Exhibit A

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VIA EMAIL TO: protest-mmo@mmo.sc.gov
Chief Procurement Officer, Materials Management Office
State Fiscal Accountability Authority
1201 Main Street, Suite 600
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RE: FOIA Protest of ModivCare Solutions, LLC in Connection with the Abandonment of the Department of Health & Human Services Solicitation No. 5400028336 and Issuance of Solicitation No. 5400029919

Dear Chief Procurement Officer:

ModivCare Solutions, LLC ("ModivCare"), through its undersigned counsel, respectfully submits this protest in connection with the abandonment of Solicitation No. 5400028336 ("Request for Proposals" or "RFP"), Exhibit ("Ex.") 1 and subsequent issuance of Solicitation No. 5400029919, Ex. 2, both issued by the State Fiscal Accountability Authority ("SFAA"), Division of Procurement Services ("DPS") on behalf of the Department of Health & Human Services ("SCDHHS") for procurement of a Non-Emergency Medical Transportation ("NEMT") coordinator to arrange for NEMT services for all eligible Medicaid Managed Care ("MMC") and Fee-for-Service ("FFS") Beneficiaries.

I. INTRODUCTION

This protest concerns an extraordinary procurement action by the State of South Carolina—the State's decision to abandon Solicitation No. 5400028336 and issue a replacement solicitation,

Solicitation No. 5400029919, the third such solicitation concerning the procurement of nonemergency medical transportation, following the conclusion of extensive protest and appellate proceedings. The underlying procurement followed a lengthy and highly competitive process.

After evaluating proposals submitted by ModivCare, Medical Transportation Management, Inc. ("MTM"), and other offerors, the State issued an Intent to Award to MTM. ModivCare timely protested that decision. The Chief Procurement Officer ("CPO") sustained ModivCare's protest, finding that MTM's proposal was nonresponsive and that the State had engaged in unequal treatment against ModivCare during the demonstration phase of the procurement. The Procurement Review Panel ("PRP") subsequently affirmed the CPO's decision. The result was a final administrative determination sustaining ModivCare's protest on grounds that MTM submitted an unresponsive proposal and remanding the procurement to proceed in accordance with the Procurement Code.

Neither the CPO nor the PRP directed the State to cancel Solicitation No. 5400028336. *See* Exs. 3, CPO Decision, & 4, PRP Decision. Neither decision ordered resolicitation, referenced the decision *In Re Protest of Carter Goble Associates*, Case No. 1989-25 (S.C. Proc. Rev. Panel 1990), or otherwise required the State to abandon the procurement. Instead, the operative directive remained the CPO's instruction that DPS proceed in accordance with the Procurement Code, which directs the agency to (1) cancel the solicitation, (2) revise the solicitation to comply with the law and rebid, or (3) award the contract in a manner that complies with the code itself. S.C. Code Ann. § 11-35-4310(2).

Nevertheless, rather than continue the procurement following remand, the State, without explanation, abandoned Solicitation No. 5400028336 and issued an entirely new solicitation. At the time of cancellation, the State provided no publicly available written determination explaining why cancellation was required, identified no legal authority compelling that result, and provided none of the offerors with any analysis of alternative courses of action.

This protest presents three related questions. First, whether the State complied with the South Carolina Consolidated Procurement Code when it abandoned Solicitation No. 5400028336 and commenced a new procurement without a publicly identified determination satisfying the requirements of the Procurement Code and Procurement Regulations. Second, whether the State acted arbitrarily and capriciously by abandoning Solicitation No. 5400028336 rather than implementing corrective action after ModivCare successfully established that MTM was ineligible for award, thereby denying ModivCare the benefit of the competitive process and the administrative remedies afforded by the Procurement Code. Third, whether the abandonment decision was based upon an erroneous belief that cancellation was legally compelled by prior administrative decisions, such as *Carter Goble*.

The Procurement Code does not permit cancellation of a solicitation merely because a protest has been sustained and the intended awardee has been found to be nonresponsive. Rather, cancellation authority is limited by statute and regulation and must be supported by appropriate findings and documentation. Based on the information presently available, the State has failed to identify any lawful basis supporting its decision to abandon Solicitation No. 5400028336. Because the cancellation of that solicitation and issuance of Solicitation No. 5400029919 was contrary to the Procurement Code, arbitrary and capricious, and inconsistent with the prior administrative decisions governing the procurement, this protest should be sustained and the contract should be awarded to ModivCare.

II. FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. ModivCare and Its History Providing NEMT Services

ModivCare is one of the nation's leading providers of NEMT management and brokerage services. For nearly three decades, ModivCare has coordinated transportation services for Medicaid beneficiaries, managed care organizations, and governmental healthcare programs throughout the United States. ModivCare currently administers transportation programs serving millions of members and has developed extensive expertise in network development, provider management, call-center operations, fraud prevention, utilization management, and large-scale transportation coordination.

ModivCare has served as South Carolina's NEMT broker since 2007. During that time, ModivCare has developed an extensive statewide network of transportation providers, accumulated significant institutional knowledge regarding South Carolina's Medicaid population and transportation needs, and successfully coordinated transportation services for hundreds of thousands of beneficiaries throughout the State. ModivCare's incumbent experience has required it to develop transportation capacity in urban and rural areas alike, establish relationships with providers throughout South Carolina, and implement systems capable of ensuring compliance with federal and state Medicaid requirements.

Because of its longstanding service to South Carolina and extensive experience administering NEMT programs nationwide, ModivCare possesses substantial knowledge regarding the procurement history and operational requirements associated with South Carolina's NEMT program. ModivCare therefore has a significant interest in ensuring that procurements involving these services are conducted in accordance with the Procurement Code and that offerors, including ModivCare, are treated fairly and equitably throughout the procurement process.

B. Solicitation No. 5400027781

On January 24, 2025, DPS, acting on behalf of SCDHHS, issued Solicitation No. 5400027781 seeking proposals for statewide NEMT coordinator services. Ex. 5, Solicitation No. 5400027781. The solicitation contemplated award of a contract for administration of South Carolina's Medicaid transportation program and attracted significant interest from NEMT providers, including both ModivCare and MTM.

Following several amendments, the State established April 23, 2025, as the deadline for submission of proposals. ModivCare devoted substantial time and resources preparing and submitting proposals responsive to the State's requirements. By the proposal deadline, the State had received several proposals and the competitors' positions had effectively been revealed.

After proposals had been received, but before evaluations were completed, DPS sua sponte decided to cancel Solicitation No. 5400027781 and issue a revised the solicitation, Solicitation No. 5400028336. Exs. 5, & 6, Notice of Cancellation for Solicitation No. 5400027781. The most significant change between the two solicitations was the addition of a scored demonstration component worth 200 evaluation points. Although demonstrations had been contemplated under the prior solicitation, Solicitation No. 5400028336 elevated the demonstration process into a significant scored evaluation factor capable of materially affecting overall rankings and award outcomes.

C. Solicitation No. 5400028336

Following cancellation of Solicitation No. 5400027781, the State proceeded under Solicitation No. 5400028336. The solicitation required offerors to submit proposals by May 14, 2025. Seven offerors responded to the solicitation, including ModivCare and MTM. DPS ultimately determined that four proposals were responsive and advanced to evaluation.

The solicitation established a multi-factor evaluation process consisting of Technical Approach, Qualifications, Rates, and Demonstrations. Technical Approach carried a possible 1,000 points, Qualifications carried 250 points, and Demonstrations carried 200 points. Rates were evaluated on a pass/fail basis. As a result, the newly added demonstration component represented a significant portion of the total available evaluation points.

Following evaluation of the written proposals, MTM and ModivCare were scored as the two highest-ranked offerors and advanced to the demonstration phase. Ex. 7, Evaluator Explanation Summary. MTM received 1,165 points, ModivCare received 1,137.5, Verida received a total score of 647.5 points and MediTrans received a total score of 550 points. *Id.* Under the solicitation, only offerors with a mathematical possibility of achieving the highest-ranked position advanced to demonstrations. Because neither Verida nor MediTrans had a mathematical possibility of becoming the highest-ranked offeror, both were excluded from the demonstration phase.

The State conducted demonstrations on June 11, 2025. MTM subsequently received 190 demonstration points while ModivCare received 100 demonstration points. *Id.* Following completion of demonstrations and scoring, MTM received a total score of 1,355 points while ModivCare received a total score of 1,237.5 points. *Id.* DPS thereafter opened negotiations with MTM. Ex. 8, Negotiation Letter.

On July 3, 2025, DPS issued an Intent to Award identifying MTM as the successful offeror. Ex. 9, Intent to Award.

D. ModivCare's Protest of the Intent to Award

Following issuance of the Intent to Award, ModivCare timely filed a protest pursuant to the South Carolina Consolidated Procurement Code. Ex. 3, CPO Decision. Among other things, ModivCare challenged the responsiveness of MTM's proposal, the State's evaluation of proposals, disparate treatment during the demonstration phase, documentation deficiencies, and the State's earlier cancellation of Solicitation No. 5400027781.

The CPO conducted an administrative review pursuant to Section 11-35-4210, including a hearing held on September 3, 2025. On October 2, 2025, the CPO issued a written decision granting ModivCare's protest in part. *Id.* The CPO sustained two protest grounds that he found dispositive. *Id.* at 21. First, the CPO determined that MTM's proposal was nonresponsive because of the manner in which MTM incorporated VeyoRide into its proposed solution. *Id.* at 13–14. The CPO found that MTM repeatedly described VeyoRide as an integral component of its network-development and service-delivery approach despite solicitation provisions prohibiting the contractor from providing transportation through affiliated transportation providers. According to the CPO, MTM's proposal created a material ambiguity regarding whether MTM intended to rely upon VeyoRide in performing the contract. The CPO further concluded that the State improperly evaluated and ranked MTM's nonresponsive proposal, in clear violation of the Procurement Code.

Second, the CPO sustained ModivCare's protest concerning disparate treatment during the demonstration phase. *Id.* at 16. The CPO found that the State initially instructed offerors to limit demonstration participants to three individuals but later allowed MTM, at MTM's request, to utilize six presenters. ModivCare was not afforded the same opportunity under the same circumstances. The CPO concluded that the State failed to treat offerors equally during a scored portion of the procurement and that the resulting error could not be considered harmless.

The CPO rejected a number of ModivCare's remaining protest allegations. Relevant here, the CPO rejected ModivCare's challenge to the cancellation of Solicitation No. 5400027781. *Id.* at 18. The CPO did not conclude that the cancellation was substantively proper. Instead, he held that any challenge to the cancellation of Solicitation No. 5400027781 or to the addition of demonstration scoring in Solicitation No. 5400028336 was untimely and therefore declined to reach the merits of those issues. The basis for that ruling was that a challenge to the cancellation itself had to be asserted within fifteen days of issuance of the replacement solicitation and could not be preserved by a later protest of the resulting award. The CPO therefore held that any challenge to the cancellation of Solicitation No. 5400027781 was untimely because it was not asserted within fifteen days following issuance of Solicitation No. 5400028336. *In re Protest of ModivCare LLC*, Case No. 2026-104, at 18 (Oct. 2, 2025).

Having sustained ModivCare's protest on the nonresponsiveness and disparate-treatment grounds, the CPO concluded that those errors required invalidation of the intended award to MTM. The CPO therefore sustained the protest and remanded the procurement to DPS "to proceed in accordance with the Procurement Code." *Id.* at 21. The CPO's decision did not direct cancellation of Solicitation No. 5400028336, did not direct resolicitation, and did not otherwise prescribe a particular course of action on remand other than to fully comply with the Procurement Code.

E. Procurement Review Panel Proceedings

MTM appealed the CPO's October 2, 2025, decision to the PRP pursuant to Section 11-35-4410 of the Procurement Code. The parties agreed that the matter could be decided on the written record without an evidentiary hearing. On January 16, 2026, the PRP issued a Final Order affirming the CPO's decision. Ex. 4, PRP Decision. The Panel concluded that MTM's proposal was nonresponsive because it contained a material ambiguity concerning MTM's intended reliance upon VeyoRide. According to the Panel, MTM described VeyoRide inconsistently throughout its proposal, characterizing it both as a key component of its proposed solution and as an optional enhancement. The Panel concluded that those competing descriptions created more than one reasonable interpretation concerning compliance with a material solicitation requirement and therefore rendered the proposal nonresponsive.

The Panel further determined that contemporaneous evaluation records demonstrated that evaluators themselves viewed VeyoRide as creating uncertainty during the evaluation process. The Panel also addressed the State's subsequent clarification request to MTM and noted that clarification was not sought until after evaluations had been completed and after MTM had been identified as the intended awardee.

In its conclusions of law, the Panel stated that discussions may clarify minor uncertainties but "may not cure a material ambiguity that renders a proposal nonresponsive at the time of submission." *Id.* at 8. The Panel further stated that "a proposal that is nonresponsive as submitted cannot be rendered responsive through post-submission discussions or negotiations," *id.* at 9, and concluded that the State lacked authority to evaluate, rank, or cure MTM's proposal through post-submission clarification.

Having determined that MTM's proposal was nonresponsive, the Panel found that issue dispositive and found it unnecessary to reach the separate issue concerning disparate treatment during the demonstration phase. The Panel's order did not direct cancellation of Solicitation No. 5400028336, did not direct resolicitation, did not reference *Carter Goble*, and did not identify any particular corrective action that DPS was required to undertake. Instead, the operative portion of the order provided: "[f]or the foregoing reasons, the October 2, 2025, decision of the CPO, sustaining ModivCare's protest, is AFFIRMED." *Id.* at 11.

F. Post-Order Communications Concerning the PRP Decision

Shortly after issuance of the PRP's Order, counsel for the State and representatives of the PRP exchanged in communications concerning the scope of the decision and the treatment of nonresponsive proposals in competitive sealed proposal procurements.

In an email dated January 16, 2026, Assistant General Counsel Manton Grier advised the Panel that, although the CPO agreed with the result reached by the Panel, he questioned portions of the Panel's discussion concerning whether a nonresponsive proposal could be cured through discussions. Ex. 10 . Mr. Grier specifically referenced the Panel's statements that discussions may not cure a material ambiguity, rendering a proposal nonresponsive and that a proposal that is nonresponsive as submitted cannot be rendered responsive through post-submission discussions or negotiations.

Mr. Grier advised that the CPO believed Procurement Regulation 19-445.2095(I)(2)(b) permits correction of deficiencies that would otherwise render a proposal nonresponsive and represented that "the way our agency fundamentally operates on requests for proposals is to allow procurement officers to correct non-responsive proposals during discussions." *Id.*

Mr. Grier further stated that "[t]he CPO believes it could have been cured, but it never happened; hence why his hands were tied in finding the proposal non-responsive." *Id.* On January 20, 2026, PRP General Counsel Stephen O'Keefe responded on behalf of the Panel Chair. Mr. O'Keefe advised that the Panel believed its Order was sufficiently clear and stated that the Panel's determination "turned on the proposal's condition at submission and the timing of the State's clarification request rather than discussions under section 11-35-1530(6)." *Id.* Mr. O'Keefe further advised that, if the CPO believed clarification was necessary, the appropriate procedure would be to file a motion seeking clarification. No motion for clarification was filed.

G. Unlawful Abandonment of Solicitation No. 5400028336 and Issuance of Solicitation No. 5400029919

Following completion of the protest and appellate proceedings, DPS chose to simply and unlawfully abandon Solicitation No. 5400028336 without any formal notice. On June 26, 2026, DPS issued Solicitation No. 5400029919. Ex. 2. The issuance of this new solicitation represented the first substantive procurement action taken by the State following resolution of the protest and appellate proceedings involving Solicitation No. 5400028336, which remains to this date still outstanding and validly existing. *See* Ex. 11, Solicitation No. 5400028336 Notices Page & Ex. 12, Contract Details Page.

At the time Solicitation No. 5400029919 was issued, DPS did not publicly disclose any written determination canceling Solicitation No. 5400028336. DPS likewise did not publicly provide any legal analysis, procurement determination, factual findings, consideration of alternatives, or explanation concerning why completion of Solicitation No. 5400028336 was allegedly impossible or inappropriate. Nor did DPS identify any Procurement Code provision, regulation, administrative decision, or appellate ruling requiring cancellation of Solicitation No. 5400028336.

Accordingly, based upon the public record presently available, DPS simply abandoned Solicitation No. 5400028336 and initiated Solicitation No. 5400029919 without making any formal decision about providing offerors any explanation of the basis for that decision or any official cancellation notice.

H. ModivCare's Requests for Procurement Records

Following issuance of Solicitation No. 5400029919, ModivCare sought access to records concerning the cancellation decision and the State's actions following the PRP's decision pursuant to S.C. Code Ann. § 11-35-410(F). Ex. 13, FOIA Request. Among other things, ModivCare requested records relating to the cancellation of Solicitation No. 5400028336, the State's evaluation of available remedial options following the protest proceedings, communications among procurement officials and consultants, analyses concerning available courses of action, and documents explaining the rationale, if any existed, for abandoning Solicitation No. 5400028336 in favor of a new solicitation.

Despite the central relevance of those materials to the issues presented by this protest, the State has thus far not produced requested records pursuant to the Procurement Code's expedited disclosure provisions that provide any analysis whatsoever. Instead, the State has indicated that it believes that, in this case, it may rely upon ordinary FOIA timelines and has asserted that many of the requested materials constitute source-selection information or otherwise protected procurement information. Ex. 14, Grier FOIA Response Email & Ex. 15, FOIA Deadline Position Response Letter.

As a result, ModivCare has been forced to prepare and file this protest with only limited documents, none of which show that any statutorily required analysis was performed prior to making the decision to abandon Solicitation No. 5400028336. ModivCare therefore expressly reserves the right to supplement this protest if any further production of responsive records is made and further develop the administrative record based upon any such submitted documents.

III. GROUNDS FOR PROTEST

The foregoing facts reveal a procurement that was fully conducted, fully evaluated, subjected to both protest and appellate review, and ultimately remanded for further action consistent with the Procurement Code. The CPO sustained ModivCare's protest and directed DPS to proceed in accordance with the Procurement Code. The PRP affirmed that decision. Neither decision directed cancellation of Solicitation No. 5400028336, required resolicitation, or otherwise mandated that DPS abandon the procurement and begin anew.

Nevertheless, DPS elected to abandon Solicitation No. 5400028336 without explanation and issue Solicitation No. 5400029919. At the time of abandonment, DPS did not publicly disclose any determination, as required by law, explaining why abandonment was required, identify the legal authority supporting its decision, or provide any explanation as to why the remanded procurement could not proceed through one of the remedial options available under the Procurement Code.

Compounding that uncertainty, post-appeal communications demonstrate that procurement officials themselves disagreed regarding the significance of the PRP's decision and the extent of the State's authority following remand. *See* Ex. 10. Those communications further underscore that cancellation was not expressly directed by either the CPO or the PRP and that the proper path forward was the subject of contemporaneous debate among State officials.

The Procurement Code does not permit a governmental body to abandon a completed procurement simply because a protest has been sustained or because procurement officials prefer a different outcome. Rather, cancellation authority is limited by statute and regulation and must be supported by appropriate findings, written determinations, and a documented rationale. To date, the state has provided no evidence that was made.

ModivCare therefore challenges both the State's authority to abandon and/or cancel Solicitation No. 5400028336 and the apparent legal premise upon which the abandonment decision was made. The specific grounds for protest are set forth below.

A. The State Violated the Procurement Code by Abandoning Solicitation No. 5400028336 and Issuing Solicitation No. 5400029919 Without Complying with the Requirements Governing Cancellation.

1. The Procurement Code Requires a Publicly Written and Documented Basis for Cancellation.

The South Carolina Consolidated Procurement Code does not permit a governmental body to abandon a completed procurement merely because a protest has been sustained or because procurement officials prefer to restart the competition. Cancellation is a regulated procurement action that may be taken only in accordance with the requirements of the Procurement Code and applicable regulations.

Both the Procurement Code and the Procurement Regulations recognize that cancellation is an extraordinary remedy because it disrupts competition, undermines the finality of procurement decisions, and imposes substantial costs on both the State and participating offerors. Accordingly, cancellation is permitted only when supported by appropriate findings and documentation.

The Code provides that a solicitation may be cancelled "when it is in the interest of the State," but expressly requires that "[t]he reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file." S.C. Code Ann. § 11-35-1710. Likewise, implementing regulations require a written determination supporting cancellation and further provides that "[d]eterminations to cancel a request for proposals shall state the reasons therefor." S.C. Code Ann. Regs § 19-445.2097(B)(2) Those requirements reflect the broader mandate that written determinations be retained in the contract file and documented in sufficient detail to satisfy audit requirements. *See* S.C. Code Ann. §§ 11-35-210(A), 11-35-1710.

These requirements advance the Procurement Code's core objectives of fostering competition, ensuring integrity in public procurement, and providing fair and equitable treatment to all persons who deal with the procurement system. S.C. Code Ann. § 11-35-20(2)(b), (f), and (g). A governmental body cannot satisfy those objectives by quietly abandoning a completed procurement without identifying the legal and factual basis for doing so. That is precisely what occurred here.

Solicitation No. 5400028336 was fully competed. The State received seven proposals, evaluated those proposals, narrowed the field to MTM and ModivCare, conducted demonstrations, completed final scoring, negotiated with MTM, and issued an Intent to Award. The procurement then proceeded through nearly a year of protest and appellate proceedings. The CPO sustained ModivCare's protest and remanded the matter to DPS for further action under the Procurement Code. The PRP affirmed that decision.

Neither the CPO nor the PRP ordered cancellation of Solicitation No. 5400028336. Neither directed DPS to issue a replacement solicitation. Neither concluded that the Procurement Code prohibited continuation of the procurement. Yet DPS subsequently abandoned Solicitation No. 5400028336 and issued Solicitation No. 5400029919, without any documented analysis or explanation.

DPS never issued a publicly available written determination cancelling Solicitation No. 5400028336. DPS has never identified the regulatory basis for cancellation, the factual findings supporting cancellation, or the reason corrective action within the existing procurement was allegedly unavailable. Indeed, based upon the current record, Solicitation No. 5400028336 has never been formally cancelled at all. *See* Exs. 11 & 12. It has simply been unlawfully abandoned.

That omission is particularly significant because Regulation 19-445.2097(B) requires more than a conclusory assertion that cancellation is in the State's interest. The procurement officer must identify the actual basis for cancellation and state the reasons supporting that determination. Simply issuing a replacement solicitation does not satisfy the regulation. Nor does the existence of a prior protest decision automatically authorize cancellation.

DPS has thus far produced no records that reveal any lawfully required basis supporting its decision. ModivCare requested records concerning the cancellation decision, alternatives considered following remand, communications concerning the disposition of Solicitation No. 5400028336, and analyses supporting the issuance of Solicitation No. 5400029919. None has been produced. As a result, ModivCare files this protest with the assurance that the very documents that the Procurement Code requires DPS to maintain do not exist.

2. No Permissible Basis for Cancellation Exist.

The Procurement Regulations do not grant an unrestricted right to cancel a solicitation. Regulation 19-445.2097(B)(1) authorizes cancellation only where the procurement officer determines in writing that:

- inadequate or ambiguous specifications were cited in the solicitation;
- specifications have been revised;
- the supplies or services are no longer required;
- the solicitation failed to consider all relevant cost factors;
- the State's needs can be satisfied by a less expensive alternative;
- all proposals are unreasonably priced;
- proposals were collusive or submitted in bad faith;
- or for other reasons, cancellation is clearly in the best interest of the State.

S.C. Code Ann. Regs § 19-445.2097(B)(1).

None of those grounds appear to have been considered or analyzed and are therefore inapplicable here. There has been no finding that Solicitation No. 5400028336 contained inadequate or ambiguous specifications. To the contrary, the procurement successfully progressed through all substantive evaluation stages, including demonstrations and final scoring. Neither the CPO nor the PRP identified any defect in the solicitation itself. The services sought under Solicitation No. 5400028336 also remain necessary. DPS's issuance of Solicitation No. 5400029919 for substantially the same statewide NEMT services confirms that the underlying requirement continues to exist.

Likewise, neither the CPO nor the PRP identified concerns relating to unreasonable pricing, failure to consider relevant costs, collusion, bad faith, or lack of meaningful competition. The issues addressed during the protest proceedings concerned responsiveness and procurement process deficiencies, not pricing or the State's underlying requirements.

Nor does the current record support cancellation on the basis that "specifications have been revised." S.C. Code Ann. Regs § 19-445.2097(B)(1)(b). Solicitation No. 5400029919 appears to seek substantially the same services sought under Solicitation No. 5400028336. On information and belief, DPS's underlying requirements have not materially changed. If DPS contends otherwise, it bore the burden of identifying the revisions, explaining why they rendered continuation of Solicitation No. 5400028336 impracticable, and documenting that decision for the public's information and audit purposes. That legal requirement was simply ignored, and post hoc reconstruction cannot now be sanctioned.

Accordingly, the only potentially applicable provision is the residual authority allowing cancellation where it is "clearly in the best interest of the State." S.C. Code Ann. Regs § 19-445.2097(B)(1)(h). But that provision cannot be read as an unlimited grant of authority permitting cancellation whenever procurement officials may prefer a fresh competition or another NEMT provider. Such an interpretation would effectively swallow the remainder of Regulation 19-445.2097(B)(1) and render meaningless the documentation requirements imposed by both the Procurement Code and the Procurement Regulations.

3. Neither Abandonment nor Cancellation Was "Clearly in the State's Best Interest."

The current record not only fails to identify a valid basis for cancellation; it affirmatively suggests that cancellation was contrary to the State's interests. By the time DPS abandoned Solicitation No. 5400028336, the State had already invested substantial public resources in the procurement. The State had completed evaluations, demonstrations, scoring, award determinations, protest proceedings, and appellate review. Offerors likewise devoted significant time and expense preparing proposals, participating in demonstrations, and pursuing administrative remedies.

Moreover, neither the CPO nor the PRP identified any defect in the solicitation requiring revision or resolicitation. Following the Procurement Review Panel's decision, MTM had been determined nonresponsive and therefore ineligible for award. The State's need for NEMT services remained unchanged. ModivCare remained both the incumbent contractor successfully performing those services and the highest-ranked responsive offeror under the existing procurement.

Under those circumstances, continuation of the existing procurement, **not** abandonment or cancellation, appears to have been the option most consistent with the State's interests. Rather than implementing an appropriate corrective action within Solicitation No. 5400028336, DPS decided, without explanation or analysis, to discard years of procurement activity and restart the competition with a new solicitation in total disregard of the mandatory requirement of the Procurement Code and its own regulations.

Cancellation also undermines the remedial purpose of the Procurement Code's protest process. The Code provides administrative and appellate review so that procurement errors can be identified and corrected. If an agency may simply abandon, without explanation, a procurement after a successful protest and appellate affirmance, the very integrity of the protest process is diminished and harmed. Such an approach rewards restarting procurements, for no valid reason, rather than correcting them and cannot be reconciled with the Code's mandate of fair and equitable treatment.

The conclusion that cancellation served the State's interests is further undermined by the substantial disclosure of procurement materials that occurred during the protest proceedings.

Through document production and litigation, offerors gained access to significant portions of the procurement record, including proposal materials, evaluation records, scoring information, evaluator comments, and identified proposal strengths and weaknesses.

As a result, the competitive landscape that existed during Solicitation No. 5400028336 no longer exists. Offerors now possess substantial insight into competitors' prior approaches as well as the State's evaluation methodology. Yet Solicitation No. 5400029919 seeks substantially the same services and appears to require much of the same proposal information. The very fairness the Procurement Code mandates is jeopardized from the outset of the new Solicitation.

This concern is not merely theoretical. The disclosures revealed specific areas in which evaluators viewed particular offerors as possessing competitive advantages. For example, evaluation materials identified strengths associated with ModivCare's technology platform, including functionality supporting caregivers who manage transportation reservations on behalf of multiple members. The disclosure of such information provides competitors with valuable insight into both a competitor's capabilities and the features evaluators considered particularly beneficial. Whether or not any competitor ultimately acts on that information is beside the point. Once disclosed, the competitive environment necessarily changes because offerors gain visibility into proposal strengths, weaknesses, and evaluator preferences that would not ordinarily be available during an active competition.

Consequently, cancelling and resoliciting the procurement does not merely duplicate effort. It creates a materially different competitive environment than the one that existed when Solicitation No. 5400028336 was originally issued. The State cannot simply presume that such a resolicitation promotes competition. To the contrary, where extensive proposal and evaluation information has already been disclosed, restarting the competition may diminish the integrity of the competitive process by allowing offerors to refine their proposals using knowledge they would not otherwise possess. DPS has provided no documented analysis addressing these consequences. Nor has it explained why restarting a substantially identical procurement after extensive disclosure of proposal and evaluation information better serves the State than completing the already-evaluated procurement.

Accordingly, the current record demonstrates neither compliance with the procedural requirements governing cancellation nor the existence of any permissible substantive basis for cancellation. The absence of a documented determination, coupled with the absence of any justification under Regulation 19-445.2097(B), renders DPS's abandonment of Solicitation No. 5400028336 arbitrary, contrary to the Procurement Code, and subject to reversal.

Solicitation No. 5400029919 should therefore be set aside and such further relief should be granted as necessary to assure compliance with the South Carolina Consolidated Procurement Code.

B. The State Acted Arbitrarily, Capriciously, and Contrary to the Remedial Purposes of the Procurement Code by Abandoning Solicitation No. 5400028336 After ModivCare's Successful Protest.

Even if the state could establish compliance with the procedural requirements governing cancellation, its decision to abandon Solicitation No. 5400028336 and commence Solicitation No. 5400029919 was arbitrary, capricious, and an abuse of discretion.

South Carolina courts have repeatedly recognized that agency action is arbitrary or capricious when it lacks a rational basis, is based upon will rather than reasoned decision-making, or is taken without adequate governing principles. A decision is arbitrary when no rational basis for the conclusion exists, when it is "based alone on one's will and not upon any course of reasoning and exercise of judgment," or when it is made "without adequate determining principles" and is "governed by no fixed rules or standards." *Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002), quoting *Deese v. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985).

Likewise, an abuse of discretion occurs when an agency acts pursuant to an error of law, fails to exercise the discretion entrusted to it, reaches a conclusion unsupported by the evidence, or adopts a result that falls outside the range of permissible decisions under the circumstances presented. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006) (application of standard to circuit court); *Fontaine v. Peitz*, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987). South Carolina courts have also recognized that non-uniform, inconsistent, or selective application of governing standards may indicate arbitrary decision-making. *Mungo v. Smith*, 289 S.C. 560, 571, 347 S.E.2d 514, 521 (Ct. App. 1986). Measured against those standards, the State's decision is without support or justification.

Solicitation No. 5400028336 progressed through every significant stage of the competitive procurement process. The State received seven proposals, evaluated those proposals, narrowed the competitive field, conducted demonstrations, completed final scoring, negotiated with MTM, and issued an Intent to Award. ModivCare thereafter pursued the administrative remedies provided by the Procurement Code, successfully challenged the award decision before the CPO, and successfully defended that result before the PRP.

As a consequence of those proceedings, MTM was determined to be nonresponsive and therefore ineligible for award. Neither the CPO nor the PRP ordered cancellation. Neither found that the solicitation contained defective specifications. Neither concluded that the procurement could not be completed through corrective action. Instead, the matter was remanded to SCDHHS for further proceedings consistent with the Procurement Code. Yet DPS appears to have abandoned the procurement entirely.

There is no evidence that the State evaluated available any corrective-action alternatives. There is no analysis addressing whether award to ModivCare was appropriate, whether reevaluation or additional discussions were warranted, or whether any other corrective measures remained available. Likewise, there is no explanation of why cancellation better served the State than completion of a procurement that had already progressed through evaluations, demonstrations, protest proceedings, and appellate review.

That absence of analysis is particularly significant because the State had already determined that only MTM and ModivCare possessed a mathematical possibility of becoming the highest-ranked offeror. The remaining responsive offerors had been eliminated from further consideration because they lacked any realistic path to award under the solicitation's scoring methodology.

Thus, following the PRP's affirmance, ModivCare was not merely one competitor among many. It was the highest-ranked by far of the remaining responsive offerors under a procurement that had already undergone complete evaluations, demonstrations, award determinations, and appellate review. This does not mean the State was necessarily required to award the contract to ModivCare. It does mean, however, that the State was required to exercise reasoned judgment concerning the available options. The Procurement Code entrusted the State with the mandate of analytical honesty to determine the appropriate course of action; it did not authorize the State to discard the procurement without evaluating whether less disruptive and more efficient alternatives remained available and whether fundamental fairness and faithfulness to the integrity of the procurement process dictated that ModivCare be awarded the contract.

The decision is further indicative of arbitrariness is fundamentally unfair because it deprives ModivCare of the practical benefit of its successful protest. The Procurement Code's protest procedures exist so that procurement errors can be identified and corrected. Had ModivCare not pursued its protest rights, MTM would have received the award. ModivCare invested substantial resources to demonstrate that result was improper and ultimately prevailed before both the CPO and the PRP. Yet rather than implementing an appropriate corrective action, the State restarted the procurement and placed ModivCare back at the beginning of a process it had already successfully litigated.

Moreover, by the time the State abandoned Solicitation No. 5400028336, the State had already invested substantial public resources in evaluations, demonstrations, negotiations, administrative proceedings, and appellate review. Extensive proposal, evaluation, and source-selection information had also been disclosed during the protest process. The State has never explained why restarting a substantially similar procurement after all of that effort and disclosure better served the State than completing the procurement already underway.

A rational decision-making process would ordinarily require consideration of these factors. Yet no such analysis has been identified. Instead, the current record reflects a completed procurement, a successful protest, a nonresponsive intended awardee, a highest-ranked remaining responsive offeror, and a subsequent decision to begin again from scratch without any publicly identified explanation.

Under South Carolina law, agency action that lacks a rational connection between the facts known and the result reached is arbitrary and capricious. *Converse Power* and *Deese*, among other decisions, make clear that discretion must be exercised through reasoned judgment, not assumption, preference, or unexplained action. The State abandoned Solicitation No. 5400028336 without evaluating available corrective-action alternatives, without considering whether completion of the existing procurement better served the State's interests, and apparently upon the mistaken belief that cancellation was legally required. In doing so, the State failed to exercise the reasoned and analytical mandate entrusted to it by the Procurement Code.

Accordingly, even apart from the State's failure to comply with the statutory and regulatory requirements governing cancellation, the decision to abandon Solicitation No. 5400028336 and commence Solicitation No. 5400029919 was arbitrary, capricious, constituted an abuse of discretion, and should be reversed.

C. Upon Information and Belief, DPS's Abandonment Decision Was Based on an Erroneous Interpretation of *Carter Goble*.

Based upon the procedural history of this procurement and the absence of any lawfully mandated justification for cancellation, it appears that DPS may have concluded that *In re: Protest of Carter Goble Associates, Inc.*, Case No. 1989-25, required cancellation once MTM was determined to be nonresponsive. To the extent the State relied upon that interpretation, the decision rests upon a mistaken reading of *Carter Goble*, an improper expansion of that decision beyond its facts, and a failure to apply the governing provisions of the Procurement Code.

1. Neither the Chief Procurement Officer nor the Procurement Review Panel Directed Cancellation.

As an initial matter, neither the CPO nor the PRP concluded that cancellation was required following the sustained protest. The CPO sustained ModivCare's protest and remanded the procurement for further proceedings consistent with the Procurement Code. The PRP affirmed. Neither decision cited *Carter Goble*. Neither directed DPS to issue a replacement solicitation. Neither held that cancellation was legally required. Neither concluded that Solicitation No. 5400028336 had become incapable of corrective action. That omission is significant.

When South Carolina procurement authorities believe *Carter Goble* controls the available remedy, they typically say so expressly. As discussed below, later CPO decisions have specifically cited and relied upon *Carter Goble* when ordering resolicitation. Here, neither the CPO nor the PRP did so. If *Carter Goble* truly compelled cancellation under these circumstances, one would reasonably expect one of those tribunals to have said so.

Instead, the matter was remanded to DPS to proceed in accordance with the Procurement Code. The absence of any directive requiring cancellation strongly suggests that neither adjudicative body understood *Carter Goble* as establishing a mandatory rule requiring resolicitation whenever an intended awardee is later determined to be nonresponsive.

2. *Carter Goble* Was a Fact-Specific Remedy Decision.

A careful reading of *Carter Goble* demonstrates that the Panel did not announce a categorical rule requiring cancellation whenever the intended awardee is later found nonresponsive. The case involved a procurement in which an offeror, ATE, received the highest score but was ultimately determined to be nonresponsive because its proposal violated a material budget limitation contained in the RFP. The principal issue before the Panel was not whether ATE was nonresponsive, but rather what remedy should follow from that determination in that particular case. *Id.* at 7. Carter Goble Associates, the second-ranked offeror, argued that the contract should simply be awarded to it. *Id.* The State Procurement Office likewise argued against rebidding and noted that proposal prices had already been exposed. *Id.* ATE also opposed resolicitation because of the disclosure of proposal information. *Id.* Despite those concerns, the Panel concluded that resolicitation was the appropriate remedy on the record before it.

Critically, however, the Panel repeatedly limited its reasoning to the particular facts before it, "[t]he Panel holds that resolicitation is the appropriate remedy ***in this case***." *Id.* at 8 (emphasis added). The Panel further explained, "[i]f ATE's proposal is removed, all evaluations ***in this case*** are invalid." *Id.* (emphasis added). And it ultimately concluded that, "the fairest remedy ***in this case*** and the only way to insure the state gets the most advantageous proposal is to resolicit ***the contract in question here***." *Id.* at 8–9 (emphasis added).

The Panel's order likewise directed that only "the contract in question," *id.* at 9, be resolicited. Those repeated references matter. The Panel did not announce a procurement-wide rule applicable to all future protests. Rather, it evaluated the procurement before it and determined that resolicitation was appropriate under the particular circumstances presented there.

3. The Central Premise of *Carter Goble* Does Not Apply Here.

The rationale underlying *Carter Goble* is materially different from the circumstances surrounding Solicitation No. 5400028336. The Panel's reasoning centered on its conclusion that removing ATE from the evaluation process rendered the entire evaluation unreliable:

> Offerors must necessarily be evaluated in relation to each other and ranked on each criteria including cost. Simply deleting ATE's scores from the process at this stage does not accurately reflect the result as it would have been if ATE had never been included. If ATE's proposal is removed, all evaluations in this case are invalid.

Id. at 8. That concern is substantially diminished here.

DPS received seven proposals and ultimately determined that four were responsive. Following evaluation of those proposals, DPS determined that only MTM and ModivCare possessed any mathematical possibility of becoming the highest-ranked offeror. The remaining responsive offerors were excluded from further consideration because they lacked any realistic path to award. Thus, unlike *Carter Goble*, this is not a situation where removal of one offeror necessarily calls into question the entirety of the competitive ranking process. DPS itself determined that the field had effectively narrowed to two viable competitors. Even assuming MTM should have been excluded earlier, there is substantial reason to believe that the relative positions of the remaining offerors would not have materially altered the competitive outcome.

At a minimum, substantial grounds existed for concluding that corrective action short of cancellation remained available.

4. Subsequent Decisions Applying *Carter Goble* Do Not Support or Compel Cancellation Here.

For example, the later Panel decision *In re: Protest of Blue Cross Blue Shield of South Carolina and Public Consulting Group, Inc.,* Panel Case No. 1996-3, 1996 WL 33404913, likewise does not compel cancellation under the circumstances presented here.

In *Blue Cross*, the State issued an RFP for third-party liability services. Following issuance of the solicitation and a subsequent amendment, the procurement documents contained multiple inconsistencies concerning the duration of the contract. Different portions of the RFP reflected conflicting contract terms, and those inconsistencies affected pricing and evaluation of proposals. After proposals were received and an intended award announced, the highest-ranked offeror was determined to be nonresponsive.

Critically, the PRP did not rely solely on the fact that the intended awardee was nonresponsive. Instead, it found that the solicitation itself contained independent defects warranting cancellation. The PRP expressly concluded that "[c]learly the RFP contains inadequate and ambiguous specifications." *Id.* at *3. It further found that the conflicting contract durations, pricing implications, and administrative errors created defects that could not be adequately cured through corrective action, holding that "[a] problem in the process, such as this, can only be cured by cancellation and resolicitation." *Id.* at *4. Only after identifying those solicitation defects did the PRP discuss *Carter Goble* and prior decisions concerning the appropriate remedy when a nonresponsive offeror participated in an RFP procurement.

Accordingly, *Blue Cross* does not stand for the proposition that cancellation automatically follows whenever an intended awardee is determined to be nonresponsive. Rather, it involved a procurement containing multiple independent defects, including ambiguous specifications, conflicting solicitation provisions, pricing impacts, and administrative error, that directly affected the integrity of the solicitation itself.

No comparable findings exist here. Neither the CPO nor the PRP found ambiguous specifications, defective evaluation criteria, conflicting solicitation provisions, pricing distortions, administrative error in the solicitation, or any other defect requiring a new competition. To the contrary, the protest proceedings focused on proposal responsiveness and procurement-process issues, not defects in Solicitation No. 5400028336 itself.

Thus, *Blue Cross* is materially distinguishable both factually and legally.

5. Later CPO Decisions Confirm That *Carter Goble* Is Not a Mandatory Rule

a. *eSystems* Demonstrates That Procurement Officials Expressly Invoke *Carter Goble* When They Believe It Applies.

In *In Re Protest of eSystems, Inc.*, Case No. 2017-202, the CPO determined that the intended awardee's proposal was nonresponsive because it improperly attempted to condition compliance with material solicitation requirements. After sustaining the protest, the CPO expressly addressed the proper remedy and expressly relied upon *Carter Goble*. The CPO explained that "[t]his solicitation was a Request for Proposals with more than two offers. In *In Re: Protest of Carter Goble Associates, Inc.*, Case 1989-25, the PRP prescribed the remedy in this situation as a resolicitation." *Id.* at 14–15. The significance of *eSystems* is not merely that the CPO ordered resolicitation. The significance is that the CPO expressly identified *Carter Goble* as the authority supporting that remedy. No such discussion occurred in the CPO or PRP decisions involving Solicitation No. 5400028336.

b. *SourceCorp* Explicitly Rejects the Notion That *Carter Goble* Automatically Requires Resolicitation.

Even more important is the CPO's decision in *In Re Protest of SourceCorp BPS, Inc. / Exela Technologies, Inc.*, Case No. 2021-213. In that case, the CPO sustained a protest because the procurement officer improperly instructed evaluators to disregard the incumbent's performance history, thereby producing a flawed evaluation. The CPO expressly discussed *Carter Goble*, quoted its reasoning, and then addressed whether resolicitation was required. After doing so, the CPO unequivocally held that "[w]hile re-solicitation may offer an opportunity to correct the evaluation error, it is neither necessary nor required by *Carter Goble*. The most efficient remedy is to cancel the award to IM and remand for re-evaluation." *Id.* at 8. That statement is highly significant.

The CPO expressly recognized that *Carter Goble* does not impose a mandatory remedy. Instead, the proper remedy depends upon the facts of the procurement and whether corrective action remains available. The CPO's analysis in *SourceCorp* is fundamentally inconsistent with any claim that *Carter Goble* compelled DPS to restart this procurement.

6. Reading *Carter Goble* as a Mandatory Rule Would Conflict with the Procurement Code.

Limiting *Carter Goble* to its facts is not merely the best reading of the decision. It is the only reading that avoids a direct conflict with the Procurement Code.

The Procurement Code contemplates a range of remedies when a protest is sustained. Depending on the circumstances, an agency may reevaluate proposals, conduct discussions, reopen negotiations, reject particular proposals, implement corrective action, award to another offeror, or cancel the solicitation. The appropriate remedy must be determined based on the facts of the particular procurement and supported by procurement-specific findings.

Most importantly, the Procurement Code does not treat cancellation as automatic. Section 11-35-1710 permits cancellation only when it is in the interest of the State and requires that the reasons supporting cancellation be documented in the procurement file. Likewise, Regulation 19-445.2097 requires a written determination identifying the basis for cancellation and the reasons supporting that decision. Those provisions necessarily contemplate the exercise of agency judgment and discretion. Cancellation is permissible only after an agency determines that cancellation is justified under the specific circumstances presented.

If *Carter Goble* were interpreted as establishing a universal rule that cancellation automatically follows whenever an intended awardee is later determined to be nonresponsive, that interpretation would effectively eliminate the "best interest of the State" analysis that the Procurement Code expressly grants procurement officials. Agencies would no longer evaluate whether corrective action remains available, whether the procurement can fairly be completed, whether cancellation would waste public resources, or whether cancellation actually serves the State's interests. Instead, cancellation would become mandatory based solely on the subsequent determination that an offeror was nonresponsive.

Such a reading would be particularly problematic here. By the time DPS abandoned Solicitation No. 5400028336, the State had already completed evaluations, demonstrations, final rankings, protest proceedings, and appellate review. The State had invested substantial public resources in the procurement and possessed extensive information concerning the relative merits of the competing offerors. MTM had been found nonresponsive, ModivCare remained the highest-ranked responsive offeror, and the State's need for NEMT services remained unchanged. Under those circumstances, a reasonable decisionmaker could conclude that completing the existing procurement, rather than discarding years of procurement activity and starting over, would better serve the State's interests.

Whether DPS ultimately should have reached that conclusion is not the point. The point is that the Procurement Code required DPS to perform that analysis. It did not permit DPS to bypass the inquiry by assuming that cancellation was compelled as a matter of law.

Indeed, interpreting *Carter Goble* as a mandatory cancellation rule would largely nullify the Procurement Code's requirement that cancellation be in the "best interest of the State." The agency would never reach the question whether cancellation actually serves the State's interests because *Carter Goble* would already dictate the result. Nothing in the Procurement Code supports such a displacement of agency mandated requirements.

The more sensible interpretation, and the one reflected in later decisions such as *SourceCorp*, is that *Carter Goble* addressed the proper remedy on a specific factual record where the Panel concluded that removal of the disqualified offeror rendered the evaluations in that procurement unreliable. It did not create a categorical limitation on agency discretion, and it did not relieve agencies of their obligation to determine whether cancellation is actually in the State's best interest under the Procurement Code.

7. Any Decision Based Upon a Belief That *Carter Goble* Mandated Cancellation Constitutes an Error of Law.

Ultimately, *Carter Goble* did not establish a per se rule requiring cancellation whenever an intended awardee is later found to be nonresponsive. The decision repeatedly limited its reasoning to the procurement before the PRP, rested upon a finding that the evaluations in that case were rendered invalid, and has subsequently been treated by procurement authorities as a fact-specific remedial precedent rather than a mandatory rule.

Accordingly, if DPS concluded that *Carter Goble* left it with no discretion other than cancellation, that conclusion was legally erroneous. The Procurement Code required DPS to evaluate the specific circumstances of Solicitation No. 5400028336, determine whether a permissible basis for cancellation existed, and document its reasoning.

Therefore, upon information and belief, DPS's decision to abandon Solicitation No. 5400028336 and issue Solicitation No. 5400029919 was based upon an erroneous interpretation of *Carter Goble*. If these proceedings confirm that understanding, the cancellation decision constitutes an error of law, an abuse of discretion, and an action contrary to the South Carolina Consolidated Procurement Code.

IV. RESERVATION OF RIGHTS

ModivCare has diligently sought and examined the information presently available concerning Solicitation No. 5400028336, the subsequent protest and appeal proceedings, DPS's decision to abandon that procurement, and the issuance of Solicitation No. 5400029919. ModivCare has also submitted requests for records relating to DPS's cancellation decision, including but not limited to communications concerning the disposition of Solicitation No. 5400028336, analyses of available remedial options following remand, determinations concerning cancellation, and materials supporting the issuance of Solicitation No. 5400029919.

To date, DPS has not produced records that document any factual or legal basis for abandoning Solicitation No. 5400028336. As a result, portions of this protest necessarily are asserted upon information and belief based on the facts presently known.

Accordingly, ModivCare expressly reserves the right to supplement, amend, or expand this protest; submit additional documentary evidence; present additional legal authorities; and raise such additional arguments, claims, or grounds for relief as may be supported by any records subsequently produced by DPS, SCDHHS, or any other governmental entity. ModivCare further reserves the right to rely upon any additional findings, testimony, communications, analyses, procurement-file materials, or other evidence that may be produced during the course of this protest proceeding that are not subject to exclusion on evidentiary grounds, any internal agency review, any evidentiary hearing, or any subsequent administrative or judicial review.

Nothing contained herein should be construed as a waiver of any argument, claim, objection, or remedy available to ModivCare under the South Carolina Consolidated Procurement Code, the Procurement Regulations, or applicable law.

V. CONCLUSION

This protest does not concern an ordinary procurement dispute. Solicitation No. 5400028336 was fully competed. Seven offerors submitted proposals. Evaluations were completed. Demonstrations were conducted. Final rankings were established. An Intent to Award was issued. The procurement then proceeded through extensive protest and appellate proceedings culminating in final decisions by both the CPO and the PRP.

Neither the CPO nor the PRP directed cancellation. Neither found that Solicitation No. 5400028336 contained defective specifications. Neither identified ambiguity requiring resolicitation. Neither held that continuation of the procurement was prohibited by the Procurement Code. Instead, the matter was remanded for further proceedings consistent with the Procurement Code.

Yet, DPS abandoned Solicitation No. 5400028336 and issued Solicitation No. 5400029919 without any written determination identifying the basis for abandonment or cancellation, without any documented finding that cancellation was in the State's interest, and without any compliance with the requirements of Section 11-35-1710 or Regulation 19-445.2097.

The current record demonstrates both procedural and substantive defects. Procedurally, DPS has failed to identify the written determination that the Procurement Code requires before a solicitation may be cancelled. Substantively, DPS has failed to identify any permissible basis for cancellation under Regulation 19-445.2097(B). No finding has been made that the solicitation contained inadequate specifications, that the State's requirements changed, that the pricing was unreasonable, that competition was compromised, or that any other recognized ground for cancellation existed.

Moreover, the circumstances surrounding the procurement strongly suggest that cancellation was not in the State's best interest. By the time DPS abandoned the procurement, the State had already devoted substantial public resources to evaluations, demonstrations, negotiations, protest proceedings, and appellate review. MTM had been determined nonresponsive. ModivCare remained the highest-ranked responsive offeror. The State's need for NEMT services continued unchanged. Cancellation therefore appears to have produced only additional delay, additional expense, duplication of effort, and the unnecessary loss of the procurement work already performed.

The record further suggests that the cancellation decision may have been driven by an erroneous belief that *Carter Goble* required resolicitation once MTM was determined to be nonresponsive. As demonstrated above, neither *Carter Goble*, *Blue Cross*, nor subsequent procurement decisions establish any such rule. To the contrary, more recent authority confirms that *Carter Goble* does not mandate cancellation and that procurement officials retain discretion to evaluate the appropriate remedy based on the facts of the particular procurement. Any decision based upon a contrary understanding constitutes an error of law and an abuse of discretion.

For all of these reasons, ModivCare respectfully requests that the CPO conduct a limited evidentiary hearing and require appropriate representatives of DPS and/or the SCDHHS to testify regarding: (1) whether the State relied upon *Carter Goble* in deciding to abandon Solicitation No. 5400028336; (2) the extent of any discussions concerning *Carter Goble*; and (3) the factual and legal basis for any conclusion that *Carter Goble* required or supported abandonment or cancellation.

Following that hearing, ModivCare respectfully requests that the CPO: (1) sustain this protest; (2) declare that the State's abandonment of Solicitation No. 5400028336 and issuance of Solicitation No. 5400029919 violated the South Carolina Consolidated Procurement Code and Procurement Regulations; (3) reverse and set aside the State's cancellation of Solicitation No. 5400028336 and its decision to proceed with Solicitation No. 5400029919; (4) direct award of the contract to ModivCare as the highest-ranked remaining responsive offeror under Solicitation No. 5400028336, consistent with the Procurement Code and the decisions of the CPO and PRP; and (5) grant such other and further relief as the CPO deems just, equitable, and necessary to restore compliance with the South Carolina Consolidated Procurement Code.

Very truly yours,

WILLOUGHBY HUMPHREY & D'ANTONI, P.A.

Mitchell Willoughby

Mitchell Willoughby

EXHIBIT 6

STATE OF SOUTH CAROLINA
SFAA, DIV. OF PROCUREMENT SERVICES
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Notice Regarding Solicitation
Posting Date: May 2, 2025
Cancellation of Solicitation

Solicitation: **5400027781**
Description: **Non-Emergency Medical Transportation Coordinator Services (NEMT)**
Agency: **South Carolina Department of Health & Human Services**

NOTICE OF CANCELLATION
CANCELLED (05/2/2025)

THE REQUEST FOR PROPOSAL FOR NON-EMERGENCY MEDICAL TRANSPORTATION COORDINATOR SERVICES (NEMT), ISSUED ON JANUARY 24, 2025, IS HEREBY CANCELLED.

Section 19-445.2097(B) (1) and (b and f) of the S.C. Code of Regulations states:
19-445.2097: 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 the procurement officer determines in writing that:

(b) specifications have been revised;
(h) for other reasons, cancellation is clearly in the best interest of the State.

SC may revise the specifications for Solicitation #5400027781. Given the new specifications of the solicitation, it is in the best interest of the State of South Carolina to cancel the solicitation at this time and potentially resolicit.

Kayla Middleton
Procurement Officer

EXHIBIT 7

			Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments	Vendor Rating	Awarded Points	Negotiation Points
	Evaluation Factors	Amended ATTM 010 Section(s)								
	Transportation Operations To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.	Sections 5, 6, 8	1-10	500					0	
	Member & Provider Services To what extent the Offeror improves members' access to quality NEMT services by (a) improving how Healthy Connections Medicaid members interact with the agency; (b) implementing a person-centered, comprehensive transportation approach that will aid members to achieving their optimal overall health through timely NEMT services that are easy to access; (c) developing and implementing outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments due to lack of transportation, thereby improving the member's overall health; and (d) monitoring expenditure and utilization trends to ensure the services are provided in the most cost effective manner and only for eligible NEMT services	Sections 4, 10	1-10	300					0	
	General Requirements To what extent the Offeror can demonstrate the ability to meet performance standards and ease administrative burden on Transportation Providers. The following should also be considered: (a) streamlined reimbursement processes including timely payment of services; (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improvement on the provider experience. Evaluators should consider how the Offeror plans to implement cost-reduction and quality improvement initiatives, monitoring end-to-end program performance and quality, and how they plan to increase healthcare access opportunities by the completion of approved trips, and mandating and utilizing improved performance measures and monitoring.	Sections 3, 9, 13	1-10	200					0	
	Qualifications The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion.		1-10	250					0	
	Rates The estimated capitation rate ranges by rate cell are presented in Appendix B. Capitation Payments and Reimbursement Methodology of the Contract (Amended ATTM 010) along with the actuarily sound methodology used to determine those capitated rate ranges. It is anticipated that SFY 2026 capitation rates for the NEMT program will reflect an update to the estimates provided in this report. Offeror's submission of a formal acknowledgement that the Offeror accepts the methodology provided and is in agreement with the rate range based on current data will be evaluated on a pass/fail basis, meaning failure of Offeror to submit such an acknowledgement agreeing to the Capitation Payments and Reimbursement Methodology expressed in Appendix B of the Contract will result in the Offeror's Proposal being determined nonresponsive.		Pass/Fail						0	
	Demonstrations Offeror oral presentation with demonstration of its system(s) related to NEMT services. This includes, but is not limited to, Offeror's system demonstrating the ability to schedule, prior authorize, credential and communicate with its members and providers (mobile application).		1-10	200					0	
Total Points									0	

			Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments	Vendor Rating	Awarded Points
	Evaluation Factors	Amended ATTM 010 Section(s)							
	Transportation Operations To what exter the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.	Sections 5, 6, 8	1-10	500	Strong flexibility. Enhanced driver requirements. Intergrated technology with enhancement capabilities. Mechanism for detecting fraud and abuse. Identify methodology for developing a provider network.	detail provided for provider incentitives. Technology platform interface. No eveidence for data dashboard capabilities. Internal incident reporting process allows for delays in agency notifications. Vehicle self inspection process. Reliance on non- participating transportation provider to fill network gaps. Transportation		5	250
	Member & Provider Services To what extent the Offeror improves members' access to quality NEMT services by (a) improving how Healthy Connections Medicaid members interact with the agency; (b) implementing a person-centered, comprehensive transportation approach that will aid members to achieving their optimal overall health through timely NEMT services that are easy to access; (c) developing and implementing outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments due to lack of transportation, thereby improving the member's overall health; and (d) monitoring expenditure and utilization trends to ensure the services are provided in the most cost effective manner and only for eligible NEMT services.	Sections 4, 10	1-10	300	Offers language interpretation program. Intergrated complaint module into main platform. Provides agency access to call center for monitoring. Robust plan for dialysis provider and member outreach.	No established plan for providing a call center. Facility portal does not have many self service options. Members calls will be sent out of state when call volumes are too high. Lack of detail for member incentive program. Strategy lacked detail beyond contractual requirements for addressing member no shows.		5	150
	General Requirements To what extent the Offeror can demonstrate the ability to meet performance standards and ease administrative burden on Transportation Providers. The following should also be considered: (a) streamlined reimbursement processes including timely payment of services; (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improvement on the provider experience. Evaluators should consider how the Offeror plans to implement cost-reduction and quality improvement initiatives, monitoring end-to-end program performance and quality, and how they plan to increase healthcare access opportunities by the completion of approved trips, and mandating and utilizing improved performance measures and monitoring.	Sections 3, 9, 13	1-10	200	Competive salary. Thorough defined job responsibilty for key staff positions. Demonstrated improvement in digital only transportation provider submissions.	Effectiveness of the proposed operation organizational chart. Organizational chart shows lack of understanding for key staff positions. Lack of long term experience in executive leadership for overseeing operations in the State. Lack of comprehensive of rural strategy.		5	100
	Qualifications The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion.		1-10	250	Experience with maganged care contracting.	Concerns related to financial standing compared to the size, scope, and risk of the contract. Concern over the lack of experience with large statewide implementation outside of a managed care environment.		2	50
	Rates The estimated capitation rate ranges by rate cell are presented in Appendix B. Capitation Payments and Reimbursement Methodology of the Contract (Amended ATTM 010) along with the actuarily sound methodology used to determine those capitated rate ranges. It is anticipated that SFY 2026 capitation rates for the NEMT program will reflect an update to the estimates provided in this report. Offeror's submission of a formal acknowledgement that the Offeror accepts the methodology provided and is in agreement with the rate range based on current data will be evaluated on a pass/fail basis, meaning failure of Offeror to submit such an acknowledgement agreeing to the Capitation Payments and Reimbursement Methodology expressed in Appendix B of the Contract will result in the Offeror's Proposal being determined nonresponsive.		Pass/Fail		Pass				0
	Demonstrations Offeror oral presentation with demonstration of its system(s) related to NEMT services. This includes, but is not limited to, Offeror's system demonstrating the ability to schedule, prior authorize, credential and communicate with its members and providers (mobile application).		1-10	200					0
Total Points									550

			Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments	Vendor Rating	Awarded Points
	Evaluation Factors	**Amended ATTM 010 Section(s)**							
	Transportation Operations **To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.**	Sections 5, 6, 8	**1-10**	**500**	Self serviced business intelligent tools. User friendly intuitive member mobile application. Ability to intergrate current transportation provider systems into there main system. Enhanced facility portal capabilities that allow more self serve options. Real time tracking of transportation drivers. Established provider network in SC. Incentivizes high performing transportation providers through advance scheduling methodology. Messaging capabiity between the member and driver. GPS enabled claims data reduces fraud, waste, and abuse. Complaint prevention program/actiivties.			9.5	475
	Member & Provider Services **To what extent the Offeror improves members' access to quality NEMT services by (a) improving how Healthy Connections Medicaid members interact with the agency; (b) implementing a person-centered, comprehensive transportation approach that will aid members to achieving their optimal overall health through timely NEMT services that are easy to access; (c) developing and implementing outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments due to lack of transportation, thereby improving the member's overall health; and (d) monitoring expenditure and utilization trends to ensure the services are provided in the most cost effective manner and only for eligible NEMT services.**	Sections 4, 10	**1-10**	**300**	State specific contact center training. Contact center staff flexibility. Solutions to will call trips. Agency access to call center metrics and tracking. Robust member engagement and education related to healthier outcomes. Intergrated compliant system. Program to proactively mitigate trip failures for members with high touch needs. Engages member and provider communities through multiple channels. Demonstrated high performance with call center metrics.			9.5	285
	General Requirements **To what extent the Offeror can demonstrate the ability to meet performance standards and ease administrative burden on Transportation Providers. The following should also be considered: (a) streamlined reimbursement processes including timely payment of services; (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improvement on the provider experience.** **Evaluators should consider how the Offeror plans to implement cost-reduction and quality improvement initiatives, monitoring end-to-end program performance and quality, and how they plan to increase healthcare access opportunities by the completion of approved trips, and mandating and utilizing improved performance measures and monitoring.**	Sections 3, 9, 13	**1-10**	**200**	Experienced staff ready to take on key staff positions. Proactive outreach to SC managed care organizations. Comprehensive technology system for member tracking. Ensures quality through extensive data tracking via quality management system. Continous process improvement program (Lean Six LSS). Demonstrates extensive backup capabilities for data in the event of hazardous weather.	Not as competitive salaries for key staff positions.		9	180
	Qualifications **The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion.**		**1-10**	**250**	30 years of experience in city, county, state, and managed care. Large enough to take on this risk contract. Direct experience in the state of SC.	Multiple adverse actions and lawsuits.		9	225
	Rates **The estimated capitation rate ranges by rate cell are presented in Appendix B, Capitation Payments and Reimbursement Methodology of**		**Pass/Fail**		Pass				0
	Demonstrations **Offeror oral presentation with demonstration of its system(s) related to NEMT services. This includes, but is not limited to, Offeror's system demonstrating the ability to schedule, prior authorize, credential and communicate with its members and providers (mobile application).**		**1-10**	**200**	Modern intergrated platform. Agency, facilities, and stakeholder functional capabilities exceeded expectations. Utilized demonstration to illustrate to improve service delivery in alignment with strategic goals. Credentialing platform is user friendly and streamlined approach for providers. Proprietary platform allows for greater customization to meet agency goals. Proactive stakeholder engagement. Agency can submit adn track complaints on behalf of members. AI enhanced fraud, waste, and abuse detection and data visualization for tracking.	Caregiver functionality on member app is limited.		9.5	190
Total Points									1355

			Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments	Vendor Rating	Awarded Points
	Evaluation Factors	**Amended ATTM 010 Section(s)**							
	Transportation Operations **To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.**	Sections 5, 6, 8	**1-10**	**500**	Near real time tracking for transportation providers. Innovative performance based provider incenitive program. Targeted efforts for disabled population focused on safety operations. Incentivizes high performing transportation providers through advance scheduling methodology. Effective provider score card designed for transperancy and accountability. Addressed network gaps through innovative network partnerships.	Reliance on non- participating transportation provider to fill network gaps. Gas mileage reimbursement solution is cumbersome.		9	450
	Member & Provider Services **To what extent the Offeror improves members' access to quality NEMT services by (a) improving how Healthy Connections Medicaid members interact with the agency; (b) implementing a person-centered, comprehensive transportation approach that will aid members to achieving their optimal overall health through timely NEMT services that are easy to access; (c) developing and implementing outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments due to lack of transportation, thereby improving the member's overall health; and (d) monitoring expenditure and utilization trends to ensure the services are provided in the most cost effective manner and only for eligible NEMT services.**	Sections 4, 10	**1-10**	**300**	Engages member and provider communities through multiple channels. Demonstrated high performance with call center metrics. Weekly engagement with facility providers to proactively address issues. Actively participates in member events hosted by outside organizations. Proactive notification for driver crediential expiration date.	Reliance on IVR solutions verses live agent and/or web and mobile application solutions.		9	270
	General Requirements **To what extent the Offeror can demonstrate the ability to meet performance standards and ease administrative burden on Transportation Providers. The following should also be considered: (a) streamlined reimbursement processes including timely payment of services; (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improvement on the provider experience.** **Evaluators should consider how the Offeror plans to implement cost-reduction and quality improvement initiatives, monitoring end-to-end program performance and quality, and how they plan to increase healthcare access opportunities by the completion of approved trips, and mandating and utilizing improved performance measures and monitoring.**	Sections 3, 9, 13	**1-10**	**200**	Currently staffed to support SC. Collaborates with current magaged care organizations in the state. Experienced staff.			9	180
	Qualifications **The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion.**		**1-10**	**250**	Large enough to take on this risk contract	Multiple lawsuit actions.		9.5	237.5
	Rates **The estimated capitation rate ranges by rate cell are presented in Appendix B. Capitation Payments and Reimbursement Methodology of the Contract (Amended ATTM 010) along with the actuarily sound methodology used to determine those capitated rate ranges. It is anticipated that SFY 2026 capitation rates for the NEMT program will reflect an update to the estimates provided in this report. Offeror's submission of a formal acknowledgement that the Offeror accepts the methodology provided and is in agreement with the rate range based on current data will be evaluated on a pass/fail basis, meaning failure of Offeror to submit such an acknowledgement agreeing to the Capitation Payments and Reimbursement Methodology expressed in Appendix B of the Contract will result in the Offeror's Proposal being determined nonresponsive.**		**Pass/Fail**		Pass				0
	Demonstrations **Offeror oral presentation with demonstration of its system(s) related to NEMT services. This includes, but is not limited to, Offeror's system demonstrating the ability to schedule, prior authorize, credential and communicate with its members and providers (mobile application).**		**1-10**	**200**	Caregiver functionality. Demonstrated viability of platform in SC.	Multiple platforms. Demonstration did not provide evidence of strategic goals of the agency. Ease of use and navigation of applications. Credentialing platform. Efficency of claims process for transportation provider.		5	100
Total Points									1237.5

			Rating Method	Max Points	Strengths	Weaknesses	Dissenting Rating Comments	Vendor Rating	Awarded Points
	Evaluation Factors	**Amended ATTM 010 Section(s)**							
	Transportation Operations **To what extent the Offeror has demonstrated their ability to ensure an adequate and robust provider network and demonstrated the ability improve the member and medical provider experience. The following should also be considered: Delivering quality NEMT services and implementing performance measures to (a) reduce occurrences of fraud, waste and abuse; (b) reduction of the number of provider or member complaints; (c) increasing the accuracy and timeliness of data reports; and exploring opportunities for member and transportation provider incentives that reduce no-shows, complaints, and missed appointments while improving the services provided.**	Sections 5, 6, 8	**1-10**	**500**	Provides transportation providers with technology to meet fully digital goals. Well defined provider incenitives. Strong interventions for strengthening the provider network. Collaboration with the agency specifics for data access and tracking.	Level of systems and tool intergration. Lack of State presence. Technology platform interface. Gas mileage reimbursement solution is cumbersome. Does not demonstrate understanding of exceptional travel procedures.		6.5	325
	Member & Provider Services **To what extent the Offeror improves members' access to quality NEMT services by (a) improving how Healthy Connections Medicaid members interact with the agency; (b) implementing a person-centered, comprehensive transportation approach that will aid members to achieving their optimal overall health through timely NEMT services that are easy to access; (c) developing and implementing outreach and education activities that would increase the number of eligible members accessing NEMT services and reduce the number of missed or broken appointments due to lack of transportation, thereby improving the member's overall health; and (d) monitoring expenditure and utilization trends to ensure the services are provided in the most cost effective manner and only for eligible NEMT services.**	Sections 4, 10	**1-10**	**300**	Strong provider support for claims processing. Offer language interpretation. Real time agent assist program. State specific call center training. Tools used to detect fraud, waste, and abuse-use of predictive analytics.	Limited call center backup.		5.5	165
	General Requirements **To what extent the Offeror can demonstrate the ability to meet performance standards and ease administrative burden on Transportation Providers. The following should also be considered: (a) streamlined reimbursement processes including timely payment of services; (b) use of industry best practices to improve quality, reduce administrative inefficiencies, and improvement on the provider experience.** **Evaluators should consider how the Offeror plans to implement cost-reduction and quality improvement initiatives, monitoring end-to-end program performance and quality, and how they plan to increase healthcare access opportunities by the completion of approved trips, and mandating and utilizing improved performance measures and monitoring.**	Sections 3, 9, 13	**1-10**	**200**	Multiple modalities for training delivery. Competitive salary. Robust quality data tracking.	Administrative capability of transitioning and implenting a statewide program.		6	120
	Qualifications **The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion.**		**1-10**	**250**		Substantial adverse action. Concerns related to financial standing compared to the size, scope, and risk of the contract.		1.5	37.5
	Rates **The estimated capitation rate ranges by rate cell are presented in Appendix B. Capitation Payments and Reimbursement Methodology of the Contract (Amended ATTM 010) along with the actuarily sound methodology used to determine those capitated rate ranges. It is anticipated that SFY 2026 capitation rates for the NEMT program will reflect an update to the estimates provided in this report. Offeror's submission of a formal acknowledgement that the Offeror accepts the methodology provided and is in agreement with the rate range based on current data will be evaluated on a pass/fail basis, meaning failure of Offeror to submit such an acknowledgement agreeing to the Capitation Payments and Reimbursement Methodology expressed in Appendix B of the Contract will result in the Offeror's Proposal being determined nonresponsive.**		**Pass/Fail**		Pass				0
	Demonstrations **Offeror oral presentation with demonstration of its system(s) related to NEMT services. This includes, but is not limited to, Offeror's system demonstrating the ability to schedule, prior authorize, credential and communicate with its members and providers (mobile application).**		**1-10**	**200**					0
Total Points									647.5

EXHIBIT 8

June 26, 2025

Medical Transportation Management, Inc.
Attn: Alaina Macia'
aritchie@mtm-inc.net
16 Hawk Ridge Circle
Lake St. Louis, MO 63367

Subject RFP #5400028336 Non-Emergency Medical Transportation Coordinator Services (NEMT)

Dear Ms. Macia',

The State has finished the evaluation of the responses to the RFP for Non-Emergency Medical Transportation Coordinator Services (NEMT). Your company has been chosen to move into the negotiation process pursuant to the following requirements as set forth in the South Carolina Procurement Code and Regulations:

> *Section § 11-35-1530. Competitive Sealed Proposals (8) Negotiations. Whether price was an evaluation factor or not, the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:*
> *(a) negotiate with the highest-ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in its sole discretion;*
> *(b) during the negotiation process as outlined in item (a) above, if the procurement officer is unsuccessful in its first round of negotiations, he may reopen negotiations with any offeror with whom it previously negotiated; or*
> *(c) the procurement officer may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.*

Your ability to meet the State's requirements in the best manner possible are vital to making your solution one in which mutually benefits both Medical Transportation Management, Inc., and the State for years to come. After review of your proposal, the State requests that you respond to the following negotiation points:

1. A firm commitment that MTM will have caregiver functionalities available and fully operational within their mobile application on or before **January 1, 2026.**

2. Confirm acknowledgment that the use of the optional VeyoRide as part of its transportation provider network is strictly prohibited and that they can meet all contractual requirements without its use. This restriction is in accordance with **Section 8.7.7 of the ATTM 010 Contract**, which states:

    8.7.7. Contractor-Operated Vehicles

The Contractor may not itself provide transportation to Members or refer to, or subcontract with, a Transportation Provider:

8.7.7.1. If the Contractor has a financial relationship as defined at 42 CFR 411.354(a) (2023, as amended) with "Contractor" substituted for "physician" and "non-emergency transportation" substituted for "DHS"; or
8.7.7.2. The Contractor has an immediate family member, as defined at 42 CFR§ 411.351 (2023, as amended), that has a direct or indirect financial relationship with the Transportation Provider, with the term "Contractor" substituted for "physician."

3. On April 9, 2025, CMS published the Acceptable Risk Controls for ACA, Medicaid, and Provider Entities (ARC-AMPE) Version 1.02. This new security framework will replace the current Minimum Acceptable Risk Standards for Exchange (MARS-E v2.2) framework. CMS has mandated all AEs to have ARC-AMPE implemented by March 4, 2026. For this reason, we have updated the contract language to reflect this new requirement. MTM must confirm acknowledgment and acceptance of updated requirements.

4. The State requests MTM must confirm acknowledgement and acceptance of updated requirements for ATTM 005 HIPPA Business Associate Agreement.

Please submit your response to me at your earliest convenience but no later than **4:00 PM ET** on **June 30, 2025**. If formal negotiations should become necessary, I will schedule a tele-conference with both parties.

If you have any questions, please do not hesitate to contact me at kmiddleton@mmo.sc.gov.

Sincerely,

Kayla Middleton
Procurement Officer
Division of Procurement Services
SC State Fiscal Accountability Authority

EXHIBIT 9

STATE OF SOUTH CAROLINA
SFAA, DIV. OF PROCUREMENT SERVICES
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Intent to Award
Posting Date: July 3, 2025

Solicitation: **5400028336**
Description: **NON-EMERGENCY MEDICAL TRANSPORTATION**
Agency: **Department of Health & Human Services**

The State intends to award contract(s) noted below. Unless a written notice of intent to protest is timely filed pursuant to Section 11-35-4210(1)(b), or the award is otherwise suspended or canceled, this document becomes final Statement of Award effective**, July 16, 2025.** Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

If you are aggrieved in connection with the award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing
(a) by email to protest-mmo@mmo.sc.gov or
(b) by post or deliver to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400037511
Awarded To: MEDICAL TRANSPORTATION MANAGEMENT INC (7000046922)
635 MARYVILLE CENTRE DRIVE
SAINT LOUIS MO 63141

Total Potential Value: $390,000,000.00
Maximum Contract Period: July 16, 2025 through July 15, 2030

Item	Description	Total
00001	NEMT Broker Services	$ 390,000,000.00

Procurement Officer
KAYLA MIDDLETON

EXHIBIT 10

From: O'Keefe, Stephen <Stephen.OKeefe@prp.sc.gov>
Sent: Tuesday, January 20, 2026 9:19 AM
To: Grier, Manton <mgrier@ogc.sc.gov>; Missy Copeland <missy@gravesdavis.com>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Byron Roberts <Robertsb@scdhhs.gov>
Subject: RE: FINAL ORDER: Panel Case No. 2025-4 - Appeal by Medical Transportation Management, Inc.

Manton, the Panel Chair and I believe the order, as issued, is sufficiently clear. It does not announce a categorical rule regarding discussions; it applies established responsiveness principles to the record. The Panel's determination turned on the proposal's condition at submission and the timing of the State's clarification request rather than discussions under section 11-35-1530(6).

If the CPO believes clarification is warranted, the appropriate mechanism would be to file a

motion and serve it on the parties.

Steve O'Keefe
803.734.0661

From: Grier, Manton <mgrier@ogc.sc.gov>
Sent: Friday, January 16, 2026 5:32 PM
To: O'Keefe, Stephen <Stephen.OKeefe@prp.sc.gov>; Missy Copeland <missy@gravesdavis.com>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Byron Roberts <Robertsb@scdhhs.gov>
Subject: RE: FINAL ORDER: Panel Case No. 2025-4 - Appeal by Medical Transportation Management, Inc.

And to be clear, this does not affect the facts of this case, because discussions never occurred. The CPO believes it could have been cured, but it never happened; hence why his hands were tied in finding the proposal non-responsive.

From: Grier, Manton
Sent: Friday, January 16, 2026 5:30 PM
To: O'Keefe, Stephen <Stephen.OKeefe@prp.sc.gov>; Missy Copeland <missy@gravesdavis.com>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Byron Roberts <Robertsb@scdhhs.gov>
Subject: RE: FINAL ORDER: Panel Case No. 2025-4 - Appeal by Medical Transportation Management,

Steve:

Inc.

I send this reluctantly, but I'm asking whether the Panel may need to clarify a small issue in its decision. This is a point of clarification that does not affect the Panel's conclusion.

I think the order is very well written. But because none of the parties referenced Reg. 2095(I)(2)(b), the Panel may have overlooked one part of that Reg.

The order states as follows:

> Although this procurement was conducted under a request for proposals, and discussions may be permitted under section 11-35-1530(6), discussions presuppose a responsive proposal. Discussions may clarify minor uncertainties, but they may not cure a material ambiguity that renders a proposal nonresponsive at the time of submission. This distinction is critical because clarification of an otherwise responsive proposal differs fundamentally from curing a material ambiguity concerning compliance with a mandatory requirement. (Pg. 8)
>
> Consistent with *Coca-Cola Bottling*, a proposal that is nonresponsive as submitted cannot be rendered responsive through post-submission discussions or negotiations.
>
> (pg. 9)

Although the CPO believes the Panel absolutely got the decision right, the CPO is now asking the Panel whether the underlined language is consistent with regulation 2095(I)(2)(b), which allows the correction of deficiencies that would render a proposal non-responsive, and Panel's own precedent (I know the Panel has analyzed discussions recently in Appeal by Blue Cross 2019-2 and Appeal by Idemia 2022-1 and a number of other decisions).

Again, I reluctantly send this, and only at the request of the CPO, because the way our agency fundamentally operates on request to proposals is to allow procurement officers to correct non-responsive proposals during discussions. (Bids, of course, are different). From what the CPO has told me, the Reg. 2095 was specifically drafted, in part, to ensure procurement officers could do this.

Thanks and have a great weekend.
Manton

From: O'Keefe, Stephen <Stephen.OKeefe@prp.sc.gov>
Sent: Friday, January 16, 2026 1:40 PM
To: Missy Copeland <missy@gravesdavis.com>; John Schmidt <john@gravesdavis.com>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Andrew D'Antoni <adantoni@whdlawyers.com>; Vicki Johnson <JOHNVIC@scdhhs.gov>; Byron Roberts <Robertsb@scdhhs.gov>; White, John <jswhite@mmo.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; Blake.Page@lw.com; kyle.jefcoat@lw.com; Hunter Pope <HPope@whdlawyers.com>
Cc: Gillins, Pamela <Pamela.Gillins@prp.sc.gov>

Subject: FINAL ORDER: Panel Case No. 2025-4 - Appeal by Medical Transportation Management, Inc.

To All Parties:

Attached please find the Panel's Order for the case referenced above, issued January 16, 2026.

The Panel affirmed the October 2, 2025, decision of the CPO, sustaining ModivCare's protest on the ground that MTM's proposal was nonresponsive due to material ambiguity.

Please contact me if you have any questions.

Sincerely,

Steve O'Keefe
General Counsel

South Carolina Procurement Review Panel

Edgar Brown Building
1205 Pendleton Street, Suite 366
Columbia, SC 29201
803.734.0661

EXHIBIT 11

PROCUREMENT SERVICES

NOTICE OF TIME EXTENSION
POSTINGS OF AWARD RELATED DOCUMENTS

For solicitations issued by the Information Technology Management Office, the Statement of Award or Intent to Award will be posted at this location on the date published on the solicitation. If the appropriate award document has not been posted at this location by the close of business on the date published on the solicitation, contact the procurement officer whose name and contact information appears on the cover page of the solicitation, or if applicable, the last amendment to the solicitation.

For additional information, please reference Regulation 19-445.2090(B).

Refresh

Solicitation Number	Solicitation Description	Purchasing Agency	Delivery Point	Submission Ending Date/Time
5400028336	NON-EMERGENCY MEDICAL TRANSPORTATION	Materials Mgmt Ofc	Columbia, SC	05/14/2025 11:00:00 AM

Solicitation Attachments

Pre-Award Notices

16 solicitation attachments found, displaying all solicitation attachments.

	Attachment Name	Date/Time Posted
1	Solicitation Document.docx	05/02/2025 04:27:09 PM
2	ATTM 001 NR TP.docx	05/02/2025 04:27:30 PM
3	ATTM 002 OC.docx	05/02/2025 04:27:36 PM
4	ATTM 003 CRD.docx	05/02/2025 04:27:40 PM
5	ATTM 004 DCID.docx	05/02/2025 04:27:44 PM
6	ATTM 005 HIPAA.docx	05/02/2025 04:27:48 PM
7	ATTM 006 COI.docx	05/02/2025 04:27:52 PM
8	ATTM 007 CGL.docx	05/02/2025 04:27:57 PM
9	ATTM 008 QT.xlsx	05/02/2025 04:28:04 PM
10	ATTM 009 ETAA.xlsx	05/02/2025 04:28:08 PM
11	ATTM 010 CONTRACT.docx	05/02/2025 04:28:17 PM
12	ATTM 011 OE.xlsx	05/02/2025 04:28:21 PM
13	ATTM 012 DEMO SCRIPT.docx	05/02/2025 04:28:26 PM
14	AMENDED ATTM 010 CONTRACT.docx	05/02/2025 04:28:36 PM
15	ATTM 013 Q & A.xlsx	05/02/2025 04:29:33 PM
16	Procurement Library.zip	05/02/2025 04:30:35 PM

Contract Awards

Post-Award Notices

To view Award Documents, click on the Contract Number below

One contract found.

Contract Number	Term From	Term Thru	Vendor Name	Vendor Number
4400037511	07/16/2025	07/15/2030	MEDICAL TRANSPORTATION MANAGEMENT	7000046922

BACK

EXHIBIT 12

SFAA State Fiscal Accountability Authority PROCUREMENT SERVICES

Contract 4400037511

Back to Initial Screen

Validity Start 07/16/2025 **Validity End** 07/15/2030
Target Value $ 390,000,000.00
Bid Invitation 5400028336
Contract Notes

Vendor 7000046922

Vendor Address MEDICAL TRANSPORTATION MANAGEMENT INC
635 MARYVILLE CENTRE DRIVE
SAINT LOUIS MO 63141
District SAINT LOUIS **E-mail** newbusiness@mtm-inc.net
Telephone (636) 561-5686 **Fax Number** (636) 561-2962
Minority Status Not Applicable
Home Page http://www.mtm-inc.net **Other URL**

Vendor Contacts

One Contact found.

Contact Name	Function	Phone	E-mail
LUCAS, MICHELE	Primary Contact	(636) 695-5536	newbusiness@mtm-inc.net

Attachments

2 Attachments found, displaying all Attachments.

Attachment Title	Date/Time Posted
Award Suspension.docx	07/11/2025 04:03:46 PM
Intent to Award.docx	07/03/2025 08:32:32 AM

Contract Items

One Item found.

Item Pricing

00002 NEMT Broker Services

Material Group: 96182 - transportation services (not otherwise classified)

Agency: Dept of Health & Human Service

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EXHIBIT 13

WILLOUGHBY HUMPHREY & D'ANTONI
LITIGATION | REGULATORY | BUSINESS

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July 6, 2026

<u>VIA EMAIL</u>

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: FOIA Request on behalf of ModivCare Solutions, LLC
Solicitation #s 5400028336 and 5400029919

This firm, Willoughby Humphrey & D'Antoni, P.A., represents ModivCare Solutions, LLC, in connection with matters arising from Solicitation No. 5400028336, the subsequent protest proceedings, and the issuance of Solicitation No. 5400029919.

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq., and the Consolidated Procurement Code, we respectfully request access to and copies of all records concerning the cancellation of Solicitation No. 5400028336 and the development, approval, and issuance of Solicitation No. 5400029919. The specific categories of records requested are set forth in the attached Exhibit A and are incorporated herein by this reference.

This request includes, among other things, records concerning the decision to cancel Solicitation No. 5400028336, the State's evaluation of available remedies following the Procurement Review Panel's decision in Case No. 2025-4, the decision to issue Solicitation No. 5400029919, communications with consultants and third parties, and records reflecting the development and drafting of Solicitation No. 5400029919.

We request that documents be provided on a rolling basis as they become available. If your office requires additional time to determine whether certain materials are releasable under FOIA, please promptly release all documents that are immediately available and clearly subject to disclosure. Please do not delay production of responsive materials pending the collection or review of other documents. We are willing to pay reasonable fees for the search, duplication, and review of these records, and prefer to receive them electronically via email. If any records or portions thereof are withheld, please provide: (1) the non-exempt records and portions of records; (2) an index and description of any withheld materials; and (3) the specific statutory basis for each withholding.

Thank you for your attention to this request. Please confirm receipt and let us know if you require any additional information to process it. We look forward to your response within the statutory time frame as outlined in the S.C. Code Ann. § 11-35-410(F) ("[W]ithin five days of the receipt of any such request, [the agency will] make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer."). If you have any questions, please contact the undersigned at mwilloughby@whdlawyers.com or by cell phone at 803-730-3550.

With warmest regards, I am

Very truly yours,

WILLOUGHBY HUMPHREY & D'ANTONI, P.A.

Mitchell Willoughby

Mitchell Willoughby

MW/cgc

cc: Manton Grier, Jr.
Assistant General Counsel
Office of General Counsel
South Carolina State Fiscal Accountability Authority

Enclosures: Ex. A – Requested Records

FOIA Request

All documents and communications concerning the decision to cancel Solicitation No. 5400028336 and issue Solicitation No. 5400029919, including, but not limited to, the following:

1. All documents reflecting, discussing, recommending, approving, authorizing, or supporting the cancellation of Solicitation No. 5400028336, including any documents addressing whether Solicitation No. 5400028336 should have been continued, amended, corrected, re-evaluated, re-ranked, awarded, re-awarded, canceled, or replaced with a new solicitation.

2. All analyses, reports, memoranda, evaluations, recommendations, presentations, briefing materials, meeting materials, and communications identifying or discussing the rationale for issuing Solicitation No. 5400029919 rather than proceeding under Solicitation No. 5400028336.

3. All documents and communications evaluating whether ModivCare or any other offeror could or should have received an award under Solicitation No. 5400028336 following the Chief Procurement Officer's decision and the Procurement Review Panel's decision in Case No. 2025-4.

4. All documents and communications concerning the appropriate remedy following the ModivCare protest, the Chief Procurement Officer's protest decision, and the Procurement Review Panel decision in Case No. 2025-4, including discussions regarding award to ModivCare, award to another offeror, re-evaluation, re-ranking, cancellation, resolicitation, issuance of a replacement solicitation, legal risk, operational impact, financial impact, and programmatic impact.

5. All memoranda, analyses, recommendations, opinions, or communications concerning available remedies following the Procurement Review Panel decision, cancellation of Solicitation No. 5400028336, or issuance of Solicitation No. 5400029919.

6. All documents comparing Solicitation No. 5400028336 and Solicitation No. 5400029919, including documents identifying changes, revisions, corrections, additions, or modifications resulting from the protest proceedings, appeal proceedings, legal concerns, evaluator concerns, procurement concerns, consultant recommendations, or lessons learned from prior procurements.

7. All documents and communications evaluating the use of state resources associated with canceling Solicitation No. 5400028336 and issuing Solicitation No. 5400029919, including any analyses concerning cost, efficiency, duplication of

effort, procurement delays, administrative burden, or whether issuance of a replacement solicitation was determined to be in the best interests of the State.

8. All internal reviews, after-action reviews, procurement assessments, audits, lessons-learned analyses, deficiency assessments, risk assessments, or similar documents relating to Solicitation No. 5400028336 and its cancellation.

9. All communications concerning the cancellation of Solicitation No. 5400028336 or issuance of Solicitation No. 5400029919 involving the South Carolina Department of Health and Human Services, the State Fiscal Accountability Authority, the Division of Procurement Services, offerors, prospective offerors, consultants, advisors, legislators, lobbyists, state officials, or other third parties.

10. All meeting minutes, notes, recordings, calendar invitations, agendas, presentations, executive summaries, briefing materials, or decision memoranda concerning how SCDHHS would proceed following resolution of the protest and appeal involving Solicitation No. 5400028336.

11. All documents reflecting approval, concurrence, authorization, or endorsement of the decision to cancel Solicitation No. 5400028336 or issue Solicitation No. 5400029919 by agency leadership, procurement leadership, executive management, consultants, advisors, or external stakeholders.

12. All communications, memoranda, presentations, briefing materials, meeting notes, agendas, calendar invitations, or correspondence exchanged with or provided to the Governor's Office, the Executive Director of SCDHHS, SCDHHS executive leadership, members of the General Assembly, or legislative staff concerning Solicitation No. 5400028336, the ModivCare protest, the Procurement Review Panel decision, cancellation of Solicitation No. 5400028336, or issuance of Solicitation No. 5400029919.

13. All documents, emails, text messages, Teams messages, memoranda, presentations, analyses, meeting notes, or correspondence discussing whether the State could avoid making an award under Solicitation No. 5400028336 after the Procurement Review Panel's decision.

14. All documents, communications, emails, text messages, Teams messages, memoranda, meeting notes, presentations, analyses, recommendations, or other records discussing, referring, or relating to the need or desirability of issuing a new solicitation, re-soliciting the services, canceling Solicitation No. 5400028336, or otherwise restarting the procurement process in order to facilitate, permit, increase the likelihood of, or result in the award of the contract to a particular offeror, bidder, proposer, contractor, or vendor.

15. All documents, communications, analyses, recommendations, or discussions concerning whether any particular offeror, bidder, proposer, contractor, or vendor was preferred, favored, desired, better positioned, more suitable, more advantageous, more likely to receive an award, or otherwise benefited from cancellation of Solicitation No. 5400028336 and issuance of Solicitation No. 5400029919.

16. All documents, communications, memoranda, presentations, meeting materials, or analyses discussing whether cancellation of Solicitation No. 5400028336 and issuance of Solicitation No. 5400029919 would create an opportunity for a different award outcome than would have resulted had Solicitation No. 5400028336 been completed.

17. The complete procurement file relating to development of Solicitation No. 5400029919.

18. All working drafts of this solicitation and associated attachments.

19. All comments, edits, recommendations, and suggested revisions proposed by SCDHHS personnel, SFAA personnel, consultants, or outside parties.

20. All records identifying who drafted or edited each portion of the solicitation.

21. All communications between SCDHHS, SFAA, the Division of Procurement Services, consultants, legal counsel, or third parties discussing the competitive position of ModivCare, Medical Transportation Management, Inc. ("MTM"), or any other offeror following the Procurement Review Panel decision and whether issuance of a new solicitation would affect such competitive position.

22. All documents and communications containing or referencing any of the following terms:

- "award to ModivCare"
- "re-award"
- "reprocure"
- "re-procure"
- "remedy"
- "cancel and resolicit"
- "cancel and reissue"
- "cancel and rebid"
- "new procurement"
- "replacement solicitation"

- “5400028336 remedy”
- “5400029919”
- “Procurement Review Panel decision”
- “Case No. 2025-4”
- “ModivCare protest”
- “award to ModivCare”
- “award recommendation”
- “Medical Transportation Management”
- “MTM”
- “ModivCare”
- “Carter Goble”
- “state resources”
- “11-35-4210”
- “11-35-4310”
- “11-35-710”

The foregoing terms are intended as search terms only and shall not be construed to limit the scope of this request. Responsive records shall be produced whether or not they contain any of the foregoing terms if they otherwise fall within the scope of this request. To the extent electronic searches are conducted, please identify the custodians searched, the search terms utilized, the date ranges searched, and any responsive records excluded from production as non-responsive.

For purposes of this Request, the term “Communication” or “Communications” shall be construed as broadly as possible and includes any transmission, exchange, sharing, discussion, correspondence, conversation, message, or transfer of information, whether oral, written, electronic, recorded, or otherwise memorialized.

Communications include communications maintained by or in the possession of consultants, vendors, contractors, subcontractors, advisors, attorneys, or other third parties acting on behalf of, advising, supporting, or assisting SCDHHS, SFAA, the Division of Procurement Services, or any evaluation committee in connection with Solicitation Nos. 5400028336 or 5400029919. The term includes, but is not limited to:

- Emails and email attachments;
- Microsoft Teams messages, chats, channels, posts, reactions, and attachments;
- Text messages, SMS messages, MMS messages, and iMessages;
- Signal messages;
- WhatsApp messages;
- Telegram messages;
- Slack messages;
- Google Chat messages;
- Zoom chats and messages;
- Webex chats and messages;

- Microsoft Outlook messages;
- Voicemail messages;
- Social media direct messages;
- LinkedIn messages;
- Facebook Messenger messages;
- X (formerly Twitter) direct messages;
- Electronic messages sent through any mobile application, collaboration platform, or messaging platform;
- Calendar invitations, calendar entries, meeting requests, meeting responses, and scheduling communications;
- Notes of telephone calls;
- Notes of video conferences;
- Notes of in-person meetings;
- Meeting minutes;
- Agendas;
- Memoranda;
- Letters;
- Drafts;
- Comments;
- Annotations;
- Briefing papers;
- Presentations;
- Reports;
- White papers;
- Spreadsheets;
- Databases;
- Internal messaging systems;
- Shared-drive documents;
- Cloud-based documents;
- Recordings;
- Transcripts;
- Voice messages;
- Audio recordings;
- Video recordings;
- Metadata associated with any communication; and
- Any attachment or document transmitted with any communication.

The term "Communications" also includes communications sent or received through personal accounts, personal devices, business accounts, government accounts, government devices, privately owned devices, consultant-owned devices, contractor-owned devices, or any other medium used to conduct public business concerning the subject matter of this Request.

The term includes communications that have been archived, deleted, retained pursuant to a retention policy, stored in cloud environments, backed up, or otherwise preserved.

Unless otherwise specified, requests for communications include all attachments, forwarded versions, reply chains, embedded messages, drafts, comments, redlines, annotations, and associated metadata.

EXHIBIT 14

From: Grier, Manton
To: Hunter Pope; Simmons, Tara
Cc: _MMO - docreq; Protest-MMO; Mitchell Willoughby; Andrew D"Antoni; Craig, Kimber
Subject: RE: [External] FOIA Request - Solicitation # 5400029919
Date: Tuesday, July 7, 2026 1:12:25 PM
Attachments: image001.png
image003.png

Hunter:

I'm reviewing this now. But keep in mind that the five-day deadline under 11-35-400(F) only applies to information regarding a specific award or intended award. There has been no award or intended award for the NEMT solicitation that was just issued (Solicitation 5400029919). We will be proceeding under FOIA.

Further, much of what your FOIA request seeks is "source selection information" that cannot be disclosed pursuant to Reg. 19-445.2010 until after an award or intent to award is issued.

Also, we will not be providing a "rolling production." We will respond to the FOIA request for documents presently existing and that are not protected from disclosure. If you wish to retrieve documents that will be created in the future, you will have to submit a separate FOIA request for those. But, again, keep in mind that any source selection information will not be available under FOIA until after there has been an award or intended award.

If you have any questions, feel free to call me.

Manton

SFAA
State Fiscal Accountability Authority

Manton M. Grier Jr. | Assistant General Counsel
Office of General Counsel | State Fiscal Accountability Authority
1333 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-1660 | mgrier@ogc.sc.gov

---

From: Hunter Pope <HPope@whdlawyers.com>
Sent: Tuesday, July 7, 2026 11:49 AM
To: Simmons, Tara <tssimmons@mmo.sc.gov>
Cc: Grier, Manton <mgrier@ogc.sc.gov>; _MMO - docreq <docreq@mmo.sc.gov>; Protest-MMO <protest-mmo@mmo.state.sc.us>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Andrew D'Antoni <adantoni@whdlawyers.com>
Subject: RE: [External] FOIA Request - Solicitation # 5400029919

Good morning, Ms. Simmons:

Thank you for confirming receipt of our FOIA request.

We appreciate your attention to this matter. By way of clarification, we are not seeking records that are more than two years old. Accordingly, we do not believe that the extended production period applies to this request. Because the records sought fall within the two-year period, we look forward to receiving a complete response within the timeframe established by the South Carolina Consolidated Procurement Code.

We also wanted to reiterate that our request seeks production on a rolling basis. Given the compressed timeframe associated with the procurement and protest process, we would greatly appreciate the production of any responsive documents that are readily available while searches for additional records continue. To the extent responsive records can be produced as they are collected and reviewed, rather than waiting until all responsive materials have been gathered and processed, that would be extremely helpful.

Thank you again for your assistance and cooperation. Please let us know if there are any questions regarding the scope of the request or if any additional information would be helpful.

Best,

Hunter Pope

Hunter R. Pope | Associate Attorney
Willoughby Humphrey & D'Antoni, PA

930 Richland Street, Columbia, SC 29201
O. (803) 771-2124 | M. (803) 445-9555
hpope@whdlawyers.com | www.whdlawyers.com

WILLOUGHBY HUMPHREY & D'ANTONI
LITIGATION | REGULATORY | BUSINESS

From: Simmons, Tara <tssimmons@mmo.sc.gov>
Sent: Tuesday, July 7, 2026 9:22 AM
To: Hunter Pope <HPope@whdlawyers.com>
Subject: RE: [External] FOIA Request - Solicitation # 5400029919

Good morning,
Your FOIA request has been received and will be responded to in accordance with the South Carolina Consolidated Procurement Code.
Please note that if the records requested are more than two years old it may take up to 35 days to produce the requested documents.
Thanks,

Tara S. Simmons | Procurement Specialist II & FOIA Coordinator
Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Office: (803) 737-5092 | tssimmons@mmo.sc.gov

---

From: Hunter Pope <HPope@whdlawyers.com>
Sent: Monday, July 6, 2026 4:26 PM
To: _MMO - docreq <DocReq@mmo.sc.gov>; Protest-MMO <protest-mmo@mmo.state.sc.us>; Perry, Nakendra <nperry@mmo.sc.gov>
Cc: White, John <jswhite@mmo.sc.gov>; Grier, Manton <mgrier@ogc.sc.gov>; Craig, Kimber <kcraig@mmo.sc.gov>; Mitchell Willoughby <mwilloughby@whdlawyers.com>; Andrew D'Antoni <adantoni@whdlawyers.com>
Subject: [External] FOIA Request - Solicitation # 5400029919

Please find attached a formal FOIA request submitted on behalf of our client, ModivCare Solutions, LLC, regarding Solicitation # 5400029919. The request includes an attachment outlining the specific categories of documents we are seeking.

Please confirm receipt at your earliest convenience. Do not hesitate to contact me if you have any questions or require additional information.

Best regards,

Hunter R. Pope | Associate Attorney
Willoughby Humphrey & D'Antoni, PA

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WILLOUGHBY HUMPHREY & D'ANTONI
LITIGATION | REGULATORY | BUSINESS

EXHIBIT 15

WILLOUGHBY HUMPHREY & D'ANTONI
LITIGATION | REGULATORY | BUSINESS

Mitchell M. Willoughby
R. Walker Humphrey, II*
Andrew J. D'Antoni
Elizabeth Zeck**
ElizabethAnn L. Carroll
Margaret M. O'Shields
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July 7, 2026

<u>VIA EMAIL</u>

Chief Procurement Officer, Materials Management Office
State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Manton M. Grier, Jr.
Assistant General Counsel, Office of General Counsel
State Fiscal Accountability Authority
1333 Main Street, Suite 600
Columbia, SC 29201

RE: FOIA Production of Records Concerning Cancellation of Solicitation No. 5400028336 and Issuance of Solicitation No. 5400029919

Dear Chief Procurement Officer and Mr. Grier:

We write concerning the State's response to ModivCare's Freedom of Information Act request pursuant to S.C. Code Ann. § 11-35-410(F) seeking records relating to the cancellation of Solicitation No. 5400028336 and the issuance of Solicitation No. 5400029919.

After reviewing the State's position, ModivCare respectfully disagrees with the conclusion that the records requested are subject only to the general FOIA response deadlines and that the expedited disclosure provisions contained in the South Carolina Procurement Code are inapplicable. ModivCare is particularly concerned that the State's position, if adopted, would require an aggrieved offeror to exercise its protest rights within the Procurement Code's strict statutory deadlines while simultaneously denying access to the records necessary to understand and evaluate the procurement action being challenged.

As an initial matter, our request is not directed to source-selection information relating to a future award under Solicitation No. 5400029919. Rather, an important and primary purpose of the request is to obtain records concerning the State's decision to discontinue Solicitation No.

5400028336 and issue Solicitation No. 5400029919, including records relating to the State's consideration of available remedies following the Procurement Review Panel's decision in Case No. 2025-4 and the basis for its decision to resolicit these services rather than proceed under the existing procurement.

The procedural history is important. In the protest involving Solicitation No. 5400028336, ModivCare challenged, among other things, the State's cancellation of Solicitation No. 5400027781. Although ModivCare timely protested the intended award under Solicitation No. 5400028336, the Chief Procurement Officer held that ModivCare had nevertheless waived any challenge to the earlier cancellation of Solicitation No. 5400027781 because that issue was not separately protested within fifteen days following issuance of the replacement solicitation. Specifically, the CPO held that any challenge to the cancellation of Solicitation No. 5400027781 was untimely under S.C. Code Ann. § 11-35-4210(1)(a). *In re Protest of ModivCare LLC*, Case No. 2026-104, at 18 (Oct. 2, 2025).

The State now appears to be taking the position that an offeror must immediately challenge the issuance of Solicitation No. 5400029919 or forever waive any challenge to the cancellation of Solicitation No. 5400028336, while simultaneously refusing to produce records explaining that decision until well after the protest deadline has expired. Respectfully, those positions are irreconcilable.

The South Carolina Procurement Code expressly provides that one of its fundamental purposes is "to ensure the fair and equitable treatment of all persons who deal with the procurement system" and to maintain a procurement system characterized by integrity and public confidence. S.C. Code Ann. § 11-35-20(f) and (g). The Procurement Code likewise recognizes the importance of meaningful protest rights and provides strict deadlines within which aggrieved offerors must act.

Under the State's interpretation, ModivCare would be required to file a protest challenging the cancellation of Solicitation No. 5400028336 and issuance of Solicitation No. 5400029919 without access to the very records explaining why that decision was made. Even if ModivCare had filed its notice of intent to protest and records request on June 26, 2026, the date Solicitation No. 5400029919 was issued, the State's position would prevent access to responsive records until long after the statutory protest deadline expired.

Such a result is fundamentally inconsistent with the Procurement Code's stated policy of fair and equitable treatment, inconsistent with principles of fundamental fairness and due process, and deprives an aggrieved offeror of a meaningful opportunity to evaluate and support its protest grounds. It effectively requires an offeror either to file a protest without the benefit of relevant facts or permanently forfeit its right to challenge the procurement action.

The concern is heightened by S.C. Code Ann. § 11-35-4330, which authorizes sanctions for frivolous protests. The Procurement Code places protestants at risk if they submit unsupported protest allegations, yet the State's position would simultaneously deny access to the records necessary to investigate and substantiate those allegations. That result cannot be squared with the fair-treatment principles embodied in the Procurement Code or with basic notions of procedural fairness.

Moreover, we do not believe the records at issue can, or should, be viewed solely as pre-award source-selection materials relating to a future procurement. Solicitation No. 5400029919 was issued only after the Chief Procurement Officer sustained ModivCare's protest concerning Solicitation No. 5400028336 and remanded the "matter back to DPS to proceed in accordance with the Procurement Code," *In re Protest of ModivCare LLC*, Case No. 2026-104, at 21 (Oct. 2, 2025), and after the Procurement Review Panel affirmed the dispositive portions of that decision. Accordingly, the records explaining why the State chose to abandon Solicitation No. 5400028336 and issue Solicitation No. 5400029919 are not merely records relating to some future award decision; they are records documenting the State's chosen remedy following an intended award, a protest, a Chief Procurement Officer decision, and a Procurement Review Panel appeal.

Indeed, MTM argued, and the Chief Procurement Officer agreed, that ModivCare's challenge to the cancellation of Solicitation No. 5400027781 was waived even though ModivCare had timely protested the intended award under Solicitation No. 5400028336. The basis for that ruling was that a challenge to the cancellation itself had to be asserted within fifteen days of issuance of the replacement solicitation and could not be preserved by a later protest of the resulting award. The Chief Procurement Officer therefore held that any challenge to the cancellation of Solicitation No. 5400027781 was untimely because it was not asserted within fifteen days following issuance of Solicitation No. 5400028336. *In re Protest of ModivCare LLC*, Case No. 2026-104, at 18 (Oct. 2, 2025).

That prior position underscores the fundamental concern here. If issuance of a replacement solicitation triggers a protest deadline and the failure to protest within that period forever waives the challenge, it is difficult to reconcile a disclosure position that would prevent an aggrieved offeror from obtaining the records explaining the cancellation decision until after the protest deadline has expired. Such a result is inconsistent with the Procurement Code's stated purpose of ensuring the fair and equitable treatment of participants in the procurement system. S.C. Code Ann. § 11-35-20(f) and (g).

Returning to the substance of our request, we also wish to clarify that our request does not seek documents that may be created in the future. Rather, our request seeks records existing as of the date the request was submitted. Our request for rolling production was simply a request that responsive, non-exempt records be produced as they become available, rather than withholding all responsive records until completion of the State's review process.

We understand that the State is not obligated to provide rolling production. Nevertheless, given that the State has provided no public explanation or rationale for its decision to cancel Solicitation No. 5400028336 and issue Solicitation No. 5400029919, we certainly expected the State would, at a minimum, promptly produce any existing non-exempt records reflecting the basis for that decision. Those records are central to understanding the procurement action being challenged and to preserving the meaningful exercise of protest rights under the Procurement Code. Without access to such records, an aggrieved offeror is effectively required to decide whether to protest a procurement action without knowing the factual basis upon which the action was taken. That practical reality is precisely why we requested rolling production in the first instance.

Similarly, while we recognize that certain source-selection information may be protected from disclosure under applicable law, much of the information requested does not concern any future source-selection decision. The request seeks records relating to the cancellation of Solicitation No. 5400028336, analyses of available procurement remedies, communications concerning issuance of Solicitation No. 5400029919, procurement recommendations, consultant communications, and records identifying the rationale for abandoning the prior procurement. We do not believe all such records constitute source-selection information, and the existence of some potentially protected materials does not excuse production of non-exempt records.

At bottom, our concern is straightforward. The State's position appears to require ModivCare to challenge the cancellation of Solicitation No. 5400028336 within the statutory protest period or forever waive that challenge, while simultaneously withholding the records explaining that decision until after the protest period has expired. We respectfully submit that such a result is inconsistent with the Procurement Code's commitment to fairness, transparency, and equitable treatment of procurement participants. S.C. Code Ann. § 11-35-20(f) and (g).

Accordingly, we respectfully request that the State reconsider its position and promptly produce all non-exempt records concerning the cancellation of Solicitation No. 5400028336 and the decision to issue Solicitation No. 5400029919. At a minimum, if the State intends to withhold categories of responsive records, we request that it identify the categories being withheld and the specific legal basis asserted for withholding them so that the scope of any dispute may be better understood and potentially narrowed.

We appreciate your attention to this matter and look forward to your response. With warmest regards, I am

Very truly yours,

WILLOUGHBY HUMPHREY & D'ANTONI, P.A.

Mitchell Willoughby

Mitchell Willoughby

MW/cgc

Exhibit B

GRAVES & DAVIS
Attorneys at Law

Melissa J. Copeland
Columbia Office
803.309.4686
Missy@GravesDavis.com

July 28, 2026

Via email to: jswhite@mmo.sc.gov
John St. C. White
Materials Management Officer and State Engineer
Division of Procurement Services
SC State Fiscal Accountability Authority
1333 Main Street, Suite 700
Columbia, SC 29201

Re: Medical Transportation Management, Inc's Response to Protest of ModivCare Solutions, LLC Regarding Cancellation of Solicitation No. 5400028336

Dear Mr. White:

This Firm represents Medical Transportation Management, Inc ("MTM") with regard to the above-referenced protest filed by ModivCare Solutions, LLC ("ModivCare") dated July 11, 2026, concerning the Department of Health & Human Services Solicitation Nos. 5400028336 ("2025 RFP") and 5400029919 ("2026 RFP") for Non-Emergency Medical Transportation (NEMT) coordinator services.

I. Introduction

ModivCare protests the issuance of Solicitation No. 5400029919, the 2026 RFP. The issuance of this new solicitation followed the CPO's Decision and the affirming Panel Decision that rejected MTM's proposal in response to the prior solicitation, 2025 RFP, Solicitation No. 5400028336, as non-responsive. Governing Panel precedent requires that in this circumstance the remedy is a rebid. Additionally, substantial revisions to the requirements were made between the 2025 RFP and the newly released 2026 RFP which would also independently support cancellation of the prior RFP. ModivCare's allegation that there is not adequate documentation of the cancellation is not a valid ground for protest under established law. Furthermore, any deficiency in documentation can be easily cured in the agency's discretion.

Finally, ModivCare's request that it be awarded the contract under the prior RFP as the "highest ranked responsive offeror" fails to comply with the Procurement Code which requires award to only responsive *and responsible* offerors. It is undisputed that ModivCare's financial position has changed substantially from the circumstances that were evaluated as part of the 2025 RFP. On August 10, 2025, ModivCare filed for Chapter 11 Bankruptcy. In December 2025, ModivCare emerged from Chapter 11 Bankruptcy and instead of being the public company that submitted the prior proposal, it is now under private ownership by a group of its previous creditors, with a vastly different financial standing. The anticipated contract requires a vendor to make substantial payments to transport providers; any failure to make such payments puts the State at grave risk. Therefore, the State is entitled to a new process that allows it to evaluate ModviCare's current business and financial position. The State should not be forced to continue with outdated scoring under an old RFP and an outdated proposal that do not consider ModivCare's current business, financial status and responsibility, which is what is relevant and essential to the contract decision.

II. Response to Grounds of Protest

A. The Only Proper Remedy Under Governing Panel Precedent was Resolicitation and that Remedy did not have to be specifically ordered by the CPO or the Panel.

Since the issuance of the *Carter-Goble* decision by the Panel in 1990, it has consistently been applied that resolicitation is the required remedy in the circumstance like the one here where there are more than two offerors[1] in response to an RFP and an offeror is removed from consideration:

> The only issue to be decided by the Panel is, given that ATE is not responsive to the Request for Proposals, what is the proper remedy in this case. CGA argues that it is entitled to award of the contract because it was the second high scorer and because the evidence indicates that the State would incur no liability to ATE in awarding to CGA. The Division of General Services agrees that the proper remedy in this case is award to CGA, arguing that rebid would not be cost efficient because bid prices have already been exposed and the proposals have already been graded by (presumably) the most qualified personnel the Highway Department can offer. ATE believes that it is entitled to the contract and argues against rebid because of the exposure of its bid price and other information it considers prejudicial.
>
> The Panel holds that resolicitation is the appropriate remedy in this case. There appears to be disagreement between ATE and the Highway Department whether there is a contract in effect. Even if a contract exists, it is doubtful that the State would suffer any substantial liability from cancelling it. ATE testified that it had incurred no costs in execution of the contract and ATE would probably not be entitled to recover lost profits in light of the termination without cause on thirty day's notice provision contained in the RFP (Record, pp. 31-32).

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[1] *See Protest of Industrial Sales Co..,* Case No. 1993-11, 1993 SC CPO LEXIS 12, *6 (Procurement Review Panel, June 30, 1993) ("Carter Goble Associates, Inc., Case No. 1989-25, which specifies resolicitation as the remedy when the RFP process is used, is distinguished from this case because in the present case only two offerors were evaluated."). Under the 2025 RFP at hand, four offerors were evaluated; thus removing one offeror requires the remedy of resolicitation.

In Protest of Carter Goble Assoc., Inc., Case No. 1989-25, 1990 SC CPO LEXIS 16, *8-9 (Procurement Review Panel, February 7, 1990); <u>see also</u> *In Re Protest of GTE Vantage, Inc.* Case No. 1992-19, 1992 SC CPO LEXIS 8, *11-12 (Procurement Review Panel, November 17, 1992)("Because the Panel has determined that INC is not responsive to all of the material requirements of the RFP, resolicitation of the contract is required under the Panel's decision in In re: Protest of Carter Goble Associates, Inc., Case No. 1989-25."); *In Re Protests of Orangeburg-Calhoun-Allendale-Bamberg Comm. Action Agency, Inc.,* Case No. 1992-15, 1992 SC CPO LEXIS 12, *5 (Procurement Review Panel, August 10, 1992). ("In this case, the Protestants are alleging that the winning offeror on an RFP is not responsive. If successful in this claim, the appropriate remedy is resolicitation."); *Matter of: eSystems, Inc.*, Case No. 2017-202, 2017 SC CPO LEXIS 12, *25 (Chief Procurement Officer, January 18, 2017). ("IPS was non-responsive to material requirements of the solicitation and should not have been afforded the opportunity to cure that deficiency through the Best and Final process. The protest of eSystems, Inc. is granted. This solicitation was a Request for Proposals with more than two offers. In In Re: Protest of Carter Goble Associates, Inc., Case 1989-25, the Procurement Review Panel prescribed the remedy in this situation as a resolicitation of the State's requirements and award made to the responsive offeror whose proposal is most advantageous to the State, taking into consideration price and the evaluation factors set forth in the RFP. It is so ordered."); *In re Appeal by Schindler Elevator Company*, Case No. 2024-5, 2024 SC CPO LEXIS 42, *8 (Procurement Review Panel, September 19, 2024) ("[R]esolicitation is the appropriate remedy for a RFP that has a nonresponsive offeror.").

ModivCare wrongly contends that the *SourceCorp* decision shows that the *Carter Goble* remedy of resolicitation is not always required when one offeror is removed from consideration. In *Matter of SourceCorp Bps, Inc./Exela Tech, Inc.*, Case No. 2021-213, 2021 SC CPO LEXIS 37, *12 (Chief Procurement Officer, August 4, 2021), the protest involved the evaluation process, but unlike here, the remedy *did not* include removing one proposal from consideration, and thus *Carter Goble* would not apply at all to such a case:

> *In this case, neither proposal is being removed from consideration*. While re-solicitation may offer an opportunity to correct the evaluation error, it is neither necessary nor required by *Carter-Goble*. The most efficient remedy is to cancel the award to IM and remand for re-evaluation.

Id. at p. 8 (emphasis added). As stated by the CPO in that decision, *Carter Goble* did not apply since a proposal was not removed from consideration. In the case at hand, MTM's proposal was removed from consideration and thus *Carter Goble* mandates that the remedy is resolicitation.

ModivCare also asserts that Carter Goble does not apply since neither the CPO nor the Panel explicitly stated that cancellation was required or that *Carter Goble* applied. However, it is common for the CPO and Panel to remand for the agency to act in compliance with the Code.[2]

[2] A review of recent CPO decisions show that the CPO routinely remands to the agency to proceed in accordance with the Code rather than directing a specific remedy. *See* Case Nos. 2026-213, 2026-203, 2026-108, 2026-110, 2026-

Here, compliance with the Code includes compliance with controlling precedent which includes the *Carter Goble* remedy of resolicitation. Panel and CPO decisions have clearly and repeatedly affirmed that the remedy of resolicitation is required and there is no flexibility:

> Nevertheless, Carter Goble is crystal clear in its holding: Where the successful offeror to an RFP is found non-responsive, "the only way to insure the State gets the most advantageous proposal is to resolicit the contract in question here." ***The CPO has no flexibility to order any other remedy.*** Excent is non-responsive to a material and essential requirement of the solicitation. Pursuant to Protest of Carter Goble Associates, Inc., Panel Case No. 1989-25, the solicitation is cancelled, the intended award to Excent is cancelled, and the State is ordered to re-solicit its requirements.

In the Matter of Protest of Public Consulting Group, Case No. 2013-207, 2013 SC CPO LEXIS 3, *25 (Chief Procurement Officer, February 7, 2013) (emphasis added). The CPO's approach to granting a remedy of proceeding under the Code is properly designed to allow the agency to use its discretion in responding to the CPO's decision in a manner that is in the best interests of the State.

The Panel has also rejected arguments that the resolicitation remedy does not automatically apply in the circumstance where one offeror is rejected from consideration:

> The Panel finds that the award was properly canceled and resolicitation ordered in this case.
>
> Regulation 19-445.2085 not only allows the award to be canceled but also allows either reaward or resolicitation. BCBS argues that their {sic} should be a causal link between the cause of the nonresponsiveness and the ambiguous contract term to justify resolicitation in this case. However, the Panel's decision in Case No. 1989-25, In re: Protest of Carter Goble applies to this case. In Carter Goble, the Panel was also faced with the issue of the proper remedy in the case, given that the highest ranked offeror is not responsive. The Panel held that "resolicitation is the appropriate remedy in this case." The Panel reasoned that "in an RFP situation, award is made to the responsive offeror whose proposal is most advantageous to the State, taking into consideration price and the evaluation factors set forth in the RFP. Offerors must necessarily be evaluated in relation to each other and ranked on each criteria including cost. Simply deleting ATE's [nonresponsive offeror] scores from the process at this stage does not accurately reflect the result as it would have been if ATE had never been included. If ATE's proposal is removed, all evaluations in this case are invalid. Therefore, despite the problem of prior exposure of bid prices, the Panel believes that the fairest remedy in this case and the only

125A, 2026-125B, 2026-118, 2026-109, 2026-106, 2025-136, 2025-130, 2025-133, 2025-118, and 2025-122B. A review of recent Panel Orders shows that the Panel either affirms or reverses the CPO's decision, but does not direct a specific remedy. *See* Case Nos. 2026-1, 2025-1, 2025-5, 2024-4, 2024-5, and 2024-6.

> way to insure the State gets the most advantageous proposal is to resolicit the contract in question here."
>
> The Panel reinforced this decision that resolicitation is the appropriate remedy for a RFP that has a nonresponsive offeror, in Case No. 1992-15, In re: Protest of Transportation Management Services, Inc. and Case No. 1992-19, In re: Protest of GTE Vantage, Inc. In GTE Vantage, the Panel concluded that "because the Panel has determined that INC is not responsive to all of the material requirements of the RFP, resolicitation of the contract is required under the Panel's decision in In re: Protest of Carter Goble Associates, Inc., Case No. 1989-25."

In Re Protest of Blue Cross Blue Shield, Case No. 1996-3, 1996 SC CPO LEXIS 13, *7-8 (Procurement Review Panel, April 13, 1996).

Here, since MTM was the highest ranked and awarded offeror in response to the 2025 RFP and its proposal was rejected from consideration, the required remedy was a resolicitation[3] and that remedy applied by virtue of the *Carter-Goble* governing precedent and it did not have to be specifically stated by the CPO or the Panel in order to apply. The agency had no other lawful choice.

B. The RFP Specifications were Materially Revised, which further supports Cancellation and Resolicitation.

South Carolina Code Ann. § 11-35-1710 provides that:

> 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.

S.C. Code Ann. § 11-35-1710.

Regulation 19-445.2097 provides that:

> B. Cancellation of Solicitation Prior to Award.

[3] One of ModivCare's requested remedies in its July 18, 2025 protest of MTM's proposal was a resolicitation: "After taking those required actions, the Procurement Division should consider: (a) investigating whether the use of particular advisors created OCIs; (b) re-evaluating previously submitted proposals consistent with the terms of the RFP; (c) *amending the RFP to reflect the Procurement Division's unstated evaluation criteria*; (d) opening discussions or negotiations with ModivCare; (e) allowing for the submission of Final Proposal Revisions; and/or (f) awarding a new contract consistent with the RFP's terms and applicable law.") ModivCare's July 18, 2025 Protest attached to its July 11, 2026 Protest as part of Exhibit 3(emphasis added). Now, having been granted the very remedy it sought, ModivCare protests that it got just what it had asked for.

> (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.

S.C. Code Regs. 19-445.2097. The 2025 RFP 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.

Here, contrary to ModivCare's assertion that the specifications did not change between the 2025 and 2026 RFPs, a review of the 2026 RFP shows significant changes in the specifications including the following:

- A new requirement to include a narrative statement regarding Special Standards of Responsibility. 2026 RFP, § 4.1.3. ("Offeror shall submit the narrative statement required by Section 5.2 QUALIFICATIONS – SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015).")

- A new requirement to submit a Security Assessment Questionnaire. 2026 RFP, § 4.1.3. ("Offeror must submit ATTM 014 SERVICE PROVIDER SECURITY ASSESSMENT QEUSTIONNAIRE (SPSAQ) SUPPLEMENT if proposing use of Artificial Intelligence (AI) or Machine Learning (ML) in the proposed solution. See Section 4.1.3.2.8.1. Artificial Intelligence (AI) and Machine Learning (ML)")

- A new requirement to submit acceptance of the Appendix B Contract. 2026 RFP, § 4.1.3. ("Offeror must submit acknowledgement and acceptance of Appendix B of the ATTM 010 CONTRACT FOR NON- EMERGENCY MEDICAL TRANSPORTATION COORDINATOR SERVICES as required by Section 4.1.4 Rate Information.")

- A new section regarding "Contract Efficiencies." 2026 RFP, § 4.1.3.2-1.

- A new requirement to disclose use of Artificial Intelligence. 2026 RFP, § 4.1.3.2.8.1.

- Revised evaluation criteria. 2026 RFP, § 6.5.1.

- Revised Evaluation Process and Scoring section. 2026 RFP, § 6.5.4.

- Revised BAA provision regarding timing of notification of PHI/PII breach. 2026 RFP, ATTM 005, § C(e)(2).

- Revised Contract provisions. 2026 RFP, ATTM 10, §§ 5.1.3, 5.1.6. 6.7.11.14, 8.4.3.2, 8.7.1.2, 8.7.6.1, 11.12.13, 12.2.4.2.6, 12.2.4.2.7, 12.2.5.4, 12.2.5.7, 12.2.7, 12.2.9, Ex 5 Changes to Liquidated Damages for Performance Measure, Frequency, and Damage, 17.27, and 17.50-17.54.

- Revised instructions for Demonstrations/Oral Presentations. 2026 RFP, ATTM 12.

This simple review of the 2026 RFP shows that the specifications were revised and these changes independently support cancellation of the 2025 RFP. There is no reason the State cannot now simply cure any deficiency in documentation.

C. Failure to Keep Records to Satisfy Audit is not a Valid Ground for Protest.

ModivCare protests that the cancellation of the prior RFP was not documented in a manner sufficient to satisfy external audit requirements. Since governing Panel precedent required resolicitation in this circumstance that should be sufficient documentation to satisfy any audit purposes. Furthermore, the CPO has held that failure to maintain audit procurement records is not a sufficient ground for protest:

> Failure to respond to Safeway's FOIA request was an act that occurred after award and did not affect the award. From USC's failure to timely respond to FOIA, Safeway assumes *that USC failed to maintain a procurement file sufficient to satisfy an audit. Again, even if this were true, it does not provide a ground of protest. The requirement to maintain files sufficient to satisfy an audit is to facilitate an audit by State auditors, not bidders*.

Matter of SafeWay Signaling, Ltd. Co., Case No. 2025-016, 2025 SC CPO LEXIS 21, *4 (Chief Procurement Officer, April 15, 2025) (emphasis added).

D. ModivCare's Financial Condition and Responsibility Have Materially Changed Since the Prior Evaluation thus precluding its requested Remedy.

Notably, ModivCare seeks as a remedy award to it as the highest ranked *responsive* offeror. ModivCare Protest, p. 35 (emphasis added). However, that remedy is not in compliance with the Procurement Code as the Code requires an award to only *responsible* offerors. S.C. Code Ann. § 1530(9)(" Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals, ...").

ModivCare's responsibility is certainly in question given the changes in its financial standing and corporate structure since its proposal was evaluated under the 2025 RFP. Furthermore, financial information and qualifications were part of scoring under the 2025 RFP. The scoring under the 2025 RFP was conducted on or around June 5, 2025. One area that was scored was financial qualifications: "**Qualifications The information submitted in response to Section 4, INFORMATION FOR OFFERORS TO SUBMIT, Section 4.1.2 Corporate Background and Financial Information and Section 4.1.3 Rate Information and Section 5, QUALIFICATIONS will be used to evaluate this criterion."** ModivCare scored a 9.5 out of 10 for this Section based on the information submitted in its proposal. *Thereafter*, on August 10, 2025, ModivCare filed for Chapter 11 Bankruptcy. Although ModivCare has emerged from bankruptcy, it is no longer a public company, but is a private company owned in part by its former creditors. The State is allowed to assess this new information in evaluating ModivCare's financial qualifications and its responsibility. The State should not be compelled to abide by scoring on this component from over a year ago given such substantial changes in ModivCare's status.

CONCLUSION

For the reasons set forth above, MTM respectfully requests that ModivCare's protest be denied. Should the CPO require any further information regarding this matter, MTM would welcome the opportunity to attend a hearing or meeting or present any further briefing or analysis requested.

Very truly yours,

Melissa J. Copeland

Melissa J. Copeland

cc: Via email to:
Manton Grier, Esq.
Counsel for the CPO

Hunter Pope, Esq. and Mitchell Willoughby, Esq.
Counsel for ModivCare

Byron Roberts, Esq. and Vickie Johnson, Esq.
Counsel for HHS

Exhibit C

BEFORE
THE CHIEF PROCUREMENT OFFICER OF
THE SOUTH CAROLINA DIVISION OF PROCUREMENT SERVICES

IN RE:	)	
Protest of ModivCare Solutions, LLC	)	CPO Case No. 2027-201
In Connection with the Abandonment of the	)	
Department of Health & Human Services Solicitation	)	
No. 5400028336 and Issuance of Solicitation	)	
No. 5400029919	)	

Reply Brief of ModivCare Solutions, LLC in Opposition to Response of Medical Transportation Management, Inc., dated July 28, 2026

ModivCare Solutions, LLC ("ModivCare"), by and through undersigned counsel, submits this Reply to the Response of Medical Transportation Management, Inc. ("MTM") and in support of its Protest in the above captioned matter.

INTRODUCTION

MTM's Response confirms rather than refutes the central premise of ModivCare's Protest. At its core, this dispute concerns whether the South Carolina Department of Procurement Services ("DPS"), acting on behalf of the South Carolina Department of Health and Human Services ("SCDHHS"), lawfully abandoned Solicitation No. 5400028336 and initiated Solicitation No. 5400029919. The Procurement Code required DPS to comply with the statutory and regulatory requirements governing cancellation, including making and documenting the determinations necessary to justify that action. MTM's Response does not identify any contemporaneous written cancellation or abandonment determination, any documented best-interest analysis, or any procurement record demonstrating compliance with those requirements. Thus, it is clear that those essential and material requirements were simply ignored.

Instead of showing compliance with statutory and regulatory mandates, MTM's Response relies almost exclusively upon a single premise: that once MTM was determined to be nonresponsive, *In re Protest of Carter Goble Associates, Inc.*, Case No. 1989-25, automatically required resolicitation and left DPS with no discretion to pursue any other course of action. That assertion largely mirrors the very concern raised by ModivCare's Protest—namely, that DPS appears to have treated *Carter Goble* as creating a categorical rule requiring cancellation whenever an intended awardee is removed from consideration in a multi-offeror Request for Proposals ("RFP") procurement. As discussed below, neither *Carter Goble* nor subsequent procurement decisions support such an expansive interpretation.

MTM's Response also seeks to justify abandonment by pointing to alleged changes between the 2025 and 2026 solicitations. However, the relevant question is not whether differences can now be identified between the two procurements. The question is whether DPS actually relied upon those alleged changes when it abandoned Solicitation No. 5400028336 and whether it made the determinations required by the Procurement Code at the time it did so. MTM identifies no contemporaneous record supporting either proposition.

Finally, MTM attempts to shift the focus of this protest to ModivCare's Chapter 11 restructuring and current financial condition. That argument is both procedurally and legally misplaced. The issue presented by this protest is whether DPS lawfully abandoned the procurement, not whether MTM can identify a new basis for opposing award to ModivCare nearly a year after the proposals were submitted. In any event, federal law expressly limits governmental action based solely upon an entity's status as a bankruptcy debtor, and courts have repeatedly rejected the proposition that a Chapter 11 filing, standing alone, establishes a contractor's inability to perform or justifies exclusion from government contracting opportunities.

For these reasons, and those discussed below, MTM's Response provides no basis to deny the Protest and further underscores the need for the limited evidentiary hearing requested by

ModivCare concerning DPS's reliance on *Carter Goble*, the discussions preceding the abandonment decision, and the actual basis for abandoning Solicitation No. 5400028336.

ARGUMENT

I. MTM's Response Confirms that DPS's Abandonment Was Based on an Overly Broad Interpretation of *Carter Goble*.

A. MTM's Response Relies Almost Exclusively on *Carter Goble*.

MTM's Response confirms the central concern raised in ModivCare's Protest. Rather than identifying a contemporaneous written abandonment determination, a documented best-interest analysis, or any procurement record demonstrating compliance with the requirements of S.C. Code Ann. § 11-35-1710, MTM argues almost exclusively that abandonment was required as a matter of law because MTM was removed from consideration following the Procurement Review Panel's January 16, 2026 decision.

Indeed, MTM's principal argument is that *In re Protest of Carter Goble Associates, Inc.*, Case No. 1989-25, established a mandatory rule requiring resolicitation whenever the successful offeror in a Request for Proposals procurement involving more than two offerors is subsequently determined to be nonresponsive. Citing *Carter Goble* and several later decisions applying that case, MTM repeatedly asserts that DPS had "no other lawful choice" but to cancel Solicitation No. 5400028336 and issue a new solicitation once MTM was removed from consideration.

Notably absent from MTM's Response is any identification of the actual cancellation determination required by the Procurement Code. MTM does not identify when DPS formally decided to abandon Solicitation No. 5400028336, who made that decision, what written findings supported the decision, or what statutory or regulatory basis DPS relied upon at the time the abandonment occurred. Instead, MTM largely assumes the answer to the central question presented by this protest and proceeds directly to the conclusion that abandonment was mandatory under *Carter Goble*.

That argument largely mirrors the concern raised by ModivCare in its Protest. The issue presented here is not simply whether *Carter Goble* exists or whether certain prior decisions have ordered resolicitation under particular circumstances. Rather, the issue is whether DPS improperly treated *Carter Goble* as creating a categorical and self-executing rule that automatically required cancellation of the procurement, irrespective of the Procurement Code's independent requirements governing cancellation decisions. MTM's Response reinforces the concern that this is precisely how DPS viewed the matter.

Perhaps most significantly, MTM's argument depends on the proposition that resolicitation automatically followed from the CPO's decision and the Panel's affirmance, even though neither tribunal actually ordered cancellation, directed resolicitation, or even cited *Carter Goble*. The omission is noteworthy. Where procurement authorities believe *Carter Goble* controls the available remedy, they routinely say so. Yet neither the CPO's October 2, 2025 decision nor the Panel's January 16, 2026 order invoked *Carter Goble* or instructed DPS to abandon the procurement. Instead, the Panel simply affirmed the determination that MTM's proposal was nonresponsive.

Accordingly, MTM's Response does not resolve the central issue raised by the Protest. Rather, it confirms that the legality of DPS's actions turns on the threshold question of whether *Carter Goble* actually compelled cancellation of Solicitation No. 5400028336. As discussed in the following section, neither *Carter Goble* nor subsequent procurement precedent supports the expansive interpretation advanced by MTM.

B. *Carter Goble* Does Not Create a Mandatory Rule Requiring Cancellation in Every Case.

MTM's argument depends upon the premise that *Carter Goble* established a categorical rule requiring resolicitation whenever the successful offeror in a multi-offeror RFP procurement is later determined to be nonresponsive. The decision itself does not support such an expansive interpretation.

The question presented in *Carter Goble* was expressly framed by the Panel as follows, "the only issue to be decided by the Panel is, given that ATE is not responsive to the Request for Proposals, what is the proper remedy *in this case*." *Carter Goble* at 14–15. (emphasis added). The Panel then concluded that "resolicitation is the appropriate remedy in this case" because the proposals had been comparatively evaluated and ranked against one another and the Panel believed that "the only way to insure the State gets the most advantageous proposal is to resolicit the contract *in question here*." *Id.* (emphasis added). *Carter Goble* thus addressed the proper remedy only under the particular facts before the Panel. It did not purport to establish a universal rule applicable to every future procurement involving a nonresponsive offeror.

Indeed, the reasoning of *Carter Goble* demonstrates why it cannot reasonably be construed as a self-executing mandate. The Panel based its decision on the factual circumstances presented in that procurement and on its assessment that reevaluation of the remaining proposals would not accurately replicate the result that would have occurred had the nonresponsive offeror never been included in the evaluation process. Whether that rationale applies in a particular procurement necessarily depends upon the facts of that procurement. It is not a conclusion that automatically follows whenever an offeror is removed from consideration.

Moreover, accepting MTM's interpretation would effectively render the Procurement Code's cancellation provisions superfluous. Under MTM's theory, cancellation automatically occurs whenever a *Carter Goble*-type situation arises, regardless of whether the agency makes the determinations required by S.C. Code Ann. § 11-35-1710 or documents its rationale in the procurement file. Nothing in *Carter Goble* suggests that the Panel intended to (or had the authority to) displace the statutory requirements governing cancellation decisions, and nothing in the Procurement Code exempts agencies from those requirements whenever a protest results in the disqualification of an offeror.

For these reasons, *Carter Goble* is best understood as a decision prescribing a remedy under a particular set of facts presented in that case, not as a blanket rule requiring cancellation and resolicitation in every procurement where an offeror is later determined to be nonresponsive.

C. *SourceCorp* Directly Refutes MTM's Interpretation of *Carter Goble*.

More importantly, subsequent procurement decisions have expressly rejected the proposition that *Carter Goble* invariably dictates the remedy.

In *Re Protest of SourceCorp BPS, Inc. / Exela Technologies, Inc.*, Case No. 2021-213, the Chief Procurement Officer considered whether a procurement should be resolicited after identifying an evaluation error. The CPO acknowledged that resolicitation could provide one possible remedy, but expressly stated that "[w]hile re-solicitation may offer an opportunity to correct the evaluation error, it is neither necessary nor required by *Carter-Goble*." *Id.* at 8. Instead, the CPO found that the appropriate remedy was cancellation of the award and remand for reevaluation.

MTM attempts to distinguish *SourceCorp* on the ground that neither proposal in that case was removed from consideration. That distinction misses the significance of the decision. ModivCare cites *SourceCorp* not for its facts, but for its interpretation of *Carter Goble*. The critical point is that the CPO expressly rejected the proposition that *Carter Goble* automatically dictates a particular remedy whenever an issue arises in an RFP procurement. Had *Carter Goble* established the mandatory rule asserted by MTM, the CPO could not have stated that resolicitation was "neither necessary nor required" by that decision.

Accordingly, *SourceCorp* demonstrates that South Carolina procurement authorities have not treated *Carter Goble* as a rigid, self-executing rule. Rather, they have continued to examine the circumstances of individual procurements and determine the appropriate remedy based on the facts presented. That approach is fundamentally inconsistent with MTM's contention that DPS lacked any discretion once the Panel affirmed the determination that MTM's proposal was nonresponsive.

D. Neither the CPO nor the PRP Ordered Cancellation or Resolicitation.

MTM's theory is further undermined by the actions of the decision-makers whose rulings gave rise to this dispute.

If *Carter Goble* truly compelled cancellation as a matter of law, one would reasonably expect either the CPO or the Procurement Review Panel to say so. Yet neither decision contains any reference to *Carter Goble*. The CPO did not order cancellation. The CPO did not direct resolicitation. Likewise, the Panel did not order cancellation, direct resolicitation, or otherwise instruct DPS that it lacked discretion concerning the next steps in the procurement process. Instead, the Panel's decision was limited to affirming the determination that MTM's proposal was nonresponsive.

The omission is particularly significant because procurement authorities routinely cite *Carter Goble* when they believe it controls the available remedy. Several of the decisions cited by MTM expressly invoke *Carter Goble* and explicitly order cancellation and resolicitation on that basis. Here, by contrast, neither the CPO nor the Panel mentioned *Carter Goble* at all, despite having every opportunity to do so if they believed cancellation was legally required.

MTM attempts to overcome this problem by arguing that cancellation automatically followed from the CPO's and Panel's decisions, even though neither tribunal expressly ordered it. But that argument merely assumes the conclusion that MTM seeks to prove. The question presented by this protest is precisely whether DPS had discretion following remand and, if so, whether DPS complied with the Procurement Code when it exercised that discretion. The absence of any directive from either the CPO or the Panel ordering cancellation strongly suggests that the answer to that question is not nearly as clear-cut as MTM contends.

At a minimum, the fact that neither tribunal invoked *Carter Goble* or directed cancellation underscores the need for the evidentiary hearing requested by ModivCare. If DPS cancelled the procurement because it believed *Carter Goble* left it no alternative, the State should be required to explain where that understanding originated, how it was reached, and why it was not reflected in any contemporaneous written determination.

II. MTM Fails to Address the Procurement Code's Independent Cancellation Requirements.

A. The Procurement Code Required an Independent Cancellation Determination.

Even if MTM were correct that *Carter Goble* supports resolicitation under circumstances such as those presented here, that would not eliminate the Procurement Code's independent requirements governing cancellation of a solicitation.

South Carolina Code § 11-35-1710 provides that a solicitation may be cancelled when cancellation is determined to be in the best interest of the State and further requires that "[t]he reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file." Likewise, Regulation 19-445.2097 identifies specific circumstances under which cancellation may occur and contemplates a written determination by the procurement officer supporting that action. MTM's Response does not explain why these requirements ceased to apply simply because the Panel determined that MTM's proposal was nonresponsive.

Indeed, MTM's argument effectively assumes that *Carter Goble* displaced the statutory and regulatory framework governing cancellation decisions. Nothing in *Carter Goble* supports that proposition. The Panel's determination regarding the proper remedy in a particular protest does not exempt an agency from complying with the Procurement Code when implementing that remedy. Even if DPS ultimately concluded that cancellation and resolicitation were appropriate, it remained obligated to comply with the Code's requirements for documenting and supporting that decision.

This distinction is critical. ModivCare's Protest does not merely challenge the wisdom of DPS's decision to abandon Solicitation No. 5400028336. Rather, it challenges whether DPS complied with the legal requirements that govern cancellation decisions. MTM's Response largely ignores those requirements and instead proceeds from the assumption that cancellation automatically followed from the Panel's decision. That assumption is not supported by the Procurement Code.

B. MTM Never Identifies the Determination Required by the Procurement Code.

Notwithstanding the significant attention devoted to *Carter Goble*, MTM's Response never identifies the actual cancellation determination that the Procurement Code required DPS to make.

MTM does not identify:

- the date DPS decided to cancel Solicitation No. 5400028336;
- the individual who made that decision;

- the written determination authorizing the cancellation;
- the statutory or regulatory basis relied upon by DPS;
- the findings supporting the conclusion that cancellation was in the State's best interest; or
- the documentation placed in the procurement file to support the action.

Instead, MTM largely assumes that because cancellation was allegedly required under *Carter Goble*, the existence of the required determination is immaterial. But that approach merely highlights the deficiency identified in ModivCare's Protest. If DPS complied with the Procurement Code, there should be a written determination reflecting the basis for the cancellation decision. MTM's inability to identify such a determination is noteworthy, particularly given the central role that the cancellation decision plays in this dispute.

The omission becomes even more significant because MTM advances multiple alternative justifications for cancellation. At various points, MTM contends that cancellation was mandated by *Carter Goble*, justified by changes to the specifications, supported by DPS's general discretion under the Procurement Code, and warranted by ModivCare's alleged financial condition. Yet MTM never identifies which of those considerations DPS actually relied upon when it cancelled the procurement. That uncertainty further underscores the need for a limited evidentiary hearing regarding the basis for the cancellation decision, and whether there are any contemporaneous records reflecting the decision and analysis.

C. Post Hoc Rationalizations Cannot Substitute for the Required Contemporaneous Documentation.

In a shocking assertion, MTM repeatedly suggests that any deficiency in the cancellation record can simply be cured now. *See, e.g., Appeal by Medical Transportation Management*, SCPD

2025-4, (2026 WL 539399 at *5 ("Under established Panel precedent, contemporaneous evaluation materials are entitled to greater weight than after-the-fact explanations offered during a protest or appeal."); *In Re Contract Controversy*, SCPD 2005-2, 2007 WL 4898329 at *8 ("As is the case with other issues, the most credible evidence reviewed by the Panel is the contemporaneous documentation . . . as opposed to carefully tailored testimony and post dispute . . . explanations, rationalizations and calculations.").

For example, MTM argues that the revisions incorporated into the 2026 RFP independently justify cancellation and contends that "[t]here is no reason the State cannot now simply cure any deficiency in documentation." MTM Resp. at 7. That position is inconsistent with the structure and purpose of the Procurement Code.

The statutory requirement that cancellation decisions be supported by documentation sufficient to satisfy external audit necessarily contemplates contemporaneous documentation of the agency's decision-making process. If an agency could wait until after a protest is filed and then develop new justifications for its actions, the Code's documentation requirements would serve little practical purpose. Agencies could simply reconstruct their reasoning after litigation commenced, depriving offerors and reviewing authorities of any meaningful mechanism for assessing whether the original decision complied with the law.

The relevant question, therefore, is not whether lawyers or state personnel can now identify potential grounds that *might* have supported cancellation. The relevant inquiry is whether DPS actually relied upon those grounds at the time it decided to abandon Solicitation No. 5400028336 and whether it documented that reliance in the manner required by the Procurement Code. MTM's Response does not answer that question.

Nor does MTM's reliance on post-cancellation revisions to the 2026 solicitation cure the problem. The existence of revisions in a replacement solicitation may demonstrate that changes were ultimately made, but it does not establish that DPS made a contemporaneous determination that those changes justified cancellation of the original solicitation. Those are separate inquiries. The Procurement Code required DPS to document its reasons at the time it acted, not to develop alternative explanations after its decision was challenged.

Ultimately, MTM's position would allow agencies to justify virtually any cancellation retroactively, so long as a plausible rationale could later be articulated. Nothing in the Procurement Code supports such an approach. Rather, the Code requires agencies to make and document the necessary determinations before abandoning a procurement. Because neither MTM nor the State has identified such a determination here, MTM's Response fails to address one of the central defects identified in ModivCare's Protest.

III. MTM's "Specification Changes" Argument Cannot Justify the Already-Completed Cancellation.

A. The Relevant Question Is Why DPS Cancelled the Solicitation.

A substantial portion of MTM's Response is devoted to identifying minor differences between Solicitation No. 5400028336 and Solicitation No. 5400029919. According to MTM, those differences independently justify cancellation of the original procurement. MTM Resp. at 6–7. That argument misses the central issue.

The question presented by this protest is not whether counsel can now identify revisions contained in the replacement solicitation. Rather, the relevant question is whether DPS actually relied upon those revisions when it decided to cancel Solicitation No. 5400028336. Under the Procurement Code, the legality of a cancellation turns upon the rationale adopted by the agency *at* *the time* the decision was made and whether that rationale was properly documented in the procurement file. S.C. Code Ann. § 11-35-1710; S.C. Code Ann. Regs. 19-445.2097.

MTM's Response largely attempts to substitute a retrospective justification for the contemporaneous determination required by law. Even assuming the revisions identified by MTM could have supported cancellation under certain circumstances, that does not establish that DPS cancelled the 2025 solicitation for those reasons. Nor does it establish that DPS ever made the findings required by the Procurement Code.

Accordingly, the existence of minor differences between the 2025 and 2026 solicitations does not resolve the issue presented by ModivCare's Protest. The relevant inquiry remains whether those alleged changes actually formed the basis of DPS's cancellation decision.

B. There Is No Evidence That DPS Cancelled the Solicitation Because of Specification Changes.

Significantly, MTM identifies no contemporaneous evidence demonstrating that DPS relied upon specification changes when it abandoned Solicitation No. 5400028336.

MTM does not cite a written determination in which DPS concluded that specifications had been materially revised. MTM does not identify a procurement officer memorandum analyzing the alleged revisions. MTM does not point to any document reflecting that DPS evaluated potential amendments to the existing solicitation before deciding to cancel it. Nor does MTM identify any contemporaneous finding that the alleged revisions were sufficiently significant to warrant abandoning a fully evaluated procurement that had already been the subject of both a CPO decision and a Procurement Review Panel appeal.

Instead, MTM simply compares provisions contained in the 2025 and 2026 solicitations and concludes that cancellation was therefore justified. That reasoning improperly assumes that because a justification can be identified today, it must have been the basis for DPS's decision when the decision was made.

The Procurement Code requires more. An agency's cancellation decision must be evaluated based upon the rationale actually relied upon by the agency, not upon post hoc explanations developed during subsequent litigation. To date, neither DPS nor MTM has identified any contemporaneous evidence demonstrating that specification revisions formed the basis of the cancellation decision.

The absence of such evidence is particularly notable because MTM's Response otherwise insists that cancellation was mandatory under *Carter Goble*. If cancellation was truly automatic and legally compelled, there would have been no reason for DPS to separately evaluate whether revised specifications independently justified cancellation. The fact that MTM now advances both theories only underscores the uncertainty concerning the actual basis for the agency's action.

C. Many of the Identified Revisions Appear Routine and Administrative in Nature.

Even setting aside the lack of evidence that DPS relied upon them, many of the changes identified by MTM appear routine, administrative, or procedural in nature.

For example, MTM points to a new requirement concerning special standards of responsibility, a security assessment questionnaire related to artificial intelligence, acknowledgment of certain contract provisions, revised demonstration instructions, revisions to evaluation criteria, and updates to various contract terms. MTM Resp. at 6–7.

The mere existence of such minor revisions does not establish that cancellation of the original solicitation was necessary or appropriate. Government procurements are frequently amended, clarified, and updated. Indeed, ModivCare's original protest expressly contemplated a variety of potential corrective actions, including amendment of the solicitation, reevaluation of proposals, discussions, negotiations, and final proposal revisions. MTM Resp. at 5 n.3.

Nor has MTM attempted to demonstrate how any particular revision rendered continuation of Solicitation No. 5400028336 impracticable or contrary to the State's interests. The Response simply catalogs differences between the two solicitations without addressing whether those changes were material, whether they could have been addressed through amendment, or whether DPS ever performed such an analysis in the first place.

Ultimately, MTM's argument proves too much. If the mere existence of minor revisions in a replacement solicitation were sufficient to validate cancellation of an earlier procurement, the procedural safeguards contained in S.C. Code Ann. § 11-35-1710 would be meaningless. Agencies could avoid scrutiny of cancellation decisions simply by issuing a new solicitation containing revised forms, updated instructions, or modified contract provisions and then asserting, after the fact, that the revisions justified the cancellation.

That is not what the Procurement Code requires. The relevant question is not whether differences can be identified between two solicitations. It is whether DPS contemporaneously determined that those differences justified cancellation and documented that determination in accordance with the Procurement Code. MTM's Response provides no evidence that DPS ever did so.

IV. MTM's Bankruptcy Argument Is Legally and Factually Irrelevant.

A. MTM Confuses Responsibility with the Issues Presented in This Protest.

MTM devotes a substantial portion of its Response to ModivCare's Chapter 11 restructuring, emergence from bankruptcy, and current ownership structure. MTM Resp. at 7–8. That discussion largely misses the issues presented by this protest.

This protest concerns whether DPS lawfully cancelled Solicitation No. 5400028336 and whether DPS complied with the Procurement Code when it elected to abandon an already-completed procurement process and issue a replacement solicitation. The protest does not concern a current responsibility determination, nor does it challenge any decision by DPS evaluating ModivCare's present financial condition.

Even assuming, arguendo, that responsibility could ultimately become relevant to a future award decision, MTM's arguments do nothing to establish that DPS lawfully cancelled the original solicitation. They do not explain the absence of a contemporaneous cancellation determination, justify DPS's apparent reliance on *Carter Goble*, or demonstrate compliance with S.C. Code Ann. § 11-35-1710. At most, they raise issues that might arise only if and when the State is required to evaluate award to ModivCare.

For that reason alone, this argument provides no basis to deny the Protest.

B. Federal Law Prohibits Governmental Discrimination Based Solely on Bankruptcy Status.

To the extent MTM invites the CPO to view ModivCare's Chapter 11 filing itself as a basis for denying award or excluding ModivCare from consideration, that argument raises significant concerns under federal law.

Section 525(a) of the Bankruptcy Code prohibits governmental entities from discriminating against debtors solely because they have sought relief under the Bankruptcy Code. 11 U.S.C. § 525(a). While courts have recognized that governmental entities may evaluate legitimate issues relating to financial capability and future performance, they have consistently held that bankruptcy status alone cannot serve as the basis for exclusion from governmental opportunities.

In *Matter of Son-Shine Grading, Inc.*, the United States Bankruptcy Court for the Eastern District of North Carolina held that a state transportation agency violated § 525(a) when it disqualified a contractor from bidding on highway projects because of its pending Chapter 11 case. The court rejected the agency's assumption that bankruptcy rendered the contractor financially unreliable and concluded that the agency could not disqualify the contractor solely because it had sought bankruptcy protection. *Matter of Son-Shine Grading, Inc.*, 27 B.R. 693, 695–96 (Bankr. E.D.N.C. 1983).

Likewise, in *In re Exquisito Services, Inc.*, the Fifth Circuit held that a governmental entity violated § 525(a) when it refused to renew a government procurement contract solely because the contractor had filed for Chapter 11 protection. The court specifically recognized that § 525(a) has been successfully applied in the government-contracting context and held that governmental discrimination based solely on bankruptcy status is prohibited. *In re Exquisito Servs., Inc.*, 823 F.2d 151, 153–55 (5th Cir. 1987).

Accordingly, while governmental entities may evaluate legitimate performance-related considerations, federal law prohibits treating bankruptcy itself as dispositive evidence that a contractor is unqualified for government work.

C. MTM's Argument Rests Primarily on the Existence of ModivCare's Bankruptcy.

Notably, MTM identifies no evidence demonstrating that ModivCare is incapable of performing the contract.

MTM does not identify any failure by ModivCare to perform existing NEMT contracts. MTM does not point to any inability to maintain transportation networks, pay transportation providers, satisfy contractual obligations, or meet operational requirements. Nor does MTM identify any determination by DPS finding that ModivCare lacks the resources necessary to perform the services contemplated by Solicitation No. 5400028336.

Instead, MTM's discussion focuses principally on the fact that ModivCare filed for Chapter 11 protection in August 2025, emerged from bankruptcy in December 2025, and now has a different ownership and capital structure than existed when proposals were originally evaluated. MTM Resp. at 1, 7–8.

Those facts alone do not establish nonresponsibility. Indeed, if the mere existence of a bankruptcy proceeding were sufficient to justify exclusion from government contracting opportunities, the protections embodied in § 525(a) would be largely meaningless. As the courts have repeatedly recognized, governmental entities may not simply presume that a bankrupt entity lacks the ability to perform.

More importantly, MTM's argument is not supported by any evidence concerning ModivCare's actual financial condition or performance capability. To the contrary, Kenneth Shepard, ModivCare's Executive Vice President and Group Chief Financial Officer, has submitted sworn testimony confirming that ModivCare remained fully capable of performing the contract that was the subject of Solicitation No. 5400028336 throughout the restructuring process and that the Company today is financially stronger and better positioned to perform its contractual obligations than it was immediately prior to the filing of its Chapter 11 petition. Shepard Aff. ¶ 11. Mr. Shepard further testifies that the restructuring substantially reduced ModivCare's debt obligations, improved the Company's liquidity and financial stability, and resulted in ownership by institutional investors with a direct interest in the Company's continued long-term success. Shepard Aff. ¶¶ 7-8. Accordingly, the only evidence before the CPO establishes that ModivCare's financial position improved as a result of the restructuring, not the reverse.

Moreover, MTM identifies no point during the evaluation process, the CPO proceedings, the Procurement Review Panel appeal, or the period following the Panel's January 16, 2026 decision at which ModivCare was unable to satisfy the requirements of either its existing contractual obligations or Solicitation No. 5400028336. MTM does not identify any service interruption, any inability to maintain provider networks, any failure to make required payments, or any determination by any governmental entity that ModivCare lacked the resources necessary to perform. To the contrary, ModivCare's Executive Vice President and Group Chief Financial Officer has submitted sworn testimony that ModivCare continued providing services nationwide without interruption throughout the restructuring process and remained fully capable of performing the contract that was the subject of Solicitation No. 5400028336. Shepard Aff. ¶¶ 10-11. Accordingly, MTM's argument rests not on evidence of actual inability to perform, but on the mere existence of a bankruptcy filing and the unsupported assumption that such a filing necessarily indicates nonresponsibility.

D. Bankruptcy Does Not Establish Nonresponsibility.

The premise underlying MTM's argument—that bankruptcy necessarily indicates financial unreliability—is not supported by federal law.

As the court explained in *Son-Shine Grading*, a debtor operating under Chapter 11 may, in some circumstances, be "much better able to perform its contracts than a contractor not in bankruptcy" because post-petition revenues are not immediately consumed by pre-petition obligations. 27 B.R. at 695.

Similarly, *Exquisito* recognized that governmental entities may not simply equate bankruptcy status with inability to perform. Rather, the relevant inquiry is whether there exists a legitimate, non-discriminatory basis for concluding that the contractor cannot satisfactorily perform the work. 823 F.2d at 153–55.

MTM's Response does not undertake that analysis. Rather, it relies heavily on the existence of the bankruptcy proceeding itself and the corporate restructuring that followed. Whatever significance those facts may have in other contexts, they do not establish that ModivCare lacks the capability, integrity, reliability, or financial resources necessary to perform the contract.

In fact, the evidence before the CPO establishes precisely the opposite. Mr. Shepard testifies that ModivCare's restructuring was specifically designed to strengthen the Company's balance sheet, reduce debt, improve liquidity, and position the Company for continued operational success. Shepard Aff. ¶¶ 6-8. He further testifies that the restructuring substantially reduced ModivCare's debt obligations, improved the Company's overall financial position and stability, and resulted in ownership by sophisticated institutional investors with a direct interest in the Company's continued success. Shepard Aff. ¶¶ 7-8. Most importantly, Mr. Shepard confirms that, while ModivCare was fully capable of performing the contract that was the subject of Solicitation No. 5400028336 before the restructuring, the Company today is "financially stronger and better positioned to perform its contractual obligations" than it was immediately prior to filing for Chapter 11 protection. Shepard Aff. ¶ 11. Thus, even if responsibility were relevant to this protest, the unrebutted evidence demonstrates that ModivCare emerged from the restructuring in a stronger financial position than existed before the bankruptcy filing and that its ability to perform contractual obligations was never impaired.

E. Another State Procurement Authority Recently Rejected the Same Theory.

Although not binding upon the CPO, a recent procurement determination from Arkansas illustrates the weakness of MTM's position.

In 2025, the Arkansas Department of Human Services rescinded an award to ModivCare after learning of its Chapter 11 filing and concluded that the bankruptcy raised concerns regarding

ModivCare's financial responsibility. Following a protest, the Arkansas State Procurement Director determined that the award rescission violated 11 U.S.C. § 525(a) because the agency's action was based upon ModivCare's bankruptcy status. The Procurement Director sustained the protest and ordered reinstatement of the award unless the agency identified independent grounds unrelated to the bankruptcy itself.

The Arkansas determination is not controlling here. However, it demonstrates that another state procurement authority, when confronted with substantially the same argument advanced by MTM, concluded that federal bankruptcy law prohibited treating ModivCare's Chapter 11 filing as a sufficient basis for exclusion from a government contract opportunity.

F. MTM's Bankruptcy Argument Further Demonstrates Why DPS's Actual Rationale Matters.

Ultimately, MTM's discussion of ModivCare's bankruptcy underscores the importance of determining the actual rationale relied upon by DPS.

Throughout its Response, MTM advances a series of alternative justifications for DPS's actions, including *Carter Goble*, revised specifications, general cancellation authority, and ModivCare's post-protest financial circumstances. Yet nowhere does MTM identify which of these considerations DPS actually relied upon when it abandoned Solicitation No. 5400028336. Like ModivCare, they are left to speculate as a result of the state's failure to provide any actual explanation.

If DPS cancelled the solicitation because it believed *Carter Goble* compelled cancellation, that rationale should be reflected in the procurement record. If DPS cancelled because specifications materially changed, there should be contemporaneous documentation demonstrating that determination. And if ModivCare's bankruptcy or financial condition played any role in the

State's decision-making process, the parties are entitled to know when that issue arose, how it was evaluated, and whether it was considered in a manner consistent with federal law.

Accordingly, far from resolving the issues presented by the Protest, MTM's bankruptcy argument further demonstrates why discovery into DPS's actual rationale and the limited evidentiary hearing requested by ModivCare remain necessary.

V. MTM's Response Demonstrates Why a Limited Evidentiary Hearing Is Necessary.

Perhaps the most significant consequence of MTM's Response is that it reinforces, rather than diminishes, the need for the limited evidentiary hearing requested in ModivCare's Protest.

The central questions presented by this protest remain unanswered. MTM argues that cancellation was mandatory under *Carter Goble*. It alternatively argues that cancellation was independently justified by material revisions to the solicitation. It further raises concerns regarding ModivCare's current financial condition and responsibility. Yet neither MTM nor DPS has identified the actual basis upon which DPS decided to cancel Solicitation No. 5400028336.

Nor has any party identified the written determination required by the Procurement Code. The record presently contains no contemporaneous explanation establishing whether DPS believed cancellation was compelled by *Carter Goble*, whether DPS made an independent best-interest determination under S.C. Code Ann. § 11-35-1710, whether DPS concluded that specifications had materially changed, or whether some combination of those considerations motivated the decision. MTM's Response repeatedly attempts to justify the cancellation, but it does not establish what rationale DPS itself actually relied upon when it acted.

Indeed, MTM's Response largely confirms the concern raised by ModivCare in its Protest. Although no written cancellation determination has been identified, MTM repeatedly advances the precise interpretation of *Carter Goble* that ModivCare suspected may have driven DPS's actions.

Namely, that once MTM was determined to be nonresponsive, DPS had no lawful alternative but to cancel the solicitation and resolicit its requirements. Whether DPS actually held that view, how it arrived at that conclusion, and whether that conclusion was memorialized in any procurement record remain unanswered questions.

The absence of a developed factual record is particularly significant because neither the CPO nor the Procurement Review Panel directed DPS to cancel the solicitation, invoked *Carter Goble*, or expressly ordered resolicitation. Instead, DPS appears to have made that decision following the remand. Accordingly, understanding DPS's reasoning, the discussions that preceded the abandonment decision, and the documents generated during that process is central to resolving the issues raised by this protest.

For these reasons, ModivCare respectfully submits that a limited evidentiary hearing remains appropriate and necessary. The hearing need not address the underlying evaluation of proposals or revisit issues already resolved by the CPO and the Procurement Review Panel. Rather, the hearing should be narrowly tailored to determine:

- whether DPS believed *Carter Goble* required abandonment of Solicitation No. 5400028336;
- what discussions occurred among DPS, SCDHHS, and other State personnel concerning the effect of *Carter Goble* following the Panel's January 16, 2026 decision;
- whether DPS made a written cancellation determination and, if so, the contents of that determination;
- what specific basis or bases DPS relied upon when it decided to abandon the solicitation; and

- whether DPS contemporaneously considered alternatives to abandonment before issuing Solicitation No. 5400029919.

Without testimony and production of the relevant procurement records, the parties and the CPO are left to speculate regarding the rationale for DPS's actions. MTM's Response, rather than eliminating that uncertainty, underscores it. Accordingly, the limited evidentiary hearing requested by ModivCare remains necessary to create an adequate record for decision on the Protest.

VI. Conclusion

MTM's Response does not cure the fundamental defects identified in ModivCare's Protest. Rather, it at most confirms that the abandonment of Solicitation No. 5400028336 appears to have been based upon an expansive interpretation of *Carter Goble* that neither the decision itself nor subsequent procurement precedent supports. Despite repeatedly asserting that abandonment was required, MTM identifies no contemporaneous written determination, no documented best-interest analysis, and no procurement record demonstrating compliance with the cancellation requirements imposed by S.C. Code Ann. § 11-35-1710 and Regulation 19-445.2097.

MTM's additional arguments fare no better. Its reliance upon alleged specification changes is unsupported by any evidence that DPS actually relied upon those changes when it abandoned the solicitation. Likewise, its discussion of ModivCare's Chapter 11 restructuring is both irrelevant to the abandonment decision at issue and inconsistent with the principles embodied in 11 U.S.C. § 525(a) and the authorities interpreting that provision.

At bottom, the central question raised by the Protest remains unanswered: why did DPS cancel Solicitation No. 5400028336? MTM offers several possible justifications, but neither MTM nor DPS has identified the rationale actually relied upon by the agency, the determinations that were made, or the documentation that purportedly supports those determinations. The absence of that information is precisely why ModivCare requested a limited evidentiary hearing and why such a hearing remains necessary.

For the foregoing reasons, ModivCare respectfully requests that the Chief Procurement Officer sustain the Protest, determine that DPS's abandonment of Solicitation No. 5400028336 and issuance of Solicitation No. 5400029919 violated the South Carolina Consolidated Procurement Code, grant ModivCare's request for a limited evidentiary hearing, grant all other relief requested in ModivCare's protest, and award such further relief as the Chief Procurement Officer deems just and proper.

Respectfully submitted,

WILLOUGHBY HUMPHREY & D'ANTONI, P.A.

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Attorneys for ModivCare Solutions, LLC

July 30, 2026
Columbia, South Carolina

Exhibit A

To Reply Brief of ModivCare Solutions, LLC

BEFORE
THE CHIEF PROCUREMENT OFFICER OF
THE SOUTH CAROLINA DIVISION OF PROCUREMENT SERVICES

IN RE:	)	
Protest of ModivCare Solutions, LLC	)	CPO Case No. 2027-201
In Connection with the Abandonment of the	)	
Department of Health & Human Services Solicitation	)	
No. 5400028336 and Issuance of Solicitation	)	
No. 5400029919	)	

AFFIDAVIT OF KENNETH SHEPARD

BEFORE ME PERSONALLY APPEARED Kenneth Shepard, who, after being first duly sworn, deposes and states as follows:

1. My name is Kenneth Shepard. I am over eighteen years old and competent to provide this affidavit. I affirm that all statements included herein are within my personal knowledge and are truthful and accurate.

2. I am the Executive Vice President ("EVP"), Group Chief Financial Officer of ModivCare Solutions, LLC ("ModivCare").

3. Prior to assuming my current position, I served as Senior Vice President, Finance, where I was responsible for many of the functions traditionally performed by a chief financial officer. As a result, I am familiar with ModivCare's financial condition both before and after its Chapter 11 restructuring.

4. I actively participated in and have personal knowledge of ModivCare's restructuring process and emergence from Chapter 11. I have worked closely with ModivCare's executive leadership, Board, lenders, advisors, and other stakeholders throughout the Company's restructuring process.

5. ModivCare filed a voluntary Chapter 11 petition in August 2025 and successfully completed its restructuring in December 2025.

6. The purpose of the restructuring was to strengthen the Company's balance sheet, reduce debt, improve liquidity, and position the Company for long-term operational and financial success.

7. As a result of the restructuring, ModivCare emerged as a private company with a significantly stronger capital structure than it possessed immediately prior to the bankruptcy filing, and backed by institutional investors that have a direct interest in ModivCare's long-

term success as well as significant experience evaluating and supporting complex healthcare and service organizations .

8. The restructuring substantially reduced the Company's debt obligations and improved the Company's overall financial position and stability.

9. ModivCare is governed by an experienced Board of Managers composed of individuals with substantial backgrounds in healthcare, operations, finance, investment management, and corporate governance.

10. Throughout the restructuring process, ModivCare continued providing services to its clients and members nationwide without interruption.

11. Based upon my personal knowledge and professional responsibilities as the EVP, Group Chief Financial Officer, it is my opinion that, while ModivCare was fully capable of successfully performing the contract that was the subject of Solicitation No. 5400028336, it today is even financially stronger and better positioned to perform its contractual obligations than it was immediately prior to the filing of its Chapter 11 petition in August 2025.

FURTHER AFFIANT SAYETH NOT.

Kenneth Shepard

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 30th DAY OF July, 2026.

Jocelyn Comeau Ley for the state of Colorado
Notary Public for (state)

My Commission Expires
3/10/2027

Jocelyn Comeau Ley
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20154009950
MY COMMISSION EXPIRES 03/10/2027

Exhibit D

From: Grier, Manton
To: White, John
Subject: Fw: RE: [External] RE: Resolicit for NEMT
Date: Tuesday, August 4, 2026 2:49:10 PM
Attachments: image002.jpg
image003.jpg

From: Middleton, Kayla on behalf of Middleton, Kayla
Sent: Thursday, July 9, 2026 10:45 AM
To: 'Rebecca Lopez'
Subject: Fw: RE: [External] RE: Resolicit for NEMT

Happy Monday Rebecca,

Just doing my 2wk check-in. Are we still aiming for mid May?

From: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov >
Sent: Friday, May 1, 2026 4:58 PM
To: Middleton, Kayla <KMiddleton@mmo.sc.gov >
Subject: RE: [External] RE: Resolicit for NEMT

Hi Ms. Kayla, mid May more likely.   Thank you

Have a nice weekend.

Rebecca Lopez
CHIEF OF CONTRACTS

AND PROCUREMENT
Rebecca.Lopez@scdhhs.gov
Work: (803) 898-7379
Mobile: 1-839-223-4752
1801 MAIN STREET
COLUMBIA, SC - 29202
www.scdhhs.gov

SCDHHSLogo

From: Middleton, Kayla <KMiddleton@mmo.sc.gov>
Sent: Friday, May 1, 2026 2:31 PM
To: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov>
Subject: RE: [External] RE: Resolicit for NEMT

Hi Rebecca,

Just following up on the status for NEMT and wanted to know if early part of May is still the same? (just need to update my notes bi-weekly)

From: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov>
Sent: Tuesday, April 14, 2026 4:01 PM
To: Middleton, Kayla <KMiddleton@mmo.sc.gov>
Subject: RE: [External] RE: Resolicit for NEMT

Hi Ms. Kayla,

Still working on the scop. It may early part of May. Thank you for checking in.

Has anyone replaced Zach? Or is someone sitting in as interim?

Rebecca Lopez
CHIEF OF CONTRACTS
AND PROCUREMENT
Rebecca.Lopez@scdhhs.gov
Work: (803) 898-7379
Mobile: 1-839-223-4752
1801 MAIN STREET
COLUMBIA, SC - 29202
www.scdhhs.gov

From: Middleton, Kayla <KMiddleton@mmo.sc.gov>
Sent: Tuesday, April 14, 2026 3:39 PM
To: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov>
Subject: RE: [External] RE: Resolicit for NEMT

Hi Rebecca,

Just touching base with you about the status of this?

From: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov>
Sent: Wednesday, February 18, 2026 3:50 PM
To: Middleton, Kayla <KMiddleton@mmo.sc.gov>
Subject: [External] RE: Resolicit for NEMT

Hi Ms. Kayla. We will resolicit. Program area are making some changes to the scope. It should be coming in the next month or so. Thank you for checking in.

Rebecca Lopez
CHIEF OF CONTRACTS

AND PROCUREMENT
Rebecca.Lopez@scdhhs.gov
Work: (803) 898-7379
Mobile: 1-839-223-4752
1801 MAIN STREET
COLUMBIA, SC - 29202
www.scdhhs.gov

From: Middleton, Kayla <KMiddleton@mmo.sc.gov>
Sent: Wednesday, February 18, 2026 3:46 PM
To: Rebecca Lopez <Rebecca.Lopez@scdhhs.gov>
Subject: Resolicit for NEMT

Hi Rebecca,

Just wanted to touch base with you about the resolicit for NEMT Services.

I just found out that the procurement review panel decision was posted and I was not looking in the correct spot for it online. We are free to move forward. The link is below if you would like to see the decision.

[Panel Orders | procurement.sc.gov]

SFAA

Kayla M. Middleton |Procurement Manager |Agency Sourcing

Division of Procurement Services | SC State Fiscal Accountability Authority

1333 Main Street, Suite 700 | Columbia, SC 29201

Office: (803) 737-2609 | Email: kmiddleton@mmo.sc.gov

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