



State of New Jersey

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August 20, 2026

Via Electronic Mail stevep@gryde.com

Stephen Pelligrini
Director of Business Development
HBSS Connect Corp.
1075 Westford Street
Suite 304
Lowell, MA 01851

Re: I/M/O Bid Solicitation #24DPP01040 HBSS Connect Corp.
Protest of Notice of Intent to Award
T2503 Transportation Broker Services

Dear Mr. Pelligrini:

This final agency decision is in response to your letter dated August 12, 2026, on behalf of HBSS Connect Corp. ("HBSS") received by the Division of Purchase and Property's ("Division") Hearing Unit on August 12, 2026 ("Protest"). In that letter, HBSS 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. 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 DMAHS and the Bureau assigned relative weights for the three (3) Evaluation Criteria as indicated on the timestamped 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: _____				

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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 conducted an independent analysis of

each 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 each of 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

In accordance with N.J.A.C. 17:12-2.7(f) the Committee established a competitive range, which in this instance was 500. HBSS' Quote was below the competitive range established by the Committee and therefore was not evaluated for price pursuant to N.J.A.C. 17:12-2.7(f) which states in pertinent part that "[p]roposals deemed not to be in the competitive range need not be further evaluated [for price]". 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. Modivcare and MTM provided the BAFO response 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 28, 2025, the Bureau issued the NOI advising all Bidders that it was the State's intent to award a Contract to MTM.

On August 12, 2026, prior to the close of the protest period, HBSS submitted the Protest, including a request for an in-person hearing, challenging the Division's decision to award the Contract to MTM. HBSS' protest is broken up into several sections which are briefly summarized below. Specifically, HBSS states that:

A. The Competitive Range Threshold Was Established After the Scores Were Known and the Report Does Not Explain Why 500 Was Selected

A competitive range was not established in the Bid Solicitation prior to the opening of Quotes, rather this competitive range was established only "[a]fter the scores were known". Protest, page 2.

B. HBSS's Scores Were Immediately Below the "Good" Range and a Small Change Would Have Kept HBSS in the Competition

HBSS' scores in each category were "at or near the upper end of the 'Fair' range and immediately below the 'Good' range" and that the scoring differences were "outcome-determinative" and a "relatively small change in scoring would have allowed HBSS to remain in the competition and would have required the State to consider its price." Protest, page 2.

C. The Personnel Scoring Appears to Treat a More Significant MTM Omission More Favorably Than HBSS's Omission

MTM received a higher score in the personnel scoring category despite not having hired a medical director, whereas HBSS identified a medical director but failed to include their resume. HBSS also states that the additional concerns listed on the Recommendation Report about HBSS' personnel "[were] a straightforward factual question[s] that could have been answered without changing or improving HBSS's Quote." Protest, page 3.

D. *The Committee Identified Matters as Unclear or Uncertain but Did Not Seek Clarification*

HBSS argues that with respect to matters the Committee found unclear or were uncertain about, such as how the work would be divided among HBSS, Penquis and Mart, those questions could have been asked of HBSS. Specifically, HBSS states that "[t]hese were questions about facts already contained in or relating to HBSS's Quote. They did not require HBSS to change its pricing, substitute personnel, add new experience, or materially revise its proposal, and they could have been answered through clarification." Protest, page 3.

E. *The Experience of MART and Penquis Was Treated as a Source of Confusion Instead of Being Fully Evaluated*

HBSS points out that the Recommendation Report lists the Medicaid trips that HBSS manages and that they "provided trip volume information for members of its proposed team" including trips for MART and for Penquis. Protest, page 4. HBSS further states that any concern the Evaluation committee had "goes to the relationship among the entities, not whether the underlying experience existed. If the Committee needed clarification as to which entity performed which contracts, or how that experience should be attributed within the proposed team, it could have asked." Protest, page 4.

F. *The Report Appears to Consider Factors That Are Not Listed in the Published Evaluation Criteria*

HBSS states that there were "additional concerns that do not appear to be stated evaluation criteria under Section 8.9.1", namely the geographic location of HBSS and that HBSS might rely too heavily on technology. Protest, page 5. This is yet another area that could have been clarified according to HBSS.

G. *The Treatment of Section 3.23 Disclosures and Bidder Responsibility Should Be Explained*

HBSS notes that the Recommendation Report did not submit any details of negative actions. HBSS is unclear if the Committee thought that "HBSS had failed to answer the question, rather than that HBSS had no reportable negative actions" and that if so, "that issue could have been resolved through clarification." Protest, page 5.

H. *The Committee Did Not Reach Consensus on the Final Recommendation*

HBSS points out that the Committee was unable to reach a consensus on whether ModivCare or MTM should receive the Contract award and left the final determination to the Director. HBSS states that this lack of consensus makes the underlying evaluation record important.

By way of remedy, HBSS requests the relief stated in Section III of their Protest, shown below:

For the reasons stated above, HBSS respectfully requests that the Division: (a) withhold contract award pending resolution of this protest; (b) produce the complete evaluation record, including individual evaluator score sheets, consensus scoring records, evaluator notes, scoring guidance or rubrics, records concerning establishment of the Competitive Range, Committee deliberation records, and records of any clarification sought from or considered as to any bidder; (c) produce MTM's unredacted Section 3.23 disclosures, subject to appropriate confidentiality protections; (d) provide a written explanation of the scoring differences identified in Grounds C through F; (e) reconsider the Competitive Range determination and reevaluate the Technical Quotes under the published criteria in Section 8.9.1, seeking clarification where the Committee identified uncertainty; (f) evaluate HBSS's price Quote if HBSS is determined to fall within a properly established Competitive Range; (g) grant HBSS an in-person presentation as provided under the Division's protest regulations; and (h) grant such other relief as the Acting Director considers appropriate.

Although HBSS requested an in-person presentation as permitted by 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 HBSS. 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 HBSS on the written record, as such an in-person hearing is not warranted. 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)).

HBSS provided an administratively complete Quote that was evaluated by the Committee. A review of the Committee Report shows that the Committee evaluated HBSS on the three criteria (Personnel, Experience of Firm, and Ability of firm to complete the Scope of Work based on its Technical Quote) that are set forth in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria* in the same manner as they did for all other responsive bidders for this Bid Solicitation.

For their argument in A. of their Protest, HBSS is correct that the competitive range is not established prior to Quote opening but rather is established after evaluation of responsive Quotes. It would be impossible to establish a competitive range prior to Quote opening and evaluation without having any idea of what the responsive Quotes would contain. This suggestion by HBSS could very well result in bidders being excluded for price review even if the evaluation committee believed those bidders could complete the scope of work for that particular bid solicitation. Here, the Committee decided the competitive range was 500. HBSS argues that the "Report does not explain why 500 was selected. There is no explanation of when the number was chosen, what method was used to arrive at it, whether any other cutoff was considered, or why 500 was the proper dividing line." Protest, page 2. A review of the Recommendation Report shows the scale used by the Committee is found on page 4, (see below). Five hundred (500) is the beginning of the scale for those Quotes which after scoring by the Committee fall into the range of "Good".

The Bidders' Quotes were scored on a scale of 1 to 10 by the Committee, as shown by the legend below:

- 9-10 Excellent
- 7-8 Very Good
- 5-6 Good
- 3-4 Fair
- 1-2 Poor

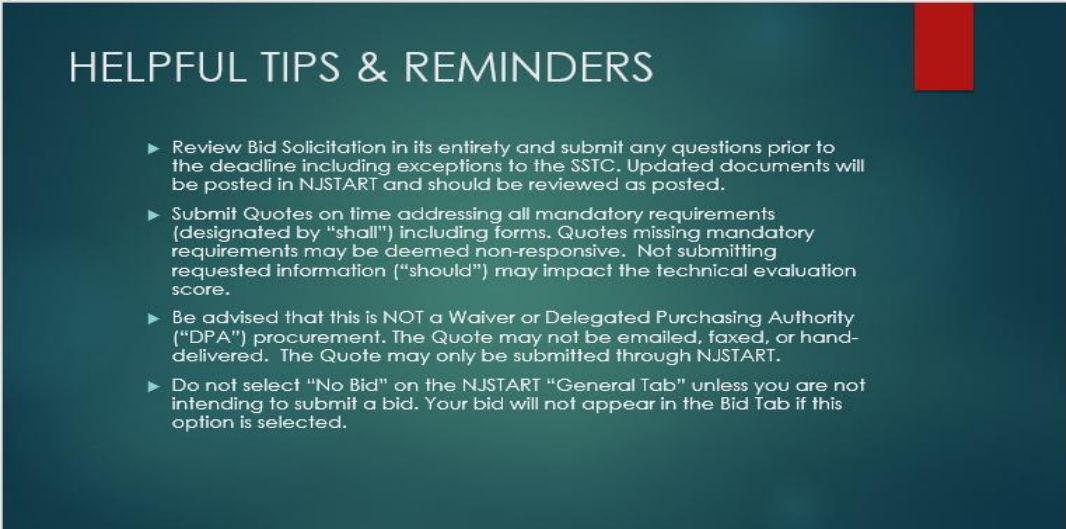
In this case, the Committee was tasked with evaluating three (3) Quotes that were responsive. After the technical evaluation, ModivCare's Quote was in the "Very Good" range; MTM's Quote was in the "Good" range and HBSS' Quote was in the "Fair" range. While HBSS is correct in that the Committee did not state that HBSS was incapable of performing the Contract, the statement from the Recommendation Report cited by HBSS in their Protest that "the Committee stated that HBSS 'may be capable of meeting the requirements of the Bid Solicitation under a resulting contract'" Protest, page 2 shows that the Committee did not have confidence that HBSS could perform the Contract if awarded. The Committee decided to focus on those Quotes that earned at least a score of "Good" after the evaluation process. N.J.A.C. 17:12-2.7(f) states:

- (f) The evaluation committee or assigned Division staff member shall determine which proposals are in the competitive range. Proposals deemed not to be in the competitive range need not be further evaluated. Proposals in the competitive range, except as may be limited as specified in this section, shall be evaluated by the evaluation committee or the assigned Division staff member on the basis of price and the other evaluation criteria set forth in the RFP. Upon conclusion of the evaluation of the proposals, the committee or the assigned Division staff member shall prepare a written report with a recommendation for award based on its evaluation of the proposals, for the Director's consideration.

Pursuant to the Statute, the Division has broad leeway to determine the competitive range in any given bid solicitation, and it is clear based upon the Recommendation Report that the Committee performed a thoughtful, thorough evaluation of the three (3) Quotes received.

HBSS' argument in B. of their Protest that they were scored at the "upper end of the 'Fair' range and immediately below the 'Good' range" and that "[a] relatively small change in scoring would have allowed HBSS to remain in the competition and would have required the State to consider its price." Protest, page 2. These are factual statements, rather than arguments to be addressed in this Protest.

HBSS argues in argument C. of their Protest that MTM received a higher score in the Personnel evaluation section despite MTM not having hired a Medical Director yet, whereas HBSS has hired a Medical Director but did not submit a resume for that individual. HBSS also argues that the additional concerns with their Personnel submissions that are noted in the Recommendation Report were all “straightforward factual question[s] that could have been answered without changing or improving HBSS’s Quote.” Protest, page 3. The Recommendation Report details the differences in submissions between MTM and HBSS with respect to Personnel. The Committee found that although MTM did not provide a name or resume for their Medical Director (whom they had yet to hire), the resumes provided had more robust qualifications than those provided by HBSS, especially with respect to the Financial Officer title for HBSS who had “CPA accounting credits” (Recommendation Report, page 9), so the Committee was unsure if the person is either a CPA or if they had a degree in accounting as required in Bid Solicitation Section 4.2 *Staffing*. Additionally, the information provided by MTM in its organizational chart delineated the names, titles, positions and roles of proposed staff while HBSS did not provide this information in their organizational chart. While an organizational chart was not required under Section 3.21 *Organizational Charts* of the Bid Solicitation, information provided by Bidders can be used to evaluate their Quote. Bidders are advised during the Pre-Quote Conference pursuant to Bid Solicitation Section 2.5 *Optional Pre-Quote Conference* and attendant Power Point presentation, available on NJSTART to both those who attended and did not attend the Pre-Quote Conference, that failing to submit requested information could impact their technical evaluation score. See page 9 of the Pre-Quote Conference Power Point slideshow below.



HELPFUL TIPS & REMINDERS

- ▶ Review Bid Solicitation in its entirety and submit any questions prior to the deadline including exceptions to the SSTC. Updated documents will be posted in NJSTART and should be reviewed as posted.
- ▶ Submit Quotes on time addressing all mandatory requirements (designated by "shall") including forms. Quotes missing mandatory requirements may be deemed non-responsive. Not submitting requested information ("should") may impact the technical evaluation score.
- ▶ Be advised that this is NOT a Waiver or Delegated Purchasing Authority ("DPA") procurement. The Quote may not be emailed, faxed, or hand-delivered. The Quote may only be submitted through NJSTART.
- ▶ Do not select "No Bid" on the NJSTART "General Tab" unless you are not intending to submit a bid. Your bid will not appear in the Bid Tab if this option is selected.

HBSS is correct that per their Quote, MTM had not hired a Medical Director at the time of Quote Opening, this position must be filled “Prior to the Commencement of Operations” according to the language in Bid Solicitation Section 4.2 *Staffing* so this did not preclude an award to MTM. Finally, HBSS argues that the issues that the Recommendation Report found with HBSS’ Quote, mainly that “that résumés were not provided for claims processing staff; that the Organization Chart did not identify which named individuals filled which positions; that the Organization Chart identified a compliance representative and a grievance and complaints manager without providing a résumé, additional personnel information, or the name of the person occupying the role; and that it was unclear whether the proposed Financial Officer held a CPA credential or an accounting degree” (Protest, page 3) were all “straightforward factual question[s] that could have been answered without changing or improving HBSS’s Quote”. Protest, page 3. Allowing HBSS to provide information on personnel (one of the stated evaluation criteria in the Bid Solicitation) post Quote opening that would be used in evaluating their submitted Quote would by definition allow HBSS to impermissibly supplement their Quote which cannot be allowed 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. Here, the Bureau could not ask HBSS for additional information that was not included within their Quote after Quote opening, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

HBSS also argues that the issues that the Committee found unclear or uncertain listed in their Protest point D, were "questions about facts already contained in or relating to HBSS's Quote. They did not require HBSS to change its pricing, substitute personnel, add new experience, or materially revise its proposal, and they could have been answered through clarification." Protest, page 4. The areas that HBSS is referring to include (among others), which entity in their consortium performed work listed in the contracts they provided for prior experience, how the work would be divided among the consortium members, whether the Financial Officer was a CPA or an accounting degree. For the reasons stated in response to HBSS' Protest point C above, these were not questions the Bureau could ask HBSS as any information provided would have supplemented their Quote in violation of On-Line Games.

HBSS again argues in their Protest point E. that where the Committee was confused or "[i]f the Committee needed clarification as to which entity performed which contracts or how that experience should be attributed within the proposed team, it could have asked." Protest, page 4. For the reasons stated in response to HBSS' Protest point C. above, these were not questions the Bureau could ask HBSS as any information provided would have supplemented their Quote in violation of On-Line Games.

HBSS argues in Protest point F. that "[t]he Recommendation Report identifies two additional concerns that do not appear to be stated evaluation criteria under Section 8.9.1". Protest, page 5. Specifically, HBSS argues that "[t]he published criteria do not state that a bidder or team member must be located in New Jersey." Protest, page 5. This is an incorrect assertion as Bid Solicitation Section 4.7 *Call Center Requirements* states that "[t]he Call Center shall be located within the State of New Jersey." Further, Bid Solicitation Section 4.2 *Staffing* states that three (3) categories (Medical Director, Financial Officer/Accounting and Budgeting Officer, and Claims processing staff) "may be located out-of-State". By specifically allowing that these three (3) categories of employees may be located out of State, the others must be located within New Jersey. Additionally, HBSS argues that the Committee noted in the Recommendation Report that there was concern about how much HBSS' proposed approach may be too reliant on artificial intelligence and technology but that the Bid Solicitation does not state an acceptable (or unacceptable) level of automation. The Bid Solicitation does not and cannot list every detail that a bidder could be evaluated on because it is impossible to know in advance what information each bidder's Quote may contain. The Bid Solicitation advises potential bidders that one of the technical evaluation criteria used for evaluation in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, is:

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.

Clearly the Committee will evaluate the "approach that would permit successful performance" which includes how the Bidder plans to accomplish the Scope of Work. In this case, the Committee was concerned that HBSS's proposal may be too reliant on artificial intelligence and technology. Yet again, HBSS claims that these concerns could have been clarified. For the reasons stated in response to HBSS' Protest point C. above, these were not questions the Bureau could ask HBSS as any information provided would have supplemented their Quote in violation of On-Line Games.

With respect to HBSS' Protest point G, HBSS quotes language in the Recommendation Report which states that "[t]he Committee notes that HBSS did not submit details of any negative actions . . . in accordance with Bid Solicitation Section 3.23". Protest, page 5. HBSS is unsure "[i]f the Committee understood that to mean that HBSS had failed to answer the question, rather than that HBSS had no reportable negative actions, that issue could have been resolved through clarification." Protest, page 5. The statement in the Recommendation Report regarding no negative actions disclosed pursuant to Bid Solicitation Section 3.23 *Experience with Contracts of a Similar Size and Scope* is merely a factual statement, as there is no accompanying notation that the Committee was confused, unsure, uncertain, etc. which had been noted elsewhere in the Recommendation Report in connection with portions of HBSS' Quote. Additionally, had this been a point of confusion for the Committee, for the reasons stated in response to HBSS' Protest point C. above, these were not questions the Bureau could ask HBSS as any information provided would have supplemented their Quote in violation of On-Line Games.

HBSS' final argument in Protest point H. is that the Committee was unable to reach a consensus on whether MTM or Modivcare should be awarded the Contact. This is a factual statement however it is important to note that the legislative purpose of N.J.S.A. 52:34-12(d) makes clear it is in the Acting Director's exclusive discretion to determine "which bid will be most advantageous to the State, 'price and other factors considered'". Comm'l Cleaning v. Sullivan, 47 N.J. 529 (1996). "Public bidding statutes exist for the good of the taxpayers, and not bidders, and they must always be construed for the public good". Sevell v. N.J. Highway Auth., 329 N.J. Super. 580, 584 (App. Div. 2000). The Acting Director's decision should not be interfered with "in the absence of bad faith, corruption, fraud or gross abuse of discretion." Keyes Martin v. Dir., Div. Purchase & Prop., 99 N.J. 244, 253 (1985). The ultimate award decision rests with the Acting Director who can accept the Bureau's recommendation even in cases where an Evaluation Committee could not come to a consensus.

There is nothing in the record to show that the Procurement Bureau and DMAHS, did not exercise their business and procurement judgment in the development of the Bid Solicitation. Furthermore, there is nothing in the Recommendation Report to suggest that HBSS' Quote was not fairly and thoughtfully evaluated. HBSS' repeated statements that if the Committee had questions or concerns with respect to certain aspects of HBSS' Quote the Committee could have requested information are incorrect in light of established procurement case law in the State of New Jersey.

CONCLUSION

Based upon the foregoing, HBSS' Protest is denied. 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

Amy F. Davis
Acting Director

CKK:CMD

c: R. Regan
A. Fanikos
W. Higgins
K. Tran