

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
Appeal by)
Medical Transportation Management, Inc.)
)
Solicitation No. 5400028336)
Non-Emergency Medical Transportation)
Coordination Services)
_____)

BEFORE THE SOUTH CAROLINA
PROCUREMENT REVIEW PANEL

ORDER

Case No. 2025-4

This matter comes before the South Carolina Procurement Review Panel (Panel) on appeal¹ by Medical Transportation Management, Inc. (MTM) from the October 2, 2025, decision of the Chief Procurement Officer (CPO). That decision sustained the protest filed by ModivCare Solutions, LLC (ModivCare) in connection with Request for Proposals (RFP) No. 5400028336 for statewide Non-Emergency Medical Transportation (NEMT) coordination services. Having conducted a de novo review of the record, the briefs of the parties, and the applicable law, the Panel affirms the CPO’s decision on the ground that MTM’s proposal was nonresponsive due to material ambiguity.

MTM was represented by Melissa Copeland, Esquire, and John E. Schmidt, III, Esquire, of Graves & Davis, LLC. ModivCare was represented by Mitchell Willoughby, Esquire, of Willoughby Humphrey & D’Antoni, P.A. The CPO was represented by Manton M. Grier, Jr., Esquire, of the State Fiscal Accountability Authority (SFAA). South Carolina Department of Health and Human Services (SCDHHS) appeared through Vicki Johnson, Esquire, Deputy General Counsel for SCDHHS.

¹ The Panel has jurisdiction under S.C. Code Ann. § 11-35-4410 to review and determine protests and appeals arising under the South Carolina Consolidated Procurement Code. The Panel conducts a de novo review, applying independent judgment to the facts and law.

I. BACKGROUND AND PROCEDURAL HISTORY

SFAA's Division of Procurement Services, on behalf of SCDHHS (collectively, the State), issued RFP No. 5400028336 on May 2, 2025, seeking a single broker to provide statewide NEMT coordination services under a risk-based capitated model. PRP00177, PRP00181.

ModivCare and MTM each submitted proposals in response to the RFP. PRP00208, PRP00639.

Following evaluation, the State issued an Intent to Award to MTM on July 3, 2025. PRP00497. ModivCare timely protested the award. PRP00036.

On October 2, 2025, the CPO sustained the protest, concluding that MTM's proposal was nonresponsive and, independently, that unequal treatment during the demonstration phase constituted non-harmless error. PRP00013.

MTM appealed that decision to the Panel. PRP00001. The parties agreed to an administrative review without a hearing, thereby consenting to the case being decided based solely on the written record. The record was supplemented once with the consent of the parties to correct omissions.

II. ISSUES

1. Was MTM's proposal nonresponsive due to material ambiguity concerning its inclusion of VeyoRide? **Yes.**

2. Did the allowance of additional demonstration presenters for MTM, without extending the same opportunity to ModivCare, constitute unequal treatment during the demonstration phase and, if so, was that error harmless? **The Panel need not reach this issue, having disposed of the appeal on the first issue.**

III. FINDINGS OF FACT

After consideration of the entire record, the Panel finds:

The State issued RFP No. 5400028336 on May 2, 2025, seeking a single broker to provide statewide NEMT coordination services under a risk-based capitated model. PRP00177, PRP00181.

The RFP's Section 2.26 provides that award will not be made on a nonresponsive offer and defines an offer as nonresponsive if it does not unambiguously agree to the solicitation's material requirements. PRP00188.

The RFP encouraged offerors to submit innovative methodologies and service enhancements beyond the contract requirements and specified that such enhancements should be submitted using ATTM 011 as part of Section B of the proposal. The RFP reserved the State's right to accept or reject any proposed enhancement. PRP00197.

The RFP incorporated the contract in ATTM 010. PRP00206. Section 8.7.7 of the contract expressly prohibits the contractor from providing transportation through an entity with which it has a "financial relationship," as defined at 42 C.F.R. § 411.354(a). PRP00549.

ModivCare and MTM each submitted proposals in response to the RFP. PRP00208, PRP00639.

In the Executive Summary and Network section of its proposal, MTM described VeyoRide as a key component of its strategy to meet the Department's NEMT goals. MTM highlighted VeyoRide as offering an "Uber-like experience for urgent trips," providing "added capacity" beyond traditional NEMT networks, expanding "healthcare access," delivering "service levels not previously possible," and playing an "important part" in its strategy for rescue trips. PRP00672, PRP00675, PRP00709, PRP00711.

In the Optional Enhancements section of its proposal, MTM described VeyoRide as an option, yet noted it is “proven to deliver higher on-time rates,” able to “incentivize drivers,” and is “the only solution available in the market today able to fully utilize rideshare services.” PRP00779-PRP00780, PRP00782.

Evaluator 1’s scoring summary dated June 4, 2025, lists VeyoRide in the Summary section describing MTM’s key features and approach, stating “VeyoRide – urgent trips / mode options in most cost-effective manner / new technology in 2026.” The evaluator’s separate Exceptionally Strong Optional Enhancements section does not include VeyoRide, instead listing “Mobile Integrated Health (MIH); Network Development; Enhancing Member services and prior authorizations.” PRP01415.

In an email dated June 16, 2025, Evaluator 2 stated that VeyoRide required clarification following review and discussion. PRP01418-PRP01420.

On June 26, 2025, after the State completed evaluations and selected MTM for negotiations, the State requested that MTM confirm its ability to meet requirements without VeyoRide. PRP01060-PRP01061.

On June 27, 2025, MTM confirmed in writing that it could comply with contractual requirements by not using VeyoRide and that it understands the use of VeyoRide is prohibited. PRP01063.

On July 3, 2025, the State issued an Intent to Award to MTM. PRP00497. ModivCare timely protested the award. PRP00036.

On October 2, 2025, the CPO sustained the protest, concluding that MTM’s proposal was nonresponsive and, independently, that unequal treatment during the demonstration phase constituted non-harmless error. PRP00013.

IV. APPLICABLE LAW

A responsive offeror is “a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or requests for proposals.” S.C. Code Ann. § 11-35-1410(9) (2025). A responsive proposal must unambiguously comply with all material solicitation requirements. The RFP incorporates these requirements in Section 2.26, which provides that “[a]ward will not be made on a nonresponsive offer” and that “[a]n offer is nonresponsive . . . if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation’s material requirements.” PRP00188.

Where a proposal is susceptible to two reasonable interpretations – one compliant and one noncompliant – it is ambiguous and therefore nonresponsive. *Taylor-Forge Engineered Systems, Inc.*, 69 Comp. Gen. 54, at 55 (Nov. 3, 1989) (“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.”) Although *Taylor-Forge* involved an invitation for bids, it articulates a general rule of responsiveness grounded in material ambiguity. Because the Procurement Code applies the same responsiveness standard to both bids and proposals, § 11-35-1410(9), the ambiguity principle articulated in *Taylor-Forge* applies equally in an RFP procurement.

In *Appeal by Coca-Cola Bottling Co. Consolidated*, Panel Case No. 1996-13, at 7 (Sept. 3, 1996), the Panel held that “[t]he 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.”

Under the Procurement Code’s selection and ranking process, “[o]nce 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.” S.C. Code Ann. § 11-35-1530(7) (2025). Consistent with that statutory framework, the Panel has held that “only proposals from responsive offerors are evaluated, ranked, and considered for award.” *Appeal by Provaliant Holdings, LLC, and Provaliant Retirement, LLC*, Panel Case No. 2017-4 (II), at 18 (Dec. 20, 2017). The responsiveness of a proposal is determined at the time proposals are opened and, absent discussions conducted pursuant to section 11-35-1530(6), is based on the contents of the proposal as submitted. *Id.* The Procurement Regulations further provide that offerors must be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals, and that discussions ordinarily are conducted prior to final ranking. Reg. 19-445.2095(I)(3).

Under Panel precedent, the contemporaneous record is entitled to greater weight than testimony or explanations offered after the fact. *Appeal by Samsara Inc.*, Panel Case No. 2024-6, at 9 (January 6, 2025) (“Evaluator 5’s contemporaneously written explanatory comments are more reliable than his oral testimony taken five months after the fact.”).

V. CONCLUSIONS OF LAW

The dispositive issue in this appeal is whether MTM’s proposal, as submitted, unambiguously demonstrated compliance with a mandatory contractual prohibition incorporated into the RFP. The Panel concludes that it did not. Because MTM’s proposal was materially ambiguous regarding its intended reliance on VeyoRide, it was nonresponsive as a matter of law and could not be properly evaluated, ranked, or cured through post-submission clarification. The Panel therefore affirms the CPO’s decision on this ground alone and need not reach the demonstration-phase issue.

A proposal is nonresponsive if it is susceptible to more than one reasonable interpretation concerning compliance with a material solicitation requirement. *Taylor-Forge* at 55. That standard governs here.

Applying that standard to the facts established in the record, the Panel concludes that MTM's proposal described VeyoRide inconsistently across proposal sections and did not clearly state whether VeyoRide was excluded from MTM's proposed method of meeting mandatory RFP requirements. This inconsistency rendered the proposal susceptible to more than one reasonable interpretation regarding compliance with a material contractual prohibition incorporated into the RFP, and therefore nonresponsive as a matter of law.

In the Executive Summary and Network sections, MTM described VeyoRide as a key component of its strategy to meet the Department's NEMT goals, emphasizing its role in offering an "Uber-like experience for urgent trips," providing "added capacity," expanding "healthcare access," delivering "service levels not previously possible," and playing an "important part" in MTM's approach to rescue trips. PRP00672, PRP00675, PRP00709, PRP00711. Elsewhere, however, MTM characterized VeyoRide as an optional enhancement, while still describing it as uniquely capable of delivering performance improvements unavailable through other means. PRP00779-PRP00780, PRP00782. These competing descriptions were not reconciled in the proposal and reasonably permit more than one interpretation as to whether VeyoRide was integral to MTM's proposed method of performance. That ambiguity concerns a material requirement and therefore renders the proposal nonresponsive. The RFP expressly required that offers "unambiguously agree to" material requirements, and MTM's proposal failed to meet that standard. PRP00188. While the RFP encouraged innovative enhancements, it presupposed that offerors would clearly

distinguish between enhancements and the means by which mandatory requirements would be satisfied. MTM's proposal failed to do so.

The contemporaneous evaluation record confirms that MTM's proposal created uncertainty at the time of evaluation, corroborating the existence of ambiguity as submitted. Evaluator 1's June 4, 2025, scoring summary lists VeyoRide among the key features of MTM's proposal rather than the section addressing optional enhancements. PRP01415. Evaluator 2's email likewise documented that VeyoRide was identified as an issue requiring clarification following review and discussion. PRP01418-PRP01420. Under established Panel precedent, contemporaneous evaluation materials are entitled to greater weight than after-the-fact explanations offered during a protest or appeal. *Samsara* at 9. MTM's post hoc assertions do not negate the ambiguity evident in the proposal and reflected in the contemporaneous record.

Although this procurement was conducted under a request for proposals, and discussions may be permitted under section 11-35-1530(6), discussions presuppose a responsive proposal. Discussions may clarify minor uncertainties, but they may not cure a material ambiguity that renders a proposal nonresponsive at the time of submission. This distinction is critical because clarification of an otherwise responsive proposal differs fundamentally from curing a material ambiguity concerning compliance with a mandatory requirement.

Here, the State did not seek clarification from MTM until June 26, 2025 – after the State completed evaluations and identified MTM as the intended awardee. PRP01060-PRP01061. The timing of the clarification request confirms that the ambiguity existed throughout the evaluation process and that MTM's proposal did not unambiguously establish

compliance as submitted. MTM's June 27, 2025, response acknowledging the prohibition confirms that the proposal was susceptible to more than one interpretation at the time of submission. PRP01063. This timing is significant. First, it underscores that the ambiguity was not resolved during evaluation. Second, it reflects that MTM alone was allowed an opportunity to clarify a material ambiguity after it had already identified as the intended awardee, contrary to the requirement that discussions, when conducted, ordinarily occur prior to final ranking and afford fair and equal treatment to all offerors. Reg. 19-445.2095(I)(3).

Consistent with *Coca-Cola Bottling*, a proposal that is nonresponsive as submitted cannot be rendered responsive through post-submission discussions or negotiations. Applying that principle here, once MTM's proposal was susceptible to more than one reasonable interpretation on a material requirement, it could not be properly evaluated or ranked. This conclusion accords with the Procurement Code's selection and ranking framework, which permits evaluation and ranking of only responsive proposals. *Provaliant* at 18.

The ambiguity is material. The RFP incorporated the contract in ATTM 010, including Section 8.7.7, which prohibits the contractor from providing transportation through an entity with which it has a financial relationship as defined at 42 C.F.R. § 411.354(a). PRP00206, PRP00549. That prohibition concerns the core method of service delivery. Whether MTM intended to rely on VeyoRide directly affects compliance with that requirement and the evaluation of MTM's proposed network, capacity, and service levels. The ambiguity regarding VeyoRide is material because it directly affects the proposal's compliance with a fundamental contractual requirement and because evaluators could have scored MTM's proposal differently depending on whether VeyoRide was expressly included or excluded from the proposed solution.

Accordingly, the dispositive question is not whether MTM ultimately could perform without VeyoRide, but whether its proposal, as submitted, unambiguously demonstrated compliance. It did not.

MTM confirmed that it could comply with contractual requirements without using VeyoRide and that it understood the use of VeyoRide was prohibited. That acknowledgment establishes both the applicability of the contractual prohibition and that MTM's proposal, as submitted, raised a material compliance question – namely, whether MTM intended to rely on VeyoRide to meet contractual obligations. The Panel does not decide the scope or applicability of the federal regulation itself. The existence of competing reasonable interpretations concerning MTM's intended reliance on VeyoRide is sufficient to establish material ambiguity and nonresponsiveness as a matter of law. MTM's acknowledgment that it understood VeyoRide to be prohibited further confirms the reasonableness of the State's interpretation. Separately, even assuming uncertainty as to the regulation's applicability, MTM was required to clearly state in its proposal whether it intended to rely on VeyoRide. MTM failed to do so, instead offering contradictory characterizations of VeyoRide as both a key component of its core strategy and an optional enhancement, creating a distinct and independent ambiguity that renders the proposal nonresponsive.

Under *Taylor-Forge*, where a proposal is susceptible to two reasonable interpretations of a material term – one compliant and one noncompliant – it is nonresponsive. This rule preserves the integrity of the competitive procurement process by requiring offerors to state their commitments clearly at the time of submission. Because MTM's proposal was materially ambiguous as submitted, the State lacked authority to evaluate, rank, or cure it through post-submission clarification.

VI. CONCLUSION

For the foregoing reasons, the October 2, 2025, decision of the CPO, sustaining ModivCare's protest, is **AFFIRMED**. Having resolved this appeal on the ground that MTM's proposal was nonresponsive, the Panel need not reach the second issue concerning the demonstration phase.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: Willie D. Franks
Willie D. Franks, Chairman

January 16, 2026
Columbia, South Carolina