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## Protest Decision

**Matter of:** ModivCare Solutions LLC

**File No.:** 2026-104

**Posting Date:** October 2, 2025

**Contracting Entity:** State Fiscal Accountability Authority, Division of Procurement Services

**Solicitation No.:** 5400028336

**Description:** Non-Emergency Medical Transportation Coordinator Services (NEMT)

### DIGEST

The Chief Procurement Officer (CPO) grants the protest of ModivCare Solutions LLC (ModivCare) in part. ModivCare's protest is attached as Exhibit A.

### AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. § 11-35-4210. This review included a limited-scope hearing held on September 3, 2025. This decision is based on materials in the procurement file, testimony given at the hearing, and applicable law and precedents.

### BACKGROUND

On January 24, 2025, the State Fiscal Accountability Authority, Division of Procurement Services (DPS), issued Solicitation number 5400027781 on behalf of the Department of Health & Human Services (HHS), requesting proposals to provide Non-Emergency Medical Transportation (NEMT) Coordinator Services. By subsequent amendment, the solicitation had a deadline for receipt of proposals of April 23, 2025. After DPS received proposals in response to the solicitation but before DPS provided them to HHS's selection committee for evaluation, DPS realized there was a problem with the evaluation criteria in the solicitation. On May 2, 2025, DPS cancelled that solicitation and issued

Solicitation No. 54000228336<sup>1</sup> in its stead. No one protested the cancellation of Solicitation number 5400027781, nor did anyone protest this solicitation.

This solicitation required interested offerors to submit proposals to DPS by 11 AM on May 14, 2025. By this deadline, DPS received seven proposals, including one from ModivCare and one from Medical Transportation Management, Inc. (MTM). [Exhibit B] The procurement officer determined three proposals to be nonresponsive and submitted the remaining four to the Evaluation Panel for evaluation.

The solicitation included the following evaluation criteria:

Category	Available Points
<b>Technical Approach</b>	1,000
<b>Qualifications</b>	250
<b>Rates</b>	Pass/fail
<b>Demonstrations</b>	200
<b>Total Available Points</b>	<b>1,450</b>

However, demonstrations were actually a component of Technical Approach. The Technical Approach was divided into a Phase I Category and a Phase II Category. Phase I Category consisted of the following subcriteria:

Phase I Category	Available Points
<b>Transportation Operations</b>	500
<b>Member and Provider Services</b>	300
<b>General Requirements</b>	200
<b>Total Available Points</b>	<b>1,000</b>

Only the three highest ranked offerors for Phase I of the technical approach would be invited to conduct demonstrations as part of Phase II.

After the selection committee evaluated and scored Phase I of each offeror's technical approach, the two-highest offerors were MTM (940 points) and ModivCare (900 points).<sup>2</sup> On June 6, 2025, the

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<sup>1</sup> As used hereinafter any reference to "this solicitation" or the "solicitation" means Solicitation No. 54000228336 published on May 2, 2025.

<sup>2</sup> DPS and HHS may have combined the scores Qualifications with the Phase I scoring to determine who was eligible for demonstrations. If they did, the ranking order is still the same; however, MTM's combined Phase I and Qualification score was 1,165 and ModivCare's was 1,137.5.

Procurement Officer invited both MTM and ModivCare to give demonstrations on June 11, 2025. MTM scored 190 points for its demonstrations, while ModivCare received 100 points.

After demonstrations, MTM's proposal was the highest ranked proposal with a total score of 1,355 points, 117.5 points higher than ModivCare's total score. Thereafter, the Procurement Officer opened negotiations with MTM. On July 3, 2025, DPS posted notice of intent to award a contract to MTM, and this protest ensued.

## **DISCUSSION**

ModivCare's protest is a product of the size of this procurement and the limited timeframe a protestant has to assert grounds of protest. It contains numerous related allegations scattered with other allegations throughout. It aptly fits the definition of a shotgun protest. However, each individual accusation is well reasoned, and with little effort the protest can be broken up into seven main groups:

- 1) Improper Evaluation of Proposals
- 2) MTM's Proposal Was Nonresponsive
- 3) Disparate Treatment of Vendors During Demonstrations
- 4) Improper Cancellation of the First Solicitation
- 5) Failure to Follow Instructions and Process
- 6) Incomplete Documentation

### **1. Allegation of Improper Evaluation of Proposals**

#### *A. Allegation of Inadequate Credit for MTM's Robust Provider Network*

ModivCare first alleges that the selection committee failed to adequately credit it for its robust provider network in South Carolina when compared to MTM's. In this regard, ModivCare observes that it has the most extensive provider network in South Carolina of any provider of NEMT coordination services. This is necessarily so because ModivCare has been the only provider under contract with HHS for these services for the past 18 years.<sup>3</sup> No other provider would develop and have on hand a network which it neither needed nor could support.

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<sup>3</sup> As noted by MTM, for most of that time, ModivCare has been working under a contract or contracts awarded without competition and apparently without adherence to the requirements of the Procurement Code.

The solicitation required offerors to address their proposal for provider networks as follows:

4.1.3.2.3 Network

This Section shall include how the Offeror's proposed NEMT program will address the requirements listed in Section 5 with the specified content as detailed below:

Annual Network Development Plan Section 5.2. of Amended ATTMM 010

Transportation Timely Access Standards Section 5.3. of Amended ATTMM 010

Section 5.2 of the Amended ATTMM 010, Contract for Non-Emergency Medical Transportation Coordinator Services, states:

5.2. Annual Network Development Plan

The **Contractor shall develop and maintain a Network development plan** which shall be submitted to the Department on or before September 1 of each Contract year.

The Contractor's annual Network development plan shall include:

**5.2.1. Processes and methods to develop, maintain, and monitor an appropriate Network** that is sufficient to perform all services covered under this Contract.

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[emphasis supplied]

This language and a reading of the solicitation in its entirety makes clear that the State did not expect offerors to have an existing provider network in South Carolina. Instead, the State expected them to explain in their proposals how they would develop and maintain such networks if awarded a contract. The evaluation criterion in the solicitation quoted by ModivCare to support its position is consistent with the foregoing:

To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience.

This criterion says nothing about the existing size of an offerors network in South Carolina but focuses on whether one's proposal demonstrates an ability to develop a network. Certainly, ModivCare's existing network in South Carolina is one way to demonstrate such an ability but it is not the only way.

At the end of the day, ModivCare's argument is nothing more than an argument that its proposal was better. Any self-respecting vendor will make the same argument. However, it is not ModivCare's opinion of the relative strengths and weaknesses of the proposals, nor the CPO's that matter. "An offeror's claim to be superior to other offerors is fruitless because the Panel has consistently held that it will not substitute its judgment for the judgment of the evaluation committee which determines the

ranking of the offerors.” *Appeal by TRAVELSIGNS*, Panel Case No. 1995-8. The opinion that matters is the opinion of the evaluation panel. Id.

Based on the foregoing, the CPO denies this ground of protest.

*B. Allegation of Arbitrary Technical Evaluation - Unequal Application of Evaluation Criteria*

ModivCare alleges that the Evaluation Panel’s evaluation of technical proposals was arbitrary, treating offerors unequally. In support of its allegations, ModivCare relies on the limited comments in the consensus evaluation score sheet. In doing so, ModivCare assumes that there is a one-to-one correlation between the points deducted and the weaknesses identified on the score sheet. For example, for the criterion “Member & Provider Services” the consensus score sheet expressly identifies a single weakness in ModivCare’s proposal. For this criterion ModivCare received a score of 270 out of 300 available points. Therefore, ModivCare, not unreasonably, assumes the Evaluation Panel docked 30 points for this single weakness. However, the assumption is flawed because the consensus score sheet does not identify any weaknesses for this criterion for MTM’s technical proposal, yet the Evaluation Panel only gave MTM a score 285 out of 300 available points. Obviously, the Evaluation Panel did not consider MTM’s proposal to be perfect with respect to this criterion, they just did not identify the weaknesses they noted in MTM’s proposal for criterion on the consensus score sheet but focused on MTM’s strengths instead.

A protestant challenging the decision of the Evaluation Panel must prove upon a preponderance of the evidence that the Panel’s decision is “clearly erroneous, arbitrary, capricious, or contrary to law.” *Appeal of Venturi Tech. Partners*, Case No. 2004-1; S.C. Code Ann. § 11-35-2410(A).[citation] Arguments that the protestant’s proposal is superior to another’s is fruitless and without merit since the determination of what is most advantageous to the State can only be determined by the State. *See Appeal by TRAVELSIGNS*, Panel Case No. 1995-8.

When evaluating ModivCare’s proposal under the criterion “Member & Provider Services,” the Evaluation Panel identified as weaknesses ModivCare’s “Reliance on IVR solutions verses [sic] live agent and/or web and mobile application solutions.”<sup>4</sup> ModivCare argues these are not weaknesses and

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<sup>4</sup> IVR means interactive voice response and is an automated telephone system allowing callers to interact with a computer system through their voice or a touch-tone keypad.

that in focusing on these areas, the Panel “failed to consider the robust communication infrastructure employed by ModivCare that includes live agents, as well as sophisticated mobile application and web-based solutions.” At the end of the day, ModivCare’s allegations amount to nothing more than an assertion that, based on ModivCare’s analysis, ModivCare’s proposal is better.

Similarly, ModivCare alleges that its mileage reimbursement solution was superior to MTM’s, yet this was identified as a weakness for ModivCare under the evaluation of the criterion “Transportation Operations” and there are no identified weaknesses for MTM. Again, ModivCare’s allegations amount to nothing more than an assertion that, based on ModivCare’s analysis, ModivCare’s proposal is better.

In the case of another offeror, ModivCare observes the Evaluation Panel stated one of MediTrans weaknesses under the criterion “Member & Provider Services” was “[m]embers calls will be sent out of state when call volumes are too high,” but did not make a similar statement about MTM having the same weakness. Moreover, ModivCare alleges that the Evaluation Panel considered this alleged weakness in MTM’s proposal to be a strength when it commented that MTM’s “[c]ontact center staff flexibility” was a strength. ModivCare alleges this is clear evidence of disparate treatment of offerors. The CPO disagrees. ModivCare’s argument ignores the fact that there is much more to MTM’s proposal on contact center operations than how it will deal with a situation when call volumes exceed the capacity of its instate staff, and there is nothing to indicate that the Panel’s comment is specifically related to any plans to rely on resources outside the state. Had the Panel expressly identified as a strength in MTM’s proposal an intent to send members’ calls out of state when call volumes are too high, the CPO would agree with ModivCare, but it did not.

ModivCare alleges that the Evaluation Panel’s scoring of proposals with respect to call-center employee training “illustrate a prejudicial and inconsistent application of evaluation criteria.” ModivCare’s evidence is that the Panel expressly identified this training as a strength in both MTM’s proposal and Verida’s proposal but not in ModivCare’s proposal. ModivCare further asserts that its proposal “included a detailed and comprehensive description of its South Carolina-specific training program, yet it received no corresponding recognition.” On the other hand, the CPO notes that the Panel did not cite ModivCare’s training as a weakness. The facts cited by ModivCare simply do not provide clear and convincing evidence that the Panel’s evaluation was “erroneous, arbitrary, capricious, or contrary to law.”

*C. Allegation of Failure to Evaluate MTM's Past Performance*

Finally, ModivCare alleges the Evaluation Panel “failed to properly evaluate MTM’s past performance.” ModivCare’s argument is not that the Panel failed to evaluate MTM’s past performance at all. The Panel’s comments clearly show they evaluated MTM’s past performance. When evaluating the criterion “Qualifications,” the Panel commented that an MTM weakness was “[m]ultiple adverse actions and lawsuits.” The Panel also gave MTM a lower score for this criterion than it gave ModivCare. ModivCare argues instead that MTM’s past performance shows that it is unqualified and the Panel’s scoring for both “Qualifications” and “Transportation Operations” fails to reflect this.

In support of much of its argument, ModivCare asserts that MTM’s proposal ignores adverse events in 2004, 2006, 2007, 2011, and 2014. However, the solicitation only sought information on adverse events since January 1, 2018. [Solicitation, Section 4.1.3.4.2, p. 20 and Section 4.1.3.4.4 and 5, p. 21]

ModivCare does point out MTM failed to list any adverse action taken by Rhode Island since January 1, 2018. Solicitation Section 4.1.3.4.2 required offerors to fill out and provide a table of adverse actions stating:

Offeror shall describe its NEMT and related Medicaid operations experience of **similar scope and size** in other government or commercial insurance programs. This shall include a description of contracts, subcontracts, and any other engagements on which Offeror has performed services similar to those required in this Contract.

Offeror shall list contracts, subcontracts and any other engagements supporting the relevant experience providing NEMT services since January 1, 2018. See ATTM 009 Experience Table/Adverse Actions.

In the Experience Table/Adverse Actions table MTM provides in its proposal, Rhode Island is missing. [MTM Proposal, pp. 23 and 24 (ModivCare Exhibit 9)] But, when responding to the Special Standards of Responsibility requirement in Section 5.2 of the solicitation, MTM states:

MTM Health also has demonstrated success implementing NEMT solutions in state environments, **many of which are similar in size** and scope to the services solicited in this procurement. MTM Health currently provides statewide NEMT services in Connecticut (since 2023), Idaho (since 2018), Iowa (since 2023), Missouri (since 2022), Nevada (since 2016), **Rhode Island (since 2019)** and Wisconsin (since 2013). We also operate the district-wide Washington D.C. program (since 2007) and the regional Minnesota Metro County Consortium program in the Twin Cities area (since 2004).

[emphasis supplied]

In response to ModivCare’s allegations concerning MTM’s omission of any adverse actions by Rhode Island, MTM states “Rhode Island’s small geography disqualifies it for inclusion as it is not similar in size or scope.” Indeed, both Rhode Island’s geographic size and population are a fraction of South Carolina’s and MTM does not represent that all the States listed in its response to Section 5.2 of the solicitation are similar in size and scope to South Carolina. In short, the CPO finds no requirement that an offeror provide any information about contracts for smaller programs nor was there any requirement on the Evaluation Panel to search out information beyond what was required by the solicitation and provided in MTM’s proposal.<sup>5</sup>

ModivCare next asserts that MTM also failed to disclose that, in 2019, the State of Arkansas terminated its contract with MTM. ModivCare further asserts that if MTM did disclose this, the Evaluation Panel did not adequately consider this termination in its ranking of MTM. A review of MTM’s unredacted proposal shows that it disclosed this termination in Appendix G of its proposal. As to the weight that the Evaluation Panel gave to the matter, that was a matter for the Panel’s discretion and the CPO will not substitute his opinion for that of the Panel. *Appeal by TRAVELSIGNS*, Panel Case No. 1995-8

## **2. Allegation that MTM’s Proposal is Nonresponsive**

ModivCare argues that MTM’s proposal is nonresponsive in several respects and therefore it was improper for the State to evaluate MTM’s proposal. A responsive proposal is one “which conforms in all **material** aspects to the ... request for proposals.” S.C. Code Ann. §11-35-1410(9) [emphasis supplied]. The State may waive an “immaterial variation from the exact requirements” of the solicitation. S.C. Code Ann. § 11-35-1520(13) and Reg. 19-445.2095(E). However, the State may not waive a material variation. Indeed, the Procurement Code states:

(7) Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, **all responsive offerors must be ranked** from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

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<sup>5</sup> In Appendix G, MTM does list litigation in Rhode Island.



(9) Award. Award must be made **to the responsible offeror** whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals...

S.C. Code Ann. §11-35-1530 [emphasis supplied]

The solicitation has a clause consistent with these provisions which states:

## **2.26 RESPONSIVENESS (MAR 2024)**

(a) Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the State, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements. (b) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. [02-2A105-3]

Importantly, regarding competitive sealed proposals, the foregoing not only prohibits award to an offeror whose proposal is nonresponsive but precludes the State from ranking nonresponsive proposals for purposes of determining which proposal is most advantageous to the State. *Appeal by Provaliant Holdings, LLC*, Panel Case No. 2017-4(II) (“Under the RFP source selection process, only proposals from responsive offerors are evaluated, ranked, and considered for award.”).

### *A. Inclusion of VeyoRide Network in Proposed Solution*

ModivCare first alleges that MTM's proposal is nonresponsive because it incorporated “its personally-maintained 'VeyoRide' network” into its proposed solution. The CPO agrees.<sup>6</sup>

Section 8.7.7 of the ATTM 010 Contract which is a part of this solicitation states:

#### **8.7.7. Contractor-Operated Vehicles**

The Contractor may not itself provide transportation to Members or refer to, or subcontract with, a Transportation Provider:

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<sup>6</sup> ModivCare argues that MTM inappropriately attempted to bolster its “ability to ensure an adequate and robust provider network” by incorporating its VeyoRide network into its proposal. ModivCare further argues that the Evaluation Panel inappropriately considered this when evaluating this criterion and accordingly inflated MTM's score. On the other hand, MTM presented evidence at the hearing that the evaluation panel did not consider MTM's VeyoRide network when evaluating MTM's proposal. ModivCare subsequently provided information disputing the question of whether the evaluation panel did in fact consider VeyoRide when evaluating MTM's proposal. However, because it is improper to evaluate non-responsive offerors, the CPO need not resolve whether MTM's inclusion of the VeyoRide network actually affected the scoring.

8.7.7.1. If the Contractor has a financial relationship as defined at 42 CFR 411.354(a) (2023, as amended) with “Contractor” substituted for “physician” and “non-emergency transportation” substituted for “DHS”

MTM’s website shows that Veyo is its affiliate company, VeyoRide is a Veyo program, and driving for VeyoRide is the equivalent of driving for MTM. See <https://www.mtm-inc.net/transforming-nemt-together-mtm-announces-acquisition-of-veyo/>, <https://veyo.com/>, and [https://www.mtm-inc.net/rideshare-drivers-drive-for-mtm ...](https://www.mtm-inc.net/rideshare-drivers-drive-for-mtm...).<sup>7</sup> Moreover, in its response to ModivCare’s protest, MTM does not dispute its ownership of VeyoRide. Therefore, to the extent MTM’s proposed solution included VeyoRide as anything other than an option, MTM’s proposal is nonresponsive.

Section B of MTM’s proposal is its “Proposed Solution and Requirements Response.” On the very first page of this Section, MTM states:

Improving Members’ access to quality NEMT services.

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Our unique VeyoRide independent provider model provides an Uber-like experience for urgent trips and added capacity beyond that of traditional NEMT networks. These resources are layered on the backbone of a robust transportation provider network that promotes a full complement of mode options to meet the needs of all Members in a cost-effective manner.

[MTM Proposal, p. 28]

On the next page, MTM states:

Increasing the number of transportation providers participating in the Healthy Connections NEMT program.

Leveraging our existing South Carolina network of nearly 400 credentialed drivers and approximately 275 vehicles (including over 125 specialized medical vehicles), we will expand the provider network immediately upon award, targeting rural counties like Allendale and Bamberg to address historical shortages. We have also received Letters of Intent (LOIs) from 37 additional providers across the state indicating their desire to work with us, should we be awarded the contract (see **Appendix F**). MTM Health is an expert in expanding NEMT networks, with strategies such as increasing participation by paying fair rates in a timely manner; offering flexible options for GPS/driver technology through an application programming interface (API) with our platform; and by offering free, continual training, and open lines of communication between our staff and theirs with a 24/7 dedicated support phone line. We further expand coverage through strategic independent provider recruitment as part of our VeyoRide program.

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<sup>7</sup> Links last visited on October 1, 2025.

[MTM Proposal, p. 29] [highlighting supplied]

Elsewhere, MTM further states:

We are also excited to expand healthcare access through our proprietary VeyoRide model.

[MTM Proposal, p. 31]

## 5.2 Annual Network Development Plan

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### *Recruiting Transportation Providers*

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To maintain a strong network, a successful broker must continually reassess network quality and adjust as necessary. MTM Health currently works with over 1,800 transportation providers across the United States representing over 14,000 drivers. Within our transportation network we also have an additional 7,000 drivers in our VeyoRide network that operate like TNC (Lyft/Uber) drivers but are fully credentialed to meet all state and federal requirements for transporting Medicaid Members.

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### *Incorporating VeyoRide*

MTM Health's network of transportation providers is supported by our unique VeyoRide model. VeyoRide uses drivers who are fully trained and credentialed according to all state, federal, and client requirements, including first aid, CPR, HIPAA, ADA, patient sensitivity, and hand-to-hand service. Our VeyoRide network is the only solution available in the market today able to fully utilize rideshare services, while meeting all state and federal requirements for Medicaid Members. The VeyoRide drivers work alongside traditional transportation providers to form the most responsive and reliable network in the NEMT industry today, all tracked in real time. This model is highly flexible, scalable, responsive, and allows MTM Health to deliver service levels not previously possible in this industry, by scaling capacity in minutes—whenever and wherever it is needed. Our VeyoRide model has proven to deliver higher on-time rates and respond faster to will-calls and last-minute requests.

When service runs late, needs to be rescheduled, or any other demand-response need arises, MTM Health can broadcast the need for additional drivers in specific areas in real time and can use these notifications along with financial incentives to encourage additional providers to logon or change locations within the service area to where they are needed most. MTM Health can notify VeyoRide drivers of a trip opportunity in their area, even if they might not have otherwise considered working at that time. Our VeyoRide model allows us to flex supply to meet demand, allowing peak performance regardless of the demand fluctuations. It verifies there are enough vehicles online at peak demand periods and allows us to intercept and correct late pick-ups before they even

happen. It is also **an important component of our strategy** for ensuring adequate coverage in rural areas.

[MTM Proposal, pp. 58-59, 65] [highlighting supplied]

#### Using VeyoRide Network and TNCs for Rescue Trips

MTM Health's VeyoRide network is **an important part of our strategy** for rescue trips. When service runs late, needs to be rescheduled, or any other demand-response need arises, MTM Health can broadcast the need for additional drivers in specific areas in real time and can use these notifications along with financial incentives to encourage additional providers to log on or change locations within the service area to where they are needed most. MTM Health can notify VeyoRide drivers of a trip opportunity in their area, even if they might not have otherwise considered working at that time.

Our VeyoRide model allows us to flex supply to meet demand, allowing peak performance regardless of the demand fluctuations. It verifies there are enough vehicles online at peak demand periods and allows us to intercept and correct late pick-ups before they even happen.

[MTM Proposal, p. 67] [highlighting supplied]

#### *Incorporating VeyoRide*

As introduced in ***Qualifications – Special Standards of Responsibility (5.2)*** beginning on **page 26**, MTM Health can supplement and enhance the existing transportation provider network in South Carolina through our unique VeyoRide model. VeyoRide uses drivers who are fully trained and credentialed according to all state, federal, and client requirements, including first aid, CPR, HIPAA, ADA, patient sensitivity, and hand-to-hand service. Not only does VeyoRide add more capacity to the network, but it also allows us to reduce waiting times, as we can use VeyoRide to expand our ability to perform on-demand trips. Supplementing the network will also naturally allow us to improve on-time percentages. Our VeyoRide model has proven to deliver higher on-time rates and respond faster to will-calls and last-minute requests.

We also have the ability to flex our supply through the scheduling and dispatching software used to operate the VeyoRide model. Built into the software is the ability to incentivize drivers to pick up trips during times, or in geographies, where we may require additional supply. Our VeyoRide network is the only solution available in the market today able to fully utilize rideshare services, while meeting all state and federal requirements for Medicaid Members.

In the first quarter of 2025, MTM Health completed 700,000 trips using the VeyoRide network

with an impressive 97% on time rate and onboarded more than 1,200 new VeyoRide drivers. MTM Health can bring this high-quality network expansion to South Carolina to benefit Members throughout the state.

[MTM Proposal, pp. 135 and 136]

All of the forgoing reads as if VeyoRide is a part of MTM’s proposed solution. It is only on page 138, where MTM includes the solicitation’s required table of “Optional Enhancements” that MTM presents VeyoRide as an optional enhancement:

ATTM 011 - OPTIONAL ENHANCEMENTS		
RFP Subsection	Contract Subsection	Enhancement Description
B3. Network	5.3. Transportation Timely Access Standards	<p>MTM Health can supplement and enhance the existing transportation provider network in South Carolina through our unique VeyoRide model. VeyoRide uses drivers who are fully trained and credentialed according to all state, federal, and client requirements, including first aid, CPR, HIPAA, ADA, patient sensitivity, and hand-to-hand service. Not only does VeyoRide add more capacity to the network, but it also allows us to reduce waiting times, as we can use VeyoRide to expand our ability to perform on-demand trips. Supplementing the network will also naturally allow us to improve on-time percentages. Our VeyoRide model has proven to deliver higher on-time rates and respond faster to will-calls and last-minute requests.</p> <p>We also have the ability to flex our supply through the scheduling and dispatching software used to operate the VeyoRide model. Built into the software is the ability to incentivize drivers to pick up trips during times, or in geographies, where we may require additional supply. Our VeyoRide network is the only solution available in the market today able to fully utilize rideshare services, while meeting all state and federal requirements for Medicaid Members.</p>

Under the friendliest analysis of MTM’s proposal, its treatment of VeyoRide in the table of Optional Enhancements creates a serious ambiguity as to MTM’s intent.

Despite the forgoing, the State evaluated MTM’s proposal and ranked it as the most advantageous to the State. It is only upon entering into negotiations that the State addressed the issue as a point of negotiation stating:

After review of your proposal, the State requests that you respond to the following negotiation points:

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2. Confirm acknowledgment that the use of the optional VeyoRide as part of its transportation provider network is strictly prohibited and that they can meet all contractual requirements without its use. This restriction is in accordance with **Section 8.7.7 of the ATTM 010 Contract...**

The very fact that the State asked for this confirmation as a part of negotiations makes it clear that the State was not sure whether VeyoRide was necessary to MTM’s solution. Therefore, at best, MTM’s proposal is ambiguous because VeyoRide was not only listed in the optional section but also listed numerous times in the main body of the proposal without qualification. Did MTM intend for VeyoRide to be part of the main proposal, simply an option, or both? “If a bid is ambiguous as to a material provision, so that it is nonresponsive under one interpretation and responsive under the other, it cannot be accepted.” Taylor-Forge Engineered Sys., Inc., 69 Comp. Gen. 54, 55 (Nov. 3, 1989).

Negotiations were not the place to clear up ambiguities and issues of nonresponsiveness. The Procurement Officer should have done this before evaluation as and only to the extent allowed by the “Discussions and Negotiations” clause of the solicitation [Section 6.4] and the Procurement Code and Regulations. See S.C. Code Ann. §11-35-1530(6), Reg. 19-445.2095(I), and *Competitive Sealed*

*Proposals Required Procedures and Guidance for Communications After Opening but Prior to Award* (DPS, Sept. 2021). Therefore, the CPO grants this item of protest.

*B. Failure to Properly Identify Subcontractors*

ModivCare alleges that MTM was nonresponsive to the solicitations requirement to disclose details concerning subcontractors. The solicitation states:

**4.1.3.3.1 Section C1. Overview and NEMT Project Team Organization**

This section shall include the listed sections, in the listed order, with the specified content as detailed below:

- A description of the proposed NEMT project team organization for each phase (implementation, operations, and turnover). The turnover phase organization discussion should focus only on organizational differences from operations.
- Proposed NEMT project team organization charts for each phase (implementation, operations, and turnover) identifying the general structure of the units performing Work. It is not necessary to include the level of detail illustrating individual workers
- How the proposed NEMT project team organization fits into Offeror's corporate structure
- A listing of all Subcontractors, why they were chosen, and what roles they will play in the proposed organization.
- How the organizational structure will contribute to Contract success, including how previous project experience with the proposed staff will be leveraged to bring a successful delivery of this project
- Any other information pertinent to the organizational approach

MTM's response to this requirement in Section C1 does not list any subcontractors. [MTM Proposal, pp. 139 – 147] However, MTM's proposal states elsewhere that MTM will use both bilingual staff and "Effectiff," an interpretive services company, to provide interpretive services. ModivCare asserts that MTM's failure to include any information about Effectiff in Section C1 renders ModivCare's proposal nonresponsive. MTM replies that the solicitation only requires the contractor to have "staff fluent in English, Spanish, and other languages where the language is used by at least five percent (5%) of the Member population as identified by the Department." MTM asserts it only intends to use Effectiff for languages other than those required by the contract and, therefore, MTM was not required to provide information regarding Effectiff in Section C1 of its proposal. MTM further argues that to the extent that it was required to provide this information, it did so elsewhere in the proposal and failure to include this information in Section C1 was a minor informality. The CPO agrees that MTM did provide the required

information earlier in its proposal when addressing Contact Center Operations, and the failure to provide it in Section C1 is a minor formality. [See MTM Proposal, pp. 56 – 57 under the heading “Providing Culturally Competent Service”] Therefore, the CPO denies this ground of protest.

*C. Alleged Failure to Include Required Information Regarding Staffing*

The solicitation required offerors to provide resumes of proposed Key Staff along with “2-3 references and their contact information.” [Solicitation p. 20 Section 4.1.3.3.3] This requirement refers offerors to Section 3.2 of Amended ATTM 010 Contract. Section 3.2 of the contract identifies the positions comprising Key Staff. ModivCare argues that MTM included Sherry Moore among its key staff. ModivCare then points out that MTM provided Ms. Moore’s resume but not references. ModivCare argues MTM’s omission of references for Ms. Moore makes MTM’s proposal nonresponsive. However, MTM list Ms. Moore as its Implementation Project Manager. Implementation Manager was not a Key Staff position identified in Section 3.2. The solicitation required offerors to provide resumes for “additional proposed staff beyond Key Staff” but not references. Respecting Ms. Moore, MTM complied with this requirement. Therefore, the CPO denies this ground of protest.

*D. Alleged Failure to Complete All ATTM 009 Requirements*

ModivCare alleges MTM was none responsive for failure to fill out the Adverse Action tab of the ATTM 009 in connection with its contract with the State of Wisconsin noting that MTM omitted “wholesale the sanction that it self-disclosed on the prior page.” MTM responds that the “sanction included liquidated damage, so MTM labeled the event as liquidated damage on the tab on page 24 of its Proposal.”

ATTM 009 contains two tabs. The first tab is an Experience table where the vendor identifies each contract and whether there were any sanctions, corrective action plans, or liquidated damages during the contract period. The second tab is an Adverse Actions table where the vendor provides additional detail, identifying the action type, date of the action was issued, etc. On the first tab MTM reports three types of Adverse Actions by Wisconsin. They were sanction(s), corrective action plan(s), and liquidated damage(s). On the second tab MTM reports one event of liquidated damages and four corrective action plans for the Wisconsin contract. MTM is silent concerning sanctions.

The CPO notes that the solicitations provide minimal instructions to offerors for filling out ATTM 009, leaving much to the discretion of the offeror. As a result, the second tab provides little additional meaningful information other than to identify the actual number of adverse action events. MTM argues that its Wisconsin liquidated damage adverse action was the same action where it was sanctioned and there is nothing more to tell. In other words, MTM it argues that it did disclose the sanction in first tab and its omission from the second tab was a minor informality. The CPO agrees and denies this ground of protest.

### **3. Allegation the State Engaged in Disparate Treatment of Offerors During the Demonstration Phase**

Section 2.39 of the solicitation addressed the procedures for the demonstration phase of proposal evaluation. This section incorporated ATTM 012 which was a demonstration script. Neither the solicitation nor ATTM 012 provided vendors any instructions on the number or representatives they would be allowed to bring to demonstrations. On June 6, 2025, the procurement officer sent ModivCare and MTM identical invitations to provide demonstrations. [ModivCare Exhibits 12 and 13] The invitation instructed ModivCare and MTM to “[p]lease keep the number of attendees at 3 or below.” That same day, MTM replied to the procurement officer asking:

Is there any flexibility in the number of attendees? Would the agency consider allowing up to **six presenters**, instead of three, which **would allow a more diverse representation of subject matter experts** to field agency questions?

[ModivCare Exhibit 13] [emphasis supplied]

The procurement officer responded that MTM would be allowed to bring up to six presenters. [Id.] However, the procurement officer failed to notify ModivCare of this change and extend it the opportunity to bring six attendees. As a result, MTM had six presenters present at its demonstration while ModivCare had only three.

In response to this ground of protest, MTM provided an affidavit from Rebecca Lopez, Chief of Contracts and Procurement for HHS stating:

Before ModivCare started their demonstration, I offered that they could include other people from their company on Teams or we could reschedule their demonstration so that they could include other attendees from their company. ModivCare told me that they were prepared and ready to proceed.

At the hearing on this matter, ModivCare representatives, Lydia Haneck, Ed Hoffman, and Ann Francis O’Neil, testified that minutes before its demonstration, Ms. Lopez asked if ModivCare had anyone



joining the meeting via Teams. ModivCare responded they did not. Ms. Lopez then offered ModivCare the opportunity to have additional attendees via Team's. ModivCare's representative did not hear an offer to reschedule the meeting and testified that they did not know at the time why they were being offered an opportunity to have more attendees on such short notice. ModivCare's representatives also testified that it would not have helped at the moment of demonstrations to bring in additional attendees who were not prepared and might not even be available.

Even had HHS offered ModivCare the opportunity to reschedule, its last-minute offer was not sufficient to cure the deficiency in the process. At that point in time, the harm was already done. ModivCare followed instructions and planned according to those instructions. ModivCare had made travel arrangements for three attendees and prepared its presentation around those three attendees. A last-minute offer from the State to add attendees or reschedule put ModivCare in a precarious position. It had to decide whether to proceed as planned, take the risk of putting on an unplanned demonstration with more participants at the last minute, or cancel and regroup. Any one of the options had the potential of making a negative impact on how its proposal was viewed. Moreover, ModivCare did not even know why it was offered this last-minute opportunity.

Clearly the ability to plan for and have up to six attendees present at demonstrations was not trivial. MTM recognized that having six attendees was an advantage stating that it "would allow a more diverse representation of subject matter experts to field agency questions."

The Code requires that all offerors must be treated equally. S.C. Code Ann. § 11-35-20(f). "[E]ach proposal must receive fair and equal consideration by the State." *Protest of Polaroid Corp*, Panel Case No. 1988-12. "Evaluations are found to be arbitrary when offerors are not treated equally in the evaluation process." *Appeal by CBN Secure Tech*, Panel Case No. 2024-4. Here, the State did not provide the same opportunity to ModivCare at the same time and in the same way. This failure provided an unfair advantage to MTM. It is impossible for the CPO to determine the impact, if any, this disparate treatment had on the demonstration scores of either party. However, it is possible that a demonstration on equal terms by ModivCare would have resulted in both a higher score for ModivCare and a lower score for MTM. The error is not harmless, because it is theoretically possible that such an adjustment could have resulted in a different outcome as to who the highest ranked offeror was. Therefore, this ground of protest is granted.

#### **4. Allegation that Cancellation of the Prior Solicitation was Improper**

ModivCare alleges that DPS improperly cancelled Solicitation Number 5400027781 on May 2, 2025, to add demonstration scoring. However, ModivCare's did not protest this cancellation or even file a notice of intent to protest until it submitted the intent to protest for this protest 70 days later. By any calculation ModivCare's protest of the cancellation of Solicitation Number 5400027781 is untimely. See S.C. Code Ann. §11-35-4210(1)(a) ("A prospective ... offeror ... aggrieved in connection with a solicitation shall protest ... within fifteen days of the date of issuance of the ... solicitation documents ... at issue."). Therefore, the CPO denies this ground of protest.

To the extent ModivCare seeks to claim that the inclusion of scoring points in this solicitation was inappropriate, that claim is also untimely. The points assigned for demonstrations were included in this solicitation when DPS published it on May 2, 2025. Per Section 11-35-4210(1)(a), ModivCare had fifteen days from this date to protest but did not protest until 70 days later. Therefore, to the extent ModivCare protests the addition of scoring for demonstrations to this solicitation its protest is untimely.

#### **5. Allegations of Failure to Follow Instructions/Process**

ModivCare alleges the State failed to follow its instructions to the Evaluation Panel and procedures for evaluation of proposals in several respects.

First, ModivCare alleges the State failed to have evaluators prepare and turn in individual score sheets. However, a review of the instructions to the Evaluation Panel shows that they are silent as to the method of scoring. [ModivCare Exhibit 17] The cover letter to the instructions does mention that each evaluator reviews proposals they may prepare "a working evaluation sheet prior to the selection meeting." [Id.] To the extent each evaluator did this, the documentation was preliminary in nature and not a document the procurement officer was required to keep in the procurement file. As for the final score sheets prepared at the selection meeting, the instructions to the Panel simply state:

Your<sup>8</sup> responsibility is to provide an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP.

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<sup>8</sup> In its protest, ModivCare substitutes "each panel member" for "your." However, these are "Instructions to the Evaluation Panel," and "your" applies to the panel members individually and collectively. Nothing in this instruction suggest that scoring will be conducted individually rather than collectively.

Score sheets are to be completed and signed in ink (or electronically) by each panel member prior to turning them in to the Procurement Officer.

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For each proposal, evaluators will provide a brief written explanation for the points awarded for each evaluation criteria. This explanation will be included in the Procurement Officer's file ...

[Id.]

These instructions do not state whether each individual evaluator will prepare their own score sheets for each proposal or whether the evaluation panel will prepare consensus score sheets for each proposal. In the case, the State choose to use consensus scoring and nothing in the record indicates the procurement officer ever instructed the Evaluation Panel otherwise. Per the instructions, each evaluator signed the consensus score sheets.

ModivCare also alleges that Evaluation Panel members failed to attend all meetings. The "Instructions to the Evaluation Panel" states that "[a]ll scoring panel members must attend all meeting of the evaluation committee." [Id.] The Evaluation Panel consisted of three voting (i.e. scoring) members: Shadda Winterhalter, Scott Timmons, and Dawn Hunt. ModivCare neither alleges nor presents evidence that any of these three individuals failed to attend one of the evaluation panel meetings.

ModivCare next alleges that the State failed to enforce requirements regarding access to proposals. The State's procedure is to have any State representative other than the procurement officer receiving a copy of proposals to execute a nondisclosure agreement (NDA) and, if they have a role in the selection process, a "Procurement Integrity Representations and Restrictions" (PIRR) form.<sup>9</sup> In several cases, ModivCare speculates that specific individuals may not have signed these agreements until after they received proposals. ModivCare's speculation is not evidence. In two other cases, ModivCare alleges that Mr. Jimmy Early and Ms. Tara Simmons attended the demonstrations without executing either an NDA or a PIRR. However, the record reflects that Mr. Early signed both forms on June 6, 2025, days before demonstrations on June 11, 2025. [MTM's Response, Exhibit F] The record does not reflect that Ms. Simmons signed either; however, ModivCare does not present any evidence of prejudice or harm as a result. As an administrative employee of DPS, Ms. Simmons already has an obligation not to disclose protected procurement information. Indeed, as a part of her job duties, she has routine access to such

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<sup>9</sup> This is a form for a person to attest that they have neither a personal nor an organizational conflict interest. Everyone involved in the selection process must execute this form.

information for all procurements that come through DPS's offices. Moreover, Ms. Simmons had no role in evaluating demonstrations or providing advice to the evaluation panel. There is no evidence that Ms. Simmons attending demonstrations as nothing more than an observer in any way prejudiced any of the offerors.

ModivCare next alleges that the State failed to investigate potential organizational conflicts of interest by Mr. Early, Ms. Simmons, or Ms. Quan Lewis. ModivCare goes on to state without explanation or evidence that it has reason to believe Mr. Early has a prior relationship with MTM. As previously noted, Mr. Early signed a PIRR stating that he had no organizational conflict of interest and ModivCare presents no evidence otherwise. As to Ms. Simmons, she did not play any role in this procurement that would create an organizational conflict of interest. She had no role in preparing the solicitation, she had no role in evaluating proposals and demonstrations, and she will have no role in administering any contract that will result from this solicitation. There is simply no reason Ms. Simmons would have needed to execute a PIRR. Finally, ModivCare's allegations concerning Ms. Lewis stem from her failure to sign a PIRR. Like Ms. Simmons, Ms. Lewis had no role in this solicitation that would create an organizational conflict of interest. Ms. Lewis was simply present at the Evaluation Panel meetings to operate the technology equipment the Panel was using as a part of conducting its evaluation. As such, there was no need for Ms. Lewis to execute a PIRR.

#### **6. Alleged Failure to Maintain Records Sufficient to Satisfy External Audit**


ModivCare alleges that the State failed to adequately document the grounds for its decision noting that the Procurement Code requires the State to maintain a file that "contains the basis on which the award is made and must be sufficient to satisfy external audit." S.C. Code Ann. § 11-35-1530(9); *see also* S.C. Code Ann. § 11-35-210(A) (Determinations required by the Procurement Code "must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11-35-1230."). ModivCare alleges that the Evaluations Panel's explanatory summary regarding the strengths and weaknesses of each proposal are inadequate to document the basis of the ranking decision and inadequate to satisfy external audit. [ModivCare Exhibit 8, Evaluator Explanatory Summary] Different people may disagree as to how much explanation in the explanatory notes is adequate to meet this requirement. Reading ModivCare's protest in its entirety, ModivCare's real complaint is that the individual panel members' pre-decisional notes were not a part of the procurement file. Because they were pre-decisional, the procurement officer was not required to maintain them in the procurement file. As to the comments in the official Evaluator

Explanatory Summary, the CPO finds that while they are minimal, they are sufficient to satisfy the requirements of the Procurement Code. Therefore, the CPO denies this ground of protest.

As part of this allegation, ModivCare suggest that DPS's response to its Freedom of Information Act (FOIA) request was incomplete. To the extent ModivCare intends this allegation to be a ground of protest it fails. Allegations of FOIA violations are not proper matter for a protest before the CPO. See *In the Matter of Protest of Singletary Tax Services*, Case No. 2011-123 ("The CPO has no jurisdiction or authority over allegations that the FOIA was violated."); *see also Protest of Transportation Management Services, Inc.*, Panel Case No. 2000-2 (dismissing an allegation involving a FOIA response for failure to state a claim).

## DECISION

For the reasons stated above, the CPO grants ModivCares protest that MTM's proposal is nonresponsive because of its inclusion of VeyoRide in its proposed solution, and that the State engaged in disparate treatment of offerors during the demonstration phase. The CPO denies all other grounds of protest. The CPO remands this matter back to DPS to proceed in accordance with the Procurement Code.

  
\_\_\_\_\_  
John St. C. White  
Chief Procurement Officer

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2025)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2025 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C SubscribeITs, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

- 
1. What is your/your company's monthly income? \_\_\_\_\_
  2. What are your/your company's monthly expenses? \_\_\_\_\_
  3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**



## WILLOUGHBY HUMPHREY & D'ANTONI

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July 18, 2025

**VIA EMAIL TO:** [protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov)

Chief Procurement Officer, Materials Management Office  
State Fiscal Accountability Authority  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201-3734

Re: Protest of ModivCare Solutions, LLC in Connection with the Department of  
Health & Human Services Solicitation No. 5400028336

Dear Sir/Madam:

ModivCare Solutions, LLC ("ModivCare"), through its undersigned counsel, respectfully submits this protest in connection with Solicitation No. 5400028336 ("Request for Proposals" or "RFP"), Exhibit ("Ex.") 1, issued by the State Fiscal Accountability Authority ("SFAA"), Division of Procurement Services ("Procurement Division") on behalf of the Department of Health & Human Services ("SCDHHS") for procurement of a Non-Emergency Medical Transportation ("NEMT") coordinator to arrange for NEMT services for all eligible Medicaid Managed Care ("MMC") and Fee-for-Service ("FFS") Beneficiaries. *See* Ex. 1, RFP at 1.

### I. INTRODUCTION

ModivCare has served as South Carolina's NEMT broker for the past 18 years. *See* Ex. 2, ModivCare Proposal at 6. ModivCare is not entitled to an award of this latest contract for NEMT services solely because of its incumbent status; however, ModivCare is entitled to a fair procurement process, whereby all offerors are subject to the same rules and requirements. In



making a presumptive award decision riddled with procedural irregularities, substantive evaluation errors, and disparate treatment of offerors, the Procurement Division has failed to live up to that obligation.

In June 2025, negotiations between the Procurement Division and the presumptive awardee, Medical Transportation Management, Inc. (“MTM”), revealed that MTM’s as-submitted proposal was in violation of the RFP: MTM’s proposal incorporated MTM’s wholly-owned transportation provider network, VeyoRide, in direct violation of the RFP and SCDHHS’s Center for Medicare and Medicaid Services (“CMS”) plan. Under applicable statutory and decisional law, the Procurement Division’s decision to enter into negotiations with MTM to cure this problem was impermissible—MTM was neither the “highest ranked offeror,” nor had it submitted a responsive proposal that could ever be eligible for award. Further compounding this error is the fact that the Procurement Division’s evaluation panel clearly relied on MTM’s VeyoRide solution in awarding MTM the highest Transportation Operations evaluated score, despite ModivCare’s in-state provider network being nearly three times the size of MTM’s. Despite these prejudicial errors, the Procurement Division nevertheless presumptively awarded the contract to MTM on July 3, 2025.

Equally concerning are other procedural and substantive errors that adversely impacted ModivCare’s ability to fairly compete for award. For instance, it appears the cancellation of the original RFP was motivated solely by the Procurement Division’s desire to incorporate a new evaluation category, “Demonstrations,” into the present RFP. While cancellation was itself an improper course of action for the Procurement Division to take, most alarming is the fact that the Contracting Officer proceeded to provide disparate instructions to MTM and ModivCare regarding the number of participants eligible to be included in the demonstrations process, adversely

impacting ModivCare’s ability to effectively compete during its live demonstration. This was not an immaterial issue as MTM’s score on the presentation was nearly double ModivCare’s. Moreover, after having submitted multiple South Carolina Freedom of Information Act (“FOIA”) requests, it is also clear that South Carolina failed to adequately document the evaluation decision in this procurement. Entire categories of documents, including mandatory individual evaluation scoresheets that would contain key justifications from the evaluators, are glaringly absent from the Procurement Division’s productions, leaving ModivCare without sufficient evidence—mandated by law and the RFP—to protect its interests.

The documentation that *is* available, however, demonstrates a fundamental misevaluation of MTM and ModivCare’s proposals. The Procurement Division’s evaluation of various technical requirements appears to have been arbitrary at best, with strengths and weaknesses being inconsistently applied in a manner prejudicial to ModivCare. The Procurement Division’s evaluation also appears to have given MTM a pass on certain mandatory contract requirements, including the disclosure of all subcontractors and information regarding key staff—whose absence should have rendered MTM’s proposal nonresponsive—and MTM’s poor record of past performance on similarly situated state-level contracts.

ModivCare’s protest could be sustained on the basis of any one of these errors. Taken together, however, the Chief Procurement Officer is obligated to issue a decision sustaining the protest and directing the Procurement Division to (1) cancel or terminate Contract No. 4400037511 awarded to MTM (the “Contract”); and (2) disqualify MTM from continuing in the competition for submitting an unresponsive proposal. After taking those required actions, the Procurement Division should consider: (a) investigating whether the use of particular advisors created OCIs; (b) re-evaluating previously submitted proposals consistent with the terms of the RFP;

(c) amending the RFP to reflect the Procurement Division's unstated evaluation criteria; (d) opening discussions or negotiations with ModivCare; (e) allowing for the submission of Final Proposal Revisions; and/or (f) awarding a new contract consistent with the RFP's terms and applicable law.

## **II. FACTUAL BACKGROUND**

### **A. ModivCare's History of Procurements**

#### **1. ModivCare is the Nation's Leading Transportation Broker**

ModivCare's mission is to serve as the critical link between millions of Medicare and Medicaid members and the care they need to improve their quality of life. *See* Ex. 2, ModivCare Proposal at 6. With nearly three decades of experience operating large-scale NEMT programs, including eighteen years as the incumbent broker for SCDHHS, ModivCare has consistently demonstrated its commitment to delivering high-quality, compliant, and scalable transportation solutions. *Id.* This mission is carried out nationally, as ModivCare serves as the broker of choice for fourteen state Medicaid agencies and more than 103 managed care plans operating over 121 transportation programs in every state. *Id.* ModivCare's expansive, well-established provider network includes a diverse fleet of over 29,000 vehicles operated by more than 5,600 transportation providers, collectively performing more than 44 million trips. *Id.*

ModivCare's comprehensive suite of services is designed to address the full spectrum of NEMT needs for state agencies and managed care organizations. ModivCare's offerings include, *inter alia*, robust call center operations, advanced trip scheduling technology, rigorous provider credentialing and compliance monitoring, and a best-in-class driver training program developed in partnership with the National Safety Council and the Community Transportation Association of America. *Id.* at 16, 44-76, 80. These services are underpinned by a commitment to safety, efficiency, and member-centered care, as evidenced by its national complaint rating of just 0.17%

and receipt of the National Safety Council's 'Defensive Driving Course' safety award for six consecutive years. *Id.* at 6, 16.

## **2. ModivCare Has Successfully Served as the NEMT Broker for the State of South Carolina for Eighteen Years**

As the incumbent NEMT broker in South Carolina since 2007, ModivCare has developed deep institutional knowledge of the state's unique transportation landscape, regulatory requirements, and member needs. Initially, in 2007, SCDHHS awarded four of its six NEMT regions to ModivCare, marking the first implementation of the brokerage model in South Carolina. *Id.* at 228. Since then, ModivCare has overcome numerous challenges to maintain uninterrupted service for the state including managing calls from regions designated to another broker and integrating emergency-contracted regions within sixty days after the designated broker withdrew in 2011. *Id.* ModivCare's longstanding partnership with SCDHHS has resulted in a stable, high-quality network that consistently meets and exceeds contractual expectations. ModivCare's proven ability to navigate complex program challenges, expand access to care, and maintain cost-effective, compliant operations uniquely positions it to continue delivering exceptional service to South Carolina's Medicaid members.

ModivCare's provider network in South Carolina is a testament to its robust capacity and commitment to delivering high-quality NEMT services. ModivCare has cultivated a strong network of 165 transportation providers operating almost 1,200 vehicles across the state. *Id.* at 234. This network successfully completed over 1.7 million verified paid trips with a miniscule 0.21% complaint rating, underscoring ModivCare's unmatched reliability and expertise in NEMT service delivery. *Id.* The provider network is strategically designed to meet the diverse, specific transportation needs of South Carolina's Medicaid members, with services ranging from ambulatory to wheelchair and stretcher transport, as demonstrated in the table below.

Type of Service	Total Trips (2024)
Ambulatory Trips	2,774,445
Wheelchair Trips	414,602
Stretcher Trips	50,549
ALS/BLS Trips	2,169

*Id.* at 81.

ModivCare’s South Carolina network is supported by sophisticated business intelligence and geospatial tools, enabling it to proactively monitor and address network adequacy at the neighborhood level and to rapidly mobilize additional resources when needed to ensure uninterrupted access to care. *Id.* at 77. It evaluates a range of factors supplemented by United States Census data and third-party data providers to understand the state’s transportation needs at a local level. *Id.* This proactive approach allows ModivCare to swiftly and accurately address any resource insufficiencies, confirming that members receive timely and consistent access to care.

Complementing this network is ModivCare’s fully staffed call center in South Carolina, which offers customer support to handle member inquiries, trip scheduling, provider coordination, and complaint resolution. *Id.* at 57. With trained agents available around the clock, ModivCare ensures that members have continuous access to live assistance. *Id.* at 67-68. Through continuous refinement and expansion, ModivCare’s provider network remains deeply embedded in South Carolina’s communities, providing safe, prompt, and accessible transportation services that align with SCDHHS’s mission and comply with federal and state regulations.

## **B. 2025 RFP**

On January 24, 2025, the Procurement Division issued RFP No. 5400027781 for NEMT coordinator services with a deadline to submit offers, after issuing certain amendments, by

April 23, 2025. *See* Ex. 3, Canceled RFP cover page. After initial proposals had been submitted and potentially reviewed, on May 2, 2025, the Procurement Division issued a notice of cancellation for RFP No. 5400027781. *See* Ex. 4, Notice of Cancellation at 1. Almost immediately following the cancellation—on the same day— the Procurement Division issued a revised RFP, No. 5400028336. Ex. 1, RFP cover page. The revised RFP was substantially identical to the original RFP, with one notable exception being that the revised RFP contains an additional “Demonstrations” evaluation factor. *Compare* Ex. 3, Canceled RFP at 27-29 with Ex. 1, RFP at 24-27.

The RFP provided for the award of a single qualified NEMT broker to administer, manage, coordinate and deliver NEMT services through a risk-based capitated model. *See* Ex. 1, RFP at 3-4. South Carolina’s goals for the program included, *inter alia*, (1) improving members’ access to quality NEMT services, (2) increasing the number of participating transportation providers, and (3) exploring opportunities for member and transportation provider incentives. *Id.* Qualifications for award eligibility included:

- The capacity in all respects to fulfill the contract requirements. *Id.* at 24.
- Five years of experience operating a NEMT program of similar size and scope, in compliance with all federal and state regulations. The solutions proposed must have been previously successfully implemented in a state environment and a detailed, narrative statement was required to establish these requirements were met. *Id.*
- A list of information including: (i) previous experience in the business, (ii) current financial position, (iii) the three most recent comparable contracts, (iv) businesses the offeror or subcontractor provided similar services to in the past three years, and (v) any failed projects or significant litigation the offeror or subcontractor was involved in. *Id.*
- A list of subcontractors that the offeror intended to work with for any portion of the work. Required information included the subcontractor’s name, phone, taxpayer identification number, and point of contact. *Id.*

Award was to be made to the highest ranked, responsive and responsible offeror whose offer was the most advantageous to South Carolina. *Id.* at 25. The formal evaluation included two phases, with the first ranking each offeror based on the following factors:

1. **Transportation Operations**, which considered the extent to which the offeror can provide an adequate and robust provider network and can improve the member and medical provider experience. Evaluators looked for performance measures to (a) reduce occurrences of fraud, waste, and abuse; (b) reduce the number of provider or member complaints; and (c) increase the accuracy and timeliness of data reports; and opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments. The maximum possible points were 500. *Id.*
2. **Member and Provider Services**, which considered the extent to which the offeror can improve members' access to quality NEMT services. Evaluators looked for the offeror's plans to (a) improve how members interact with the agency, (b) implement a person-centered transportation approach that will provide timely and accessible NEMT services, (c) develop and implement outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments, and (d) monitor expenditure and utilization trends for efficiency. The maximum possible points were 300. *Id.* at 26.
3. **General Requirements**, which considered the extent to which the offeror can meet performance standards and ease the administrative burden on transportation providers. Criteria included (a) inclusion of a streamlined reimbursement process and (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improve on the provider experience. Furthermore, evaluators were to consider how the offeror planned to implement cost-reduction and quality improvement initiatives, and how they planned to increase healthcare access opportunities by completing trips and utilizing improved performance measures. The maximum possible points were 200. *Id.*

Phase II of the evaluation required the three highest ranked offerors “with a mathematical possibility” to give a live demonstration. *Id.* at 14, 26. The two-hour demonstration was limited to the capabilities and methods described in the offeror's written proposal, and the offeror was neither permitted to change its proposal nor engage in negotiation. *Id.* at 14. The maximum possible award for Phase II was 200 points. *Id.* at 26. Notably, the original RFP did not allocate any points to this live demonstration. Ex. 3, Canceled RFP at 27-29. To ModivCare's knowledge, no past procurements in South Carolina for NEMT had included a scored oral demonstration.

Additional scoring criteria included qualifications and rates. Qualifications considered all the information required by Sections 4 and 5 of the RFP. Ex. 1, RFP at 26. The maximum possible points were 250. *Id.* at 27. Rates considered the estimated capitation rate ranges presented in Appendix B and was strictly evaluated on a Pass/Fail basis. *Id.*

On July 3, 2025, the Procurement Division issued an Intent to Award, granting the contract to MTM. *See* Ex. 5, Intent to Award at 1. The Memorandum for Determination of Award reflects MTM was awarded 1355 points as compared to ModivCare’s 1237.5 points—a difference of 117.5 points. *See* Ex. 6, Determination of Award at 1.

### **III. GROUNDS FOR PROTEST**

#### **A. South Carolina Fundamentally Failed to Properly Evaluate Each Offeror’s Provider Network**

A contract for NEMT services is fundamentally a contract for the provider network that an individual broker can offer. The structure of the RFP reflects this reality—an offeror’s provider network is the single most important evaluation criteria in the technical category, Transportation Operations, with the largest number of points allocated to it. Specifically, the evaluation criteria associated with Transportation Operations states: “To what extent the Offeror has demonstrated their ability to ensure an *adequate and robust provider network* and demonstrated the ability to improve the member and medical provider experience.” Ex. 1, RFP at 25 (emphasis added). The RFP then continues on, listing other, lesser criteria that “should also be considered.” *Id.*

Similarly, the model contract emphasizes the significance of an offeror’s provider network. Section 5.1 requires the eventual awardee to “establish a comprehensive Network of Transportation Providers to deliver NEMT to eligible Members statewide.” Ex. 7, ATTM 10 at 21. Section 5.1.3 then states the eventual awardee “must have capacity, through signed Transportation Provider Agreements and other arrangements . . . to meet all Members’ NEMT



needs.” *Id.* And in the event that the network is lacking, and SCDHHS “identifies insufficient transportation resources,” the contract calls for formal corrective action—namely, the NEMT awardee must develop and recruit additional resources to meet the NEMT program’s needs. *Id.*

ModivCare’s proposal describes the exact sort of “robust provider network” called for under the terms of the RFP. In South Carolina, ModivCare “partners with 165 Transportation Providers operating 1,000+ vehicles, which collectively performed 1.7M+ trips in 2024, solidifying our unmatched capacity, reliability, and expertise in delivering NEMT services.” Ex. 2, ModivCare Proposal at 77. In total, ModivCare’s transportation provider network includes 1,196 vehicles—and despite that breadth, ModivCare has managed to maintain a minimal 0.21% complaint rating. *Id.* at 234. ModivCare’s proposal highlights that as the incumbent to the legacy NEMT contract, it maintains “a strong and established network of Transportation Providers already serving South Carolina,” adding that “[o]ur Providers operate under strict performance expectations, and we apply a structured approach to maintaining a reliable and high-performing network.” *Id.* at 83. And in the course of describing its network, ModivCare notably excludes its own transportation network company, Provado Health, from its provider network capacity analysis so as to remain in compliance with SCDHHS’s CMS plan. *Id.* at 82.

In all respects, ModivCare’s proposal demonstrates its “ability to ensure an adequate and robust provider network and demonstrated the ability to improve the member and medical provider services.” Ex. 1, RFP at 25. After evaluating ModivCare’s proposal, the Procurement Division awarded ModivCare 450 out of 500 points for the Transportation Operations subfactor, but never *once* commented on the size or scale of its provider network. Instead, the Procurement Division noted as a strength that ModivCare “[a]ddressed network gaps through innovative network partnerships,” while simultaneously noting as a weakness that ModivCare relies on “non-

participating transportation provider to fill network gaps.” See Ex. 8, Evaluator Explanation Summary. Not only are these observations at odds with one another, but neither properly credits the size or historical performance of ModivCare’s provider network, which should have been an identified strength under the terms of the RFP.

In comparison, MTM’s proposal described a provider network a fraction of the size and scale of ModivCare’s network. MTM’s proposal states that it maintains a network of only “394 credentialed drivers and 277 vehicles in South Carolina.” Ex. 9, MTM Proposal at 31. And while MTM cites signed letters of intent with 37 transportation providers to supplement these statistics, the devil is in the details—MTM’s letters of intent are informal in nature and make no concrete commitment on behalf of the transportation provider and the cited signature was missing on several forms. See, e.g., *id.* at Appendix F. Moreover, at least one letter of intent did not even describe a single vehicle that it would contribute to MTM’s provider network. *Id.* (Questionnaire of Newberry County Council on Aging) at 280. MTM also represents that over the past 12 months, in South Carolina, it has “maintained a complaint-free trip percentage above 98%.” *Id.* at 113.

In an attempt to supplement its nascent network, MTM expressly incorporated its personally-maintained “VeyoRide” network into its proposal. MTM describes VeyoRide as follows:

VeyoRide uses drivers who are fully trained and credentialed according to all state, federal, and client requirements, including first aid, CPR, HIPAA, ADA, patient sensitivity, and hand-to-hand service. ***Our VeyoRide network is the only solution available in the market today able to fully utilize rideshare services, while meeting all state and federal requirements for Medicaid Members.*** The VeyoRide drivers work alongside traditional transportation providers to form the most responsive and reliable network in the NEMT industry today, all tracked in real time. ***This model is highly flexible, scalable, responsive, and allows MTM Health to deliver service levels not previously possible in this industry, by scaling capacity in minutes***—whenever and wherever it is needed.

MTM Proposal at 65 (emphasis added).

Indeed, MTM identifies VeyoRide as “an important component of our strategy for ensuring adequate coverage in rural areas.” *Id.*

Despite maintaining a provider network a fraction of the size of ModivCare with a higher complaint rate, MTM was awarded 475 points by the Procurement Division in connection with the Transportation Operations subfactor. Ex. 8, Evaluator Explanation Summary. The Procurement Division noted as a strength MTM’s “established provider network in SC,” as well as several apparent references to MTM’s VeyoRide system. *Id.* For instance, one strength praised MTM for “[i]ncentiviz[ing] high performing transportation providers through advance scheduling methodology,” while another listed MTM’s “[a]bility to intergrate [sic] current transportation provider systems into there [sic] main system.” *Id.* These strengths harken back to MTM’s description of VeyoRide’s functionality in its proposal, which describes various incentives and integration with broader transportation providers native to the VeyoRide model. *See* Ex. 9, MTM Proposal at 65 (“The VeyoRide drivers work **alongside traditional transportation providers** to form the most responsive and reliable network in the NEMT industry today, all tracked in real time . . . .MTM Health can broadcast the need for additional drivers in specific areas in real time and can use these notifications **along with financial incentives** to encourage additional providers to logon or change locations within the service area to where they are needed most. MTM Health can notify VeyoRide drivers of a trip opportunity in their area, even if they might not have otherwise considered working at that time.”) (emphasis added).

Following the evaluation of ModivCare and MTM’s proposals on June 5, 2025, the Procurement Division sent a negotiation letter to MTM on June 26, 2025. Ex. 10, Negotiation Letter at 1. This letter explained that MTM had been “chosen to move into the negotiation process” as the presumptive awardee pursuant to S.C. Code Ann. 11-35-1530. *Id.* The Procurement

Division explained four separate points of negotiation in this letter, one of which being specific to MTM's incorporation of VeyoRide into its proposal. The letter asked MTM to "[c]onfirm acknowledgment that the use of the optional VeyoRide as part of its transportation provider network is strictly prohibited and that they can meet all contractual requirements without its use." (emphasis in original). *Id.* In requesting this acknowledgement from MTM, the Procurement Division cites to Section 8.7.7 of the proposed NEMT contract itself, which explains that "[t]he contractor may not itself provide transportation to members," which is exactly what MTM proposed to do. *Id.* at 2; Ex. 7 ATTM 10 at 48 (emphasis added). In response to this negotiation letter, MTM unsurprisingly confirmed that it would not rely on VeyoRide as a part of its provider network, stating as follows: "Use of VeyoRide: MTM Health confirms we can meet all contractual requirements without the use of VeyoRide within our network. **We understand that the use of VeyoRide, as part of our transportation provider network, is strictly prohibited.**" Ex. 11, Response to Negotiation Letter at 1 (emphasis added).

Based on the network provider data provided through each of ModivCare and MTM's proposals, it is evident that the Procurement Division conducted an improper Transportation Operations evaluation. The numbers bear this out:

- ModivCare maintains a provider network of **1,196** vehicles in the state, whereas MTM has only **277** vehicles in its network.
- ModivCare has **165** transportation providers signed onto its network, whereas MTM can only cite to **37** non-binding provider letters of intent.
- ModivCare is even superior with respect to complaint rating: it cites a **0.21%** complaint rating in comparison to MTM's "complaint-free trip percentage above 98%," which it is safe to assume means a complaint rating of **2%**. That is an order of magnitude more complaints than what ModivCare has received while *serving as the incumbent*.

Despite ModivCare’s metrics exceeding that of MTM’s across the board, ModivCare nevertheless received a Transportation Operations score that was 25 points *less* than MTM. Ex. 8, Evaluator Explanation Summary.

The point differential as between ModivCare and MTM can only be explained by one of two things: either (1) ModivCare’s identified weaknesses, which according to the Procurement Division were “[r]eliance on non-participating transportation provider to fill network gaps” and an allegedly “cumbersome” gas mileage reimbursement solution; or (2) MTM’s impermissible incorporation of VeyoRide into its proposal. *Id.* A close review indicates that it cannot be ModivCare’s identified weaknesses because MTM cites the use of non-participating transportation providers in its own proposal as well. *See* Ex. 9, MTM Proposal at 62 (“If we identify any gaps in coverage, we work with our current network of transportation providers to identify where these providers can grow their services to accommodate the Department’s membership. Next, we reach out to transportation providers from whom we have LOIs to contract throughout additional counties to join our network.”). MTM’s mileage reimbursement process is also functionally identical to that of ModivCare: both are GPS-enabled, app-based systems that allow members to submit claims online. *Compare* Ex. 9, MTM Proposal at 32 *with* Ex. 2, ModivCare Proposal at 100.

The only explanation left is that MTM was impermissibly credited by evaluators for incorporating its VeyoRide platform into its proposal. *Cf. In re Appeal by U.S. Facilities, Inc.*, Case No. 2025-1, S.C. Procure. Rev. Panel, May 19, 2025 (Franks, W.) (“[A]ny evaluation of offerors’ proposals based on criteria outside the stated factors is improper.”). VeyoRide was a critical component of MTM’s proposal—mentioned 34 separate times—that was key to elevating the stature of MTM’s otherwise limited provider network. Without VeyoRide, MTM’s provider

network is quantifiably worse than that of ModivCare’s across all relevant metrics. *Compare* Ex. 2, ModivCare Proposal at 77 (“As the incumbent, Modivcare partners with 165 Transportation Providers operating **1,000+ vehicles**, which collectively performed 1.7M+ trips in 2024, solidifying our unmatched capacity, reliability, and expertise in delivering NEMT services.”) (emphasis added) *with* Ex. 9, MTM Proposal at 59 (“MTM Health already has a network of 394 credentialed drivers and **277 vehicles** in South Carolina, including 127 specialized medical vehicles. We will continue to recruit as necessary. We have also received 37 Letters of Intent from transportation providers[.]”) (emphasis added). Even including their 37 Letters of Intent to their total, ModivCare still dwarfs MTM’s number of vehicles by nearly 700. The Procurement Division’s more favorable evaluation of MTM’s proposal with regard to this critical capability is counter to the information included in the proposals and wholly unsupported. *See Appeal by PSI Services LLC*, Panel Case No. 2022-5 (granting protest where the government awarded the contract based primarily on one factor “while disregarding nearly the entirety of the rest of the information that support[ed] a contrary conclusion”).

## **B. The Procurement Division Illegally Engaged in Negotiations With MTM**

### **1. MTM’s Proposal Was Nonresponsive and MTM Could Not Be the Highest Ranked Offeror**

The Procurement Division violated applicable statutory requirements by entering into negotiations with MTM. S.C. Code Ann. § 11-35-1530(8) states as follows:

(8) *Negotiations.* After proposals have been ranked pursuant to Section 11-35-1530(7), the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below . . . (a) ***negotiate with the highest-ranking offeror*** on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the

level of ranking determined by the procurement officer in its sole discretion

(emphasis added). As a general matter, a statute of this nature is intended to allow the relevant procurement authority to fine-tune an awardable proposal through modest changes in price or scope.

MTM's as-submitted proposal, however, was **facially nonresponsive** to the requirements of the Solicitation. The RFP explains that an offer is nonresponsive "if it imposes conditions inconsistent with, or **does not unambiguously agree to**, the solicitation's material requirements." Ex. 1, RFP at 10 (emphasis added). The ramifications of a nonresponsive offer are straightforward: "Award will not be made on a nonresponsive offer." *Id.* The Procurement Division's June 26, 2025 correspondence itself acknowledges that MTM's proposal was "inconsistent" with contract requirements where it states that the use of VeyoRide "is strictly prohibited" by Section 8.7.7 of the Contract and requests that MTM certify it could "meet all contractual requirements without its use." Ex. 10, Negotiation Letter at 1. At a minimum, this means that MTM's proposal did not "unambiguously agree to" a material requirement of the RFP—as is demonstrated by the Procurement Division's need to send the Negotiation Letter and receive an unambiguous commitment from MTM. Under the terms of the RFP, by submitting a proposal that relied upon a "prohibited" transportation provider network, MTM's proposal was nonresponsive and should have been rendered ineligible for further consideration. *See* Ex. 1, RFP at 10 ("Award will not be made on a nonresponsive offer") & at 25 ("Ordinarily, nonresponsive proposals will be rejected outright without prior notice"); *see also In re Protest of Blue Cross Blue Shield of South Carolina and Public Consulting Group, Inc.*, S.C. Procure. Rev. Panel, Apr. 13, 1996, 1996 WL 33404913, at \*3 ("[R]esolicitation is the appropriate remedy for a RFP that has a nonresponsive offeror"); *Matter of: Eleven Four Hundred, Inc.*, Case No. 2021-144 (sustaining

protest and requiring resolicitation of bids where prospective awardee's proposal was found to be nonresponsive); S.C. Code Ann. § 11-35-1410 (defining a responsive offeror as "a person who has submitted a ... proposal which conforms in *all* material aspects to the ... request for proposals.") (emphasis added).

Rather than disqualify MTM's proposal, the Procurement Division instead impermissibly invoked its power to enter into negotiations with MTM on the flawed premise that MTM was "the highest ranking offeror." S.C. Code Ann. § 11-35-1530(8)(a). Not only was MTM decidedly not the highest rated offeror, but MTM should have been disqualified from this procurement in light of its nonresponsive proposal. The *Protest of Coca-Cola Bottling Co. Consolidated* panel decision is dispositive on this point. Panel Case No. 1996-13 (S.C. Procure. Rev. Panel, Sep. 3, 1996). In that matter, South Carolina entered into negotiations with Coca-Cola regarding the commission percentage it intended to charge on its beverage products, which South Carolina viewed as potentially nonresponsive to the solicitation. On review, the South Carolina Procurement Review Panel held that these negotiations were in error, stating as follows:

The Panel takes this opportunity to point out that *the State mistakenly began negotiations before making a decision concerning the responsiveness of Coke*. Mr. Horton testified that he had a problem with the juice commission of 14.75%, which was always 'in the back of his mind'. However, in discussing with Coke possibly changing the percentage for juice, the State actually began negotiating prior to determining responsiveness. *An offeror may not change its bid. The State cannot negotiate with a nonresponsive offeror. Only after a determination of being responsive can negotiations concerning the price begin with the highest ranked offeror*. While there is no time limit in which the State must make a determination of nonresponsiveness, the State cannot begin negotiations with a nonresponsive offeror." *Id.* at 7.

Here, the Procurement Division committed an identical error by entering into negotiations with MTM despite its proposal being nonresponsive to the requirements of the RFP thanks to the



inclusion of VeyoRide. By committing this error, the Procurement Division directly prejudiced other offerors, including ModivCare, who unlike MTM submitted proposals responsive to all contract requirements.

## **2. The Procurement Division's Negotiations Impacted the Ranking of Offerors**

Where a negotiation “potentially affects the ranking of the offerors, *then the State must give all other offerors the opportunity to submit best and final proposals.*” *In Re: Protest of ACMG, Inc.*, SCPD 1990-4, 1990 WL 10008038 at \*8 (May 18, 1990) (emphasis added). As explained above, MTM’s evaluated Transportation Operations score should have been significantly lower than ModivCare’s by any measure. However, without the benefit of its VeyoRide platform, MTM’s evaluated Transportation Operations score should have been even substantially lower than it was—and certainly not comparable to ModivCare. A shift in MTM’s technical subfactor rating would have not just an “affect” on the ranking of all offerors, but potentially a material impact on the ultimate prospective award decision. To the extent that MTM’s proposal was awardable, the Procurement Division’s negotiations were nevertheless illegal for failing to allow offerors, like ModivCare and others, the opportunity to submit a best-and-final offer in response to this change.

## **C. The Procurement Division Engaged in Disparate Treatment of Offerors During the Demonstrations Phase**

Despite initially instructing all offerors to limit oral presentation teams to three presenters, the Procurement Division granted MTM’s private request to double its presenters to six, without notifying ModivCare of this material change. As a result, ModivCare adhered to the original, more restrictive terms, while MTM leveraged additional subject matter experts, gaining a significant and unfair advantage in a highly complex and technical procurement. This disparate treatment

directly violated South Carolina procurement law, which mandates fair and equitable treatment for all bidders and requires consistent application of solicitation terms.

Furthermore, the cancellation of a solicitation after the submission of proposals is an extraordinary measure that must be supported by a clear, well-documented rationale to preserve the integrity and transparency of the procurement process. In the case of Solicitation No. #5400027781, the Procurement Division canceled the original request for proposals on May 2, 2025—just ten days after receiving submissions—without offering a substantive explanation. That same day, it issued a new solicitation that was nearly identical in scope and content, save for the addition of a new and highly subjective evaluative criterion: a demonstration and oral presentation weighted at 200 points. This abrupt and unexplained change raises serious concerns about the fairness and propriety of the procurement process.

#### **1. Inconsistent Demonstration Phase Instructions to Offerors**

On June 6, 2025, Kayla Middleton, Procurement Manager, sent identical emails to ModivCare and MTM, outlining instructions for the demonstration phase of Solicitation No. #5400028366. *See* Ex. 12, Email from Middleton to Hennick, June 6, 2025 & Ex. 13, Email from Middleton to Ritchie, June 6, 2025. Both emails instructed offerors to limit the number of presenters to three for the oral presentation. *Id.* Later that day, MTM responded, requesting, among other things, permission to use up to six presenters to ensure “more diverse representation of subject matter experts to field agency questions.” Ex. 13, Email from Middleton to Ritchie, June 6, 2025. Approximately two hours later, Ms. Middleton replied, “Yes, 6 are ok.” *Id.* The Procurement Division failed to notify ModivCare of this material change, which doubled the number of permissible presenters for MTM only.

On June 11, 2025, ModivCare complied with the original instructions, delivering its presentation with three presenters. *See* Ex. 14, Minutes of the Office of State Procurement,

ModivCare Demonstration. In contrast, MTM arrived with six presenters, leveraging additional subject matter expertise to address agency questions. *See* Ex. 15, Minutes of the Office of State Procurement, MTM Demonstration. This inconsistency in the application of oral presentation requirements was highly prejudicial to ModivCare, as demonstrated by the **90-point difference in scoring** for this section. *See* Ex. 8, Evaluator Explanation Summary at 3-4.

The RFP for non-emergency medical transportation involves complex and highly technical topics. Proposals submitted by ModivCare and MTM spanned hundreds of pages, reflecting the extensive data, information, and expertise required to respond to the RFP. With six presenters, MTM gained a significant advantage by deploying additional subject matter experts to address specialized or technical topics. A larger presentation team also allowed MTM presenters to narrow their areas of concentration, setting the conditions for a more detailed, comprehensive, and persuasive demonstration. Furthermore, a six-person team may have created an impression of greater organizational depth, resources, or commitment, subjectively influencing evaluators, even if not explicitly part of the evaluation criteria. This unequal treatment was not only prejudicial but also violated South Carolina procurement law. The South Carolina Consolidated Procurement Code mandates “*fair* and *equitable* treatment of all persons who deal with the procurement system.” S.C. Code Ann. § 11-35-20(f) (emphasis added); *see also* 1 *Gov’t Contract Awards: Negotiation and Sealed Bidding* § 10:5 (“The ‘fundamental rule’ in procurement is to treat offerors equally.”). Allowing MTM to deviate from the three-presenter requirement without notifying or offering ModivCare the same opportunity contravenes this principle because ModivCare was denied the chance to adjust its demonstration team, directly impairing its ability to compete on equal terms.

Moreover, the three-presenter requirement was a condition of the solicitation process, as it governed how offerors were to prepare demonstrations. The Procurement Division's decision to allow MTM to exceed this limit without giving ModivCare the same privilege violated the requirement for consistent and equal evaluative conditions between and among offerors. S.C. Code Ann. Regs. 19-445.2099(E) (mandating that awards be made on evaluation factors listed in the solicitation); S.C. Code Regs. § 19-445.2099(D)(4) (requiring amendments or revisions to solicitation terms to be issued to all offerors).

Procurement officers also have an obligation to “exchange information with *all* offerors” when discussions with another offeror are conducted. S.C. Code R. 19-455-2095(I)(2) (emphasis added). Discussions with offerors are limited to three categories of issues: “responsiveness; uncertainties concerning the cost or price, technical proposal, or other terms and conditions; and suspected mistakes.” *Matter of Integrated Biometric Technology, LLC*, Case No. 2022-207, Mar. 11, 2022 at 4 (citing S.C. Code Regs. 19-455-2095(I)). Communications that provide an offeror with an “opportunity to improve or amplify” its response “crosses the line, particularly when both offerors were not given the same opportunity.” *Id.* at 9. This is exactly what occurred in this case, that is, by privately approving MTM's request to employ six presenters, the Procurement Division created an opportunity for MTM to effectively amplify and enhance its proposal in the demonstration phase without providing ModivCare the same opportunity.

Lastly, granting MTM's private request to increase the number of presenters from three to six without notifying ModivCare, shows favoritism or bias toward MTM that is repugnant to the spirit and letter of the South Carolina Procurement Code. Indeed, this action demonstrates that MTM received preferential treatment, as the procurement officer responded affirmatively to their

request within hours but failed to extend the same opportunity to ModivCare.<sup>1</sup> Even if the disparate treatment was the result of simple inadvertence, that does not alter the fact that a significant change was made to the oral presentation requirements at the request of and to the advantage of MTM without notice and equal terms being offered to ModivCare, creating unfair and inequitable conditions during the demonstration phase. Whether or not MTM received additional accommodations in the course of its demonstration remains unclear based on the limited documentation the State has made available.

## **2. The Procurement Division Improperly Canceled the Prior Solicitation to Add Demonstration Scoring Category**

On January 25, 2025, the Procurement Division posted the original solicitation for NEMT services with a deadline to submit offers by April 23, 2025. ModivCare submitted its proposal on April 22, 2025. However, on May 2, 2025, the Procurement Division canceled Solicitation #5400027781 without any substantive explanation. *See* Ex. 4, Notice of Cancellation. Curiously, on the same day, it issued a new solicitation for NEMT services with a deadline to submit offers by May 14, 2025. While the new solicitation largely mirrored the initial solicitation, a scoring category was added, namely, a demonstration and oral presentation, which was weighted at 200 points, increasing total evaluative points from 1,250 to 1,450.

South Carolina procurement regulations permit the cancellation of a solicitation before an award or notification of intent to award, but such cancellations must be supported by a written determination stating specific reasons that align with the grounds outlined in S.C. Code Regs. § 19-445.2097(B)(1). This regulation lists permissible reasons for cancellation and requires that

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<sup>1</sup> This failure is amplified by the fact that the Contracting Officer, Ms. Kayla Middleton, was in correspondence with representatives from ModivCare in the days immediately following her decision to grant MTM's request and could have easily extended the same opportunity to ModivCare.

“[d]eterminations to cancel a request for proposals shall state the reasons therefor.” *Id.* at (B)(2). The Notice of Cancellation for Solicitation No. #5400027781, issued on May 2, 2025, fails to meet this standard, as it provides a circular and inadequate explanation, stating only that “specifications have been revised” and that cancellation is “in the best interest of the State” due to “new specifications of the solicitation.” Ex. 4, Notice of Cancellation.

This explanation is deficient because it merely restates the regulatory grounds for cancellation without providing substantive reasons for the cancellation. By failing to articulate specific, justifiable reasons for the cancellation, the Procurement Division violated S.C. Code Regs. § 19-445.2097(B)(2), undermining the transparency mandated by S.C. Code Ann. § 11-35-20(f). The circular reasoning—citing revised specifications as both the regulatory ground and the reason for cancellation—raises concerns of an arbitrary or pretextual decision, potentially intended to manipulate the procurement process after competitive proposals were submitted by offerors.

To compound matters, FOIA requests submitted to the Procurement Division resulted in not a single email, intra-office memorandum, or any other written communication (aside from the formal notice itself) pertaining to the cancellation, making it appear as if this significant decision was a mere spontaneous occurrence. Indeed, the lack of explanation for the cancellation after submission of proposals or any documents related to this cancellation, combined with the immediate addition of a new evaluative criterion that is largely subjective in nature, raises concerns that the Procurement Division may have acted to alter the competitive landscape for the benefit of a favored offeror.

Canceling a solicitation after receiving proposals, only to revise the RFP requirements by adding a new subjective evaluative criterion—here, oral presentations weighted at 200 points—and re-issuing a new solicitation, is also highly unusual and problematic in public procurement. It

is particularly questionable here where the Canceled RFP had always included an oral presentation, albeit unscored. *See* Ex. 3, Canceled RFP at 14–15, Section 2.41; Ex. 16, ATTM 012, Demonstration Script/Oral Presentation Script. This change was simply inserting a process to allow the evaluators to assign up to 200 points through a subjective, undocumented evaluation step. Evaluative criteria are defined upfront to ensure transparency and fairness. *See, e.g.*, S.C. Code Ann. § 11-35-1530(5) (“The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals....”); S.C. Code Ann. Regs. 19-445.2099 (“All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation.”). Typically, material changes to the RFP are accomplished by way of amendment rather than restarting a new solicitation. *See* S.C. Code Ann. Regs. 19-445.2099 (“When, either before or after receipt of proposals, the State changes its requirements or terms and conditions, the responsible procurement officer shall amend the solicitation.”).

Canceling and re-issuing a solicitation to introduce new evaluative criteria after the receipt of proposals is unconventional. It raises concerns that the Procurement Division may have reviewed the submitted proposals and then decided to cancel and re-issue with a new evaluative criterion to benefit a favored offeror. This is especially true here where the cancellation is not supported by a clear rationale, the additional evaluative criterion added is highly subjective in nature, and the three-presenter limitation in the demonstration phase was privately altered for the benefit of MTM without notice being given to ModivCare. *See In re Protest By Sperry-rand Corporation and Tandy Corporation*, S.C. Procure. Rev. Panel, Aug. 14, 1985, 1985 WL 667178, at \*9 (“In dealing with the expenditure of public funds the procedure must not only be fair but the appearance of complete fairness must be present”) (citing *Wall v. Am. Optometric Assoc., Inc.*, 379 F. Supp 175 (1974)); *see also Harmonia Holdings Grp., LLC v. United States*, 160 Fed. Cl. 674,

689 (2022) (“[B]ias—or even the mere appearance of bias—is a legitimate reason to cancel a solicitation”); *Burgos & Assocs., Inc.*, 59 Comp. Gen. 273, 275 (Feb. 25, 1980) (“It is, o[f] course, incumbent upon the agency to avoid even the appearance of favoritism or preferential treatment by the government towards a firm competing for a contract ... award.”).

**D. The Procurement Division Acted Unreasonably in Failing to Adequately Document the Grounds for Its Decision to Award the Contract to MTM**

The Procurement Division’s documentation failures begin with its failure to adequately document the rationale for its decision to cancel the initial solicitation, as discussed in Section C.2 above. Specifically, the Procurement Division failed to document the reasons for cancellation supported by documentation sufficient to satisfy external audit standards and failed to retain that documentation in the official contract file as required by S.C. Code Ann. § 11-35-1710 and related procurement regulations. However, as explained in more detail below, the Procurement Division failed to maintain appropriate documentation in multiple other ways.

The lack of comprehensive transparency and documentation in this procurement not only undermines the integrity of the process, but deprives unsuccessful offerors of a meaningful opportunity to understand and challenge the basis for the award, thereby impeding their statutory protest rights under S.C. Code Ann. § 11-35-4210. *See also Starry Assocs., Inc. v. United States*, 131 Fed. Cl. 208, 214 (2017), *vacated and remanded on other grounds*, 892 F.3d 1372 (Fed. Cir. 2018) (“The bedrock of [procurement law] ... is that procurements are to be conducted *fairly* and *transparently*.”) (emphasis added); *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 171, 551 S.E.2d 263, 270 (2001) (citing federal procurement cases to interpret state procurement contracts).



# **1. The Evaluators Failed to Follow Their Own Internal Instructions and Statutory Mandates**

First, the individual evaluators appear to have failed to complete or retain their own scoresheets with independent comments and justifications. The evaluation packet provided to each RFP Committee Member by the Procurement Officer states: (i) “Score sheets are to be completed and signed in ink (or electronically) **by each panel member** prior to turning them in to the Procurement Officer[.]” (ii) “[f]or each proposal, evaluators will provide a brief written explanation for the points awarded for each evaluation criteria”, and (iii) that **each evaluator** must “provide an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP.” Ex. 17, Evaluation Packet at 2 (emphasis added). Furthermore, those instructions made clear that the evaluators were required to review proposals prior to their joint meeting, and the evaluators were essentially directed to assess their own individual scores in that pre-review:

Be prepared to discuss each proposal at the selection meeting. You may complete your Evaluator Reports in pencil, use the electronic document, or use a working evaluation sheet prior to the selection meeting. You might want to adjust your scores when the Panel meets for discussion.

*Id.* at 1. The only way to “adjust scores” when the entire panel met was for the individual evaluators to have performed their own individual scoring and presumably thoroughly evaluated proposals prior to that joint meeting.

However, in response to its FOIA requests, ModivCare has been informed by the Procurement Division that no such individual evaluator evaluations or written explanations for points awarded exist. Instead, all that the Procurement Division produced is a consensus evaluation with terse, generic explanations for points awarded for each proposal, which are clearly insufficient under the Procurement Division’s own terms.

Second, the evaluation summary spreadsheet provided by the Procurement Division, purportedly representing the culmination of the evaluation process, contains only minimal, generic commentary regarding each offeror's qualifications. *See* Ex. 8, Evaluation Explanation Summary. The comments are vague, lack specificity, fail to meaningfully distinguish between the distinct strengths and weaknesses of the competing proposals, and are wholly inadequate in determining what weight the individual evaluators placed on each evaluation section. To compound matters, as detailed elsewhere in this protest, weaknesses cited on the part of ModivCare are contradicted by data and information contained in its proposal, and strengths awarded to MTM—but not to ModivCare—are not supported by unique or different capabilities included in MTM's proposal. All of this raises troubling concerns that evaluators failed to diligently and fully review materials provided. Such an uninformative summary provides no insight into the actual decision-making process.

Moreover, the summary contains no dissenting views or indications of evaluator disagreement, which is highly unusual and suspicious in a competitive procurement involving complex technical proposals, where differing professional opinions are common and expected. Below is an example from the evaluation explanation summary for MTM:

		Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments
<b>Evaluation Factors</b>	<b>Amended ATTM 010</b>					
<b>Transportation Operations</b> To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.	Sections 5, 6, 8	1-10	500	Self serviced business intelligent tools. User friendly intuitive member mobile application. Ability to integrate current transportation provider systems into there main system. Enhanced facility portal capabilities that allow more self serve options. Real time tracking of transportation drivers. Established provider network in SC. Incentivizes high performing transportation providers through advance scheduling methodology. Messaging capability between the member and driver. GPS enabled claims data reduces fraud, waste,		

Ex. 8, Evaluator Explanation Summary. Note that there are no “Dissenting Rating Comments” in the column on the far right. To be clear, in the evaluation of four offerors, including four evaluation factors and three subfactors—a total of eight rows of evaluation for each offeror or 32 total evaluations—**there was not a single dissent**. The conspicuous absence of dissenting comments or detailed rationale raises serious concerns that the evaluation process may have been perfunctory, that evaluators were not permitted to fully document their independent assessments, or that the process was designed to obscure actual deliberations rather than transparently reflect them.

Third, the strengths identified in the evaluation summary do not appear to correspond directly to the specific evaluation factors outlined in the solicitation. For example, the summary includes vague references to “staff flexibility” and “experience,” but it conspicuously fails to tie these comments to specific, quantifiable evaluation criteria or to explain how these nebulous factors were weighted in the scoring process. Ex. 8, Evaluator Explanation Summary at 3. When evaluators fail to adequately document how their assessments and subsequent scores relate to the required criteria, it becomes utterly impossible to determine whether the award decision was made in accordance with the law, thus eroding confidence in the integrity of the procurement.

## **2. The Procurement Division’s Deficient FOIA Productions**

The Procurement Division’s responses to ModivCare’s FOIA requests were inadequate, incomplete, and demonstrably failed to satisfy the State’s statutory obligations. The South Carolina FOIA imposes specific requirements on the State regarding the award of a procurement contract:

If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the procurement officer shall, within five days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise

exempt from disclosure available for inspection at an office of the responsible procurement officer. Without otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently canceled.

S.C. Code Ann. § 11-35-410(F)

Despite multiple, specific requests for comprehensive evaluation documentation, including individual scoresheets, evaluator notes, detailed scoring justifications, and all communications related to the evaluation and decision to cancel the initial solicitation, the Procurement Division produced, primarily, a high-level summary spreadsheet and redacted portions of the winning proposal.<sup>2</sup> This limited and insufficient production fails to satisfy the transparency obligations imposed by the South Carolina FOIA. S.C. Code Ann. § 30-4-30 *et seq.* and further impedes ModivCare’s ability to conduct a thorough review and assess the fairness and legality of the procurement.

To the extent that individual evaluations and written explanations *do* exist, the Procurement Division’s failure to produce them in response to multiple FOIA requests submitted by ModivCare is a significant and unexcused procedural deficiency. *See* S.C. Code Ann. § 30-4-30(A); *see also* S.C. Code Ann. § 11-35-410. Evaluation scoresheets, individual evaluator notes, and detailed justifications for scoring are unquestionably “public records” pertinent to the procurement process, and are documents that are essential to demonstrating that each evaluator independently assessed the proposals based on the stated criteria and that the final consensus score was the result of a deliberative, reasoned, and objective process. Without these critical records, there is no verifiable

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<sup>2</sup> ModivCare notes that the Procurement Division has not claimed any exemptions or privilege in response to its FOIA request. It has merely claimed that such records do not exist and failed to produce such relevant documents.

means to ascertain whether the evaluators adhered to the solicitation's requirements, whether consistent criteria were applied, or whether the scoring was influenced by improper or undisclosed considerations.

The lack of adequate documentation in this procurement not only constitutes a material violation of the Procurement Code but also effectively deprives offerors of their statutory right to a meaningful protest process under S.C. Code Ann. § 11-35-4210, which requires agencies to provide the basis for their award decisions to enable effective challenges. *See also* S.C. Code Ann. § 11-35-210(A) (“Written determinations expressly required by the code or regulations must be retained in an official contract file of the governmental body administering the contract. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11-35-1230.”).

In sum, the Procurement Division's pervasive failure to adequately document the evaluation process and its refusal or inability to produce key evaluation records in response to legitimate FOIA requests constitute a material and compounding violation of the South Carolina Consolidated Procurement Code and the South Carolina FOIA. These systemic deficiencies call into serious question the legitimacy of the award to MTM.

**E. The Procurement Division Conducted an Arbitrary Technical Evaluation that Failed to Evaluate Offerors on a Level Playing Field**

The technical evaluation of proposals by the Procurement Division demonstrably failed to adhere to the fundamental principles of fairness, transparency, and consistency mandated by the South Carolina Consolidated Procurement Code. As an initial matter, the Procurement Division failed to follow its own evaluation instructions in reviewing proposals. It is a fundamental procurement requirement that evaluators have to follow their own stated process: “The Panel finds evaluating [the] Proposal in a manner contrary to the documented method provided to the

[Evaluation Panel] runs afoul of the stated purposes and policies of the Procurement Code, is not fair, and therefore is contrary to law.” *Appeal by uWork.com, Inc.*, Panel Case No. 2023-4, at 6 (South Carolina Procure. Rev. Panel, Jan. 3, 2024). As discussed in detail in the section above, the evaluation instructions here made clear that the evaluation was to be performed—and documented—at an individual evaluator level: “Score sheets are to be completed and signed in ink (or electronically) **by each panel member.**” Ex. 17, Evaluation Packet at 2 (emphasis added). However, contrary to the Procurement Division’s own evaluation instructions, the Procurement Division has represented in response to FOIA requests that “this procurement was done using consensus, not individual scoring.” Ex. 18, Email Chain with Manton Grier at 4.

In addition, to this conceded, process failure across the entire evaluation process, the evaluation committee specifically failed to apply the stated criteria uniformly across all offerors, resulting in unequal treatment across a number of specific technical categories and a direct violation of the Procurement Code which provides that “[t]he underlying purposes and policies of this code are ... to ensure the fair and equitable treatment of all persons who deal with the procurement system ...”. See S.C. Code Ann. § 11-35-20(f) and (g). The evaluation packet submitted to the RFP Committee Members echoed this sentiment. “Your responsibility is to provide an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP.” Ex. 17, Evaluation Packet at 2.

The inconsistencies in the technical evaluation process in the five areas described below failed to meet this standard, and, as a result, have materially prejudiced ModivCare and undermined the integrity of the procurement process.

# **1. Use of Intelligence Virtual Agent/Interactive Voice Response Technology**

The Procurement Division’s evaluation of ModivCare’s proposal under the “Member & Provider Services” factor is fundamentally flawed, resulting in an unfair 30-point deduction (270/300 points) compared to MTM’s 15-point deduction (285/300 points). The “Evaluator Explanation Summary” identifies a single weakness in ModivCare’s proposal: an alleged “[r]eliance on IVR solutions versus live agent and/or web and mobile application solutions.” Ex. 8, Evaluator Explanation Summary at 4. This conclusion misinterprets ModivCare’s comprehensive communications infrastructure and unfairly penalizes its thorough response to contract requirements. *See* S.C. Code Ann. § 11-35-20(f).

The RFP’s contract, “ATTM 010 AMENDED CONTRACT FOR NON-EMERGENCY MEDICAL TRANSPORTATION COORDINATOR SERVICES” explicitly requires offerors to “install, operate, and monitor an IVR capable of performing” specific functions and “provide [IVR] options that are user-friendly to Members.” *See* Ex. 7, ATTM 10. at ¶¶ 4.11.5.12 & 4.11.6; *see also* Ex. 1, RFP (describing ATTM 010 as “the full integrated enforceable Contract for this solicitation”). ModivCare’s proposal meticulously addresses these IVR mandates while clearly demonstrating a multifaceted communication infrastructure that integrates live agents, web portals, and mobile applications. For example, ModivCare’s proposal states: “ModivCare maintains live agents to answer all Reservation or Ride related calls 24/7” and “Members who call South Carolina’s toll-free number always have access to a live agent.” Ex. 2, ModivCare Proposal at 47 & 67; *see also id* at 48, 53, 58, 70, 154, 220 (referencing the use of live agents). Additionally, the proposal details web and mobile app functionalities, noting that “Members using our mobile application or web portal can track their driver’s ETA and route in near real time” and access ride updates “through their mobile application, portal, or phone.” Ex. 2, ModivCare Proposal at 101–

02; *see also id.* at 41 (reviewing “Multi-Channel Member Engagement for Accessibility & Convenience” including “Mobile App” and “Web App”) & 195–203 (addressing the public website and mobile application requirements). These references refute any claim of exclusive or excessive reliance on IVR versus live agents or mobile and web-based solutions.

In contrast, MTM’s proposal, which received 285/300 points with no weaknesses noted, appears to have avoided similar scrutiny simply by adhering to minimum submission requirements and omitting detailed responses to IVR-related contract terms that both offerors will be obligated to meet if awarded the contract. In other words, the Procurement Division effectively *rewarded* MTM’s minimal compliance while penalizing ModivCare’s thoroughness. Regardless, by narrowly focusing on ModivCare’s responses to IVR-related contract requirements, the Procurement Division failed to consider the robust communications infrastructure employed by ModivCare that expressly includes live agents, as well as sophisticated mobile application and web-based solutions. This failure had the direct effect of skewing the competitive balance relative to MTM, prejudicing ModivCare’s net standing in the evaluation.

## **2. Inconsistent Evaluation of Call Center Reliance**

ModivCare’s oral demonstration detailed that approximately 80% of all trips in South Carolina are booked through digital platforms, such as ModivCare’s website and Mobile App available on both Apple and Android devices. This data unequivocally demonstrates a significant emphasis on digital solutions and a reduced dependency on traditional call center interactions for trip initiation. In stark contrast, MTM reported a Call to Ride ratio of 38.6%, indicative of a greater reliance on telephonic interaction for trip bookings.

Furthermore, ModivCare’s App is the number 1 Mobile App in the NEMT industry with over 260,000 active users and 1,000 new downloads each week. In fact, ModivCare’s number of active users dwarfs the 58,000 active users reported by MTM for its mobile app. *Cf.* Ex. 9, MTM



Proposal at 96. This significant asymmetry only reinforces the perplexing inconsistency of the evaluations between these two offerors where ModivCare was awarded fewer points for a purported lack of mobile application solutions relative to MTM.

Despite this quantifiable difference, MTM was not cited for “over-reliance” on its call center, nor was this factor treated as a weakness in its proposal. This disparate treatment of similarly situated offerors, where a quantifiable advantage for ModivCare was mischaracterized as a weakness while a comparative disadvantage for MTM was ignored, constitutes another example of the arbitrary manner in which these proposals were evaluated. The evaluation committee’s assessment of call center reliance demonstrates, at a minimum, a lack of diligence in evaluating the individual responses and a failure to objectively apply the stated evaluation criteria.

### **3. Unequal Treatment Regarding Call Center Location and Staffing Flexibility**

The evaluation committee’s assessment of call center location and staffing flexibility also demonstrates arbitrary and capricious decision-making. Specifically, MTM’s proposal presented an identical issue for which another offeror, MediTrans, was evaluated as having a weakness—but MTM received no criticism. Specifically, MediTrans was penalized for routing calls out of state during periods of high call volume, with this practice being characterized as a “weakness.” *See* Ex. 8, Evaluator Explanation Summary (penalizing MediTrans because “[m]ember calls will be sent out of state when call volumes are too high”). This criticism implies a preference for in-state call center operations or a perceived lack of control over out-of-state resources. However, MTM, which explicitly employs a functionally identical model, was praised for its “staff flexibility.” MTM’s proposal further details the use of the “Five9” platform, which enables a work-from-home (WFH) call center model and facilitates the creation of a “**global** resource pool” to manage high call volumes. Ex. 9, MTM Proposal at 48 (emphasis added).

While MTM’s proposal states an intent to hire in-state operators, it concurrently acknowledges that calls may be routed out of state during peak periods. *See id.* (emphasizing reliance on a “global resource pool” to reroute calls in the event of “increases in call volume”). This approach is functionally identical to, if not a more explicit embrace of, out-of-state—and potentially out-of-country—call routing during high volume periods than that of MediTrans. Yet, only MediTrans was penalized for this strategy, while MTM received commendation. This inconsistent treatment of two vendors for employing comparable strategies constitutes an arbitrary and capricious evaluation.

#### **4. Disparate Scoring of Call Center Employee Training**

The evaluation committee’s scoring of call center employee training further illustrates a prejudicial and inconsistent application of evaluation criteria. MTM was awarded favorable scoring for its inclusion of state-specific training for call center employees.<sup>3</sup> This suggests that the committee recognized the importance of tailored training for effective service delivery within South Carolina. However, ModivCare’s proposal also included a detailed and comprehensive description of its South Carolina-specific training program, yet it received no corresponding recognition or scoring benefit. Ex. 2, ModivCare Proposal at 62, 68, 71. While ModivCare, MTM, and Verida all clearly articulated commitments to training staff on South Carolina-specific policies, procedures, and customer service expectations, a critical component for effective non-emergency medical transportation services, only MTM and Verida were recognized in the Evaluator Explanation Summary as having this training.

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<sup>3</sup> State-specific call center training was also cited as a strength for Verida. Ex. 8, Evaluator Explanation Summary.

The committee's failure to acknowledge ModivCare's demonstrably present and equally robust training program, despite clear documentation within its proposal, directly violates S.C. Code Ann. § 11-35-1530(9), which requires that awards be made based on the evaluation factors set forth in the solicitation and that the evaluation process be adequately documented. The failure to recognize equivalent efforts by ModivCare constitutes a prejudicial error that materially affects the scoring outcome and undermines the fundamental fairness and impartiality of the procurement process.

## **5. Mileage Reimbursement Solution**

The Procurement Division cited as a "weakness" in its "Evaluator Explanation Summary" under the "Transportation Operations" evaluative factor a "cumbersome" gas mileage reimbursement ("GMR") solution on the part of ModivCare, resulting in a 450/500 points evaluation. *See* Ex. 8, Evaluator Explanation Summary. MTM, on the other hand, had no noted weaknesses and was awarded 475/500 evaluative points. *Id.* The proposition that ModivCare's GMR solution is more "cumbersome" relative to MTM is not supported by the evidence in the proposals. Modivcare's streamlined processes, information technology, and Member-centric design make its GMR program at least as efficient, if not more so, than MTM's.

ModivCare permits Members to submit gas mileage reimbursement requests through a HIPPA-compliant mobile app with a 4.6+ star rating on Google Play and Apple Store. Ex. 2, ModivCare Proposal at 41 & 197. ModivCare's mobile app includes geofenced mileage tracking, which automates distance calculations and ensures accurate reimbursement submissions. *Id.* at 198. ModivCare's GMR program's ease of use is reflected in its adoption by members. For example, in West Virginia, ModivCare's GMR program grew from 40% to nearly 60% of all transportation. *Id.* at 238.

While MTM, likewise, permits gas mileage reimbursement requests through a mobile application with similar features, Ex. 9, MTM Proposal at 98, there is absolutely no evidence that it employs technology or systems more streamlined, user friendly, or more functional relative to ModivCare. In fact, ModivCare's 4.6+ star rated mobile app with more than 260,000 active users strongly suggests otherwise, especially when compared to MTM's 58,000 active users and lower 4.4-star rating. *Compare* Ex. 2, ModivCare Proposal at 41 *with* Ex. 9, MTM Proposal at 96. There is simply no evidence in the respective proposals supporting the proposition that ModivCare's GMR program is more "cumbersome" somehow relative to MTM's; and thus, no justification for the 15-point differential under the "Transportation Operations" evaluative criteria based on this purported "weakness."

**F. MTM Submitted a Non-Responsive Proposal that Was Ineligible for Award and Should Have Been Disqualified**

As explained in Section II.B.1 above, the Procurement Division had no discretion to award a contract to an MTM proposal that failed to comply with the terms of the RFP. Indeed, the RFP itself makes clear that an offer is nonresponsive "if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements." Ex. 1, RFP at 10. Moreover, "[a]ward will not be made on a nonresponsive offer." *Id.* In addition, to making its entire provider network dependent on its VeyoRide solution that was not permitted under the RFP, MTM also failed to submit a responsive proposal regarding three additional RFP requirements: (1) disclosing all subcontractors; (2) providing adequate information regarding proposed staffing; and (3) submitting a completed ATTM 009, Experience Table/Adverse Actions.

Significantly, each of these failures was significant because it deprived the Procurement Division of specific information that had been requested to assess the quality and effectiveness of MTM's proposal. Significantly, no procurement official or staff from the Procurement Division

ever recognized or acknowledged these deficiencies and no one requested that MTM cure these deficiencies or issued a waiver of compliance with these requirements.

#### **1. MTM Failed to Disclose Subcontractors as Required by the RFP**

The RFP specifically required that offerors provide: “[a] listing of all Subcontractors, why they were chosen, and what roles they will play in the proposed organization.” Ex. 1, RFP at 19 (§ 4.1.3.3.1). However, MTM failed to comply with this requirement. MTM’s proposal in fact claimed: “MTM Health does not plan to use any subcontractors for this contract.” Ex. 9, MTM Proposal at 146. However, MTM’s proposal also specifically described its use of subcontractors including a third-party translation service, Effectiff, as part of its foreign language support program:

MTM Health accommodates languages spoken by the populations we serve by ... using Effectiff interpretive services. ... Our CCRs can also perform a warm transfer to our third-party interpretive service, Effectiff, free of charge. Effectiff’s team of interpreters can accommodate hundreds of languages.

*Id.* at 57.

Furthermore, the RFP at Section 5.4 specifically required that for any subcontractor that “involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact.” Ex. 1, RFP at 24. Despite MTM’s explicit statements of reliance on Effectiff for the critical service of communicating with patients (and the instruction to err on the side of inclusion), MTM failed to include “why they were chosen,” “what roles they will play in the proposed organization,” or even basic information like Effectiff’s address, phone, taxpayer identification number, or point of contact as required by the RFP. *See* Ex. 1, RFP at 19 (§ 4.1.3.3.1).

## **2. MTM Failed to Include Required Information Regarding Staffing**

The RFP also required that offerors include particular information about staff that was proposed for use in performance of any contract awarded in accordance with the RFP. Specifically, for each individual that was proposed to fill a key staff position, the RFP mandated that offerors include: “Resumes of proposed project Key Staff, including 2-3 references and their contact information, as required by Section 3.2 of the Contract.” Ex. 1, RFP at 20 (§ 4.1.3.3.3). And in its proposal, MTM included Sherry Moore among its Key Staff. *See* Ex. 9, MTM Proposal at 155. However, when MTM included Ms. Moore’s resume, *id.* at PDF page 186, it did not include any references—violating the instructions from the RFP and eliminating the Procurement Division’s opportunity to review references for an important proposed member of MTM’s team.

## **3. MTM Failed to Complete All ATTM 009 Requirements**

Lastly, the RFP required offerors to complete ATTM 009 by listing all “contracts, subcontracts and any other engagements supporting the relevant experience providing NEMT services since January 1, 2018.” Ex. 1, RFP at 20 (§ 4.1.3.4.2). ATTM 009 requires that the offeror disclose any sanctions, corrective action plans, or liquidated damages incurred in connection with this past work experience. *See* Ex. 9, MTM Proposal at 23 (“\*If you answered yes to this question for any contract, then you **must** fill out the “Adverse Actions” tab.”). In connection with its statewide contract with Wisconsin, MTM disclosed on ATTM 009 that it had been subject to all three types of adverse action. *Id.* However, MTM’s “Adverse Actions” table only provides additional information regarding its liquidated damages and corrective action plan associated with the Wisconsin NEMT contract, omitting wholesale the sanction that it self-disclosed on the prior page. *Id.* at 24. This is yet another example of MTM’s failure to adhere to the solicitation requirements, and is once again indicative of its proposal being nonresponsive.

**G. MTM's Past Performance Demonstrates It Is Unqualified to Perform the Contract**

The Procurement Division failed to properly evaluate MTM's past performance and overlooked significant inconsistencies and omissions in the company's proposal. An accurate representation of an offeror's past performance is essential to the evaluation: "There can be no better indication of an offeror's ability to perform than its record of performance on similar contracts." *Matter of: SourceCorp Bps, Inc./Exela Technologies Inc.*, Case No. 2021-213 (granting protest where evaluators did not address the past performance of the protestor when scoring proposals, in violation of the solicitation requirements); *accord Matter of: Ace Info Sols., Inc.*, B-414650.10, 2018 CPD ¶ 189 (Comp. Gen. May 21, 2018) (granting protest where the agency relied on past performance information that had accidentally included incorrect contract numbers).

The RFP required the Procurement Division to weigh MTM's past performance under two award criteria: Transportation Operations and Qualifications. *See* Ex. 1, RFP at 24–25. The Transportation Operations evaluation factor required consideration of each offeror's compliance with the requirements set forth in Section 5 of the RFP. Significantly, Section 5.3 asked contractors to submit a description of "[t]he general history and experience of the business in providing work of similar size and scope" and a "[l]ist of failed projects, suspensions, debarments, and significant litigation" to be evaluated under Transportation Operations. *Id.* at 23–24. Bidders were also required to "represent that the information provided [was] complete." *Id.* at 24. Next, the Qualifications factor mandated a "description of contracts, subcontracts, and any other engagements on which Offeror has performed services similar to those required in this Contract," and adverse actions taken against the contractor during performance. *Id.* at 17, 20. Had the

Procurement Division complied with the RFP in its evaluations, MTM's score on each of these criteria would have been reduced.

First, MTM omitted negative past performance information from its proposal in violation of the RFP. Section 5.3 of the RFP required offerors provide a "List of failed projects, suspensions, debarments, and significant litigation." *See* Ex. 1, RFP at 23. In its Attachment 009, Experience Table, MTM listed six prior statewide NEMT contracts it has performed: Idaho, Missouri, Nevada, Wisconsin, Connecticut, and the District of Columbia.<sup>4</sup> *See* Ex. 9, MTM Proposal at 23. The accompanying Adverse Actions table asserts MTM was assessed liquidated damages in three of these states. *Id.* at 24. However, these tables exclude MTM's 2019 Rhode Island NEMT contract, which is mentioned briefly later in the proposal. *Id.* at 27, 108. South Carolina failed to investigate this omission.

Had the Procurement Division conducted proper diligence into the Rhode Island matter, it would have learned MTM was assessed \$600,000 in liquidated damages relating to a 2021 fatal car accident caused by an MTM driver. *See* Ex. 19, Letter from Kristin Sousa, Acting Medicaid Program Dir., Rhode Island Exec. Off. of Health & Hum. Servs., to Alaina Macia, Chief Exec. Officer, Med. Transp. Mgmt. 1 (Jan. 6, 2022), [https://eohhs.ri.gov/sites/g/files/xkgbur226/files/2022-01/ri\\_mtm-lds\\_auditreview\\_caps\\_final-2022-01-06.pdf](https://eohhs.ri.gov/sites/g/files/xkgbur226/files/2022-01/ri_mtm-lds_auditreview_caps_final-2022-01-06.pdf) (summarizing the incident and ordering MTM to develop a plan to avoid hiring uncredentialed drivers). MTM, in "a series of very severe violations of law and breaches of the standard of care expected," permitted an unlicensed driver to join its network of providers and transport a passenger while intoxicated, causing the death of the elderly patient. *Id.* at 2. MTM

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<sup>4</sup> The table lists Virginia in the place of the D.C. contract. *See* Ex. 9, MTM Proposal at 23. MTM clarifies elsewhere in their proposal that this line in fact refers to the D.C. contract. *Id.* at 159.



did not notify the Rhode Island Executive Office of Health and Human Services of the accident until *three days* after it had occurred, demonstrating insufficient management and reporting systems. See Ex. 20, Associated Press, *RI's Medical Transport Company Fined \$600,000 over Fatal Crash*, WPRI (Jan. 6, 2022, 12:16 PM), <https://www.wpri.com/news/local-news/west-bay/ris-medical-transport-company-fined-600000-over-fatal-crash/>.

This accident aside, MTM has been repeatedly penalized in Rhode Island for ongoing poor performance. The company was ordered to pay \$1,000,000 in fines during the initial phase of the contract due to “complaints about rides being late [and] patients being left stranded.” See Ex. 21, Sarah Bawden, *RI Extends Controversial MTM Contract to 2023*, WPRI (Apr. 12, 2022, 6:31 PM), <https://www.wpri.com/target-12/ri-extends-controversial-mtm-contract-will-now-expire-in-2023/>. Following the crash, during the first year of the Rhode Island NEMT contract the company won in 2023, MTM was assessed more than \$500,000 in penalties for failing to comply with state standards. See Ex. 22, Brian Crandall, *NBC 10 I-Team: MTM Assessed More Performance Penalties as Part of State Contract*, WJAR (June 13, 2024), <https://turnto10.com/i-team/mtm-assessed-more-performance-penalties-as-part-of-state-contract>. MTM’s omission, in violation of the RFP requirement to submit complete performance information, raises significant questions regarding the company’s qualifications to perform the contract.

Assuming that MTM disclosed its prior canceled contracts, the Procurement Division also failed to consider this information as part of their past performance evaluation. Although the evaluation summary states that MTM had “[m]ultiple adverse actions and lawsuits,” it does not appear to weigh the failed projects list required by Section 4.1.3.4.4 of the RFP. See Ex. 8, Evaluator Explanation Summary. For example, MTM won four regions of an Arkansas NEMT contract in late 2018. See Ex. 23, Amy Webb, *DHS Transitioning to Second Lowest Bidder for*

*Medicaid Transportation in 4 Regions*, Ark. Dep’t of Hum. Servs. (Jan. 17, 2019), <https://humanservices.arkansas.gov/news/dhs-transitioning-to-second-lowest-bidder-for-medicaid-transportation-in-4-regions/>. Within the first month of performance in 2019, the state ***canceled*** the contract, citing the fact that “MTM has not been able to consistently provide the level of services required in its contract.” *Id.*; see also Ex. 24, Marty Stempniak, *Medicaid Transportation Company Booted over Missed Appointments*, MCKNIGHTS LONG-TERM CARE NEWS (Jan. 18, 2019), <https://www.mcknights.com/news/medicaid-transportation-company-booted-over-missed-appointments/>. ModivCare, by contrast, has never been subject to contract termination for subpar performance in an NEMT contract. See Ex. 25, ModivCare Proposal Attachments at 80–87. South Carolina’s evaluation “does not reflect [MTM’s] past performance in rating its qualifications to perform the [NEMT] contract” because it simultaneously ignored MTM’s cancellation and ModivCare’s successes. *Matter of: SourceCorp Bps, Inc./Exela Technologies Inc.*, Panel Case No. 2021-213.

Similarly, MTM provided misleading information regarding its prior experience as an NEMT provider in Missouri. Although MTM’s proposal mentions one Missouri corrective action plan from 2004, it does not provide the full context of MTM’s history with Missouri NEMT. See Ex. 9, MTM Proposal at 24. In short, MTM has repeatedly failed to satisfy Missouri’s NEMT needs, having been ordered to pay more than \$2,000,000 in fines for breach of contract relating to Medicaid overbilling in 2006, and then in 2011 having refused to continue work on the first option year of a contract without a rate increase—leaving ModivCare to assume responsibility for transporting the state’s elderly and disabled patients.<sup>5</sup> See Ex. 26, Sarah Okeson, *LogistiCare Takes over Medicaid Transport Contract*, Mo. Pub. Transit Ass’n (Oct. 14, 2011),

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<sup>5</sup> At that time, known as LogistiCare Solutions, LLC.

<https://mopublictransit.org/2011/10/14/logisticare-takes-over-medicaid-transport-contract/>. By failing to fully disclose its complete performance history, MTM has demonstrated it is unqualified to serve South Carolina. *See* Ex. 1, RFP at 24.

MTM also misrepresented its prior NEMT broker role with South Carolina. In its proposal, MTM asserts it “previously served as the **statewide** NEMT broker for this contract.” *See* Ex. 9, MTM Proposal at 26 (emphasis added). However, as party to the 2007 contract, ModivCare would note that MTM’s role was much more limited in scope. Rather than acting for the entire state, MTM only provided two *regional* broker services for South Carolina. Although MTM attempts to clarify the true nature of the contract later in its proposal, the conflicting statements served to mislead and confuse the evaluators. *See id.* at 31.<sup>6</sup>

By inconsistently describing their prior NEMT contract, MTM again failed to comply with their representation that the performance history “information provided [was] complete.” Ex. 1, RFP at 24; *see also Matter of: Ace Info Sols., Inc.*, B-414650.10, 2018 CPD ¶ 189 (Comp. Gen. May 21, 2018) (holding that “the agency made substantial errors in evaluating [the awardee’s] past performance” by relying on “inadvertently” mislabeled information). As MTM’s prior experience demonstrates, the company is unqualified to perform the contract, and the award decision was unreasonable. *Cf. Matter of: SourceCorp Bps, Inc./Exela Technologies Inc.*, Panel Case No. 2021-213 (acknowledging the importance of past performance when evaluating bidders).

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<sup>6</sup> It is also worth noting that MTM exited South Carolina in August 2011 under a cloud by failing to timely pay providers, a matter that DHHS was forced to address at subsequent Transportation Advisory Committee meetings. Ex. 39, Transp. Advisory Committee Quarterly Meeting Minutes, Oct. 5, 2011; Ex. 40, Transp. Advisory Committee Quarterly Meeting Minutes, Nov. 17, 2011.

## **H. The Procurement Division Did Not Follow its Own Guidance and Requirements Regarding Evaluation Panels and the Individuals Involved in Review of Proposals**

### **1. All Evaluation Panel Members Did Not Attend All Meetings**

The instructions to the evaluation panel make clear: “All scoring panel members must attend all meetings of the evaluation committee.” Ex. 17, Evaluation Packet. Moreover, the “Charging” meeting makes clear that the panel members included individuals beyond the evaluators:

The following panel members from Dept. of Health & Human Services (DHHS): Rebecca Lopez (Procurement Director), Carmen Laudenschlager (SME), Clark Phillip, Shadda Winterhalter, and Scott Timmons.

Ex. 27, Meeting Minutes from Charging, May 22, 2025.

However, at least one scoring panel member, Carmen Laudenschlager—who was specifically identified as a panel member in the Charging meeting minutes—did not attend the June 5, 2025 scoring meeting. *See* Ex. 28, June 5, 2025, Minutes of Evaluation Panel; Ex. 29, June 5, 2025, Evaluation Panel Sign-In Sheet.

### **2. The Procurement Division Failed to Enforce Requirements Regarding Access to Proposals**

The Evaluation Panel Instructions state that panel members could not get RFP responses until the member signed the Non-Disclosure Agreement (“NDA”/ Procurement Integrity Representations and Restrictions (“PIRR”). Ex. 17, Evaluation Packet. Ms. Laudenschlager did not return her NDA/PIRR until June 4, 2025—the day before the scoring meeting. However, there are indications in the documentation that Ms. Laudenschlager was in fact provided copies of proposals prior to signing her NDA/PIRR. The minutes from the charging meeting stated: “Copies of each of the proposals submitted in response to the Request for Proposal were distributed near the conclusion of the meeting.” Ex. 27, Meeting Minutes from Charging, May 22, 2025.

Even if Ms. Laudenschlager was only provided the documentation on June 4, 2025, that late production of substantial proposal information means that she did not have access to offeror proposals until the day before evaluations which would have made it impossible for her to thoroughly review the proposal documentation for four separate offerors. Furthermore, in addition, to Ms. Laudenschlager's late signing of the PIRR and NDA, Rebecca O'Brien similarly did not sign the NDA and PIRR until June 3, 2025—two days prior to the scoring session. Indeed, receiving the documents the day before (or even two days before) the scoring meeting appears wholly inconsistent with the evaluation instructions to “[b]e prepared to discuss each proposal at the selection meeting.” Ex. 17, Evaluation Packet.

### **3. The Procurement Division Was Inconsistent In Defining Roles and Responsibilities of Evaluation Team Members**

The record produced by the Procurement Division in response to the FOIA requests is riddled with instances demonstrating the Procurement Division's inconsistency in defining the roles and requirements of the team members.<sup>7</sup> For instance, Donna Spigner signed an NDA, PIRR form and was given an evaluator summary sheet suggesting that she played some role in evaluating the proposal. *See* Ex. 30, D. Spigner NDA and PIRR. Moreover, on meeting minutes, she was listed as a panel member. *See* Ex. 14, Minutes of the Office of State Procurement, ModivCare Demonstration.

As a panel member, Ms. Spigner was required to attend all meetings. Ex. 17, Evaluation Packet. However, she did not. While she attended ModivCare's demonstration, she did not attend MTM's oral presentation. *See* Ex. 15, Minutes of the Office of State Procurement, MTM

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<sup>7</sup> Indeed, emails produced in response to FOIA appear to indicate that there was a second charging meeting that took place on May 30 at 3 pm. *See* Ex. 41, May 30, 2025 Microsoft Teams Calendar Notice. However, there are no minutes or sign-in sheet for this meeting

Demonstration. She also is not listed as an attendee in the May 22 Charging meeting, *see* Ex. 27, Meeting Minutes from Charging, May 22, 2025, and did not attend the June 5, 2025 Scoring meeting. *See* Ex. 31, June 5, 2025, Scoring Meeting Sign-In Sheet. Like Ms. Spigner, Ms. Laudenshlager was also a panel member and similarly did not attend all of the meetings. In particular, Ms. Laudenshlager did not attend the scoring meeting. *See* Ex. 32, June 5, 2025 Scoring Meeting Minutes.

Indeed, the record is incredibly difficult to follow because of individuals appointed to roles that apparently did not fulfill their duties. For instance, three individuals, Clark Phillip, Jordan Desai, and Carmen Laudenschlager, were designated as Subject Matter Experts (“SMEs”). *See* Ex. 33, 5400027781 NEMT Evaluation Panel Members. However, none of those SMEs attended either MTM’s or ModivCare’s oral presentations. *See* Ex. 15, Minutes of the Office of State Procurement, MTM Demonstration & Ex. 14, Minutes of the Office of State Procurement, ModivCare Demonstration.

In addition, other individuals submitted NDA/PIRR forms but apparently had no actual role in the evaluation process as they did not attend any meetings. *Cf.* Ex. 34, NDA Form for Lavelton Baldwin; Ex. 35, NDA Form for Wilfrado Casillas Jr.; Ex. 36, NDA Form for Rhonda Morrison *with* Ex. 27, Meeting Minutes from Charging, May 22, 2025; Ex. 28, June 5, 2025, Minutes of Evaluation Panel; Ex. 15, Minutes of the Office of State Procurement, MTM Demonstration & Ex. 14, Minutes of the Office of State Procurement, ModivCare Demonstration.

Moreover, other individuals, like Mr. Jimmy Earley, were not designated as an evaluator. *See* Ex. 33, 5400027781 NEMT Evaluation Panel Members. And despite the fact that the RFP made clear that only evaluators were allowed to ask questions during presentations, *see* Ex. 1, RFP at 15 (§ 2.39(c) (“Evaluators may ask questions pertaining to the Offeror’s demonstration ...”),

Mr. Earley specifically asked questions of ModivCare during the demonstration. Furthermore, if Mr. Earley had actually been an evaluator, then he would have been required to attend all of the meetings—which he did not. *See* Ex. 27, Meeting Minutes from Charging, May 22, 2025; Ex. 28, June 5, 2025, Minutes of Evaluation Panel.

Given the lack of transparency on who was actually evaluating proposals, it is difficult to know what influence these individuals may have had on the process or what influence their presence (or absence) from various meetings may have had on the scoring of proposals—including the scoring of Modivcare’s presentation.

### **I. The Procurement Division Failed to Investigate and Resolve Potential OCIs**

Conflicts of interest are impermissible under South Carolina procurement law and constitute grounds for reversing an award. *See* S.C. Code Ann. § 11-35-20(f) & (g) (stating that the purpose of the procurement code is “to ensure the fair and equitable treatment of all persons who deal with the procurement system” and “provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process”); S.C. Code Regs. § 19-445.2127 (promulgating regulations concerning conflicts of interest); *see also* State Fiscal Accountability Authority, *Organizational Conflicts of Interest Procedures, Guidance, and Information*, Version 1.0, eff. Aug. 2023 (Dep’t of Procurement Services) (providing guidance on identifying and addressing conflicts of interest).

The serious nature of conflicts of interest is reflected by the fact that South Carolina requires all persons participating in the evaluation of proposals to execute a PIIR form certifying, among other things, that the participant “has no conflicts of interest regarding this procurement.” Ex. 17, Evaluation Packet. The purpose of the PIIR form is to “ensure the integrity and

confidentiality of the procurement process.” *In re Appeal By Intralot, Inc.*, S.C. Procure. Rev. Panel, Case No. 2017-8, Apr. 17, 2018, 2018 WL 1912560, at \*28 (McLane, Sr., C.).

Mr. Jimmy Earley participated in this procurement, including evaluating proposals by attending and questioning offerors at the oral presentations. *See* Ex. 15, Minutes of the Office of State Procurement, MTM Demonstration (listing “Jimmy Early (IT)” as a “panel member” from DHHS) & Ex. 14, Minutes of the Office of State Procurement, ModivCare Demonstration (same). Mr. Earley is apparently the Chief Executive Officer of InnTec Consulting, LLC (“InnTec”), a firm that holds itself out as working with government agencies to manage and execute information technology projects. *See* Ex. 37, <https://www.inntecconsulting.com/> (“InnTec Consulting was founded to address the growing need for expert IT management in large-scale public sector projects. With years of experience in planning and implementing modern IT systems for government agencies, we ensure seamless execution and reliable results.”). Notably, the types of work that InnTec purports to engage in are precisely the types of work that raise the risk of creating an OCI. *See* S.C. Code Regs. § 19-445.2127 (explaining that OCIs occur “when, because of other activities or relationships with the State or with other businesses: (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or (c) a business has an unfair competitive advantage.”). In the meeting minutes from the demonstration, Mr. Earley is identified as “IT”, which presumably means he served as an information technology subject matter expert relied on by evaluators at the oral presentations, although he is not listed as a participating panel member scorer or subject matter expert by South Carolina in other documents. *See* Ex. 33, 5400027781 NEMT Evaluation Panel Members.



The state's FOIA response produced neither a PIRR form nor an NDA executed by Mr. Earley, certifying the absence of a conflict of interest and non-disclosure of information, records, or materials related to this procurement. In fact, ModivCare specifically followed up with South Carolina requesting that documents regarding OCI including NDAs be provided—but none regarding Mr. Earley have been submitted. *See* Ex. 18, Email Chain with Manton Grier.

The fact that neither a PIRR form nor an NDA was included in the production is significant, because, unlike in other instances, there is no NDA here to cure Mr. Earley's failure to sign the PIRR. *Cf. In re Appeal By Intralot, Inc.*, at \*14 (dismissing claim regarding non-panel members failure to sign PIRR documents where it was "undisputed that they signed non-disclosure agreements instead."). In addition to Mr. Earley, Tara Simmons also attended the MTM and ModivCare presentations on June 11, 2025 without having executed either a PIRR or NDA. *See* Ex. 15, Minutes of the Office of State Procurement, MTM Demonstration & Ex. 14, Minutes of the Office of State Procurement, ModivCare Demonstration. Furthermore, Mr. Quan Lewis, another IT consultant only signed an NDA, but did not execute a PIRR. *See* Ex. 38, NDA Form for Quan Lewis.

The PIRR signed by other participants in the procurement stated as follows:

Personal Conflicts of Interest / Ethics Act: • I have no conflicts of interest regarding this procurement. In determining whether any conflict of interest exists, I have considered all of the following factors that might place me in a position of conflict, actual or apparent, with my official responsibilities regarding this procurement: (a) ***my relationship with all offerors, including their named subcontractors***, (b) my stocks, bonds, and other financial interests or commitments; (c) ***my employment and business arrangements (past, present, and under consideration)***; and (d) to the extent known by me, the financial interests and employment and business arrangements of members of my family. . . . ***I have not solicited or accepted, directly or indirectly, any promise of future employment or business opportunity from an officer, employee, representative, agent, or consultant of any offeror for the twelve***

*months prior to or during the procurement process.* • I have not, directly or indirectly, sought, received, or agreed to receive anything from any officer, employee, representative, agent, or consultant of any offeror. • I am not aware of any circumstances which would (a) impair my exercise of independent judgment or my impartiality with respect to my duties in support of the above cited acquisition, or (b) prevent me from evaluating any proposals submitted solely on their merits and in accordance with the evaluation criteria. • I have not received any guidance or instructions, directly or indirectly, regarding which offeror should be favorably evaluated, and except for those provided by the procurement officer, any instructions regarding how to evaluate the proposals. • I am not aware of anyone under my supervision or in my chain of command having a conflict of interest regarding this procurement.

Organizational Conflict of Interest / Unfair Competitive Advantage:  
• *I am not aware of any offeror having provided or having been provided information, directly or indirectly, that would provide them an unfair competitive advantage.* • I am not aware of any offeror that, should it receive the award, would have conflicting roles that might bias its exercise of judgment in performing its contractual obligations. • I have no information that would suggest that an offeror, directly or indirectly, has provided to any other offeror information regarding its pricing, the factors used to calculate its prices, or its intention to submit an offer. • I am not aware of any offeror (including its principals and affiliates) making a donation, directly or indirectly, to the using agency during the eighteen months prior to issuance of the solicitation.

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[ • *If you are not a public official*, public member, or public employee (as defined by the State Ethics Act) and you are participating in this evaluation pursuant to a contract with the State, *(a) you affirm that your employer does not have any direct or indirect financial interest or any other beneficial interest in any offeror, and (b) you agree to file a statement as required by Section 8-13-1150 and to simultaneously provide a copy to the procurement officer.*]

Ex. 17, Evaluation Packet (emphasis added).

The absence of such a certification from Mr. Earley is particularly troubling because ModivCare has been informed that Mr. Earley has prior connections to MTM or potentially an

entity which MTM acquired, Access2Care, Inc. While ModivCare has admittedly not seen documentary evidence substantiating such a prior relationship, the absence of a PIRR form and NDA executed by Mr. Earley is not a minor omission. Under S.C. Code Regs. § 19-445.2127(E)(1), the procurement officer is required to “analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.” The lack of documentation demonstrating that this analysis occurred, paired with the absence of an agency waiver under S.C. Code Regs. § 19-445.2127(F), only raises further questions regarding compliance with applicable procurement requirements. Accordingly, ModivCare respectfully requests that Procurement Services conduct an investigation to determine, what, if any, conflict of interest Mr. Earley, Ms. Simmons, or Mr. Lewis may have with respect to this procurement, including, without limitation, any prior relationship or connection to MTM, its employees, agents, representatives, predecessors, or affiliates.

#### **IV. RESERVATION OF RIGHTS**

ModivCare has diligently requested and gathered evidence in the form of documents, materials, and information relevant to this RFP and its protest. However, ModivCare believes there is still evidence that exists that may be relevant to this RFP and protest and has made requests for the production of any such evidence. Therefore, ModivCare expressly reserves the right to submit additional evidence to further substantiate and reinforce arguments or assertions presented herein and to raise such other arguments or assertions as may be supported by subsequently obtained evidence or any additional findings or evidence revealed by the Procurement Division during the course of any internal investigation it may conduct with respect to this procurement, whether related to conflicts of interest or otherwise.

## V. CONCLUSION

For the reasons set forth above, ModivCare respectfully submits that its protest should be sustained. ModivCare requests that the Chief Procurement Officer issue a decision sustaining the protest and directing the Procurement Division to (1) cancel or terminate the Contract awarded to MTM; and (2) disqualify MTM from continuing in the competition for submitting an unresponsive proposal. After taking those required actions, the Procurement Division should consider: (a) investigating whether the use of particular advisors created OCIs; (b) re-evaluating previously submitted proposals consistent with the terms of the RFP; (c) amending the RFP to reflect the Procurement Division's unstated evaluation criteria; (d) opening discussions or negotiations with ModivCare; (e) allowing for the submission of Final Proposal Revisions; and/or (f) awarding a new contract consistent with the RFP's terms and applicable law.

Very truly yours,

**WILLOUGHBY HUMPHREY & D'ANTONI, P.A.**



Mitchell Willoughby

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(202) 637-2201 (fax)

Kyle.Jefcoat@lw.com

Cc: Kayla Middleton  
State Fiscal Accountability Authority  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201-3734

Materials Management Office  
Vendor Response Form

# Exhibit B

Sol # 5400028336

Change Date To: 00/00/0000 00/00/0000 00/00/0000 00/00/0000 5/14/2025

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Issue Date: 5/2/2025 Opened by Scott Hawkins

Buyer: MIDDLETON

## RFP

Witnessed by BBS/SRM

Description: NON-EMERGENCY MEDICAL TRANSPORTATION COORDINATOR SERVICES

Agency: **South Carolina Department of Health & Human Services**

Other NOTES:

Bidder	Code
1. MEDI TRANS LLC SRM	7000365269
2. ADAMS ARMS HOMECARE SERVICES SRM	7000350886
3. VERIDA, IN. SRM	7000333512
4. CONNECT STAFFING AGENCY LLC SRM	7000311609
5. MODIVCARE SOLUTIONS LLC SRM	7000295283
6. WINGS OF EAGLES TRANSPORTATION CORP SRM	7000277213
7. MEDICAL TRANSPORTATION MANAGEMENT SRM	7000046922
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