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June 8, 2022

VIA ELECTRONIC MAIL

Kenneth J. Zellers
Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, MO 65101
Ken.Zellers@oa.mo.gov
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Karen S. Boeger
Director
Division of Purchasing
Office of Administration
301 West High Street, Room 630
Jefferson City MO 65101
Karen.Boeger@oa.mo.gov

Re: Protest of Contract Award for Non-Emergency Medical Transportation Services Broker
RFPS30034902200493 (“RFP”)

Protesting Party: ModivCare Solutions, LLC
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Dear Commissioner Zellers and Ms. Boeger:

ModivCare Solutions, LLC (“ModivCare”), through its undersigned counsel and under 1 CSR § 40-1.050 (12), hereby protests the May 26, 2022 contract award for the above-referenced RFP (“Award”) for Non-Emergency Medical Transportation Services¹ Broker to Medical Transportation Management, Inc. (“MTM”).

INTRODUCTION

ModivCare, the incumbent vendor, was entitled to a fair, rational, substantiated, and competitive bidding process that complied with the terms of the RFP and Missouri law and afforded it an equal and fair opportunity to compete for a contract award. That did not occur here and ModivCare was unfairly, unlawfully, and arbitrarily denied a contract award as a direct result in favor of a nonresponsive, less qualified vendor with a checkered history of performing the Missouri NEMT contract and similar contracts in other states. The entire bidding process was flawed for multiple reasons:

- MTM’s proposal was required to be disqualified for failure to meet a mandatory term of the RFP because it failed to disclose required governmental findings, assessments, investigations, and relevant litigation.
- The Division failed to require the evaluation committee (“committee”) to assign adjectival ratings and associated scores to vendors’ proposals based on the definitions of the adjectival ratings in the RFP and failed to properly assign MBE/WBE participation points, which resulted in:
 - ModivCare’s proposal being underscored by at least 11.13 points in the Overall Relevant Vendor Performance (wrongly denied 5 points) and Case Studies (wrongly denied 4 points) elements of the Past Performance category, the Vendor Personnel Qualifications category (wrongly denied 2 points) and in the MBE/WBE Participation category (wrongly denied .13 points).
 - MTM’s proposal being overscored by at least 19.4 points in the Overall Relevant Vendor Performance (wrongly assigned 15 points) and Case Studies (wrongly assigned 3 points) elements of the Past Performance category, and the MBE/ Participation category (wrongly assigned 1.4 points).
 - Verida, Inc.’s (“Verida”) proposal being overscored by at least 8 points in the Overall Relevant Vendor Performance (wrongly assigned 8 points).
 - Veyo, LLC’s (“Veyo”) proposal being overscored by at least 11 points in the Overall Relevant Vendor Performance (wrongly assigned 8 points) and Case Studies (wrongly assigned 3 points).
- As conducted, the entire bidding process was insufficiently competitive and opaque contrary to Missouri law due to the Division’s failure to require the committee to rate and score the proposals in accordance with the adjectival ratings in the RFP, properly document facts supporting the adjectival rating assigned,

¹ A complete copy of the RFP is attached hereto as Exhibit 1 and incorporated herein by reference. Citations to the RFP will be to the added bates labeling which starts with RFPS0001 and ends on RFPS0334.

and to true up the scoring of the proposals to ensure the scoring accurately accounted for significant differences in the content of the proposals.

For all these reasons, the Division should terminate the contract award to MTM, correct the scoring, disqualify MTM, and award the contract to ModivCare. Alternatively, the Division should terminate the contract award to MTM, conduct a restructured rebid to determine which bidder is truly the lowest and best, and extend ModivCare's contract until completion of the rebid.

ANALYSIS

- I. The Bidding Process Was Unfair, Irrational, An Abuse Of Discretion, Arbitrary, Capricious, Contrary To The Rating And Scoring Criteria In The RFP, Unlawful, Showed Favoritism To Other Vendors By Improperly Assigning Unwarranted Points To Their Proposals, Denied ModivCare An Equal Opportunity To Compete By Improperly Failing To Assign Warranted Points To Its Proposal, And Resulted In ModivCare Unfairly Being Denied A Contract Award.**
 - A. The Committee Failed To Rate And Score Vendors According To The RFP And The Contents Of The Proposals For The Overall Relevant Vendor Experience Element Of The Past Performance Category.**

The RFP required each vendor to submit a technical proposal comprised of three categories: Proposed Methodology; Vendor Personnel Qualifications, and Past Performance. The Past Performance category contained two elements: Overall Relevant Vendor Experience ("Experience") and Case Studies. Section 4.10 of the RFP prescribed the content of vendors' technical proposals for both elements of the Past Performance category.² Section 4.10.1 provides:

The Technical Proposal should provide overall relevant experience and three (3) past performance case studies using the format on Exhibit D. Such case studies should be no longer than one (1) page and summarize the project's context, objectives, approach, and impact achieved relevant to the Proposal. These case studies should have been completed in the past three (3) years. At least two (2) should involve work for a government agency of similar scale and complexity to the MO HealthNet Division, any experience with NEMT may be reviewed, including managed care, fee-for-service and Medicare. The case study should include the name and contact information for a client representative who can speak to the scope, quality, and impact of the vendor's work. The State of Missouri may or may not contact these references during the review process. For evaluation purposes, only the first three (3) past performance case studies will be considered. Any additional past performance case studies submitted will not be evaluated.

With respect to both the Experience and Case Studies elements of the Past Performance category, Section 4.10.2 of the RFP³ provides:

² See Exhibit 1 at RFPS0078.

³ See Exhibit 1 at RFPS0078.

The vendor should complete Exhibit [D] with information related to previous and current contracts performed by the vendor’s organization and any proposed subcontractors which: (1) involve the operation, management, or brokering of capitated transportation services for other governmental entities operating a NEMT system, (2) were operational during the past 24 months with other States or other state agencies of the State of Missouri, (3) were services for MO HealthNet participants, or (4) concerning any other relevant brokering or transportation experience. The vendor should identify if the services were based on capitated rates or fees for service.

Page 1 of Exhibit D⁴ provides, in relevant part regarding the Experience element of the Past Performance category:

EXHIBIT D
TECHNICAL PROPOSAL
PAST PERFORMANCE

Directions to Vendor: The vendor should provide the overall relevant vendor experience related to this RFP and reflective of the contractor qualifications in RFP section 2.

Overall Relevant Vendor Experience (succinctly identify experience in each of the qualification areas identified below)	
Experience as a broker.	
Experience providing Non-Emergency Medical Transportation Services.	
Experience in managing a call center.	
Experience in maintaining eligibility requirements for services.	
Experience managing and auditing transportation providers as a broker.	
Experience handling grievances.	
Experience handling transportation provider complaints and appeals.	

Directions to Vendor: The vendor should provide the overall relevant vendor experience related to this RFP and reflective of the contractor qualifications in RFP section 2.

⁴ See Exhibit 1 at RFPS0097.

Page 2 of Exhibit D, provides in relevant part regarding the Case Studies element of the Past Performance category:

EXHIBIT D
TECHNICAL PROPOSAL-CONTINUED
PAST PERFORMANCE CONTINUED

Directions to Vendor: The vendor should provide three (3) past performance reference case studies. Each should have been completed in the past three (3) years. At least two (2) should involve work for a state agency of similar scale and complexity as the MO HealthNet Division. The vendor should copy and complete this Exhibit for each case study presented. The three (3) case studies should represent the vendor's most relevant and recent experience that most closely aligns with the vendor's services proposed herein.

CASE STUDY	
Project Title	
Duration of the Project	
Specific Contact Information:	Organization Name: Contact Person Name: Telephone Number: Email Address:
The vendor should summarize below the past project's context, objectives, approach and impact achieved relevant to this RFP.	

Section 4.10.3⁵ governs the rating and scoring of both the Experience and Case Studies elements Past Performance Category of the RFP, providing:

The vendor's past performance will be rated using the adjectival rating system as defined in Table 5 of Attachment 21. Details on the rating and scoring of the Past Performance can be found in Table 6 of Attachment 21.

⁵ See Exhibit 1 at RFPS0078.

Attachment 21 to the RFP⁶ provides, in relevant part:

Rating and Scoring Technical Proposal

Adjectival Evaluation Ratings and Scoring

Each responsive proposal will receive a score for each evaluation element. The scoring will align with defined adjectival ratings and associated scores for each evaluation criterion. As identified in Section 4.6, technical proposals will be evaluated using the following weighting of factors:

Scoring of Past Performance

The state will assess the Vendor’s Past Performance based upon the adjectival categories in Table 5:

TABLE 5	
CASE STUDY/REFERENCE	
Rating	Definition
Distinctive	Past performance was recent and involved essentially the same scope and magnitude of effort and complexities required in this RFP. Reference indicated past performance significantly exceeded overall requirements and expectations; delivered significant and/or innovative impact.
Superior	Past performance was recent involved similar scope and magnitude of effort and complexities required in the RFP. Reference indicated past performance exceeded requirements on some dimensions.
Satisfactory	Past performance was relatively recent and involved some of the scope and magnitude of effort and complexities required in the RFP. Reference indicated past performance met minimum requirements.
Marginal	Past performance met requirements, but only after significant extra effort, significant delay, significant scope revisions were found necessary, and/or other adverse factors.
Unsatisfactory	Past performance is not relevant to the requirements in the RFP, or resulted in failed project/work due to mainly to the fault of the vendor.

The adjectival rating for each Past Performance Reference Case Study will have a point value as shown in Table 6:

REVISED PER ADDENDUM 01					
TABLE 6					
	Distinctive	Superior	Satisfactory	Marginal	Unsatisfactory
Overall Relevant Vendor Experience	30	25	18	10	0
<i>Case Studies</i>	<i>15</i>	<i>11</i>	<i>8</i>	<i>4</i>	<i>0</i>

NOTE: In the event the vendor fails to respond to any of the evaluation elements identified in Evaluation and Award Process Section, the vendor may receive an “Unsatisfactory” rating for the corresponding evaluation element.

⁶ See Exhibit 1 at RFPS0332 and RFPS0334.

A maximum of 30 points was available for the Experience element of the Past Performance category. For this element, the evaluation committee assigned both ModivCare and MTM a rating/score of Superior/25 points, ignoring significant differences between the content of these two proposals, and similarities between content of MTM's proposal as compared to Verida's and Veyo's, which were assigned a rating/score of Satisfactory/18 points. A maximum of 15 points was available for the Case Studies element of the Past Performance category. The committee assigned ModivCare, MTM, and Veyo a rating/score of Superior/11 points, ignoring significant differences between the content of these three proposals. A review of the content in each vendor's proposal and other information known to the evaluation committee and subject matter experts demonstrates that the committee failed to assess the Experience and Case Studies elements of these vendors' proposals based on the definitions of the adjectival ratings in Table 5 and associated point values in Table 6 as required by the RFP and Missouri law. Instead, as discussed below the facts show that the committee abused its discretion and unfairly, arbitrarily, irrationally, and unlawfully assigned a lower than required rating/score to ModivCare and a greater than required rating/score to MTM, Verida, and Veyo. This error rendered the entire bidding process unfair by giving other vendors an unfair competitive advantage over ModivCare and denying ModivCare a fair and equal opportunity to compete for a contract award, and resulted in ModivCare being denied the contract award.

1. The Committee Over Rated And Scored The Experience Element Of The Past Performance Category of MTM's (And Verida's And Veyo's) Proposals Contrary To The RFP And The Contents Of The Proposals.

The rationale given by the committee to support its assignment of the rating/score of Superior/25 to the Experience element of the Past Performance category of MTM's proposal is as follows:

MTM has been providing brokered NEMT services, including call center operations for more than 25 years and currently provides transportation services for many managed care organizations with the State of Missouri. Additionally, previously MTM provided the state agency's brokered NEMT services for nine years. Currently, MTM is providing NEMT services for 29 state-based programs totaling 13 million trips annually.⁷

The committee's rationale is flawed and wrong for several reasons.

a. Exhibit D Of MTM's Proposal Did Not Include Information Supporting The Committee's Assignment Of An Rating/Score Of Superior/25 Points.

The portion of MTM's proposal related to the Experience element of the Past Performance category is a scantily completed one-page Exhibit D that lacks the majority of the information cited as the committee's rationale for its rating/scoring of MTM. Indeed, the only information in Exhibit D that is relied upon by the committee is a reference to MTM having been a NEMT broker and managing "call centers" for 26 years.⁸ Exhibit D is devoid of any of the other information relied upon by the committee. Contrary to section 10.4.2 requirements, MTM's Exhibit D contains no information related to previous and current contracts performed by MTM or any of proposed subcontractors which (1) involve the operation, management, or brokering of capitated transportation services for other governmental entities operating a NEMT system, (2) were operational during the past 24

⁷ A copy of the evaluation report is attached as Exhibit 2 and is incorporated by reference. See Exhibit 2 at NEMT Evaluation and Report0018.

⁸ A copy of MTM's proposal is attached hereto as Exhibit 3 and incorporated by reference. See Exhibit 3 at MTM0124.

months with other States or other state agencies of the State of Missouri, (3) were services for MO HealthNet participants, or (4) concerning any other relevant brokering or transportation experience. Likewise, Exhibit D does not state whether services provided under previous and current contracts by MTM were/are based on capitated rates or fee for service.⁹ The content of MTM's Exhibit D does not support the rating/score assigned by the committee and demonstrates that the assigned rating was higher than permitted by the definitions of the adjectival ratings in the RFP and an abuse of discretion which is unfair, irrational, arbitrary, capricious, and unlawful. At best, based on the content of MTM's Exhibit D the highest rating/score allowed by the definitions in the RFP is Marginal/10.

b. MTM's Proposal As A Whole Did Not Support The Assignment Of A Rating/Score Of Superior/25 Points.

As noted above, Exhibit D of MTM's proposal failed to mention any experience in providing brokered NEMT services in Missouri or any other jurisdiction. MTM, however, did note in the executive summary of its proposal that it has nine years of prior experience providing these services to Missouri and that it provides these services in 29 states and the District of Columbia, and the committee's scoring rationale states that it considered MTM's past experience in Missouri and experience in other states as a fact justifying assignment of a rating/score of Superior/25 Points.¹⁰ The committee's analysis is contrary to the definitions of the adjectival ratings in Attachment 21 of the RFP which required the committee, when evaluating experience cited by a vendor to consider not only the fact of the experience, but also the recentness of the experience, the quality of contract performance. For example, the definition of the adjectival rating of "Satisfactory" provides: "Past performance was relatively recent and involved some of the scope and magnitude of effort and complexities required in the RFP. Reference indicated past performance met minimum requirements." For experience that was not relatively recent, the definitions of the adjectival ratings mandated a rating of Marginal or Unsatisfactory. For contract performance of a troublesome quality (e.g. met requirements only after significant extra effort, significant delay or other adverse factors were involved), the definitions mandated a rating of Marginal. For contract performance of a poor quality that resulted in failed project/work due mainly to the fault of the vendor, the definitions mandate a rating of Unsatisfactory.

Based on the individuals involved in the evaluation of the proposals and information in ModivCare's proposal¹¹, the committee had information regarding the recentness of MTM's (and ModivCare's) prior experience and

⁹ MTM does state in the executive summary of its proposal that it served MO HealthNet for nine years, provides "more than 13 million trips for 10 million individuals in 29 states and the District of Columbia, and employs about 1,500 staff members. Exhibit 3 at MTM0035-36.

¹⁰ Exhibit 3 at MTM0035-0036.

¹¹ See Exhibit 4 at ModivCare0141, which states:

In 2005, DSS asked ModivCare to assume management of Missouri's statewide NEMT program when another broker was unable to meet its obligations. With participants at risk of losing the transportation they relied on to get to their medical appointments, ModivCare quickly implemented statewide services within 30 days – a process that typically takes close to 120 days in a new market. In the first year of our contract, we helped the state save more than \$10M, primarily through the implementation of thorough Transportation provider management and gatekeeping protocols.

ModivCare retained Missouri's NEMT contract until October of 2010 when severe Medicaid budget constraints forced the state to issue a request for proposals. Though the DSS assigned the highest score to ModivCare's technical response, it chose not to partner with us for pricing reasons. The selected broker submitted an inexplicably low-cost proposal; the same broker who had failed to provide acceptable NEMT services in 2005. Within eleven months of implementation, the broker acknowledged it could not sustain performance of the services at the price it had quoted. As a result of this broker's decision to exit the market, the DSS again asked ModivCare to step in on an

performance of the Missouri contract. The committee knew that MTM was awarded the Missouri NEMT contract in or around 2005, and that MTM was unable to meet its obligations under the contract in 2005 such that it was necessary for ModivCare (then Logisticare) to step in and assume the contract on an emergency basis. They also knew that in 2010 the Missouri NEMT contract was rebid and again awarded to MTM, and that in 2011 MTM refused to continue to perform the contract without an unfair rate increase so it again became necessary for ModivCare (Logisticare) to step in and take over the contract on an emergency basis. When the Missouri NEMT contract was last rebid in 2016, ModivCare (Logisticare) was awarded the contract over MTM due to a large gap between the points assigned by that evaluation committee to the vendors' respective technical proposals—MTM (75 points) and ModivCare (110 points).¹² That committee's stated rationale for this point gap was that ModivCare "submitted the best experience, reliability, and expertise of vendor's personnel, and method of performance."¹³ The committee found that "Logisticare has the greater experience with capitated broker services" and "more statewide NEMT contracts and more contracts similar in size or larger to Missouri than MTM possesses." That committee devoted a third of its discussion in the 2016 Subjective Evaluation of differences between ModivCare and MTM to comments about issues with MTM's conduct related to its performance of the 2010 Missouri NEMT services contract. It noted that "[t]he prior contractor was MTM who left the contract early in 2011," that MTM refused to continue to perform the contract without a rate increase, and that "the evaluation committee has concerns with MTM's "inability to reach agreement on contract rates" at the time of contract renewal."¹⁴

As discussed in more detail in Section II below, MTM failed to disclose for the committee's consideration governmental findings and assessments showing that MTM recently has had serious issues performing NEMT contracts in other states.¹⁵ In Rhode Island, an elderly transportation member died on December 3, 2021. On January 6, 2022, after investigation the Rhode Island government contractor made a finding that MTM failed to implement appropriate safety procedures and assessed a \$600,000 sanction against MTM for failure to comply with contractual requirements. In Arkansas, MTM was awarded four regional contracts for NEMT services that commenced on January 1, 2019. Seventeen days after MTM commenced performing these contracts, the Arkansas government contractor notified MTM that its contracts were being terminated for failure to consistently provide the level of services required by the contracts. Then in February 2019, the Arkansas procurement office claimed \$3.7 million in damages was sustained due to the issues that resulted in the termination of MTM's contracts.

These facts demonstrate that MTM's most recent prior Missouri experience was over 11 years ago and thus was not "relatively recent", and that MTM failed to perform the Missouri contract 17 years ago and unjustly refused to perform its most recent Missouri contract 11 years ago. In addition, MTM's recent experience in both Rhode Island and Arkansas resulted in failed work due to mainly the fault of MTM. MTM's prior experience

emergency basis. For the second time in six years, we quickly resumed operations following a transition period of less than 30 days.

¹² The subject matter experts appear to have been Connie Sutter with MHD and Dirk Elrod with DSS/DFAS. Exhibit 3 at NEMT Evaluation and Report0044 and 46. Both Ms. Sutter and Mr. Elrod are familiar with the history of this contract. Ms. Sutter served on the evaluation committee for the 2016 RFP for this contract. A copy of the 2016 Evaluation Report is attached as Exhibit 5 and incorporated by reference herein. See Exhibit 5 at 2016 Evaluation Report0002 and 61. Mr. Elrod reviewed the 2016 Evaluation Report and approved the committee's recommendation to award the 2016 NEMT services contract to ModivCare (then LogistiCare). Exhibit 5 at 2016 Evaluation Report0005.

¹³ Exhibit 5 at 2016 Evaluation Report0028-29.

¹⁴ Exhibit 5 at 2016 Evaluation Report0028-29.

¹⁵ See Section II below.

performing the Missouri NEMT contract and performing NEMT contracts in Rhode Island and Arkansas thus is contradictory to the committee's assignment of a rating of Superior because the definition of this rating requires relatively recent experience and past performance that met minimum requirements. MTM's prior experience instead aligned with the definition of the Marginal rating and this mandated the committee to assign MTM a rating of Marginal its past performance of the Missouri NEMT contract (consistent with the scoring of MTM's 2016 proposal) and the Rhode Island and Arkansas NEMT contracts. Stated otherwise, the definitions of the adjectival ratings did not allow the evaluation committee to rely on MTM's prior experience performing the Missouri contract or other NEMT contracts as part of its rationale for assigning an adjectival rating/score without also considering the recentness of the experience and quality of contract performance. The committee's assignment of a rating/score of Superior/25 points to MTM was arbitrary, capricious, irrational, and unlawful because it was contrary to the evaluation and scoring criteria in the RFP and Missouri law. At best, MTM's prior experience performing the Missouri NEMT contract considered with its undisclosed and disclosed other prior experience aligned with the definition of the Marginal rating and mandated that the committee assign MTM a rating/score of Marginal/10 points.

c. The Committee Could Not Rely On MTM Currently Providing NEMT Services For 29 State-based Programs As Justification For Scoring Because MTM Currently Only Provides NEMT Services For 8 State-Based Programs, Including DC.

In the evaluation report, the committee states, "Currently, MTM is providing NEMT services for 29 state-based programs" as a rationale for assigning MTM a rating/score of Superior/25 points. This statement shows that the committee relied on MTM having 29 state-based programs in its rating/scoring of MTM's proposal. The committee's reliance is misplaced because this "fact" is untrue and is the product of a misinterpretation of MTM's proposal.¹⁶ Nowhere in MTM's proposal does it claim to provide NEMT services for any specific number of state-based programs, let alone 29 of them. The reason that MTM did not claim this is because it was not and is not true. It is common knowledge in the NEMT industry that MTM provides NEMT services for 8 state-based Medicaid programs (DC, FL, ID, MS, TX, NV, MN, RI) and that is why MTM's proposal instead states "As one of the nation's largest and most experienced transportation managers, we provide more than 13 million trips for 10 million individuals *in 29 states* and the District of Columbia."¹⁷ Providing NEMT services in 29 states is not the same as providing NEMT services for 29 state-based programs. MTM has nearly 75% less state-based programs than relied upon by the committee for its rating/score rationale. For this reason, the committee's rationale for the adjectival rating/score assigned to MTM is fatally flawed.¹⁸ It is clear from the committee's stated rating/score rationale that this error affected its rating/scoring of MTM's proposal. While it is impossible to tell how much, the definitions of the adjectival ratings did not allow for MTM's proposal to be assigned a rating/score of Superior/25 points when it had 8 state-based programs rather than 29 state-based programs. At best, MTM's number of state-based programs supported a rating/score of Marginal/10 points.

d. The Data in MTM's Proposal Relating To Annual Trips And Other Experience Did Not Authorize Assignment Of A Score of Superior/25 Points Under The Definitions Of The Ratings In The RFP.

¹⁶ Exhibit 2 at NEMT Evaluation and Report0018.

¹⁷ Exhibit 3 at MTM0036.

¹⁸ Exhibit 4 at ModivCare0141.

The committee’s final rationale for assigning MTM a rating/score of Superior is MTM’s provision of “13 million trips annually.” This cited rational shows the committee based its scoring on MTM’s annual service statistics, including the number of trips annually provided. Chart No. 1 below compares data points from each vendor’s proposal of the type cited by the committee as rationale for its assignment of a rating/score to each proposal.¹⁹

Chart No. 1

Line Item	ModivCare	MTM	Veyo	Verida
Years of Service/Experience	35 years transportation experience / NEMT for 26 years	27 years (1995)	20 years (through parent company) as a provider 15 years as NEMT broker	22 years (2000)
Number of Programs/Contracts	350	100	16	13
Number of Participants	28,000,000	10,000,000	5,000,000	3,000,000
Number of Trips	48,000,000	13,000,000	9,000,000	5,000,000
Number of Calls Handled	27,000,000	4,000,000	350,000/month stated (4,200,000)	5,000,000
Number of Employees	3,500	1,500	500	1,000
Number of Providers	5,400	1,600	1,000	1,300
# of States with NEMT Business	50	29 + DC	9	7 + DC
State-Based Medicaid Programs	15 (DE, FL, GA, ME, MI, MO, NJ, NY, OK, PA, SC, TX, UT, VA, WV)	8 (DC, FL, ID, MS, TX, NV, MN, RI)	2 (CT, WI)	3 (AR, GA, IN)

This data demonstrates several things.

¹⁹ The data in Chart No. 1 (with the exception of information regarding state-based programs) comes from the vendors’ proposal. See Exhibit 4 at ModivCare0139-0147; Exhibit 3 at MTM0019, MTM0035, MTM0036, MTM0038, MTM0039, MTM0040, MTM0041, MTM0042, MTM0046, MTM0051, MTM0063, MTM0079, MTM0124 and MTM0158; Exhibit 6 at Veyo0022, 0043, 0045, 0109, 0110, 0111 and 0112; Exhibit 7 at Verida0031, 0094, 0128, 0129, 0131.

- As applied to the data points in MTM’s proposal, the definitions of the adjectival ratings and evaluation criteria mandated a rating/score of Satisfactory/18 points rather than a rating/score of Superior/25 points.
- The committee’s assignment of the same rating/score to MTM’s and ModivCare’s proposal was arbitrary, irrational, unjust, unfair, capricious and unlawful and contrary to the definitions of the ratings/scores in the RFP because of significant differences between the same data points in the two proposals, including but not limited to annual trips. For example, ModivCare has 250 more current programs/contracts than MTM; 18 million more participants than MTM; 35 million more trips than MTM; 23 million more calls than MTM; 2,000 more employees than MTM; 3,800 more providers than MTM, 21 more states than MTM; and 7 more state-based Medicaid programs than MTM. And ModivCare has provided excellent service in Missouri, bailing out Missouri twice after MTM failed. Also, as discussed in Section III below, MTM also continues to have performance issues in other states like Arkansas and Rhode Island and has 50 fewer NEMT programs than it did at the time of the 2016 rebid for the Missouri NEMT contract.²⁰ The differences between the data points for ModivCare and MTM are staggering and the definitions of the adjectival ratings required a lower rating/scoring for MTM’s proposal and a higher rating/score for ModivCare’s proposal (as discussed below).
- If the definitions of the adjectival ratings and evaluation criteria mandated assigning the same rating/score to any two or more vendors, the data in the respective vendor’s proposals mandates assigning MTM the same score as Veyo and Verida, meaning all three of these vendors should have received a rating/score of Marginal/10 points. For example, MTM has 84 more programs/contracts than Veyo; 5 million more participants than Veyo; 4 million more trips than Veyo (Veyo similarly has 4 million more trips than Verida); 200,000 less calls handled than Veyo and 900,000 less calls handled than Verida; 21 more states than Veyo (including DC) and 22 more states than Verida; and 6 more state-based Medicaid programs than Veyo and 5 more state-based programs than Verida.

2. The Committee Wrongly Underrated and Underscored The Experience Element Of ModivCare’s Proposal Contrary to the Definitions of the Ratings In The RFP.

The rationale given by the committee to support the rating/score of Superior assigned to the Experience element of ModivCare’s proposal is as follows:

ModivCare has been providing NEMT services for 26 years and has been providing NEMT services for the State of Missouri more than 15 years. Currently, ModivCare is providing NEMT services for 15 state-based programs totaling 48 million trips annually.

The committee’s rationale is flawed and wrong for several reasons.

a. The Definitions of the Ratings Mandated A Rating/Score of Distinctive/30 Points For The Experience Element Of ModivCare’s Proposal.

One of the committee’s three rationales (one-third of its rationale for the scoring of ModivCare’s proposal) for assigning the rating/score of Superior to ModivCare’s proposal is noted to be ModivCare’s years of experience.

²⁰ Exhibit 5 at 2016 EvaluationReport0017 (Noting that MTM “[c]urrently manages 150 NEMT contracts). Exhibit 3 at MTM0124 (Stating “MTM holds over 100 contracts nationwide”).

As indicated in ModivCare’s proposal, while it has been providing NEMT services for 26 years (since 1996), it started off providing emergency medical transportation services (“EMT”) (as a technology solutions provider for emergency ambulance vehicles) back in 1986.²¹ Its innovative 1980’s technology was soon deployed in vehicles throughout the country –from New York to California – as it proved to be highly effective.²² By 1991, ModivCare reemerged as a transportation consulting firm. ModivCare’s 9 years of EMT services provided it with a strong foundation for providing NEMT services.²³ This experience also involved the same scope and magnitude of effort and complexities required in the RFP for NEMT services and shows ModivCare’s ability to exceed requirements and deliver significant and innovative impact. Thus, the definitions of the adjectival ratings in the Attachment 21 to the RFP mandated that the evaluation committee consider ModivCare’s total years of NEMT and EMT experience and assign it a rating/score of Distinctive/30 points because ModivCare’s 9 years of EMT experience sets ModivCare apart from other vendor as shown in Chart No. 1 above and in ModivCare’s proposal.²⁴

b. ModivCare’s Missouri And Other Experience Was Not Scored As Required By The Definitions Of The Adjectival Ratings In The RFP.

The committee’s second rationale for assigning ModivCare a rating/score of Superior/25 (and another one-third of its rationale) is that ModivCare “has been providing NEMT services for the State of Missouri more than 15 years.” While the committee correctly cites ModivCare’s years of experience with the Missouri NEMT contract, it—as discussed above regarding MTM’s proposal—failed to consider two aspects of ModivCare’s Missouri experience as required by the definitions of the adjectival ratings in Attachment 21 to the RFP. Under these definitions, the committee was required to consider the recentness of ModivCare’s Missouri and other experience, the quality of contract performance, and whether the performance involved essentially the same scope, magnitude of effort and complexities required by the RFP. For recent experience that involved essentially the same scope, magnitude of effort and complexities required in the RFP that significantly exceeded overall requirements and expectations or delivered significant or innovative impact, the definitions mandated an adjectival rating of Distinctive.

As discussed above, the committee knew that ModivCare was currently performing the Missouri NEMT contract that is the subject of the RFP and that ModivCare also had significant prior experience performing the Missouri NEMT contract. The committee also had knowledge regarding the quality of ModivCare’s current and prior performance of the Missouri NEMT contract. The committee knew that in 2005 Missouri officials asked ModivCare to assume management of Missouri’s NEMT program when MTM was unable to meet its obligations and that ModivCare successfully did so within 30 days, and helped Missouri save more than \$10 million in the first year of the contract. It also knew that in 2011 Missouri again asked ModivCare to assume responsibility for the same contract on an emergency basis after another issue with MTM and that for the second time in six years ModivCare resumed operations within 30 days. Further, when the Missouri NEMT contract was last rebid in 2016, the contract was awarded to ModivCare and ModivCare is the current vendor in

²¹ Exhibit 4 at ModivCare0139.

²² Exhibit 4 at ModivCare0139.

²³ Exhibit 4 at ModivCare0139.

²⁴ Exhibit 4 at ModivCare0141.

Missouri.²⁵ As known to the committee and subject matter experts and as set forth in ModivCare's proposal, ModivCare's quality of contract performance has been exceptional.²⁶

In addition, ModivCare's proposal contained information showing that it had recent experience performing NEMT contracts in all 50 states, including DC.²⁷ ModivCare's proposal also indicated that it has the most prior experience performing NEMT contracts involving essentially the same scope, magnitude of effort, and complexities required by the RFP, having 15 state-based programs. Of these, those in GA, MI, NJ, OK, PA, SC, TX, VA, and WV are essentially the same (or greater) scope, magnitude or effort, and complexities required by the RFP.²⁸ Further, ModivCare's performance of these contracts has exceeded or significantly exceeded overall requirements or expectations or delivered significant or innovative impact.

The facts indicate that ModivCare's Missouri experience involves the very contract solicited in the RFP, and is ongoing and thus as recent as possible, ModivCare also has significant recent experience performing NEMT contracts in other states that are similar (or greater) in scope, magnitude of effort and complexities required by the RFP. and the facts also show that ModivCare's performance of the Missouri NEMT contracts and similar NEMT contracts in other states significantly exceeded overall requirements and expectations, or delivered significant or innovative impact. The definitions of the adjectival ratings for the current RFP thus mandated that the evaluation committee assign ModivCare a rating/score of Distinctive/30 points for its past and current performance of the Missouri NEMT contract (as occurred in the 2016 rebid) coupled with its extensive past and current performance of NEMT contracts in other jurisdictions. The committee's assignment of an adjectival rating of Superior to ModivCare was contrary to the definitions of the adjectival ratings in the RFP, arbitrary, unfair, irrational, an abuse of discretion and unlawful.

c. The Data in ModivCare's Proposal Relating To Annual Trips And Other Experience Mandated A Rating/Score of Distinctive/30 Points Under The Definitions Of The Ratings In The RFP.

The committee's final rationale (and remaining one-third of its rationale) for assigning ModivCare a rating/score of Superior/25 is that "Currently, ModivCare is providing NEMT services for 15 state-based programs totaling 48 million trips annually." As was true with the committee's evaluation of MTM's (and other vendor's bids), the committee assigned this rating/score to ModivCare's proposal based on annual service statistics in ModivCare's proposal and the number of state-based programs for which ModivCare currently provides NEMT services. ModivCare's proposal demonstrated it is the national NEMT leader by indicating it has the largest number of state-based programs than any of its competitors and significant and exceptional annual service statistics. As can be seen in Chart No. 1 above, ModivCare's statistics far exceed those of its closest competitor. For example, ModivCare has 250 more current programs/contracts than MTM; 18 million more participants than MTM; 35 million more trips than MTM; 23 million more calls than MTM; 2,000 more

²⁵ The subject matter experts appear to have been Connie Sutter with MHD and Dirk Elrod with DSS/DFAS. Exhibit 2 at NEMT Evaluation and Report0044 and 46. Both Ms. Sutter and Mr. Elrod are familiar with the history of this contract. Ms. Sutter served on the evaluation committee for the 2016 RFP for this contract. Exhibit 5 at 2016 Evaluation Report0002 and 61. Mr. Elrod reviewed the 2016 Evaluation Report and approved the committee's recommendation to award the 2016 NEMT services contract to ModivCare (then LogistiCare). Exhibit 5 at 2016 Evaluation Report0005.

²⁶ Exhibit 3 at MTM0027-0150.

²⁷ Exhibit 4 at ModivCare0139.

²⁸ Exhibit 4 at ModivCare0139-0147.

employees than MTM; 3,800 more providers than MTM, 21 more states than MTM; and 7 more state-based Medicaid programs than MTM. And to boot ModivCare is the current vendor in Missouri and has provided excellent service in Missouri, bailing out Missouri twice after MTM failed.

These data and statistics clearly demonstrate that ModivCare is the vendor with the most extensive NEMT contract experience overall and the vendor with the most experience that involves the same scope and magnitude of effort and complexities required by the RFP. In addition, this information shows that ModivCare's past performance in Missouri and nationwide significantly exceeds requirements and expectations, and that ModivCare has delivered significant or innovative impact in Missouri and nationwide. As such, the definitions of the adjectival rating/scoring required the committee to assign ModivCare—and ModivCare alone—a rating/score of Distinctive/30. It was nonsensical, arbitrary, capricious, unfair, unjust and contrary to the criteria in the RFP and Missouri law, and the content of its proposal for ModivCare not receive the highest rating/score. It was likewise wrong for the committee to assign ModivCare the same rating/score as its closest competitor, MTM, when ModivCare's statistics and data are staggeringly higher and MTM has had recent, serious performance issues in Rhode Island and Arkansas.²⁹

B. The Committee's Rating and Scoring Of The Case Studies Element of the Past Performance Category Is Contrary To The Definitions Of The Adjectival Ratings In The RFP.

RFP sections 4.10.1, 4.10.2, and 4.10.3, page 2 of Exhibit D, and Tables 5 and 6 of Attachment 21, set forth in full in Section I.A. above governed the contents of proposals and the rating and scoring of the Case Studies element of the Past Performance Category of the RFP. Per Table 5 of Attachment 21, the same adjectival ratings and definitions were used to rate vendors in this element. Per Table 6 of Attachment 21, the maximum score per case study was 5 points for a maximum score of 15. The committee's expressed rationale for the scoring of the vendor's respective case studies shows that it assigned a rating/score to each vendor's proposal based on the following information: case market, membership, years served, annual trips and annual calls. The committee assigned a rating/score of Superior/11 to ModivCare, MTM and Veyo, and a rating/score of Marginal/4 to Verida.

Chart No. 2 below reflects the rating/scoring assigned by the committee and summarizes the information in the three case summaries provided in the vendors' proposals.

²⁹ Even if the definition of the rating Superior in the RFP aligned with ModivCare's experience—which it does not—it would not also align with MTM's (or any other vendor's) proposal due to the significant differences between the content. Based on these differences, the definitions of the adjectival ratings mandated a higher rating for ModivCare's proposal.

Chart No. 2

Case Study	Score	Case Markets	Membership	Years Served	Annual Trips	Annual Calls
Modivcare Solutions	Superior	OK Statewide Program	780,000	19	1.7M	385,000
	11 Points	ME Regional Program	166,000	9	2.2M	277,000
		WV Statewide Program	490,000	4	2.1M	718,000
Medical Transportation Management	Superior	District of Columbia Program	113,000	15	512,000	No Info Provided
	11 Points	Nevada Statewide Program	700,000	6	1.5M	No Info Provided
		UHC Missouri (MCO)	250,000	5	41,000	65,000
Veyo, LLC	Superior	Centene Louisiana (MCO)	550,000	1	No Info	No Info Provided
	11 Points	Wisconsin Statewide Program	1.3M	7 months	550,000	250,000
		Connecticut Statewide Program	800,000	4	730,000	No Info Provided
Verida, Inc.	Marginal	Arkansas Regional Program	No Info	9	No Info	No Info Provided
	4 Points	Indiana Statewide Program	No Info	4	No Info	No Info Provided
		AmeriHealth Louisiana (MCO)	220,000	4	No Info	No Info Provided

As noted in Chart No. 2, the committee assigned the same rating/score to the Case Studies element of ModivCare’s, MTM’s and Veyo’s proposals despite the significantly different content of the proposals. A comparison of the above data that is the rationale by the committee for rating/scoring of the case studies to the definitions of the ratings in the RFP demonstrates that the committee’s rating/scoring is contrary to the definitions and wrong due to significant differences in the content of the vendors’ proposals. The Distinctive rating is defined in Table 5 of Attachment 21 of the RFP as:

Past performance was recent and involved essentially the same scope and magnitude of effort and complexities required in this RFP. Reference indicated past performance significantly exceeded overall requirements and expectations; delivered significant and/or innovative impact.

The Superior rating is defined in Table 5 of Attachment 21 of the RFP as:

Past performance was recent and involved similar scope and magnitude of effort and complexities required in the RFP. Reference indicated past performance exceeded requirements on some dimensions.

The Missouri NEMT contract that ModivCare currently manages includes a population of roughly 1.2 million members (ABD + Behavioral Health for all) with an annual trip count of over 1.6 million trips and an average call amount of over 696,000.³⁰ The data in Chart No. 2 shows:

- ModivCare is the ONLY vendor to submit three case studies that were all equivalent in scope to Missouri relative to trip counts which is by definition “essentially the same scope and magnitude”.
- ModivCare is the ONLY vendor to include a case study that was equivalent in scope to Missouri relative to cited annual calls which is by definition “essentially the same scope and magnitude.”
- ModivCare provided two case studies showing significantly more years of experience than all other vendors, and a third case study showing roughly the same years of experience as other vendors.

³⁰ Exhibit 4 at ModivCare0140.

- Veyo is the only company who included a reference with a population that is “essentially the same scope and magnitude” relative to membership (WI) and ModivCare is currently serving Missouri.

In addition, the data in Chart No. 2 shows significant disparity between the case studies provided by ModivCare and MTM, and MTM and Veyo:

ModivCare vs. MTM

- The gap between MTM and ModivCare’s case study membership totals = 373,000 members ModivCare
- The gap between MTM and ModivCare’s case study annual trips = 3,947,000 trips ModivCare
- The gap between MTM and ModivCare’s case study years served = 6 years ModivCare

MTM vs. Veyo

- The gap between MTM and Veyo case study membership totals = 1,587,000 Veyo
- The gap between MTM and Veyo case study annual trips = 773,000 MTM (Given Veyo did not disclose trip count for Centene Louisiana)
- The gap between MTM and Veyo case study years served = 20+ year advantage MTM

Application of the definitions of the adjectival ratings to this data mandated that the committee assign ModivCare an adjectival rating/score of Distinctive/15 for the Case Studies element because its past performance was by definition "essentially the same scope and magnitude of effort and complexities required in the RFP and indicated past performance that significantly exceeded requirements and expectations."³¹ The committee thus failed to follow the adjectival rating/scoring in the RFP as required.

C. The Definitions Of The Ratings In The RFP Mandated The Committee To Assign The Vendor Personnel Qualifications Category Of ModivCare’s Proposal A Rating/Score Of Distinctive/10 Instead Of Superior/8.

Section 4.9 of the RFP required vendors to provide information regarding vendor personnel qualifications on Exhibit C.³² Section 4.9.1 provides, in relevant part:

³¹ Even if the definition of the rating Superior in the RFP aligned with the case studies in ModivCare’s proposal—which it does not—it did not also align with the case studies in MTM’s and Veyo’s proposals due to the noted significant differences in content. Based on these differences, the definitions of the adjectival ratings mandated that MTM’s rating/score be Satisfactory/9 and Veyo’s rating/score be Marginal/6.

³² Exhibit 1 at RFPS0078.

- 4.9.1 The Technical Proposal should provide detailed information on the experience and qualifications of the vendor's proposed team using the format on Exhibit C. The vendor's proposed team should include the Leadership Team, as defined in the RFP.
- a. Leadership Team: No more than five (5) Leadership Team (see paragraph 2.4) members' biographies will be considered in the evaluation. For evaluation purposes, only the first five (5) biographies will be considered. Any additional biographies submitted will not be evaluated. One (1) member of the Leadership Team should be identified as the vendor's primary contact. By including their biographies, the vendor is committing the Leadership Team members to support the project, should it be awarded.

Section 2.4 of the RFP set forth the personnel requirements, providing:³³

2.4 Broker Personnel Requirements:

2.4.1 Leadership Team: The broker shall provide sufficient leadership team personnel to perform, at a minimum, the functions of the positions described below. The broker shall provide personnel that possesses the minimum amount of experience stated for each position. If the broker is proposing one person to serve two or more personnel roles, the proposed person should have the minimum experience for each role proposed.

a. Administrator or Director:

- 1) The Administrator or Director shall have clear authority over general administration and implementation of the provisions and requirements set forth herein. The Administrator or Director shall be located within the State of Missouri and their entire workload shall be 100% dedicated to providing the services required in the contract.
- 2) The Administrator or Director should have a minimum of 18 months experience providing medical and behavioral health transportation services in this position or a similar position.

b. Quality Manager:

- 1) The quality manager shall implement and oversee all aspects relating to quality of services provided as outlined in the Quality Assessment and Improvement Requirements.
- 2) The quality manager should have a minimum of 12 months experience in this position or a similar position.

c. Customer Service Manager:

- 1) The customer services manager shall oversee all aspects relating to customer service operations including determining the appropriateness of NEMT requests for specialized transportation including, but not limited to: ambulance, stretcher van, out-of-state travel, transplant related issues, special circumstance transports, attendants, and dialysis patients.
- 2) The customer services manager should have a minimum of 12 months experience in this position or a similar position.

³³ Exhibit 1 at RFPS0018-19.

d. Network Manager:

- 1) The network manager shall ensure a network of qualified transportation providers sufficient to provide adequate access to all state agency and DMH covered services and shall ensure transportation provider compliance with the provisions and requirements stated herein.
- 2) The network manager should have a minimum of 12 months experience in this position or a similar position.

e. Chief Administrative Officer (CAO) or Chief Financial Officer (CFO):

- 1) The CAO/CFO shall oversee the budget and accounting systems implemented by the broker. With state agency approval, the broker may provide alternative executive level personnel for this position.
- 2) The CAO/CFO should have a minimum of 18 months experience in this position or a similar position.

Exhibit C provides, in relevant part:³⁴

EXHIBIT C
TECHNICAL PROPOSAL
TEAM QUALIFICATIONS – LEADERSHIP TEAM MEMBER BIOGRAPHIES

Directions for Vendor: No more than five (5) Leadership Team members' biographies will be considered in the evaluation. Biographies should be submitted in the attached format. One (1) member of the Leadership Team should be identified as the vendor's primary person responsible for the delivery of the project. By including their biographies, the vendor is committing the Leadership Team members to support the project, should it be awarded.

Name:	
Title:	
Proposed project role:	
% of time committed to project:	

Education, certifications, and other distinctions:

Degree, certification, or other distinctions	Institution	Date
<i>Example: BA, Business Administration</i>	<i>Washington University in Saint Louis</i>	<i>2010</i>
<i>Example: MBA, Marketing</i>	<i>Northwestern University</i>	<i>2014</i>

Employment history:

Organization	Role	Dates
<i>Example: Current Co.</i>	<i>Partner and leader of organization design practice</i>	<i>2014-present</i>
<i>Example: Company ABC</i>	<i>Director, Strategy and Continuous Improvement</i>	<i>2010-2012</i>

Specific experience relevant to project:

Topic: These topics should relate to the experience required in the scope.	Years of experience	Brief description of relevant experience (e.g., specific projects; previous employment)
Other		

Other experience or background information:

³⁴ Exhibit 1 at RFPS0096.

Section 4.9.2 provided the rating and scoring criteria for the Personnel Qualifications Category, and states:

4.9.2 The vendor’s Team Qualifications will be rated using the adjectival rating system as defined in Table 3 of Attachment 21. Details on the rating and scoring of the Team Qualifications can be found on Table 4 of Attachment 21.

Attachment 21 provides:

Scoring of Personnel Qualifications

The state will assess the Personnel Qualifications based upon the adjectival categories in Table 3.

TABLE 3	
Rating	Definition
Distinctive	Personnel exceeds the requirements with superlative experience, qualifications, and/or expertise in a way that promises significant benefits to the government; personnel has track record of delivering significant impact in complex and demanding situations, and/or recognized as leaders or emerging leaders among relevant peer groups; high confidence with the personnel’s qualifications
Superior	Personnel meets all requirements and offers experience, qualifications, and demonstrated expertise that goes beyond stated requirements; no material weaknesses; confidence with the personnel’s qualifications
Satisfactory	Personnel meets all requirements; offers no significant benefits beyond the stated requirements; no significant weaknesses exist; reasonable confidence with the personnel’s qualifications
Marginal	Personnel has one or more significant weaknesses; significant weaknesses are manageable; moderate confidence with the personnel’s qualifications
Unsatisfactory	Personnel has several significant weaknesses; which present significant risks to project delivery; little or no confidence with the personnel’s qualifications

The adjectival rating for Leadership Team will have a point value as shown in Table 4:

TABLE 4					
	Distinctive	Superior	Satisfactory	Marginal	Unsatisfactory
Leadership Team	10	8	6	3	0

The committee assigned the Vendor Personnel Qualifications category of ModivCare’s proposal an adjectival rating of Superior/8 points. The committee’s rationale to support the rating/score provided:

ModivCare documented experience for each of the proposed leadership team members that goes beyond the number of years of experience minimally required in the RFP. The evaluation committee has a high level of confidence in the proposed leadership team’s qualifications.

The committee correctly notes that ModivCare’s leadership team has years of experience beyond the minimum requirement. However, as shown in Chart No. 3 and the bullet points beneath it, the

committee’s rationale wholly fails to account for the vast amount of experience these leaders have beyond the minimum required.

Chart No. 3

ModivCare’s Leadership Team				
Name	Position	Minimum. Experience Required by RFP	Actual Experience	Years Exceeding Minimum Requirement
Sean Jones	Director	1 ½ years	29 years	27 ½ years
Tim Hubbard	Quality Manager	1 year	23 years	22 years
Iris Turner	Customer Service Manager	1 year	6 years	5 years
Geoffrey LaVeine	Network Manager	1 year	18 years	17 years
Heath Sampson	CFO	1 ½ years	16 years	14 ½ years

The committee’s rationale also ignores other key facts relating to ModivCare’s leadership team, including:

- Sean Jones has been leading ModivCare’s Missouri NEMT program for 7+ years. Sean Jones received ModivCare’s Leadership Excellence Award in 2018
- Tim Hubbard has over 23 years of over quality control experience in the call center environment.
- Iris Turner has been the Call Center Supervisor for ModivCare’s Missouri NEMT program for 6+ years. She previously worked for 2 years at ModivCare as a Fraud, Waste, and Abuse Specialist.
- Geoffrey LaVeine has worked in the medical transportation industry for 19 years, including 6 years with ModivCare and 12 years with MTM.
- Heath Sampson has worked for ModivCare for 2 years, has received multiple recognitions and is a National Association of Corporate Directors Board Leadership Fellow.

These key facts show that ModivCare personnel have experience that exceeds the requirements with superlative, qualifications, and/or expertise in a way that promises significant benefits to Missouri, and they have a proven track record of delivering significant impact in performing Missouri’s NEMT contract and other complex and demanding situations. As such, ModivCare’s personnel’s experience aligned with the definition of the Distinctive/10 adjectival rating/score and the committee’s failure to assign this rating/score was arbitrary, capricious, irrational, unjust and contrary to the RFP and Missouri law.

D. The Division Assigned 1.4 MBE/WBE Participation Points To MTM And Denied .13 MBE/WBE Participation Points To ModivCare Contrary To The RFP Criteria.

Section 4.11 of the RFP governed the Division's evaluation of each vendor's Minority Business Enterprise ("MBE")/Women Business Enterprise ("WBE") Participation and assignment of MBE/WBE Participation Points. Section 4.11.1 provides:

- 4.11.1 In order for the Division of Purchasing (Purchasing) to meet the provisions of Executive Order 05-30, the vendor should secure participation of certified MBEs and WBEs in providing the products/services required in this RFP. The targets of participation recommended by the State of Missouri are 10% MBE and 5% WBE of the total dollar value of the contract.
- a. These targets can be met by a qualified MBE/WBE vendor themselves and/or through the use of qualified subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for MBE/WBE participation.
 - b. The services performed or the products provided by MBE/WBEs must provide a commercially useful function related to the delivery of the contractually-required service/product in a manner that will constitute an added value to the contract and shall be performed/provided exclusive to the performance of the contract. Therefore, if the services performed or the products provided by MBE/WBEs is utilized, to any extent, in the vendor's obligations outside of the contract, it shall not be considered a valid added value to the contract and shall not qualify as participation in accordance with this clause.
 - c. In order to be considered as meeting these targets, the MBE/WBEs must be "qualified" by the proposal opening date (date the proposal is due). (See below for a definition of a qualified MBE/WBE.)

Section 4.11.2 provides:

- 4.11.2 The vendor's proposed participation of MBE/WBE firms in meeting the targets of the RFP will be considered in the evaluation process as specified below:
- a. If Participation Meets Target: Vendors proposing MBE and WBE participation percentages that meet the State of Missouri's target participation percentage of 10% for MBE and 5% for WBE shall be assigned the maximum stated MBE/WBE Participation evaluation points.
 - b. If Participation Exceeds Target: Vendors proposing MBE and WBE participation percentages that exceed the State of Missouri's target participation shall be assigned the same MBE/WBE Participation evaluation points as those meeting the State of Missouri's target participation percentages stated above.
 - c. If Participation Below Target: Vendors proposing MBE and WBE participation percentages that are lower than the State of Missouri's target participation percentages of 10% for MBE and 5% for WBE shall be assigned a proportionately lower number of the MBE/WBE Participation evaluation points than the maximum MBE/WBE Participation evaluation points.
 - d. If No Participation: Vendors failing to propose any commercially useful MBE/WBE participation shall be assigned a score of 0 in this evaluation category.

Section 4.11.3 provides:

4.11.3 MBE/WBE Participation evaluation points shall be assigned using the following formula:

$$\frac{\text{Vendor's Proposed MBE \%} \leq 10\% + \text{WBE \%} \leq 5\%}{\text{State's Target MBE \% (10) + WBE \% (5)}} \times \begin{array}{c} \text{Maximum} \\ \text{MBE/WBE} \\ \text{Participation} \\ \text{Evaluation points} \\ \text{(10)} \end{array} = \begin{array}{c} \text{Assigned} \\ \text{MBE/WBE} \\ \text{Participation} \\ \text{points} \end{array}$$

4.11.4 If the vendor is proposing MBE/WBE participation, in order to receive evaluation consideration for MBE/WBE participation, the vendor must provide the following information with the proposal.

- a. Participation Commitment - If the vendor is proposing MBE/WBE participation, the vendor must complete Exhibit E, Participation Commitment, by listing each proposed MBE and WBE, the committed percentage of participation for each MBE and WBE, and the commercially useful products/services to be provided by the listed MBE and WBE. If the vendor submitting the proposal is a qualified MBE and/or WBE, the vendor must include the vendor in the appropriate table on the Participation Commitment Form.
- b. Documentation of Intent to Participate – The vendor must either provide a properly completed Exhibit F, Documentation of Intent to Participate Form, recently signed by each MBE and WBE proposed or must provide a letter of intent recently signed by each MBE and WBE proposed which: (1) must describe the products/services the MBE/WBE will provide and (2) should include evidence that the MBE/WBE is qualified, as defined herein (i.e., the MBE/WBE Certification Number or a copy of MBE/WBE certificate issued by the Missouri OEO). If the vendor submitting the proposal is a qualified MBE and/or WBE, the vendor is not required to complete Exhibit F, Documentation of Intent to Participate Form or provide a recently signed letter of intent.

Section 4.6.a provides:

4.11.6 Definition -- Qualified MBE/WBE:

- a. In order to be considered a qualified MBE or WBE for purposes of this RFP, the MBE/WBE must be certified by the State of Missouri, Office of Administration, Office of Equal Opportunity (OEO) by the proposal opening date.

Page one of Exhibit F provides:

EXHIBIT F

DOCUMENTATION OF INTENT TO PARTICIPATE

If the vendor is proposing to include the participation of a Minority Business Enterprise/Women Business Enterprise (MBE/WBE) and/or Organization for the Blind/Sheltered Workshop and/or qualified Service-Disabled Veteran Business Enterprise (SDVE) in the provision of the products/services required in the RFP, the vendor must either provide this Exhibit or letter of intent recently signed by the proposed MBE/WBE, Organization for the Blind, Sheltered Workshop, and/or SDVE documenting the following information with the vendor's proposal.

~ Copy This Form For Each Organization Proposed ~

Vendor Name: _____

This Section To Be Completed by Participating Organization:

By completing and signing this form, the undersigned hereby confirms the intent of the named participating organization to provide the products/services identified herein for the vendor identified above.

Indicate appropriate business classification(s):

___ MBE ___ WBE ___ Organization for the Blind ___ Sheltered Workshop ___ SDVE

Name of Organization: _____

(Name of MBE, WBE, Organization for the Blind, Sheltered Workshop, or SDVE)

Contact Name: _____ Email: _____

Address (If SDVE, provide MO Address): _____ Phone #: _____

City: _____ Fax #: _____

State/Zip: _____ Certification #: _____

SDVE's Website Address: _____ Certification Expiration Date: _____ (or attach copy of certification)

Service-Disabled Veteran's (SDV) Name: _____ SDV's Signature: _____
(Please Print)

PRODUCTS/SERVICES PARTICIPATING ORGANIZATION AGREED TO PROVIDE

Describe the products/services you (as the participating organization) have agreed to provide:

Authorized Signature:

Authorized Signature of Participating Organization
(MBE, WBE, Organization for the Blind, Sheltered Workshop, or SDVE)

Date
RFPS0102

1. The Division Assigned 1.4 MBE/WBE Participation Points To MTM Contrary To The RFP Criteria Because MTM Failed To Provide Fully Completed Documentation Of Intent To Participate Forms For Three Vendors.

Under section 4.11.4.b of the RFP, to obtain points for proposed MBE/WBE participation, a vendor was required to provide a properly completed RFP Exhibit F that was recently signed by the proposed MBE or WBE or a letter of intent containing certain information that was recently signed by the proposed MBE or WBE. Exhibit F requires the participating organization completing the MBE/WBE section to provide the date its MBE/WBE certification expires. Per section 4.11.2.c., vendors that propose participation of less than

“Missouri’s target participation of 10% for MBE and 5% for WBE shall be assigned a proportionately lower number of MBE/WBE Participation evaluation points than the maximum MBE/WBE evaluation points.” Points must be calculated using the formula in section 4.11.3 of the RFP.

MTM’s proposal sought and was assigned 10 MBE/WBE points, the maximum allowed, for its goal of 10.02% MBE and 5% /WBE participation. Of these points, a total of 2.19 percentage points were for the participation of MBEs EEE Medical Transportation (1.29% of MTM’s goal), LaJoy’s Transportation Services (.5% of MTM’s goal), and Prompt Medical Transport (.4% of MTM’s goal). A review of the Schedule F’s submitted with MTM’s proposal shows that the field of certification expiration date for each of these vendors was not completed as required by the RFP because the Certification Expiration Date field was left blank.³⁵

Name of Organization: EEE MEDICAL TRANSPORTATION
(Name of MBE, WBE, Organization for the Blind, Sheltered Workshop, or SDVE)
Contact Name: Abiyomi Badmus Email: sideontriplee@icloud.com
Address (If SDVE, provide MO Address): 1945 Woodsm Road Phone #: (314) 556-4335
City: Overland Fax #: (314) 731-4840
State/Zip: Missouri 63114 Certification #: MO 3636
SDVE’s Website: _____ Certification (or attach copy of Expiration certification) Date: _____

Name of Organization: LaJoy's Transportation Services LLC
(Name of MBE, WBE, Organization for the Blind, Sheltered Workshop, or SDVE)
Contact Name: LaJoy Andrews-Dabney Email: lajoy.dabney@yahoo.com
Address (If SDVE, provide MO Address): 8907 Lackland Rd Phone #: 314 941 9911
City: Saint Louis Fax #: 314 787 4529
State/Zip: MO 63114 Certification #: 17877
SDVE’s Website: _____ Certification (or attach copy of Expiration certification) Date: _____

³⁵ Exhibit 3 at MTM0137, MTM0139 and MTM0141.

Name of Organization:	Prompt Medical Transport, LLC		
(Name of MBE, WBE, Organization for the Blind, Sheltered Workshop, or SDVE)			
Contact Name:	Regina Ivory	Email:	Regina Ivory
Address (If SDVE, provide MO Address):	7220 N. Lindbergh Blvd Suite 340	Phone #:	(314) 504-9582
City:	Hazelwood	Fax #:	(636) 294-5959
State/Zip:	MO 63042	Certification #:	#12348
SDVE's Website Address:		Certification Expiration Date:	(or attach copy of certification)

Due to MTM's failure to provide a properly completed Exhibit F for each of these vendors as required, the terms of the RFP precluded it from being assigned the maximum points for the participation commitments from these MBE vendors. Accordingly, application of the formula in section 4.11. 3 of the RFP requires that MTM's MBE/WBE points be reduced by 1.4 points from 10 points to 8.6 points.³⁶

2. The Division Denied ModivCare .13 MBE/WBE Participation Points Contrary To The RFP criteria Because Moore Transport's MBE Certification Had Not Expired By the Proposal Opening Date.

Under section 4.11.1.c of the RFP, for a vendor's proposed MBE or WBE commitments to be scored, they must be "qualified by the proposal opening date." The definition of qualified MBE/WBE states that to be qualified, "the MBE/WBE must be certified by the State of Missouri, Office of Administration, Office of Equal Opportunity (OEO) by the proposal opening date."

ModivCare's proposal sought 10 points for its goal of 10% MBE and 5% WBE participation. The Division assigned ModivCare's proposal 9.87 points, denying ModivCare .13 points for its proposed vendor, Moore Transport on the basis that this vendor was not certified by the proposal opening date of February 9, 2022. This denial was improper and contrary to the RFP because ModivCare's proposal included a copy of Moore Transport's certification and a fully completed Exhibit F, both of which reflected that Moore Transport's certification did not expire until May 10, 2022, several months *after* the proposal opening date.³⁷ In addition, the denial is inconsistent with the Division's award of points to other vendors for the use of certified MBEs whose certifications expired earlier than Moore Transport's. For example, the Division awarded points to MTM for two MBE vendors whose certification expired before Moore Transport's: BMT Transportation (certification expired on March 24, 2022); and Jelps Medical Transportation (certification expired on February 28, 2022).³⁸

³⁶ This result is consistent with the Division's disqualification of two of ModivCare's (then Logisticare's) MBE vendors during the evaluation of its 2016 proposal for ModivCare's "failure to submit a completed Documentation of Intent to Participate Form." Exhibit 5 at 2016 EvaluationReport0039.

³⁷ Exhibit 4 at ModivCare0170-0171.

³⁸ Exhibit 2 at NEMT Evaluation and Report0033.

II. The RFP Required The Division To Reject MTM’s Proposal As Nonresponsive For Failure To Disclose All Litigation As Required By The RFP.

1 CSR 40-1.050 (21) provides:

- (21) Awards are to be made to the bidder/offeror whose bid/proposal complies with—
 - (A) All mandatory specifications and requirements of the bid/proposal;
 - (B) Is the lowest and best bid/proposal in accordance with the evaluation methodology outlined in the bid/proposal; and
 - (C) Complies with Chapter 34, RSMo, other applicable Missouri statutes, and all applicable Executive Orders.

1 CSR 40-1.050 (19) states:

(18) Minor technicalities or irregularities in bid/proposals can be waived by the division if the waiver does not create a competitive advantage for any bidder/offeror. Such waiver is appropriate for a condition that does not conform with a mandatory requirement of the solicitation document, and therefore could otherwise be considered non-responsive, but is so minor in nature, or cannot otherwise be met by all bidders/offerors, that to determine non-responsiveness could be considered unreasonable and would not be to the state’s advantage.

Paragraph 4.5.5 of the RFP provides that “The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division determines that a change in such requirements is in the best interest of the State of Missouri.”

Paragraph 4.6.5 of the RFP provides that “The contract will be made to the lowest and best proposal.” Similarly, paragraph 8.d. of the RFP Terms and Conditions states:

d. Awards shall be made to the vendor whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the vendor, and all other evaluation criteria specified in the RFP and any subsequent negotiations and (3) complies with chapter 34, RSMo, other applicable statutes, and all applicable Executive Orders.

Paragraph 4.2.3 of the RFP provides:

Vendors are cautioned that the State of Missouri shall not award a non-compliant proposal. Consequently, any vendor indicating non-compliance or providing a response in conflict with mandatory requirements, terms, conditions or provisions of the RFP shall be eliminated from further consideration for award ...

Under 1 CSR 40-1.050 (21) (A) and paragraphs 4.5.5, 4.5.6, 4.2.3, and 8.d. of the RFP, the Division cannot award a contract to a bidder whose proposal does not meet the mandatory requirements of the RFP. 1 CSR 40-1.050 (19) supplies the simple reason for this rule: doing so would create an unfair competitive advantage to the detriment of other bidders.

Paragraph 4.18.1.a, .b, and .d the RFP requires vendors to disclose relevant litigation, pending investigations, assessments and substantiated findings. They provide:

4.18.1 Except for employment and workers' compensation matters, the vendor must disclose a list of relevant litigation within the past five (5) years involving the vendor, all of the vendor's employees, officers, agents, and/or subcontractors. The vendor shall disclose the names of the parties (initials may be used in lieu of party name for minors); the Court and case number in which the case was filed; and a brief description of the claims or criminal charges brought. The vendor may include a copy of the complaint or petition.

- a. Relevant litigation is defined as any civil claims, judgments, or out of court settlements and/or criminal charges which are pending or have been disposed of by a finding or plea of guilt, an Alford plea, or a plea of nolo contendere regarding the following:
 - 1) Allegations of child abuse or neglect;
 - 2) Personal injury to a client;
 - 3) Violent acts, including but not limited to, domestic violence and other crimes against persons;
 - 4) Acts against the family, which include, but are not limited to Orders of Protection, and criminal charges denominated as offenses against the family;
 - 5) Fraud and/or misrepresentation;
 - 6) Sexual offenses, including pornography, and any registration on a sexual offender registry;
 - 7) Weapons offenses;
 - 8) Controlled substance offenses; or
 - 9) Any other claims or charges which relate to the delivery of foster care case management services to children.
- b. The vendor's proposal must also include a listing of pending investigation or assessment or "substantiated finding" of any vendor's employee, officer, agent, and/or subcontractor.
 - 1) Substantiated finding is defined as a court adjudication, or determination by the state agency or any Court of a probable cause and/or preponderance of the evidence finding, or substantially similar findings in this state or any other.
- d. The vendor should present the above information on Exhibit K, or any other format with the proposal. The above information must be submitted prior to the award of a contract.

A. MTM Failed To Disclose Governmental Findings, Assessments, Investigations, and Relevant Litigation Reflecting Serious, Recent Performance Issues As Required By A Mandatory Provision Of The RFP.

MTM's proposal fails to identify relevant governmental findings, assessments, and investigation reflecting performance issues with MTM's recent work in Rhode Island and Arkansas that section 4.18.b of the RFP required to be disclosed. The Division simply cannot ignore these failures as each demonstrates serious concerns regarding MTM's ability to perform its contractual obligations and demonstrates MTM's failure to comply with the RFP's mandatory requirement to disclose such relevant information.

First, MTM failed to disclose findings, an assessment and investigation in the State of Rhode Island made by the Rhode Island Executive Office of Health and Human Services (EOHHS) that reflect serious performance issues after the death of an elderly transportation member in MTM's care on December 3, 2021. On January 6, 2022, the EOHHS completed an investigation and issued a comprehensive report finding MTM failed to implement appropriate safety procedures and required corrective actions.³⁹ The Rhode Island EOHHS also imposed a \$600,000 assessment against MTM for its failure to comply with contractual requirements to ensure member safety after the death of a member being transported by an uncredentialed driver that provided a false identity, did not properly secure the passenger, and was driving under the influence of alcohol with an open alcohol bottle in the vehicle at the time of the incident. Furthermore, the EOHHS found that MTM failed to ensure provider vehicles were properly insured and that MTM's processes related to driver credentialing were inadequate, and required MTM to conduct additional training regarding the securing of wheelchairs and stretchers for transport drivers. As a result of the EOHHS findings, MTM was required to submit multiple corrective action plans related to reporting of significant incidents, required credentialing to prevent unauthorized drivers, and oversight of transportation providers to correct what EOHHS characterized as "substandard oversight" conducted by MTM to that point. The EOHHS noted that the Rhode Island Attorney General was continuing to review the matter at that time.

Plainly stated, the RFP required disclosure of these findings, the assessment and the investigation reflecting MTM's serious performance issues and the incident in Rhode Island. While MTM's proposal makes brief reference to a Rhode Island State Police investigation, MTM portrayed the incident as solely the responsibility of a transportation vendor and wholly failed to provide any information regarding the substantiated findings from the EOHHS findings documented in the EOHHS's January 6, 2022 letter to MTM's CEO Alaina Macia.

Second, MTM failed to disclose findings reflecting serious performance issues related to its provision of NEMT services in the State of Arkansas and resulting damages to Arkansas. As relevant history, MTM was awarded four regional contracts for NEMT services in Arkansas which commenced on January 1, 2019. After just 17 days, the Arkansas Department of Human Services notified MTM that its regional contracts were being terminated, based on findings stated in a press release that "MTM has not been able to consistently provide the level of services required in its contract."⁴⁰ As widely reported at that time, Arkansas DHS Chief of Procurement Sarah Collins Linam issued a February 2019 letter in which the State claimed \$3.7 million in damages as a result of MTM's failure to meet its contractual obligations after less than a month of operation in the state. MTM's communications with Arkansas' Department of Human Services, and ultimate resolution of

³⁹ Exhibit 8, Rhode Island Notification.

⁴⁰ Exhibit 9, Arkansas Transition Article.

the State’s claims, are wholly absent from MTM’s RFP proposal despite containing obvious relevance to MTM’s ability to perform its contractual obligations in Missouri upon any award of NEMT services. MTM could have and should have provided information about its failures in Arkansas, but plainly did not in contravention of the RFP’s mandatory requirement to do so.

As discussed among Division staff, a contract performance issue in another state is of the utmost concern to the Division in making any award.⁴¹ MTM failed to disclose findings, assessments and investigation showing its recent performance issues in, at minimum, Rhode Island and Arkansas, that resulted or may result in an assessment and/or termination of MTM’s contracts in the respective states.

B. MTM Failed To Disclose Relevant Litigation As Required By A Mandatory Provision Of The RFP.

Exhibit K of MTM’s proposal purports to identify all relevant litigation as required by a mandatory the RFP. However, MTM does not appear to have identified all relevant litigation as required.

First, MTM failed to disclose relevant litigation involving personal injuries to individuals receiving transportation services. In addition to relevant litigation identified in MTM’s RFP response, ModivCare has identified the following relevant litigation involving personal injuries and/or death of an individual receiving transportation services from MTM.

Chart No. 4

Names of Parties	Court	Case Number	Brief Description of the Claims or Criminal Charges Brought
Guillermo Aviles, Jr., et al. v. Access Services, et al.	California - Superior Court - Los Angeles County	20STCV33752	Complaint alleging wrongful death while decedent being transported by a transportation provider company.
Alejandro Parjus, as Personal Representative, et al. v. MTM et al.	FL Miami-Dade 11th Judicial Circuit	2021-009742-CA-01	Complaint alleging wrongful death while decedent being transported by a transportation provider company.
Ana Delgado v. MTM et al.	FL Miami-Dade 11th Judicial Circuit	2022-004740-CA-01	Plaintiff alleged sustaining injuries while being transported by a transportation provider company.
Orlando Rolon Nieves v. MTM et al.	FL Miami-Dade 11th Judicial Circuit	2017-011185-CA-01	Plaintiff alleged sustaining injuries while being transported by a transportation provider company.

⁴¹ Exhibit 2 at NEMT Evaluation and Report. On February 17, 2022, Connie Sutter, Pharmacy Fiscal and Rate Setting Director for the Department of Mental Health sent an email to Dirk Elrod, the DSS/DFAS Procurement Specialist regarding the vendors’ disclosures of relevant litigation, investigations and findings. She stated “I would find it very difficult to believe that MTM has no personal injury litigation.... I would be most concerned with breach of contract/contract disputes.”

MTM further failed to disclose relevant litigation involving MTM’s payment of taxes in States in which it has previously operated. For example, the Kansas Department of Revenue recently had to file a tax warrant related to MTM’s unpaid withholding taxes, assessing an amount of approximately \$6,500.00 against the company.⁴² As shown in the chart below, MTM is believed to have additional tax warrant or lien matters in Wisconsin and Washington State.

Chart No. 6

Names of Parties	Court	Case Number	Brief Description of the Claims or Criminal Charges Brought
Medical Transportation Management, Inc. v. Wisconsin Department of Administration et al	Wisconsin - Circuit Court - Dane County	2021CV000259	010-Administrative
Director Of Taxation Department Of Revenue v. Medical Transportation Mgmt Inc	Kansas - District Court - Shawnee County	2022-ST-007879	280-Liens
Department of Labor and Industries v. Medical Transportation Management, Inc.	Washington - Superior Court - Spokane County	18-2-12616-3	425-Tax
Department of Labor and Industries v. Medical Transportation Management, Inc.	Washington - Superior Court - Spokane County	18-2-12617-1	425-Tax
Department of Labor and Industries v. Medical Transportation Management, Inc.	Washington - Superior Court - Spokane County	18-2-12615-5	425-Tax

Under Paragraph 14 of the RFP, it was mandatory for all vendors to disclose relevant litigation, pending investigations, assessments and substantiated findings because the language includes the term “shall.” MTM’s proposal failed to comply with this mandatory requirement of the RFP. Accordingly, the Division was required to reject MTM’s proposal such that it should cancel the contract award to MTM.

⁴² Exhibit 10, Kansas Tax Warrant Documentation.

III. As Conducted, The Entire Bidding Process Was Unfair, Unlawful, Arbitrary, Capricious, And An Abuse Of Discretion Because The Committee Failed To Competitively Score The Vendors' Proposals Per Their Content And Consistent With The Terms Of The RFP And Determine Which Proposal Was Both The Lowest And Best As Required By Missouri Law, And This Failure Denied ModivCare An Equal And Fair Opportunity To Compete And The Contract Award.

Section 34.042 requires purchases of \$100,000 or more to be made based on “competitive proposals.” Section 34.042.3., RSMo provides, in relevant part that:

The contract shall be let to the *lowest and best* offeror as determined by the evaluation criteria established in the request for proposal and any subsequent negotiations conducted pursuant to this subsection. In determining the lowest and best offeror, as provided in the request for proposals and under rules promulgated by the commissioner of administration, negotiations may be conducted with responsible offerors who submit proposals selected by the commissioner of administration on the basis of reasonable criteria for the purpose of clarifying and assuring full understanding of and responsiveness to the solicitation requirements. *Those offerors shall be accorded fair and equal treatment* with respect to any opportunity for negotiation and subsequent revision of proposals; however, a request for proposal may set forth the manner for determining which offerors are eligible for negotiation, including, but not limited to, the use of shortlisting.

(Emphasis added). Under Section 34.010.2, RSMo, “the term “lowest and best” in determining the lowest and best award, *cost, and other factors are to be considered* in the evaluation process. Factors may include, but are not limited to, value, performance, and quality of a product.”

Missouri courts have interpreted these statutes to require the competitive bidding process “[t]o meet the basic standards of due process and to avoid being arbitrary, unreasonable, or an abuse of discretion,” fraudulent, corrupt, or without reason. See *Pub. Comm’s Servs., Inc. v. Simmons*, 409 S.W.3d 538, 546 and 551 (Mo. Ct. App. 2013). The process *must* ensure that all bidding vendors have a fair and equal opportunity to compete in a field where no favoritism is shown or may shown to other contestants. *Byrne & Jones Enters., Inc. v. Monroe City R-1 Sch. Dist.*, 493 S.W.3d 847, 853 (Mo. banc 2016). The process must ensure that one vendor’s bid is not chosen over another’s for other than valid reasons. *Simmons*, 409 S.W.3d at 547. The state purchasing agent has a duty to honestly and fairly exercise its discretion. *Id.* at 546. A state agency’s decision must be made using some kind of objective data rather than mere surmise, guesswork, or ‘gut feeling.’” *Id.* at 551. When an agency completely fails to consider an important aspect or factor of an issue before it, it acts arbitrarily or capriciously. *Id.* By statute, contracts awarded contrary to these requirements are “void and of no effect.” § 34.150, RSMo

Here, the RFP required the use of a committee and subject-matter experts to review each vendor’s technical proposal in accordance with the subjective evaluation criteria in the RFP. The RFP contained three categories each of which was comprised of 1 or more elements, with a grand total of 12 elements. The information provided by each vendor for each element was required to be rated using the applicable adjectival rating system in Attachment 21 of the RFP. The rating system for elements within each category consisted of one table identifying and defining five rating adjectives, and another table assigning scores to each of the five rating adjectives for each rated and score element.

After reviewing the proposals, the committee prepared a report which shows the subjective evaluation points assigned to each element of the four vendors’ technical proposals and a written narrative highlighting the considerations that influenced their opinions. The report indicates that the narrative and point assignments “are based on the information presented in the vendors’ proposals and subsequent Best and Final Offer (BAFO) responses. Chart No. 6 and the bullet points beneath it summarizes the results of the rating and scoring performed by the committee.

Chart No. 6

COMPARISON OF TECHNICAL PROPOSAL RATING AND SCORING					
Category	Element	Modivcare’s Adjectival Rating/Score	MTM’s Adjectival Rating/Score	Verida’s Adjectival Rating/Score	Veyo’s Adjectival Rating/Score
Proposed Methodology	General Requirements	Superior/7	Superior/7	Satisfactory/5	Satisfactory/5
Proposed Methodology	Access and Call Center Requirements	Superior/8	Superior/8	Superior/8	Superior/8
Proposed Methodology	Eligibility Requirements	Satisfactory/5	Satisfactory/5	Satisfactory/5	Marginal/2
Proposed Methodology	Service Requirements	Satisfactory/6	Satisfactory/6	Satisfactory/6	Satisfactory/6
Proposed Methodology	Transportation Providers Requirements	Satisfactory/6	Satisfactory/6	Satisfactory/6	Satisfactory/6
Proposed Methodology	Reporting and Recordkeeping Requirements	Satisfactory/5	Satisfactory/5	Satisfactory/5	Satisfactory/5
Proposed Methodology	Claims Processing and Management Information System	Satisfactory/5	Satisfactory/5	Satisfactory/5	Satisfactory/5
Proposed Methodology	Quality Assessment and Improvement Requirements	Satisfactory/6	Satisfactory/6	Satisfactory/6	Satisfactory/6
Proposed Methodology	Financial Requirements	Satisfactory/5	Satisfactory/5	Satisfactory/5	Marginal/2
Personnel Qualifications	Leadership Team	Superior/8	Superior/8	Superior/8	Marginal/3
Past Performance	Overall Relevant Vendor Experience	Superior/25	Superior/25	Satisfactory/18	Satisfactory/18
Past Performance	Case Studies	Superior/11	Superior/11	Marginal/4	Superior/11
TOTAL SCORE		53	53	51	45

- The committee assigned an identical rating/score to ModivCare’s and MTM’s proposals despite highly significant differences between the information and statistics in their respective proposals (discussed in Section I.A. above).
- In the Proposed Methodology category, the committee assigned an identical rating/score to all 4 vendors’ proposals for 6 out of 9 elements despite significant differences in their proposals.

- This means that all four vendors received an identical score in half—6 out of 12—of the total elements in the RFP.
- ModivCare, MTM and Verida received an identical rating/score in 8 out of the 9 elements despite the fact that ModivCare has demonstrated highly successful implementation of its approach in Missouri for over 15 years, MTM’s approach has failed twice in Missouri (which is discussed in Section I.A. above and is the reason MTM was not award the contract in 2016) has recent, serious performance issues in Rhode Island and Arkansas, and Verida has no experience implementing its approach in Missouri.
- For 7 out of the 9 elements in the Proposed Methodology category, the committee lists no supporting facts in its rating/scoring rationale, only a conclusory statement.
- In the Personnel Qualifications category, the committee assigned an identical rating/score to ModivCare, MTM and Verida despite significant differences in the leadership teams.
 - ModivCare’s team’s exceptional years of experience, achievements, and Missouri specific experience (discussed in Section I.A.) makes it Distinctive but the committee ignored the supporting facts.
- In the Past Performance category, the committee assigned an identical rating/score to ModivCare and MTM for the Experience and Case Studies elements despite a staggering difference in their respective experience and service statistics, and performance record in Missouri and other states. As discussed in Section I.A. and depicted in Chart Nos. 1 and 2, ModivCare’s proposal reflected it was Distinctive in both elements, MTM’s proposal reflected it was Marginal in the Experience elements and Satisfactory in the Case Study element, Verida’s and Veyo’s proposals reflected Experience that was Marginal, and Veya’s Case Studies mandated a rating of Satisfactory.
 - The facts and types of facts in the vendors’ proposals relied upon by the committee to assign ratings/scores do not support the ratings/scores assigned based on the definitions of the ratings in Attachment 21 to the RFP and do not fairly or properly rate or score the significantly different content in each vendor’s proposal .

All of this information equates to a highly flawed and unfair process that denied ModivCare an equal opportunity to compete for a contract award and resulted in ModivCare suffering a pecuniary loss because it was wrongly denied a contract award. With all due respect to the evaluation committee that most certainly attempted to perform a diligent and compliant review, they failed. As noted above, Missouri law requires a competitive process that when followed resulted in a contract award to the lowest *and best* vendor. For a process to meet the competitive requirement in Missouri law, the process must necessarily involve a fair and even application of the scoring criteria in the RFP to each vendor’s proposal and ensure that vendors with distinctive proposal elements receive a greater rating/score than those without, that vendors with superior proposal elements receive a greater rating/score than those without, and so forth. It was incumbent upon the Division to ensure the process made these distinctions among vendors in the subjective evaluation of the technical proposals to determine which vendor was the best. In an RFP structured like this one, it was wholly inadequate for the Division to allow the committee to score each vendor’s proposal in a vacuum against the adjectival rating definition in the RFP and then ignore the fact that the process resulted in the assignment of

identical ratings/scores to elements of vendors' respective proposals that were significantly different. The competitive process in Missouri required the Division to ask the committee to delve deeper and true up its ratings for each vendor's proposal to account for the differences between them so the lowest *and best* vendor could be identified once the scoring of the objectively scored portions of the proposals were joined with the scores of the technical proposals. That did not happen here. Had ModivCare known the Division would conduct the process as it did, it would have structured its proposal differently to include, among other things, comparative data points and charts objectively showing how its technical proposal was Distinctive compared to the other vendors.

To make matters worse, the Division did not require the committee to be transparent in its scoring, instead allowing the committee not to provide a factual rationale for much of its rating/scoring and to provide a "factual" rationale that did not support portions of its scoring because of errors in the factual assertions or significant differences between different vendors' proposals that warranted different ratings/scoring. State government, including the bidding process is supposed to be transparent and not shrouded in secrecy to hide governmental action and underlying rationale from affected persons and the public. Here, the Division allowed the committee to prepare and approve an evaluation narrative that obfuscates the factual underpinnings of their rating/scoring process, inappropriately insulating portions of the process from meaningful review. To allow such conduct would give the Division absolute and total discretion in the rating/scoring process and allow it to steer contracts to vendors considered the most desirable without regard for whether they are the lowest and best contrary to Missouri law. The Division is required to conduct the bidding process in a manner that allows vendors and the public to have a meaningful understanding of the factual basis for the contract award, to determine if a fair and even process was followed, and to support a challenge when a flawed process produced a contract award and deprived a vendor of a fair and equal opportunity to compete for a contract award.

As conducted, the entire bidding process here was fatally flawed, arbitrary, irrational, unfair, insufficiently competitive, an abuse of discretion, and unlawful. The rating/scoring of the technical proposals was not conducted as required by the RFP because the rating/scoring is contrary to the definitions of the adjectival ratings in Attachment 21 and not properly supported by accurate factual rationale or any factual rationale, and the required competitive element was absent because the ratings/scores do not accurately reflect significant differences between the vendors' proposals. There was a reason that the Division historically structured RFPs to directly score vendors' proposals against each other (like the 2016 RFP for this contract). It was because that process ensured adequate competition and award of the contract to the vendor that was the lowest and best. Had the process here been conducted fairly and lawfully with sufficient competition, the rating/scoring of the technical proposal would have resulted in a contract award to ModivCare instead of MTM like it did in 2016.

CONCLUSION

For all the above reasons, the Division should terminate the contract award to MTM, disqualify MTM, correct the scoring, and award the contract to ModivCare. Alternatively, the Division should terminate the contract award to MTM, conduct a rebid to determine which bidder is truly the lowest and best, and extend ModivCare's contract until completion of the rebid. In addition, if there is a re-bid, the Division should restructure the evaluation and scoring criteria in the RFP to require a direct comparison, evaluation and scoring of each vendor's proposal against the other vendors' proposals to ensure that the contract will be awarded to the bidder that is the both the best and the lowest as required by Missouri law.

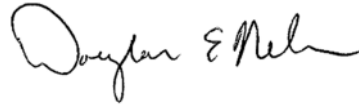
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Thank you for your attention to this important matter.

Sincerely,



Robert Pittman
ModivCare Solutions, LLC



Douglas E. Nelson
Jennifer S. Griffin
Lathrop GPM LLP

cc: Nicolle Backes – Nicolle.Backes@oa.mo.gov