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Protest Decision

Matter of:	ModivCare Solutions LLC
File No.:	2027-201
Posting Date:	August 5, 2026
Contracting Entity:	State Fiscal Accountability Authority, Division of Procurement Services
Solicitation No.s:	5400028336 and 5400029919
Description:	Non-Emergency Medical Transportation Coordinator Services

DIGEST

The Chief Procurement Officer (CPO) denies the protest of ModivCare Solutions LLC (ModivCare). ModivCare's protest is attached as Exhibit A.[1]

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. § 11-35-4210. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

On January 24, 2025, the State Fiscal Accountability Authority, Division of Procurement Services (DPS), issued Solicitation No. 5400027781 (The First Solicitation) on behalf of the Department of Health & Human Services (HHS), requesting proposals to provide Non-Emergency Medical

[1] Due to their volume, the CPO has not included ModivCare's protest Exhibit 1, the Second Solicitation; Exhibit 2, the Third Solicitation; Exhibit 3, CPO File 2026-104; Exhibit 4, Panel Case No. 2025-4; and Exhibit 5, the First Solicitation Amendment 3. All of these documents are publicly available on Procurement Services' website.

Transportation Coordinator Services.[2] After DPS received proposals in response to the First Solicitation but before DPS provided them to HHS's selection committee for evaluation, DPS realized there was a problem with the evaluation criteria in the solicitation. On May 2, 2025, DPS cancelled the First Solicitation and issued Solicitation No. 5400028336 (the Second Solicitation) in its stead. No one protested the cancellation of the First Solicitation, nor did anyone protest the Second Solicitation.

DPS received seven proposals in response to the Second Solicitation, including one from ModivCare and one from Medical Transportation Management, Inc. (MTM). After evaluating proposals, the State issued an Intent to Award to MTM. ModivCare protested that decision. The CPO sustained ModivCare's protest finding that MTM's proposal was nonresponsive and that the State engaged in unequal treatment in favor of MTM during the demonstration phase of the evaluation. [CPO File 2026-104] MTM appealed that decision to the Procurement Review Panel (the Panel). The Panel affirmed the CPO's decision with regard to responsiveness and did not address the unequal treatment issue. *Appeal by Medical Transp. Mgmt., Inc.*, Panel Case No. 2025-4. With the Panel's affirmation of the CPO's decision on responsiveness, the result was that the matter, i.e. the Second Solicitation, was remanded back to DPS "to proceed in accordance with the Procurement Code."

DPS took no further action under the Second Solicitation. However, on June 26, 2026, DPS issued Solicitation Number 5400029919 (the Third Solicitation) which also solicited services to provide Non-Emergency Medical Transportation Coordinator Services. This protest ensued.

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[2] The attempt to acquire Non-Emergency Medical Transportation Coordinator Services actually goes back to 2014. Moreover, the last time a competitive contract for Non-Emergency Transportation Services was awarded goes back to 2011.

On September 9, 2010, the State solicited proposals to provide Non-Emergency Transportation Services. After a protest, the State finalized an award to Logisticare Solutions LLC, now ModivCare, with maximum contract period of May 26, 2011, through May 25, 2016.

On August 26, 2014, HHS acting under a delegation from the CPO, solicited proposals provide Transportation Coordinator to Manage the Daily Functions of the South Carolina Non-Emergency Medical Transportation Program. [Solicitation No. 54000083862, and CPO File 2016-132] On February 16, 2026, HHS issued a notice of intent to award. Logisticare and one other offeror protested. [CPO Files 2016-132 and 2016-133] The CPO denied both protests. Logisticare appealed to the Panel. While the appeal was pending, HHS requested the CPO cancel the intended award and the solicitation. [CPO File 2016-132A] On August 31, 2016, the CPO canceled the award and the solicitation.

The CPO can find no record of a new solicitation for Non-Emergency Medical Transportation Coordination Services from the cancelation of Solicitation No. 5400008382 in August 2016 until the issuance of Solicitation No. 5400027781 in January 2025. This does not mean the State has been without these services. From the expiration of its contract awarded in 2011 until the present, Logisticare/ModivCare has been providing these services via some form of a contract with HHS awarded without competition and apparently outside the Consolidated Procurement Code.

On July 28, MTM, as a potential offeror and, therefore, a party interest, filed a response to ModivCare's Protest. [Exhibit B] On July 30, ModivCare filed a reply to MTM's response. [Exhibit C]

The three solicitations can be found at the following web addresses:

> https://apps.sceis.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400027781 (First Solicitation);
>
> https://apps.sceis.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitnumber=5400028336 (Second Solicitation);
>
> https://apps.sceis.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400029919 (Third Solicitation).

DISCUSSION

The State's act of issuing the Third Solicitation after the CPO and Panel vacated the award in the Second Solicitation was a de facto cancellation of the Second Solicitation. *See Matter of: Mission Analytics*, LLC, B-423165.5 (Comp. Gen. 2026), 2026 WL 497559 (finding in the circumstances an agency's "de facto cancellation by proceeding with a different solicitation and award" would have been reasonable).

In this protest, ModivCare ultimately contends that as a result of the CPO and Panel's decisions on its protest of the State's intended award under the Second Solicitation, it was the highest-ranked offeror and the State should have awarded it the contract rather than cancelling the Solicitation. In support of its contention, ModivCare first argues DPS did not follow the Procurement Code procedures for cancellation of the Second Solicitation. ModivCare further argues that the Procurement Code only permits cancellation of solicitations after receipt of proposals under limited circumstances, none of which exist in this case.

I. <u>Allegation the Procurement Code Requires a Publicly Written and Documented Basis for Cancellation</u>.

ModivCare correctly observes that cancellation of a solicitation per Section 11-35-1710 and Regulation 19-445.2097 requires written documentation giving the reasons for cancellation. Importantly, Regulation 19-445.2097B requires the procurement officer to make a written determination of why cancellation is in the interest of the State. Any such determination must be sufficient to effectively inform State governmental leaders why cancellation is in the interest of the state and to provide the citizens of the state with a window into the decision-making process. *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003)

ModivCare correctly asserts that the procurement officer failed to prepare a written determination setting forth grounds for the cancellation of the Second Solicitation.[3] However, the Procurement Code does not support ModivCare's conclusion that having failed to provide a written reason for cancellation of the Second Solicitation at some unspecified time in the past, the State is precluded from doing so now. The Procurement Code simply does not provide a time limit in which the State is required to exercise its right to cancel a solicitation after receipt of proposals other than it must be done before a final intent to award is made. In the case of the Second Solicitation, there has been no final intent to award. Moreover, the State's authority to cancel a solicitation is broad and to do so, the State need only establish a reasonable basis. *Matter of: Mission Analytics, LLC*, *supra*.

Finally, challenges to an inadequate written determination, standing alone, generally fail to state a claim for relief, and a CPO's written decision may cure defects in a written determination. *Appeal by Intralot*, Panel Case No. 2017-8 ("Even if this issue had been timely raised, the Panel expresses doubt that a complaint that the procurement file is not sufficient to satisfy an internal audit would be a basis for overturning an award."); *Truven Health Analytic,* Panel Case No. 2017-3 (finding CPO decision may cure defects in written determination); *Appeal by PS Energy*, Panel Case No. 2002-9 (same). Any theoretical violations of the documentation requirements are harmless, and ModivCare has suffered no prejudice because it has not been excluded from participating in the Third Solicitation.

II. Allegation that no Valid Reason Exists for Cancelling the Second Solicitation.

Section 11-35-1710 of the Procurement Code states:

> Any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the State. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.[4]

Regulation 19-445.2097 states:

> A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-

[3] Although ModivCare complains about the lack of a contemporaneous record of the decision to cancel the Second Soliication, HHS informed DPS on February 18, 2026, roughly one month after the Panel's order, that it will issue a re-solicitation because "Program area are making some changes to the scope." [Ex. D]. This document may not suffice as a written determination, but it is evidence of HHS's intentions for resoliciting.

[4] ModivCare argues that the State's documentation is not sufficient to satisfy external audit. As pointed out by MTM the purpose of retaining files sufficient to satisfy external audit is facilitate audits by the State. Nonetheless, to the extent the record lacked a required written determination, that deficiency may be satisfied by the CPO's decision.

> 1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.
>
> B. Cancellation of Solicitation Prior to Award.
>
> (1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:
>
> (a) inadequate or ambiguous specifications were cited in the solicitation;
> (b) **specifications have been revised**;
> (c) the supplies, services, information technology, or construction being procured are no longer required;
> (d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
> (e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;
> (f) all otherwise acceptable proposals received are at unreasonable prices;
> (g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
> (h) for other reasons, **cancellation is clearly in the best interest of the State**.
>
> (2) Determinations to cancel a request for proposals shall state the reasons therefor.
>
> [emphasis supplied]

The Second Solicitation contained a provision alerting potential offerors that the State retained the right to cancel the solicitation:

> The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]
>
> RFP No. 5400028336, Section 2.26.

As observed by MTM, "contrary to ModivCare's assertion that the specifications did not change between the 2025 [Second Solicitation] and 2026 [Third Solicitation] RFPs, a review of the 2026 RFP shows significant changes in the specifications." For example, the solicitation changed the use and format of demonstrations, added a new special standard of responsibility, made additional AI disclosure requirements, and changed the evaluation criteria and evaluation process.[5] Attachment 10 to the Solicitation made substantial changes to AI usage and information security and use disclosures, changes in certain pickup times and preferences, allowances for stretcher van services, and requirements for quarterly fraud, waste, and abuse reports.[6]

In addition to the change in specifications, for other reasons which are discussed below in response to ModivCare's grounds of protest cancellation of the Second Solicitation is in the State's best interest.

III. Allegation that Cancellation of the Second Solicitation Is Not "Clearly in the States Best Interest."

ModivCare argues that the record of the Second Solicitation "affirmatively suggest that cancellation was contrary to the State's interest. ModivCare further argues that under the circumstances "continuation of the existing procurement [Second Solicitation], **not** abandonment or cancellation, appears to have been the option most consistent with the State's interests." ModivCare also argues that under the circumstances, the State could have no logical basis for abandoning the Second Solicitation and commencing the Third Solicitation. ModivCare alleges that any reason the State may have to do so is "arbitrary, capricious, constituted an abuse of discretion, and should be reversed."

The CPO observes that it is a fundamental concept of sovereignty that the State, not the vendor, is tasked with determining what is in the State's best interest. *See Appeal by Helena Chem. Co.*, Panel Case No. 2001-5 ("what is in the best interest of the State can only be determined by the State"). As noted above, the fact that specifications have been revised is one rational reason cancellation is in the

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[5] The Solicitation, for example, has the following material changes: 2.32 (deletion of tax credit), 2.34 (addition of a pre-bid conference), 2.39 (changes to use and format of demonstrations), 4.1.3.1 (addition of new special standard of responsibility), 4.1.3.2.8.1 (additional of AI disclosure requirements), 4.1.3.2.9 (information for proposal evaluation that includes proposed efficiency improvements), 6.5.1 (evaluation criteria changes), 6.5.4 (changes to evaluation process).

[6] For example, Attachment 10 to the Solicitation contains material changes or additions at 5.1.6 (preference to atypical providers), 5.3.3.6 (changes to non-urgent pickup times), 6.7.3.2.1 (changes to vehicle safety requirements), 6.7.11.14 (deletion of additional assessment standards for older or high-mileage vehicles), 6.9.6 (allowance for hands free devices for trip-related communications), 8.5.5.4 (trip cancellation criterion), 8.7.1.2 (requirement for transportation for all BLS or ALS transportation for fee-for-service members), 8.7.4.1. (mileage reimbursement where undue financial hardship exists), 8.7.6.1.1. (requests for preferred transportation network companies), 8.7.6.3 (reporting requirements for use of "TNC utilization."), 8.7.8 (allowance for stretcher van service), 8.13.2 (exceptions to real-time tracking of transportation providers), 9.1.2 (changes in waiting times), 11.2.13 (requirements for quarterly fraud/waste/abuse reports), 12.2.4.1 (changes in security and privacy control standards), 12.2.4.2 (same, including addition of AI and FERPA standards), 12.2.5.7 (requirement for security and privacy related deliverables), 12.2.9 (AI requirements), 17.27 (changes in conflict of interest reporting, making it a material requirement, and allowances for the State to terminate for convenience if conflict exists), 17.50 – 17.54 (four new sections on information security and information use and disclosure).

State's interest. These are material changes that fundamentally changed the scope of the services and the evaluation process. It was up to the State to determine whether these changes were in its best interests.

ModivCare itself is an example of what can happen over a relatively brief period of time. The State received proposals for the Second Solicitation on May 14, 2025, and completed evaluation of proposals by June 11, 2025. On July 3, 2025, after negotiating with MTM, the State posted the Intent to Award which was subsequently vacated by the CPO and the Panel. All of that was just over a year ago. Since then, ModivCare filed Chapter 11 Bankruptcy as a publicly traded company, reorganized, and came out of Bankruptcy as a privately held company. MTM argues with some merit that ModivCare is not the same company the State evaluated in May and June of 2025. Whether ModivCare came out of Bankruptcy as a weaker company or, as argued by ModivCare, a stronger company financially is beside the point. The State has a real interest in testing the market as it exists today, rather than as it existed a year ago.

ModivCare also anticipates an argument that *In re Protest of Carter Goble Associates, Inc.*, Case No. 1989-25, mandates resolicitation in this case. In reply, MTM argues that it does.

In *Carter Goble*, the Panel stated that just because award to the highest ranked offeror was canceled due to nonresponsiveness, that did not mean that the second highest ranked offeror was automatically entitled to award. The Panel went on to order resolicitation. Whether or not *Carter Goble* mandates cancellation of the Second Solicitation and issuance of a new solicitation in this case, the CPO need not decide.[7] *Carter*

[7] ModivCare's argument assumes that if *Carter Goble* is not applicable to this situation and the State is otherwise prevented by the Procurement Code from canceling the Second Solicitation that the State has no other option than to award a contract to it. ModivCare is mistaken. At the time of *Carter Goble*, the Procurement Code did not allow discussions with offeror's "to assure full understanding of, and responsiveness to, the solicitation requirements." Thus, in circumstances such as presented here, the State only had two viable options, cancel the solicitation and resolicit or award to the next highest ranked offeror. In *Carter Goble,* the Panel found the second option unpalatable. Subsequently, the General Assembly amended Section 11-35-1530(6) to allow discussions. [2006 Act No. 376 and 2019 Act No. 41] With this change, the State has a third option. The State could engage in discussions with MTM to cure its non-responsiveness and re-evaluate proposals. *See Appeal by Blue Cross & Blue Shield of S.C.*, Panel Case No. 2019-2 (noting that, although discussions "ordinarily" occur prior to final ranking, the language is not limiting, and agency properly entered discussions after initial evaluation, ranking, and negotiations, and then re-evaluated proposals). However, in this case, the State has decided that neither the option of awarding to the next highest ranked offeror nor the option of engaging in discussions with MTM and re-evaluating proposals is in its best interest.

The CPO notes that ModivCare's protest argues that the Panel's decision in *Appeal by Medical Transp. Mgmt., Inc., supra*, states that the State cannot cure material non-responsiveness using discussions. However, those statements are dicta and they conflict with the clear language of Regulation 19-445.2095(I)(2). Moreover, the Panel has clearly acknowledged elsewhere that discussion may be used to cure issues of nonresponsiveness. *Appeal by Blue Cross & Blue Shield of S.C., supra*; and *Appeal by Idemia Identity & Security USA, LLC*, Panel Case No. 2022-1. Without this tool, which the State has used

Goble provides important rationale why the State may believe it is in its best interest to cancel the solicitation and resolicit under such circumstances. The Panel noted that evaluation panels necessarily evaluate offers in relation to one another. Simply removing MTM from the mix and accepting the remaining scores as is does not accurately reflect what the result would have been had MTM never been included in the evaluation. Under such circumstances, it is not unreasonable for the State to believe, as the Panel did in *Carter Goble*, that it is in its best interest to resolicit proposals "to insure the State gets the most advantageous proposal."

DECISION

For the reasons stated above, the CPO finds that the State de facto cancelled the Second Solicitation for valid reasons and to remove all doubt hereby cancels the Second Solicitation and denies ModivCare's protest.

John St. C. White
Chief Procurement Officer

Columbia, South Carolina

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extensively since 2007, many complex procurements (particularly for information technology) would fail upon receipt of proposals.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2025)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: http://procurement.sc.gov

FILING FEE: Pursuant to Proviso 111.1 of the 2025 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410…Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C SubscribeITs, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201

______________________________ ______________________________
Name of Requestor Address

______________________________ ______________________________
City State Zip Business Phone

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1. What is your/your company's monthly income? ______________________________

2. What are your/your company's monthly expenses? ______________________________

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

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To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_______ day of _______________, 20_______

______________________________ ______________________________
Notary Public of South Carolina Requestor/Appellant

My Commission expires: ______________________

For official use only: ________ Fee Waived ________ Waiver Denied

____
Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of ________________, 20_______
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.