

HENRY MCMASTER, CHAIR  
GOVERNOR  
CURTIS M. LOFTIS, JR.  
STATE TREASURER  
BRIAN J. GAINES  
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES  
DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018  
JOHN ST. C. WHITE  
MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

HARVEY S. PEELER, JR.  
CHAIRMAN, SENATE FINANCE COMMITTEE  
BRUCE W. BANNISTER  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE  
GRANT GILLESPIE  
EXECUTIVE DIRECTOR

## 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 ATTM 010

Transportation Timely Access Standards Section 5.3. of Amended ATTM 010

Section 5.2 of the Amended ATTM 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 wave 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.

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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

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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.**