



State of New Jersey

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August 28, 2026

Via Electronic Mail PPJosephson@duanemorris.com

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Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196

Re: Request for Reconsideration I/M/O Bid Solicitation #24DPP01040 Modivcare Corporation
T2503 Transportation Broker Services

Dear Mr. Josephson and Ms. Mintz:

This final agency decision (FAD) is in response to your letter dated August 26, 2026, on behalf of MTM Health ("MTM") received by the Division of Purchase and Property's ("Division") Hearing Unit on August 26, 2026 ("Reconsideration"). In that letter, MTM requests that Division's Hearing Unit reverse the action taken in its August 20, 2026, FAD, which reversed 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"). Additionally, MTM asks the Hearing Unit to consider new facts in this Reconsideration related to Modivcare Solutions, LLC's ("Modivcare") Quote that were known and available to the parties prior to the end of the protest period.¹

The following background was originally included in the August 20, 2026, FAD, but are included here again for convenience along with the new facts submitted by 3M Company with its reconsideration request. 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

¹ By way of addressing one of MTM's points, the August 6, 2026, NOI provided a protest period ending August 12, 2026, at 4:00 p.m. Prior to the close of the protest period, Modivcare requested a twenty-four (24) hour extension of the protest period to August 13, 2026, at 4:00 p.m. The requested extension was granted by correspondence on August 10, 2026. The same courtesy would've been granted to MTM upon request.

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, 2026, July 15, 2026, and July 24, 2026, 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.

On August 20, 2026, the Hearing Unit issued its FAD reversing the award to MTM in accordance with New Jersey procurement law. Specifically, MTM's Quote failed to include the mandatory disclosure of its subcontractor's information as outlined in Bid Solicitation Section 3.13.8, *Subcontractor Utilization Plan*, which requires that Bidders using subcontractors shall list all subcontractors on the Subcontractor Utilization Plan form, and that a Bidder not including any subcontractor information is automatically certifying that the Bidder will be performing all work required by the Contract.

On August 26, 2026, MTM submitted its Reconsideration challenging the Division's August 20, 2026, FAD. In its Reconsideration, MTM makes following primary arguments:

1. Modivcare's protest was apparently untimely, according to the Final Agency Decision²;
2. MTM was impermissibly denied its right to administrative due process because MTM was not notified of Modivcare's protest, provided a copy of award in MTM's favor solely on the basis of arguments made by Modivcare, without affording MTM any notice or opportunity to be heard;
3. MTM Health's third-party language translation vendor is not a "subcontractor" under the terms of the Bid Solicitation;
4. Even if MTM were required to disclose the identity of that vendor, the omission of the vendor from the Subcontractor Utilization Form was immaterial, waivable, and therefore not a reason to set aside the Notice of Intent to Award the Contract to MTM; and
5. The Final Agency Decision incorrectly directed that the Contract be awarded to Modivcare when the record does not establish Modivcare's current financial capability, no comparable financial capability review appears in the production, and Modivcare's Quote contains apparent omissions and deviations requiring further evaluation.

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)).

² Addressed by Footnote 1 on Page 1 of this Reconsideration FAD,

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. Responses and Replies to a Protest, Pursuant to N.J.A.C. 17:12-3.3(b)(4), are at the Discretion of the Director, and MTM’s Error was Sufficiently Clear to Not Require an In-Person Presentation or a Response to the August 13, 2026, Protest.

The foundational statutes addressing (1) the scope of authority granted to the Director of the Division and (2) the public bidding are the starting place for this analysis. The Director is the successor to the responsibilities of the former State Purchase Commissioner. See N.J.S.A. 52:25-1; N.J.S.A. 52:27B-53; N.J.S.A. 52:18A-16, -17, and -18. The Division has the exclusive authority and duty to purchase all articles used or needed by the State and the various using agencies “unless otherwise specified in the statutes.” N.J.S.A. 52:25-6. The Director is charged with the “efficient operation of a centralized purchasing service.” N.J.S.A. 52:27B-56.

The current public bidding law dates from 1954 and the chief provision provides:

All purchases, contracts or agreements, the cost or contract price whereof is to be paid with or out of State funds shall, except as otherwise provided in this act, be made or awarded only after public advertisement for bids therefor, in the manner provided in this act.

[N.J.S.A. 52:34-6 (L.1954, c48, §1).]

The primary requirements for the Division’s conduct of a public bid are set forth at N.J.S.A. 52:34-12 to 15, but additional statutes place additional requirements on the procurement process and the resulting contract.

As the Director executes the responsibilities as the head of the exclusive purchasing agency for the State, the Director may only enter into new contracts consistent with the requirements of the public bidding law and other applicable laws. However, these responsibilities:

must also be viewed in a larger statutory framework. Under N.J.S.A. 52:25-6 and N.J.S.A. 52:27B-55 the Director of the Division of Purchase and Property has “the exclusive authority and duty to purchase all articles used or needed by the state and its using agencies.” The Director is “vested with the powers, duties, and responsibilities involved in the efficient operation of a centralized State purchasing service” and has been given the authority, subject to the approval of the State Treasurer, “to organize the Division for the effective performance of its functions and purposes.” N.J.S.A. 52:27B-56.

[Keyes Martin, *supra*, 99 N.J. at 257.]

Operating as an efficient and effective centralized State purchasing service for all using agencies necessarily involves using discretion and expertise to manage a large portfolio of important State contracts to ensure that the human resources in the Division are able to timely procure all goods and services that are required.

The Director's authority and discretion are further clarified in the Divisions regulations, found at N.J.A.C. 17:12-1.1 et seq., including the protest process following the award of a publicly advertised bid. The protest process, and rights of bidders in that process, are outlined N.J.A.C. 17:12-3.3, *Protest procedures; challenge to proposal rejection, notice of intent to award, or RFP cancellation*. As will be shown in the following Section II below, the Director's discretion in not requesting a response was reasonable as there was no response that could be provided under New Jersey procurement law that would've been meaningful or permitted MTM to regain its position as the awarded contractor. New Jersey procurement law, including N.J.A.C. 17:12-2.2(a) (requiring that a bidder's proposal conform to the outlined requirements, including containing "all RFP-required certifications, forms, and attachments, completed and signed as required").

Additionally, a request for a response is not an open invitation after the protest period has closed to submit new information and arguments as MTM has chosen to do here. At most, MTM would've been permitted to file a "response" to Modivcare's August 13, 2026, protest, which would've limited the response to addressing the arguments in Modivcare's protest documents. As addressed in the August 20, 2026, FAD, the issues were sufficiently clear that no further information was required from MTM, and the arguments regarding responsiveness and clarification were addressed.

While the Division welcomes responses from bidders when they provide the Division with information when there are questions of fact or law, not every protest rises to the level of requiring every parties' involvement.³ When the facts and law are incontrovertible, expanding the participant pool for the sake of participation runs contrary to the Division's statutory, regulatory, and case law obligations to procure goods and services on behalf of the State in an efficient manner in accordance with State law. The August 20, 2026, FAD fully explained the facts and reasoning supporting the final conclusions, and MTM was not prejudiced by the Director exercising her discretion to not request a response.

II. MTM's "Third-Party" Arguments Fail to Address the Requirements in the Bid Solicitation and Division's Regulations, and the Hearing Unit Correctly Concluded that MTM was Non-responsive and Ineligible for Award.

As previously noted, 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

³ The State declines addressing MTM's arguments involving the self-serving marketing piece published on Modivcare's counsel's website regarding the public bidding process as it cites specifically to court rules that are not applicable in this setting.

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 argued 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”. The review of that record showed 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:	24DPP01040, T2503 - Transportation Broker Services, DHS
VENDOR NAME:	Medical Transportation Management, Inc. (dba MTM Health)
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?	

MTM clearly stated in its Quote that it would 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.

MTM’s Reconsideration argues that it’s not utilizing a subcontractor based on requirements drawn from multiple sections of the Bid Solicitation. They define subcontractors based on these requirements as “those third parties that assign management, supervisory, or key personnel to the Contract, perform an identifiable portion of the work, and possess qualifications and experience relevant to that assigned work.” Reconsideration, Page 6. MTM’s argument fails though because the Bid Solicitation clearly defines “subcontractor” in Section 9, which MTM fails to mention in its Reconsideration.

Pursuant to Bid Solicitation Section 9.2, *Definitions*, a “Subcontractor” is defined as:

An entity having an arrangement with a Contractor, whereby the Contractor uses the products and/or services of that entity to fulfill some of its obligations under its State Contract, while retaining full responsibility for the performance of all Contractor's obligations under the Contract, including payment to the Subcontractor. The Subcontractor has no legal relationship with the State, only with the Contractor.

A plain reading of this definition, either missed or ignored by MTM, when matched against the plain language in MTM’s Quote as shown above, leads to the plain fact that MTM’s “Third-Party Vendor” (or “outside operational resource” as stated on Reconsideration Page 7) is a Subcontractor under the Bid Solicitation. The language used by MTM is irrelevant when matched against the actual definition from the Bid Solicitation.

MTM’s Quote states that it is not using employees to provide the language interpreter services required in Bid Solicitation Section 4.7, *Call Center Requirements*, but is instead using a “Third-Party Vendor”. This would be an entity being used by MTM entity to fulfill some of its obligations under its State Contract. . . .” Additionally, MTM remains fully responsible for the performance of the Contract. The State has no connection to this “Third-Party Vendor”, including payment, so the Third-Party Vendor is either being paid by MTM or providing the services for free.

MTM also argues that its “Third-Party Vendor” is not a Subcontractor because it will not be performing the call center duties under Bid Solicitation Section 4.7.2, *Call Center Staff Responsibilities*, and will only assist. However, the “assistance” it would provide would satisfy the mandatory requirement under Bid Solicitation Section 4.7, *Call Center Requirements*, that “the Contractor **shall provide a language interpreter service. . .**” Emphasis added. Reemphasizing the point made above and based on the Bid Solicitation’s *actual* definition of a Subcontractor, MTM’s “Third-Party Vendor” would be an entity being used to fulfill some of MTM’s obligations under the Contract, and specifically those discussed in Bid Solicitation Section 4.7. As MTM notes, it otherwise retains full responsibility for performance of the Contract.

The question resolved in the August 20, 2026, FAD was whether MTM’s failure to provide information for subcontractor(s) on the Subcontractor Utilization Form was a material deviation that can not be waived, resulting in the Quote being non-responsive. That question was resolved in the affirmative.

As explained, 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 August 20, 2026, FAD correctly found that 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. That conclusion is only strengthened by the thorough analysis presented above.

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.

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 compliant 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).

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., *supra*, 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, *supra*, 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).

Here MTM’s Quote submitted in response to the Bid Solicitation stated that it was utilizing a “Third-Party Vendor” to provide the mandatory language interpreter service. First, the deviation deprives the State from the assurance that the contract will be performed according to the specified requirements because the Bidders cannot be accurately evaluated with contracts awarded based on who would actually be performing the required language interpreter service. Second, permitting MTM to provide the information post-Quote opening, or be permitted to not provide the required information at all, adversely affects competitive bidding because other Bidders submitted Subcontractor Utilization information as required by the Bid Solicitation. Thus, the August 28, 2026, FAD correctly deemed MTM’s Quote as non-responsive to the requirements of the Bid Solicitation, and that 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.

III. MTM Impermissibly Submitted Unsolicited Information With Its Reconsideration That Was Available Prior to the Close of the Protest Period, and MTM is Not Entitled to a Review of That Information.

As outlined in Section I above, the submission of documents is at the Director’s discretion in accordance with the Division’s regulations. See N.J.A.C. 17:12-3.1, et seq. Additionally, had a request been submitted to the Director following the end of the protest period, the response would not have been an opportunity to submit new information and arguments as MTM has chosen to do here. MTM’s response would’ve been limited to addressing the arguments outlined in Modivcare’s August 13, 2026, protest documents.

A review of Modivcare’s arguments show they focused on MTM’s failure to supply a Subcontractor Utilization Plan, that the Division impermissibly utilized a gross price comparison which materially overstated MTM’s purported cost advantage, and that Modivcare’s ability to obtain meaningful administrative review was prejudiced by the Division’s shortened Protest Period and failure to timely produce documentation. Additionally, Modivcare requested a stay that was unnecessary. Because MTM’s permitted response would’ve been limited to addressing the three arguments raised by Modivcare, the fresh issues raised in MTM’s Reconsideration were not requested, and are past the permitted protest period

submission date. As permitted under N.J.A.C. 17:12-3.3(b)(4), the Director may disregard these unsolicited portions of the Reconsideration.

IV. MTM is Not Entitled to a Stay of the contract award.

Because a request for a stay is an extraordinary remedy, the party who seeks a stay “must satisfy a ‘particularly heavy’ burden.” Gauman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006)). In exercising discretion to grant a request for stay, an agency must be guided by the four fundamental principles set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). First, a stay should be granted only “when necessary to prevent irreparable harm.” Id. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Second, “temporary relief should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Id. at 133 (citing Citizens Coach, 29 N.J. Eq. at 304-05). Third, the “plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Ibid. (quoting Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). The fourth and final consideration “is the relative hardship to the parties in granting or denying the relief.” Id. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

New Jersey courts have consistently held that a movant must clearly and convincingly demonstrate the right to a stay. Waste Mgmt. of N.J., Inc. v. Union County Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). As discussed in detail below, in reviewing each of the Crowe factors with respect to this request, MTM has not demonstrated that it is entitled to a stay.

With respect to each of the Crowe factors, I find as follows:

1. MTM will not suffer an irreparable harm if the stay is denied.

MTM will not suffer irreparable harm if the stay of the Blanket P.O. award is denied. In support of its position, MTM states that:

Absent a stay, the public and MTM Health will suffer irreparable harm because the appellate courts otherwise may be precluded from providing MTM Health relief on the merits if Modivcare and DHS execute the contract and Modivcare begins to perform. If Modivcare is permitted to proceed, DHS will incur a much higher price (relative both to the current contract and MTM Health’s proposal).

[MTM’s Reconsideration, Page 18.]

Additionally, MTM claims Modivcare cannot claim a harm since the bid opening date was moved multiple times during the procurement process. Id. At 19.

When considering a stay request, “harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe, supra, 90 N.J. at 132-33. While monetary damages are never available for the failure to award a public contract, not every request for stay that concerns a public contract award is granted. See, e.g., In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Mgmt. Servs., 436 N.J. Super. 350, 358 (App. Div. 2014) (denying stay of award of contract). This is one of the pillars underlying the public bidding laws. Moreover, even if MTM had previously provided services to the State, it does not entitle it to a contract in perpetuity. In re Motor Vehicle Comm’n Surcharge Sys. Accounting and Billing Servs., No. A-3136-16, at *13 (App. Div. Feb. 8,

2018). No bidder is entitled to award of a public contract. Comm'l Cleaning Corp. v. Sullivan, 47 N.J. 539, 546 (1966).

With respect to MTM's claim regarding execution of the Contract, this is inherent in the public procurement process, and a part of every contract awarded by the State. Additionally, there is no "loss of work" for any awarded vendor because they are well-informed in the Bid Solicitation that only an award makes them eligible to participate in the assigned work, and even then, the State makes no guarantee of assigned work volume. Bid Solicitation Section 3.25, *State-Supplied Price Sheet Instructions*. Moreover, the Contract provides a Non-Emergency Medical Transportation (NEMT) broker to arrange for non-EMT services for all eligible Medicaid Managed Care (MMC) and Fee-for-Service (FFS) Beneficiaries. This Contract provides an important service to New Jersey residents that cannot be delayed or stopped. Thus, maintaining the status quo is less favorable for the public's interest.

Finally, while MTM could suffer harm from not being awarded a Contract pursuant to this Bid Solicitation, this is a risk that a company routinely accepts when it participates in a public bidding process. Thus, MTM has not demonstrated by clear and convincing evidence that it will suffer irreparable harm if the Blanket P.O. award is not stayed.

2. MTM has the legal right to request a stay of the protest period.

The Division acknowledges that it is well-settled that a bidder claiming to be entitled to an award of a contract has standing to challenge the award of the contract to another. M.A. Stephen Construction Co., Inc. v. Borough of Rumson, 125 N.J. Super. 67, 74 (App. Div. 1973).

3. MTM has not demonstrated a reasonable probability of success on the merits.

In support of the Stay Request, MTM asserts that the Division's Final Agency Decision as a whole, was fraught with error and a misunderstanding of the law. As such, MTM opines that it will prevail on appeal.

The purpose of the public bidding process is to "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)). 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). Importantly, in general, "courts will not interfere with a Final Agency Determination which pertains to contract awards or rejecting a bid or bidders unless there is a finding of 'bad faith, corruption, fraud[,] or gross abuse of discretion.'" In re Jasper Seating Co., 406 N.J. Super. 213, 222, (App. Div. 2009). The Appellate Division had repeatedly

Our jurisprudence recognizes that the Legislature purposefully conferred broad discretion on the Director of the [DPP] to determine 'which bid will be most advantageous to the State. In re Jasper Seating Co., 406 N.J. Super. 213, 222, 967 A.2d 350 (App. Div. 2009) (quoting Sullivan, *supra*, 47 N.J. at 548). "[T]he Director's determinations 'as to . . . bid conformity are to be tested by the ordinary standards governing administrative action.'" Ibid. (quoting In re On-Line Games Contract, 279 N.J. Super. 566, 593, 653 A.2d 1145 (App. Div. 1995) (stating that "[c]ourts can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State

policy”)). Despite this “elevated scrutiny, ‘judicial capacity to review administrative actions is severely limited.’” Id. at 223 (quoting George Harms Constr. Co. v. Tpk. Auth., 137 N.J. 8, 27, 644 A.2d 76 (1994)).

[In re Bid Solicitation #11-X-21175, Snow Removal & Salting Servs. Statewide, 2012 N.J. Super. Unpub. LEXIS 2760, *7-8.]

In evaluating a reasonable probability of success on the merits, the review is restricted to a determination of whether the Director’s decision to award the contract is founded on “bad faith, corruption, fraud or gross abuse of discretion.” Commercial Cleaning Corp. v. Sullivan, 47 N.J. 539, 549 (1966); In re Jasper Seating Co., 406 N.J. Super. 213, 222 (App. Div. 2009). “[A]n appellate court will not upset an agency’s ultimate determination unless the agency’s decision is shown to have been “arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole.” Barrick, supra 218 N.J. at 259 (citing In re Stallworth, 208 N.J. 182, 194 (2011).) In reviewing the probability of success on the merits, the inquiry is limited to: (1) whether the agency’s action violated the legislative policies expressed or implied in the act governing the agency; (2) whether the evidence in the record substantially supports the findings on which the agency’s actions were premised; and (3) “whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.” Barrick, supra, 218 N.J. at 260, citing, In re Carter, 191 N.J. 474, 482 (2007).

In support of its Stay Request, MTM argues it will succeed because it was denied administrative due process and in a manner that failed to assure the public of the fairness of the proceeding. Moreover, the Final Agency Decision is based on clear errors, including the failure to analyze whether a third-party language translation vendor is a subcontractor and, if so, whether omission of that information is material or waivable. Even if the Decision were correct, there are also substantial reasons to believe that Modivcare cannot perform the contract because of its financial problems and because of its own material omissions in its bid.

The Division’s determinations, as fully outlined above and in the August 26, 2026, FAD, with respect to each of MTM’s Reconsideration points were fully supported by the governing statutes, regulations and case law. MTM has not demonstrated, because it cannot, that the Division acted in bad faith or exercised a gross abuse of discretion, such that the Division’s decision is likely to be overturned on appeal. As such, MTM is unlikely to succeed on appeal.

4. The balance of the relative hardship weighs in favor of denying the Stay Request.

Lastly, MTM has not established that the balance of relative hardships weighs in favor of granting of a stay. Importantly, MTM maintains its rights to file an appeal even if the Contract is permitted to proceed. Importantly, the public will benefit from the award and continued services of the Contract to provide transportation to its residents. As such, the State’s and the public’s interest in moving forward with the awarded Contract in order to satisfy the public purposes of procurement and the public’s transportation needs outweighs all of MTM’s legally cognizable interests.

Further, no argument exists here for the relaxation of the Crowe factors for a Stay Request, while the Court in Waste Mgmt. of New Jersey, Inc. v. Morris County Mun. Util. Auth., stated that “a court may take a less rigid view of the Crowe factors...when the interlocutory injunction is merely designed to preserve the status quo,” the Court limited that less rigid view to circumstances where “when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit

would be impaired or destroyed.” 433 N.J. Super. 445, 453-54 (App. Div. 2013). While the Crowe factors may be relaxed, there is no irreparable harm here as a justification for such relaxation.

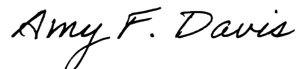
MTM has not established that the balance of the hardship weighs in its favor, that it will suffer irreparable harm or that the subject matter of the suit will be destroyed if the stay is not granted. Moreover, the Court in Waste Mgmt. recognized “the important role the public interest plays when implicated, as here, and have held that courts, in the exercise of their equitable powers, may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” Ibid. citing, Union County, supra, 399 N.J. Super. at 520-21. The State’s and the public’s interest in moving forward awarded Contract, in order to satisfy the public purposes of procurement, outweighs any of MTM’s legally cognizable interests. Conversely, the public will suffer hardship if the State and Modivcare are unable to move forward.

CONCLUSION

Based upon the foregoing, the August 20, 2026, FAD is affirmed. The matter remains with the Bureau so that the Contract can be awarded to Modivcare Solutions, LLC for the reasons outlined above and in the August 20, 2026, FAD.

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

CKK

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