation, believes that a HGPII GPO member has failed in a material and serious degree to observe the HGPII Principles, or has engaged in conduct materially and seriously prejudicial to the interest of HGPII, the Coordinator shall review and discuss such complaints with the GPO and shall take such action as the Coordinator deems necessary and prudent pursuant to the By-Laws of the HGPII.

No party shall have any obligation to amend or otherwise change policies or practices in response to recommendations made by the Neutral. However, parties are encouraged to consider such recommendations in the context of industry best practices, reasonable business practices, and GPO member needs and input.

Retaliation against any Vendor who, in good faith, requests review pursuant to a GPO Grievance Process or the HGPII Evaluation is prohibited. Concerns regarding retaliation should be brought to the attention of the Coordinator. (Contact information is set out below.)



FEES AND EXPENSES

A non-refundable case set-up fee **per party** is charged by AAA. In addition, a non-refundable case set-up fee **per party** is charged by HGPII. In addition to the case set-up fees, the Neutral shall charge, at his or her published rate, for conference, review and study time, as well as for expenses. The Neutral may assess all charges to one party or divide the obligation for the Neutral's charges between the parties based on the Neutral's evaluation of culpability. Each party is responsible for its own costs, including legal fees, incurred in connection with the HGPII Evaluation.

Before the commencement of the HGPII Evaluation, AAA shall estimate anticipated total cost and each party shall be required to pay its portion of the case set-up fees and an amount equal to the Neutral's estimated charges prior to the HGPII Evaluation. When the HGPII Evaluation is concluded, AAA shall render an accounting in accordance with the assessment of fees as determined by the Neutral and shall return any unexpended balance to the applicable party. In the event a party is determined to owe more in fees than has previously been paid to AAA, such party shall pay the difference to AAA within 5 business days of receipt of notification of fees due.

ANNUAL REPORT OF HGPII EVALUATION

The Coordinator shall set out in HGPII's annual report a summary report including the number of HGPII Evaluation requests received, the number of evaluations conducted and the number of requests which were denied as a result of disqualifying factors. The Coordinator may, in his/her discretion provide general information regarding types of complaints, however, any such information shall be blinded as to the names of the parties and as to any information that might otherwise identify any party to a HGPII Evaluation.

Each HGPII GPO shall provide information regarding its GPO Grievance Process, as well as information regarding its participation in and outcomes of any HGPII Evaluations in its responses to the HGPII Annual Public Accountability Questionnaire.



NOTICES

All notices and other communications to any party hereunder shall be in writing and shall be given to such party at its address set forth on the signature page hereof. Each such notice or other communication shall be effective if given (i) by mail, 48 hours after such communication is deposited in the mail with first class postage prepaid, (ii) by nationally recognized overnight courier, 24 hours after sending, or (iii) by any other means when delivered.

DEFINITIONS:

“**AAA**” means the American Arbitration Association.

“**Coordinator**” means the Initiative Coordinator of HGPII.

“**GPO**” means a healthcare group purchasing organization.

“**GPO Contract Process**” means the contracting process utilized by an individual GPO (i) to competitively solicit proposals from and award contracts to Vendors or (ii) to evaluate New Technology submissions from and award New Technology contracts to Vendors.

“**GPO Grievance Process**” means the published process established by a GPO to review a Vendor complaint.

“**HGPII**” means the Healthcare Group Purchasing Industry Initiative.

“**HGPII Evaluation**” means the HGPII Vendor Request for Independent Evaluation.

“**HGPII Principles**” means the principles established by HGPII that underscore the healthcare group purchasing industry’s commitment to use ethical business practices to help healthcare providers provide quality patient care at the most manageable cost.

“**Member**” means a healthcare provider that is a member of client of a GPO.

“**Member Council**” means a group or committee comprised of GPO Members that is responsible for clinical review, award determination and, where applicable, final review of the HGPII Evaluation.

“**Neutral**” means an independent third-party reviewer as determined by AAA.



“New Technology” means the definition set out in an individual GPO’s New Technology Process.

“New Technology Process” means the process by which an individual GPO evaluates and awards contracts for New Technology.

“RFP” or “Request for Proposal” means an invitation to submit a proposal/bid issued by a GPO pursuant to a GPO Contract Process.

“Vendor” means a supplier that seeks a contract award from a GPO pursuant to a RFP or through a New Technology Process.

CONTACT INFORMATION

Coordinator contact information:

Philip English, Coordinator
Healthcare Group Purchasing Industry Initiative
1717 K Street NW
Washington, DC 20036
Email: english.philip@arentfox.com
Phone: 202.857.6467

David Satterfield, Deputy Coordinator
Email: satterfield.david@arentfox.com
Phone: 202.857.6467



GPO contact information:

Amerinet, Inc.

Two CityPlace Drive, Suite 400
St. Louis, MO 63141
Phone: (800) 388-2638
Fax: (314) 542-1999
www.amerinet-gpo.com

Children's Hospital Association

6803 W. 64th Street, Suite 208
Shawnee Mission, KS 66202
Phone: (913) 262-1436
www.chca.com

GNYHA Ventures, Inc.

555 West 57th Street, Suite 1500
New York, New York 10019
Phone: (212) 246-7100
Fax: (212) 262-9350
www.gnyhaventures.com

HealthTrust Purchasing Group

155 Franklin Road, Suite 400
Brentwood, TN 37027
Phone: (615) 344-3000
<http://healthtrustpg.com>

Healthcare Coalition of Texas

ATTN: Geoffrey Brenner
7160 Dallas Parkway
Suite 600
Plano, TX 75024
Phone: (469) 366-2100
Fax: (469) 366-2101
www.hcotx.com



HPS

3275 N. M-37 Hwy
P.O. Box 247
Middleville , MI 49333
Phone: (800) 632-4572
Fax: (269) 795-9788
www.hpsnet.com

Innovatix

555 West 57th Street, 12th Floor
New York, New York 10019
Phone: (212) 246-7100
Fax: (212) 262-9350
www.gnyhaventures.com

MedAssets, Inc.

100 North Point Center East, Suite 200
Alpharetta, GA 30022
Phone: (678) 323-2500
www.medassets.com

Novation, LLC

290 East John Carpenter Freeway
PO Box 140909
Irving, TX 75014
Phone: (972) 581-5000
www.novationco.com

Premier, Inc.

12225 El Camino Real
San Diego, California 92130
Phone: (858) 481-2727
www.premierinc.com

Yankee Alliance

138 River Road
Andover, MA 01810
Phone: (978) 681-6100
www.yankeealliance.com



American Arbitration Association

Submission to HGPII Independent Evaluation Services

Vendor hereby submits the following request for evaluation pursuant to the rules of the HGPII Independent Evaluation process and the American Arbitration Association's Early Neutral Evaluation Procedures. As a condition to the GPO agreeing to participate in the evaluation process, Vendor agrees to abide by the terms, conditions, and rules of the HGPII Independent Evaluation as set out at <http://www.healthcaregpoi.com/abouthgpii/independentevaluation.html>, including without limitation all terms, conditions and rules in those sections titled "Confidentiality" and "Applications to Court and Limitation of Liability". Vendor further certifies that: (1) this grievance has previously been submitted to the applicable GPO's Grievance Process, that Vendor participated fully in such process and such process resulted in a determination not favorable to the Vendor AND (2) that this request is being brought in good faith and that, to the best of Vendor's knowledge, there are no Disqualifying Factors.

GPO that is subject of request: _____

If GPO is not a HGPII member, page 2 must be completed and submitted as a part of this Submission)

State in what manner the GPO Contract Process was not followed: (attach additional sheets if necessary): _____

Date of receipt of GPO's formal grievance process decision (attach copy of decision) _____

Claimant Name _____

Address _____

Telephone (____) _____ Fax (____) _____

Name of Claimant's Attorney or Representative _____

Address of Representative _____

Telephone (____) _____ Fax (____) _____ Email _____

Signed: _____

(Must be signed by the Chief Executive Officer, Chief Operating Officer, President, or Chief Financial Officer)

By: _____

Title: _____

Date: _____

Filing instructions: Please file three signed copies, the AAA non-refundable filing fee, and the HGPII filing fee with the HGPII Coordinator. For additional information, please visit the HGPII website at <http://www.healthcaregpoi.com/abouthgpii/independentevaluation.html>



GPO Consent to Submission to HGPII Independent Evaluation Services

_____ hereby consents to HGPII Independent Evaluation relative to the grievance set out herein.

GPO Name _____

Address _____

Telephone (____) _____ Fax (____) _____

Name of GPO's Attorney or Representative _____

Address of Representative _____

Telephone (____) _____ Fax (____) _____ Email _____

Signed: _____

By: _____

Title: _____

Date: _____