



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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AMY F. DAVIS, ESQ.
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August 20, 2026

Via Electronic Mail maeve.cannon@stevenslee.com

Maeve E. Cannon, Esq.
Stevens & Lee
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Suite 400
Princeton, NJ 08540

Re: I/M/O Bid Solicitation #24DPP01040 Modivcare Corporation
Protest of Notice of Intent to Award
T2503 Transportation Broker Services

Dear Ms. Cannon:

This final agency decision is in response to your letter dated August 13, 2026, on behalf of Modivcare Solutions, LLC (“Modivcare”) received by the Division of Purchase and Property’s (“Division”) Hearing Unit on August 13, 2026 (“Protest”). In that letter, Modivcare protests the Procurement Bureau’s (“Bureau”) August 6, 2026, Notice of Intent to Award letter (“NOI”) issued for Bid Solicitation #24DPP01040 – Transportation Broker Systems (“Bid Solicitation”).

By way of background, on May 7, 2025, the Bureau issued the Bid Solicitation on behalf of the Department of Human Services (“DHS”), Division of Medical Assistance and Health Services (“DMAHS”). The purpose of this Bid Solicitation is to solicit Quotes for a primary single-source Contractor to serve as the Non-Emergency Medical Transportation (NEMT) broker to arrange for NEMT services for all eligible Medicaid Managed Care (“MMC”) and Fee-for-Service (“FFS”) Beneficiaries, with services to be provided to all counties throughout the State for all eligible MMC and FFS Beneficiaries include Livery Service, Mobility Assistance Vehicle (“MAV”) Transportation, Air Transportation Services, Basic Life Support (“BLS”), Ground Ambulance Services (“GAS”), routine Specialty Care Transport (“SCT”), Urgent Service trips, and Ambulatory-Mobility Assistance Vehicle (“A-MAV”). Bid Solicitation Section 1.1, *Purpose and Intent*.

Bid Solicitation Section 1.2, *Background*, cautioned Bidders that this Bid Solicitation addressed the State’s current requirements, and Bidders should not rely upon or use data or information from the expiring Contract in creating its Quote response. Additionally, Bidders were put on notice that the State intended to “award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation *is most advantageous to the State, price and other factors considered.*” Bid Solicitation Section 1.1, *Purpose and Intent* (emphasis added).

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on May 14, 2025, enabling all potential Bidders to review the Bid Solicitation and Quote submission procedures and requirements. Representatives from two (2) potential bidding entities attended, including Modivcare. In accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until May 27, 2025.

On October 15, 2025, Modivcare submitted a letter to the Division requesting that the subject Bid Solicitation be rescinded or delayed to provide time to address issues raised by the firm in its letter regarding the One Big Beautiful Bill Act (H.R.1). On December 3, 2025, the Director responded to Modivcare's letter, declining to rescind or delay the subject Bid Solicitation for the reasons specified in the Director's response.

Twelve (12) Bid Amendments were issued for this Bid Solicitation, with Bid Amendment 8, dated December 9, 2025, providing revisions to the Bid Solicitation and responses to questions received from potential Bidders. A formal protest of Bid Solicitation specifications was submitted by Modivcare and received by the Division on December 12, 2025. Modivcare challenged certain specifications of the subject Bid Solicitation and requested that certain revisions be made and incorporated into a revised Bid Solicitation.

The Division issued a Final Agency Decision on February 20, 2026, which concluded that the revised Bid Solicitation, which was revised via Bid Amendment #12 dated February 20, 2026, aligns with the State's long standing procurement law and provides for full and fair competition while also meeting the requirements of the using agency. Bid Amendment 12 also maintained the Quote Opening Date of March 4, 2026.

On March 4, 2026, the Division's Proposal Review Unit opened three (3) Quotes. The PRU deemed all three Quotes to be administratively complete and released the Quotes to the Bureau for further review and evaluation.

The Bureau found that the following Quotes met, and complied with, all the mandatory requirements of the Bid Solicitation:

1. Modivcare
2. MTM ("MTM")
3. HBSS Connect Corp ("HBSS")

These three (3) Quotes were released to the Evaluation Committee ("Committee") in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*. The Committee was composed of six (6) total members, with three (3) voting members and three (3) non-voting members. The Committee included two (2) voting members from DMAHS, one (1) voting member from the Bureau, two (2) non-voting members from DMAHS, and one (1) non-voting member from the Bureau. Recommendation Report, dated July 31, 2026 ("Recommendation Report"), page 3. The Committee was responsible for performing the technical evaluation of the responsive Quotes received based upon the evaluation criteria set forth in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, which stated in part:

- A. Personnel: The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required;

- B. Experience of firm: The Bidder's documented experience in successfully completing Contract of a similar size and scope in relation to the work required by this Bid Solicitation; and
- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.

Prior to the Quote Opening, representatives from DHMAS and the Bureau assigned relative weights for the three (3) Evaluation Criteria as indicated on the time-stamped score sheet shown below:

QUOTE SCORE SHEET				
BID SOLICITATION TITLE:		T2503 – Transportation Broker Services		
BID SOLICITATION NO.:		#24DPP01040		
BIDDER NAME:		_____		
DATE SCORED:		_____		
SCORING LEGEND				
9 - 10 Excellent				
7 - 8 Very Good				
5 - 6 Good				
3 - 4 Fair				
1 - 2 Poor				
	EVALUATION CRITERIA	SCORE	WEIGHT	SUBTOTAL
A.	<u>Personnel:</u> The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required;		20	
B.	<u>Experience of firm:</u> The Bidder's documented experience in successfully completing Contracts of a similar size and scope in relation to the work required by this Bid Solicitation; and		30	
C.	<u>Ability of firm to complete the Scope of Work based on its Technical Quote:</u> The Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.		50	
TOTAL SCORE			100	
NOTE: Each score must be a whole number, decimals and fractions are not permitted SCORE x WEIGHT = SUBTOTAL				
EVALUATOR PRINTED NAME: _____				
EVALUATOR SIGNATURE: _____				
2FEB '26 2:05PM				

The Committee members met on July 14, 2025, July 15, 2025, and July 24, 2025 to review and consider the Quotes as a group. After the Committee meeting, each member conducted an independent analysis of the three (3) responsive Quotes and submitted scoring individually to the Bureau. The three (3) voting members assigned individual technical scores (1-10) for the three (3) Evaluation Criteria for each

Quote. Recommendation Report at p. 4. Assigned scores were multiplied by the criterion weight to produce a weighted score for each criterion, as indicated on Page 4 of the Recommendation Report, and shown below.

Bidder	Total Criterion A (Max 600)	Total Criterion B (Max 900)	Total Criterion C (Max 1,500)	Total Technical Score (Max 3,000)	Average Technical Score (Max 1,000)	Ranking
ModivCare	520	780	1,300	2,600	867	1
MTM	320	450	800	1,570	523	2
HBSS	220	360	600	1,180	393	3

Following the evaluation and scoring of the responsive Quotes, a Competitive Range was determined in accordance with N.J.A.C. 17:12-2.7(f) to be an Average Technical Score of 500 (“Good”) and higher. HBSS was determined to be outside of the Competitive Range and was removed from further evaluation and consideration of award.

In accordance with Bid Solicitation Section 8.12, *Negotiation and Best and Final Offer (BAFO)*, the Bureau requested a BAFO from Modivcare and MTM on July 15, 2026. Both Modivcare and MTM provided BAFO responses as shown below:

Bidder	Original Price	BAFO Price	% Savings	Ranking
ModivCare	\$1,201,392,000.00	\$1,121,256,000.00	6.67%	2
MTM	\$989,712,000.00	\$973,080,000.00	1.68%	1

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on August 6, 2026, the Bureau issued the NOI advising all Bidders that it was the State’s intent to award a Contract to MTM.

On August 13, 2026, prior to the close of the protest period, Modivcare submitted a Protest, challenging the Division’s decision to award the Contract to MTM. In its Protest Modivcare makes the following primary arguments:

1. MTM’s Quote contained material non-waivable deficiencies in the form of the inclusion of a proposed language services Subcontractor without following the Bid Solicitations Subcontracting requirements including completion and submission of the Subcontractor Utilization Form.
2. The Division impermissibly utilized a gross price comparison which materially overstated MTM’s purported cost advantage.
3. Modivcare’s ability to obtain meaningful administrative review was prejudiced by the Division’s shortened Protest Period and failure to timely produce documentation.

An in-person presentation as permitted pursuant to N.J.A.C. 17:12-3.3(e), “[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director.” Further, “[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.” N.J.A.C. 17:12-3.3(d). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Evaluation Committee Report,

the Bureau's Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by Modivcare. The issues raised in the protest were sufficiently clear such that a review of the record of this procurement has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by Modivcare on the written record, as such an in-person hearing is not needed. I set forth herein the Division's Final Agency Decision.

DISCUSSION

The New Jersey Courts have long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey's statutory procurement scheme is "to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

New Jersey procurement law requires that "specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. . . ." N.J.S.A. 52:34-12. This principle is based on the long-recognized "policy behind the competitive bidding statutes, i.e., assurance against favoritism, improvidence, extravagance and corruption in the bidding process." Palamar Constr., Inc. v. Pennsauken, 196 N.J. Super. 241, 251 (App. Div. 1983) (citing Terminal Construction Co. v. Atlantic City Sewerage Auth., 67 N.J. 403, 410 (1975)). "These policies, in turn, are meant to ensure that all bidders are equally situated in their competition for the public contract." Palamar, *supra*, 196 N.J. Super. At 251 (citing Hillside Twp. v. Sternin, 25 N.J. 317, 322 (1957)).

I. MTM's Quote contained material non-waivable deficiencies in the form of the inclusion of a proposed language services Subcontractor without following the Bid Solicitation's Subcontracting requirements including completion and submission of the Subcontractor Utilization Form.

When evaluating Quotes received, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation's terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not complaint or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c).

When evaluating a Quote received, if a deviation is found, the question is whether the deviation is material. It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of Award of On-Line Games Prod. and

Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, 127 N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. Super. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” On-Line Games, *supra*, 279 N.J. Super. at 595 (citing River Vale, *supra*, 127 N.J. Super. at 222).

Modivcare argues that MTM failed to provide a completed Subcontractor Utilization Form, despite a statement in their Quote that they would use a third-party provider for language interpretation services, and that MTM was therefore ineligible for award due to a material deviation from the Bid Solicitation’s requirements. Bid Solicitation Section 4.7 *Call Center Requirements* states in pertinent part that “[a]s part of its Call Center services, the Contractor shall provide a language interpreter service . . . to ensure that non-English speaking and hearing impaired Beneficiaries can access transportation services”. A review of the record shows that MTM stated the following in its Quote:

Accommodating Languages Other Than English

When Beneficiaries call our toll-free number, we provide them with the option to press a number on their phone to route directly to a Spanish-language menu and speak with a Spanish-speaking CCR. MTM Health accommodates languages spoken by the populations we serve by hiring bilingual Spanish-speaking staff and using a third-party vendor for interpretive services. Our Five9 telephony platform uses advanced automatic call distribution (ACD) skill level-based call routing, including routing the call based on language.

[MTM Quote, pg. 120.] (Emphasis added)

MTM submitted a Subcontractor Utilization Form with its Quote that stated Not Applicable:

SUBCONTRACTOR UTILIZATION FORM	
STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY 33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230	
BID SOLICITATION # AND TITLE:	<u>24DPP01040, T2503 - Transportation Broker Services, DHS</u>
VENDOR NAME:	<u>Medical Transportation Management, Inc. (dba MTM Health)</u>
List All Businesses To Be Used As Subcontractors. Attach Additional Sheets If Necessary. If the Bid Solicitation has subcontracting set-aside goals, and the Vendor has not achieved the goals, Vendor <u>must</u> attach information documenting its good faith effort to achieve the goals.	
SUBCONTRACTOR'S NAME: <u>Not Applicable</u>	
ADDRESS: _____	
PHONE NUMBER: _____	FEIN: _____
EMAIL: _____	
ESTIMATED VALUE OF WORK TO BE SUBCONTRACTED: _____	
DESCRIPTION OF WORK TO BE SUBCONTRACTED: _____	
IS THE SUBCONTRACTOR IS A SMALL BUSINESS?	
IF YES, SMALL BUSINESS CATEGORY: _____	
IS THE SUBCONTRACTOR IS A DISABLED VETERAN-OWNED BUSINESS?	

Here MTM clearly states that it will utilize a “third-party vendor” to satisfy one of the requirements under this Bid Solicitation. As such MTM was required to comply with the Bid Solicitation’s Subcontracting requirements including the submission of a completed Subcontractor Utilization Form. The question to be resolved here is whether MTM’s failure to provide information for subcontractor(s) on the Subcontractor Utilization Form, is a material deviation that can not be waived, resulting in the Quote being non-responsive.

A Bidder’s use of a subcontractor is governed by Bid Solicitation Section 3.13.8, *Subcontractor Utilization Plan*, which states in pertinent part that

Vendors Bidders intending to use Subcontractor(s) **shall** list all subcontractors on the Subcontractor Utilization Plan form. . . .

For a Quote that does NOT include the use of any Subcontractors, the Bidder is automatically certifying that, if selected for an award, the Bidder will be performing all work required by the Contract.

If it becomes necessary for the Contractor to substitute a Subcontractor, add a Subcontractor, or substitute its own staff for a Subcontractor, the Contractor will identify the proposed new Subcontractor or staff member(s) and the work to be performed. The Contractor shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the State Contract Manager for consideration. The Contractor must provide a completed Subcontractor Utilization Plan, a detailed justification documenting the necessity for the substitution or addition, and resumes of its proposed replacement staff or of the proposed Subcontractor’s management, supervisory, and other key personnel, as stipulated in Section 4.2, Staffing, that demonstrate knowledge, ability and experience relevant to that part of the work which the Subcontractor is to undertake. The qualifications and experience of the replacement(s) must

equal or exceed those of similar personnel proposed by the Contractor in its Quote. The State Contract Manager will forward the request to the Director for approval.

[Emphasis added.]

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal **shall** conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

- 4. Contain **all** RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically, the Bid Solicitation Section 9.2, *Definitions*, states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

The clear language in in Bid Solicitation Section 3.13.8 requiring submission of the Subcontractor Utilization Form if a Bidder intends to use subcontractors, along with the Glossary definition explaining the mandatory nature of "shall" and "must" requirements, makes clear that the Subcontractor Utilization Form was a required component MTM's Quote that included this "Third-Party Vendor". Therefore, the Bureau incorrectly determined that the Quote submitted by MTM was responsive, and as a result, MTM was not eligible for evaluation and an award.

When a subcontractor is proposed in a Quote, the completed Subcontractor Utilization Plan is a mandatory submission requirement. A Bidder cannot revise or produce additional information after the Quote submission deadline as it would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP". *Id.*

Based on the review of the Quotes submitted, the Bureau recommended a Contract award to MTM, because its Quote was the most advantageous to the State, price and other factors considered, as is required by New Jersey law. However, as outlined above, the Quote submitted by MTM is non-responsive to the Bid Solicitation's mandatory requirements, making MTM ineligible for award. Thus, the Division's award

to MTM must be canceled and this matter remanded to the Bureau for award to Modivcare as the only remaining responsive bidder in the competitive range as set forth in the Recommendation Report.

II. Modivcare's request for a Stay of the contract award is rendered moot by this FAD.

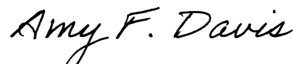
In consideration of this Stay Request, I have reviewed the record of this procurement, including Modivcare's Protest (which includes a Stay Request), the Bid Solicitation, the Quotes received, the protests, the relevant statutes, regulations, and case law. Based on the findings outlined above, the requested stay is unnecessary as the matter is being remanded to Bureau for re-award of the contract in accordance with this FAD's findings.

CONCLUSION

Based upon the foregoing, the August 6, 2026, Notice of Intent to Award to MTM is canceled. I remand the matter to the Bureau so that the Contract can be awarded to Modivcare Solutions, LLC for the reasons outlined above. As a result of this determination the Division declines to address the remainder of Modivcare's arguments in its Protest.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Amy F. Davis
Acting Director

AFD:DPK

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