



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Joel Brennan, Secretary

February 28, 2019

Medical Transportation Management, Inc
c/o Attorney Michael D. Leffel
Foley & Lardner, LLP
150 East Gilman Street
Madison, WI 53703-1481

Re: Decision on Appeal by Medical Transportation Management, Inc. of RFP No. S-0663 DMS-18

Attorney Leffel:

This letter represents the decision of the Department of Administration (“DOA”) in the above-referenced matter, which was appealed to DOA pursuant to Wis. Admin. Code § Adm 10.15(5). Upon receipt of the appeal, State Bureau of Procurement and DOA Legal staff conducted a thorough review and, as necessary, consulted with Department of Health Services (“DHS”) staff involved in the process. For the reasons explained below, and pursuant to Wis. Admin. Code § Adm 10.08(7), DHS is directed to rescind the Notice of Intent to Award issued on August 15, 2018 regarding RFP No. S-0663 DMS-18. The December 7, 2018 decision by DHS to deny the protest is hereby reversed.

Background

On August 15, 2018, DHS issued a Notice of Intent to Award RFP S-0663 DMS-18, Non-Emergency Medical Transportation Services, to LogistiCare Solutions LLC (the “Award”). The scope of the RFP included management of “the NEMT program for Medicaid and BadgerCare Plus members in the State of Wisconsin.” [Exhibit A at 9].

On August 29, 2018, Medical Transportation Management, Inc. (MTM) filed a protest of the Award [Exhibit B] pursuant to Wis. Admin. Code § Adm 10.15(1). On December 7, 2018, DHS issued a decision denying the Protest [Exhibit C]. On December 14, 2018, MTM timely appealed the denial pursuant to Wis. Admin. Code § Adm 10.15(5) [Exhibit D], which provides that a protester may appeal the agency’s decision to the DOA secretary within five working days, “provided the protestor alleges a violation of a statute or a provision of this chapter [Adm 10].”

In its appeal to DOA, MTM alleges two separate violations of Wis. Admin. Code Ch. Adm 10. First, MTM alleges that, because two out of the six members of the evaluation committee did not attend the scheduled oral presentation by MTM in June of 2018, the evaluation committee violated both §§ Adm 10.08(4)(b) and

(e)¹ and § Adm 10.08(5).² Second, MTM alleges that, because some members of the committee had contact with MTM at various points prior to the Award, they violated the provision of § Adm 10.08(5) that allows “fair and equal” discussions with proposers for purposes of clarification or negotiating the best offer. MTM claims that these contacts also violated the Ethical Guidelines signed by all evaluation committee members.

MTM also hints at various other allegations, including DHS’s alleged consideration of MTM’s past performance as well as other proposers’ history of performance on similar contracts with other states. However, as MTM itself notes, questions about past performance are “irrelevant to the issue at hand” in this appeal. [Exhibit D at 9]. The focus of this appeal is on whether a change in the award should be approved because “[v]iolations of [Ch. Adm 10] or the statutes have occurred.” Wis. Admin. Code § Adm 10.08(7)(e).

Decision

As explained more fully below, DOA does not find that the documented contacts with MTM by members of the evaluation committee violated any provisions of Ch. Adm 10 or DOA’s ethical guidelines. Nor does DOA accept MTM’s suggestions that the Award should be rescinded because DHS failed to properly consider the past performance of other proposers or improperly considered MTM’s past performance. Nevertheless, DOA finds that the evaluation committee violated Wis. Admin. Code § Adm 10.08(4)(b) and (e) when two evaluators failed to attend MTM’s scheduled oral presentation while continuing to serve as scoring members of the evaluation committee. Given the procedural importance of that requirement, DHS’s denial of MTM’s protest is reversed on the basis of this violation alone, and DHS is accordingly directed to rescind the Award.

I. The Evaluation Committee Violated Wis. Admin. Code § Adm 10.08(4)(b) and (e) When Two Committee Members Failed to Attend MTM’s Scheduled Oral Presentation.

The relevant provisions of the Code provide that an “evaluation committee shall . . . [c]onduct all formal, scheduled oral conferences and presentations with proposers that affect the evaluation process” and “[g]ive all proposers an equal opportunity to make a presentation, if presentations are permitted.” Wis. Admin. Code § Adm 10.08(4)(b) and (e).

These provisions are clear procedural requirements that must be followed for every RFP, regardless of the outcome. DHS failed to manage the NEMT RFP evaluation process in accordance with these requirements when two members of the evaluation committee missed MTM’s oral presentation but continued to be fully participatory scoring members of the committee.

In denying MTM’s protest, DHS concedes that two members of the six-member evaluation committee did, in fact, miss MTM’s oral presentation while otherwise continuing to participate in the evaluation process. DHS offers several rationales as to why this did not violate Wis. Admin. Code § Adm 10.08(4). Primarily, DHS argues that subs. (4)(b) and (4)(e) do not actually require every member to witness every presentation, simply because “there are occasionally unavoidable situations which prevent members from participating.” [Exhibit C at 2]. However, this contradicts the way that the State Procurement Manual explains Wis. Admin. Code § Adm 10.08(4). In listing the responsibilities of committee members, the Manual explains that members have a duty to “participate in all formal, scheduled, oral conferences and presentations with proposers.” State Procurement Manual, PRO-C-29, Section VI.B (emphasis added). DHS does not provide any authority for its view that the word “all” is superfluous here.

¹ These provisions require that an “evaluation committee shall,” among other requirements, “[c]onduct all formal, scheduled oral conferences and presentations with proposers that affect the evaluation process” and “[g]ive all proposers an equal opportunity to make a presentation, if presentations are permitted.” Wis. Admin. Code §§ Adm 10.08(4)(b) and (e).

² Subsection (5) provides that “[f]air and equal discussions may be conducted with all proposers for the purpose of clarification, and with proposers whose proposals are reasonably apt to be awarded the contract for the purpose of negotiating the best offer.” Wis. Admin. Code § Adm 10.08(5).

Instead, DHS appears to view the violation as essentially *de minimus*. DHS reasons that the requirements in subs. (4)(b) and (4)(e) are satisfied even if some evaluators miss a scheduled oral presentation, as long as the absent members (1) “were provided a copy of the presentation materials” and (2) “were present for all scoring meetings and had an opportunity to discuss all proposals and presentations and to contribute to discussions.” [Exhibit C at 2.] However, this reasoning could render oral presentations meaningless, because it presumes such presentations contain nothing of importance beyond the written materials and would not be affected by the evaluators in attendance. MTM persuasively points out the flaws in this view. As MTM puts it, “the entire purpose of oral presentations is to permit an open discussion with the proposers so they can address questions and explain details of their proposals that might not otherwise come through in written materials.” [Exhibit D at 8.] Regardless of the degree to which the evaluators actually engage in such back-and-forth, the requirement of Wis. Admin. Code § Adm 10.08(4)(e) is that each proposer be given an equal opportunity to do so. And this equal opportunity is facilitated by the requirement in sub. (4)(b) that evaluators must attend proposers’ formal, scheduled oral presentations.

In the alternative, DHS maintains that even if the two evaluators’ absence from MTM’s presentation was problematic, the award should not be rescinded because their scores did not affect the outcome. DHS bases this theory on an alternative scoring rubric that it created in response to MTM’s protest. In this hypothetical scenario, DHS has recalculated all proposers’ scores without considering any of the scores given by the two evaluators who missed MTM’s presentation. Based on this, DHS states that the scoring outcome would have been the same regardless of the two evaluators’ participation, such that MTM would still have ranked third among the proposers.

However, recalculating the scoring after the fact is not sufficient in this particular case, because DOA’s determination as to whether DHS violated the requirements of Wis. Admin. Code § Adm 10.08(4)(b) and (e) is not outcome-dependent. Instead, compliance with these requirements helps ensure confidence in the integrity of the RFP process by promoting public confidence in the fairness of that process. *Cf. PRN Assocs. LLC v. DOA*, 2009 WI 53, ¶34, 317 Wis. 2d 656, 766 N.W.2d 559. For this reason, public confidence in the process could be undermined to the extent that evaluators do not comply with the requirement of attending all proposers’ formal, scheduled oral presentations. It is understandable that circumstances occasionally may arise where evaluators may have to miss a formal, scheduled oral presentation, and a violation in this situation might be prevented if the absent individuals are recused from serving as scoring members of the committee after the point when they missed the presentation. But simply recalculating scores after the award—as if they had been recused—is not a sufficient cure.

For the above reasons, it has been determined that DHS violated the requirements of Wis. Admin. Code § Adm 10.08(4)(b) and (e) when two members of the evaluation committee did not participate in MTM’s scheduled oral presentation but nevertheless continued as fully participatory scoring members of the committee. On the basis of this violation, and pursuant to Wis. Admin. Code § Adm 10.08(7)(e), DHS is directed to rescind the Notice of Intent to Award.

II. MTM Has Not Presented Any Relevant Evidence That Committee Members Violated Ethical Guidelines Related to RFP Communications with Proposers or Conflicts of Interest.

As one of its additional arguments, MTM argues that “two thirds of the Committee members clearly violated DOA’s ethical guidelines” by having contact with MTM during the evaluation process. [Exhibit D at 9]. MTM provides general descriptions of these contacts in its Protest [Exhibit B at 2-3] and an affidavit from MTM staff [Exhibit E]. The ethical guidelines to which MTM refers are contained in Form DOA-3780, “Assurance of Compliance with Procedures and Ethical Guidelines for Proposal Evaluation.” Specifically, MTM points to a portion of those guidelines which provides as follows:

Only the purchasing lead in charge of the procurement or his/her designee is authorized to have contact with any proposers once the Request for Proposal is issued, during the evaluation process and until the contract is signed unless coordinated by the purchasing lead.

MTM's argument appears to proceed as follows. Because the ethical guidelines generically prohibit "contact with any proposers," this necessarily proscribes any contact, including contact that occurs as a part of the committee members' other job duties and which is unrelated to the RFP evaluation process. Even though MTM was under a contract with DHS that required ongoing monitoring and contact with DHS staff, MTM believes that any contact of any kind for any reason would automatically violate both the ethical guidelines quoted above and the provisions of Wis. Admin. Code § Adm 10.08(5).

In its protest decision, DHS succinctly explained why this argument must fail:

"It is commonplace (and desirable) for evaluation committee members to be staff responsible for overseeing the services being procured, as these staff are best able to evaluate proposals to perform these services. If MTM's argument were accepted, the only solutions would be to either form evaluation committees out of people unfamiliar with the services being procured for, or to prevent committee members from performing their regular duties." [Exhibit C at 3]

Contract administration, especially of large and complex contracts and programs such as the one involved here, requires dedicated agency resources such as those involved in this evaluation. Importantly, such resources are also exactly the staff an agency needs to participate in RFP evaluations for the same service. So long as the contacts between agency staff and incumbent proposer companies are restricted to contract business unrelated to the pending RFP, the evaluator(s) attest that they can be objective, and there is no evidence presented to the procuring agency that these protocols have been breached, such contacts are not a violation of DOA's RFP ethical guidelines or Wis. Admin. Code Ch. Adm 10. The ethical guidelines should be interpreted in light of the applicable provisions of Wis. Admin. Code Ch. Adm 10, which require that discussions must be fair and equal when evaluators make contact with proposers "for the purpose of clarification" and "for the purpose of negotiating the best offer"—that is, in the context of the RFP process. *See* Wis. Admin. Code § Adm 10.08(5).

Upon review of the aforementioned documents, the contacts outlined in the affidavit provided by MTM [Exhibit E] all appear to be related to the normal operational business of the current contract that MTM has with DHS, which is not a violation of the ethical guidelines set forth for RFP evaluators. This type of scenario is contemplated in the RFP itself [Exhibit A at 12], and this is standard template language for state agency RFPs. Absent the sort of "evidence of collusion or fraud" that would justify a change in an award under Wis. Admin. Code § Adm 10.08(7)(c), it would be an absurd interpretation of the ethical guidelines to extend them as far as MTM suggests. Because MTM has not presented any evidence that the supposedly problematic contacts were related to the RFP evaluation specifically, nor any evidence that MTM was somehow treated unfairly as a result, MTM's argument on this point is rejected.

MTM also makes some statements that appear designed to suggest a conflict of interest on the part of evaluation committee member Carrie Porter-Diamond. MTM states that she is a consultant who unsuccessfully approached MTM in 2017 about forming a business relationship, before this RFP was issued. Had MTM entered an actual business relationship with Ms. Porter-Diamond, then that relationship would preclude her from serving as an evaluator for the RFP, pursuant to Wis. Admin. Code § Adm 10.08(8). However, MTM does not have such a relationship with Ms. Porter-Diamond, and MTM has presented no evidence that any past or present contact with Ms. Porter-Diamond resulted in any biased or unfair treatment.

III. DHS Did Not "Reject" MTM's Proposal, and MTM Has Provided No Relevant Evidence that DHS Improperly Considered Past Performance.

A few additional points merit brief consideration. First, MTM incorrectly characterizes DHS's decision as suggesting "that it was appropriate for DHS to reject MTM's RFP proposal because in May 2015 the Legislative Audit Bureau issued a report critical of the NEMT program." [Exhibit D at 9.] This statement is misleading, because DHS did not "reject" the MTM proposal (i.e., refuse to even consider it). Rather, the proposal was accepted for consideration and scored, after which MTM ultimately ranked third of the four responsive proposals received. That is hardly a "rejection," and MTM has failed to include any relevant evidence that would justify characterizing the process that way.

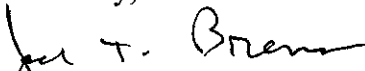
MTM also goes out of its way to include extensive allegations of performance issues with LogistiCare Solutions, LLC on a contract with DHS between 2011 and 2013. [Exhibit D at 4-6.] Perhaps this is intended to imply that DHS should rescind the award because of these performance issues. However, just like any other proposer, MTM has an expectation of fair and equal treatment in consideration of procurement awards. For this reason, MTM cannot reasonably expect that an agency will penalize a competitor for past performance problems—as it is suggesting should be done with LogistiCare—while at the same time asking that same agency not to consider MTM's own past performance issues—as it has done in its discussion of the Legislative Audit Bureau report, where it deems such issues "irrelevant." [Exhibit D at 9.]

Finally, MTM makes various additional arguments related to the responsiveness of the first and second place proposers in its Appeal, and MTM further makes insinuations about the actions of the DHS RFP Manager. DOA is satisfied with DHS's response to these arguments in its protest decision [Exhibit C] and therefore rejects them.

Conclusion

For the reason set forth above, DHS's denial of MTM's protest is reversed, and DHS is hereby directed to rescind the Notice of Intent to Award issued on August 15, 2018 regarding RFP No. S-0663 DMS-18.

Sincerely,



Joel Brennan, Secretary

Wisconsin Department of Administration

Exhibit A: DHS RFP S-0663 DMS-18

Exhibit B: MTM Protest Dated August 29, 2018

Exhibit C: DHS Protest Response Dated December 7, 2018

Exhibit D: MTM Appeal Dated December 14, 2018

Exhibit E: Affidavit of Tim Hopfensperger Dated August 29, 2018

Cc: Andrea Palm

State of Wisconsin
DOA-3261 (R05/2014)
§ 16.75, Wis. Statutes

PROPOSALS MUST BE SEALED & ADDRESSED TO:

AGENCY ADDRESS:

See RFP Section 5.5 Submitting a Proposal

REQUEST FOR PROPOSAL THIS IS NOT AN ORDER

VENDOR (Name and Address)

☐ Remove from Vendor List for this commodity/service. (Return this page only)

Proposal envelope must be sealed and plainly marked in lower corner with due date and Request for Proposal # Solicitation S-0663 DMS-18. Late proposals will be rejected. Proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the proposal is due. Proposals dated and time stamped in another office will be rejected. Receipt of a proposal by the mail system does not constitute receipt of a proposal by the purchasing office. Any proposal which is inadvertently opened as a result of not being properly and clearly marked is subject to rejection. Proposals must be submitted separately, i.e., not included with sample packages or other proposals. Proposal openings are public unless otherwise specified. Records will be available for public inspection after issuance of the notice of intent to award or the award of the contract. Proposer should consider the person named below for an appointment to view the proposal record. Proposer's shall be firm for acceptance for sixty (60) days from date of proposal opening, unless otherwise noted. The attached terms and conditions apply to any subsequent award.

Proposals MUST be in this office no later than

April 19, 2018 at 2:00 P.M. CT

Name (Contact for Request Information)

Susanne Matschull, email, Purchasing Manager

Phone:

(608) 267-8933, or DHSPurchase@wi.gov

Date

1/4/18

Quote Price and Delivery FOB

Destination, Freight Prepaid and Included

☐ Public Opening

☒ No Public Opening

Description

DEPARTMENT OF HEALTH SERVICES REQUEST FOR PROPOSAL

Non-Emergency Medical Transportation (NEMT) Services RFP No. S-0663 DMS-18

Payment Terms: Per Contract

Delivery Time: Per Contract

☐ We are the prime contractor and a corporation or other legal entity

☐ We claim minority vendor preference (Wis. Stats. § 16.75(3m)(b)(3)). Under Wisconsin Statutes, a 5% preference may be granted to CERTIFIED Minority Business Enterprises. Vendor must be certified by the Wisconsin Supplier Diversity Program. If you have questions concerning the certification process, contact the Wisconsin Supplier Diversity Program, 6th Floor, 101 E. Wilson Ave., Madison, Wisconsin 53703, (608) 267-9550. Does Not Apply to Printing Bids.

☐ We claim disabled veteran owned business bidder preference (Wis. Stats. § 16.75(3m)(b)(3)). Under Wisconsin Statutes, a 5% preference may be granted to CERTIFIED Disabled Veteran Owned Businesses. Bidder must be certified by the Wisconsin Supplier Diversity Program. If you have questions concerning the certification process, contact the Wisconsin Supplier Diversity Program, 6th Floor, 101 E. Wilson St., Madison, Wisconsin 53703, (608) 267-9550. Does Not Apply to Printing Bids.

☐ We are a work center certified under Wis. Stats. § 16.752 employing persons with severe disabilities. Questions concerning the certification process should be addressed to the Work Center Program, State Bureau of Procurement, 6th Floor, 101 E. Wilson St., Madison, Wisconsin 53702, (608) 266-6462.

Wis. Stats. § 16.754 directs the state to purchase materials which are manufactured to the greatest extent in the United States when all other factors are substantially equal. Materials covered in our bid were manufactured in whole or in substantial part within the United States, or the majority of the component parts thereof were manufactured in whole or in substantial part in the United States. ☐ Yes

☐ No ☐ Unknown

In signing this proposal we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently prepared without collusion with any other Vendor, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the opening of proposals to any other vendor or competitor; that the above statement is accurate under penalty of perjury.

We will comply with all terms, conditions and specifications required by the state in this Request for Proposal and all terms of our proposal.

Name of Authorized Company Representative (Type or Print)

Title

Phone

Fax

Signature of Above

Date

Email

This form can be made available in alternate formats to individuals with disabilities upon request

Non-Emergency Medical Transportation Services

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Attachments:

Attachment A – Cost Proposal

Attachment B – Vendor Checklist

Attachment C – Vendor Questions Submittal Sheet

Addenda 1-1 through 7-2

Non-Emergency Medical Transportation Services

DEFINITIONS

For the purposes of this Request for Proposal and resulting Contract(s), the following definitions of terms shall apply, unless otherwise indicated.

| | |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ACD: | Automatic Call Distribution. |
| ADA: | American with Disability Act. |
| Agency, Department, or DHS: | The Wisconsin Department of Health Services. |
| ASL: | Acceptable Service Level. |
| Authorized Users: | Includes any State Agency, University of Wisconsin campus, or other state or local public body authorized to use statewide contracts, as established in §§ 16.70 (1b), (1e), (2), (4) and (8), 16.73 and 66.0301 of the Wisconsin Statutes and § PRO-D-30 of the State Procurement Manual. |
| Business Day: | Includes every official work day of the week, Monday through Friday, 8 am through 5 pm, exclusive of public holidays and weekends. |
| CLA: | BadgerCare Plus Childless Adults members who are under 100% Federal Poverty Line. As of April 1, 2014, childless adults are eligible for Standard Plan benefits. |
| CMS: | Center for Medicare and Medicaid Services. |
| Contract or Agreement: | The written agreement between the successful Vendor and the State covering the goods and services to be performed pursuant to this RFP. |
| Contract Administrator: | The DHS employee responsible for the implementation, administration, and completion of the Contract. |
| Contract Manager: | The DHS employee responsible for oversight of the implementation, administration, and completion of the Contract. |
| CPR: | Cardio Pulmonary Resuscitation. |
| Day: | A calendar day, unless specifically identified as a business day. |
| Disabled Veteran-Owned Business Enterprise (DVB): | A business that has been certified by the Wisconsin Department of Administration Supplier Diversity Program as a Disabled Veteran-Owned Business Enterprise. |
| EBD Medicaid: | The part of Wisconsin's Medicaid program that provides coverage to elderly, blind and disabled individuals. |
| HMO: | Health Maintenance Organization. |
| HSV: | Human Service Vehicles |
| Immediate Family: | Immediate family includes the following: Someone's spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother in law and father in law, brothers in law, sisters in law, daughters in law and sons in law, adopted, half, and step family members. |
| Implementation Date | The date whereby the supplier provides NEMT services under the terms of the resulting Contract from this RFP. The implementation date will occur after the Contract has been signed and after the transition phase has been enacted. |
| Late Trip: | A late trip is defined as transportation arriving fifteen (15) or more minutes after the scheduled pick-up time. |

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| Major Cities | For the purposes of this RFP, a major city is defined as any city within Wisconsin that has a population of more than sixty-six thousand (66,000) inhabitants. This would include the following cities in Wisconsin – Milwaukee, Madison, Green Bay, Kenosha, Racine, Appleton, Eau Claire, Waukesha and Oshkosh. |
| Master Service Agreement (MSA) | For the purposes of this RFP, a Master Service Agreement is the Template Agreement the Vendor will use for all transportation providers due for provision to the Department as part of this RFP. |
| Members | For the purposes of this RFP, a member is defined as any person within Wisconsin enrolled and eligible in one of the following programs: Wisconsin Medicaid (including IRIS), BadgerCare Plus, Family Planning Only Services, Tuberculosis-Related Services Only Benefit, BadgerCare Plus Express Enrollment for Pregnant Women. |
| Minority Business Enterprise (MBE) | A business that has been certified by the Wisconsin Department of Administration Supplier Diversity Program as a Minority Business Enterprise under Comm. §§ 105.14, 105.21, or 105.23. |
| Mobile Responsive | A software framework built and designed specifically to transition between mobile, tablet and PC interface consistently and flawlessly. |
| Municipality | Any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (§ 16.70(8), Wis. Stats.). |
| NEMT | Non-Emergency Medical Transportation. |
| NPI | National Provider Identifier. |
| PBX | Public Branch Exchange. |
| PMPM | Per Member Per Month. |
| Procurement Manager | The Procuring Agency's procurement specialist or other person responsible for overseeing and administering the procurement process for a Proposal. |
| Procuring Agency | The Wisconsin Department of Health Services. |
| Provider | A group or company that provides a specified service as defined by the proceeding qualifying term. |
| Provider Service Agreement | For the purposes of this RFP, a Provider Service Agreement is the Agreement made by the Department and the eventual supplier to the requirements, terms and conditions as listed within this RFP and ensuing Contract pertaining to the provision of NEMT services to the State of Wisconsin. |
| RFP | A Request for Proposal. |
| RIN | Record Identification Number. |
| SFTP | Secure File Transfer Protocol. |
| SMV | Specialized Medical Vehicle. |
| State | The State of Wisconsin. |
| Subcontractor | A third party contractually engaged by the awarded Supplier to assist in the provision of goods or services enumerated in this solicitation and for which awarded Supplier has contracted with the Department to provide or perform. |

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| Supplier: | A person or entity that has been awarded the Contract as a result of this Proposal, and who is required to provide the agreed upon good and/or services. |
| Transition Phase | The period after the resulting contract from this RFP has been signed and the supplier is focused on building and delivering the system into operation. An incumbent supplier would continue to provide services under the terms of the incumbent contract during this phase. |
| Urgent Transportation: | An unscheduled episodic situation in which there is no immediate threat to life or limb but the member must be seen on the day of the request and the treatment cannot be delayed until the next day; a hospital discharge; healthcare appointments established by healthcare providers allowing insufficient time for routine two day scheduling. |
| Vendor: | A person or firm submitting a response to a solicitation and a set of specifications. |
| Valid Claim form: | A form for the purpose of claiming reimbursement for services rendered under this contract, including and not limited to, claims by electronic media or electronic submission. At minimum, every claim submitted shall be signed, certifying to the truthfulness, accuracy and completeness of the claim. |

Non-Emergency Medical Transportation Services

1.0 INTRODUCTION AND PURPOSE

1.1 Purpose and Scope of the Request for Proposal

The Wisconsin Department of Health Services (DHS) is seeking proposals for Non-emergency Transportation Services, and intends to use the results of this process to award a Contract.

The Department of Health Services does not guarantee to purchase any specific quantity, or pay any minimum Contract price during the term of the Contract. Proposals that require a minimum number of commodities or services be ordered will be disqualified.

Under § 1902(a)(4) of the Social Security Act, state Medicaid programs are required to ensure necessary non-emergency medical transportation (NEMT) for members to and from Medicaid-covered services. The purpose of this RFP is to provide interested parties with information to enable them to prepare and submit a proposal to manage the NEMT program for Medicaid and BadgerCare Plus members in the State of Wisconsin. The Department intends to use the results of this solicitation to award a Contract to one Vendor for the statewide management of the NEMT program.

As the Department's NEMT manager, the Supplier will be responsible for arranging and paying for transportation to covered services for members enrolled in the following programs:

- Wisconsin Medicaid
- BadgerCare Plus
- Family Planning Only Services
- Tuberculosis-Related Services-Only Benefit
- BadgerCare Plus Express Enrollment for Pregnant Women

The Supplier will not be responsible for arranging and paying for transportation to covered services for the following members:

- Members residing in a nursing home.
- Members enrolled in Family Care, Family Care Partnership, or the Program of All-Inclusive Care for the Elderly (PACE).
- Members enrolled in a limited-benefit plan, including the Wisconsin Well Woman Program, the Wisconsin Chronic Disease Program, SeniorCare, Alien Emergency Services, or a Medicare Savings Program.

The Department reserves the right to modify the included and excluded populations and/or covered and non-covered services, within parameters set by the Federal government for the Medical Assistance Program. Potential changes may include the addition or deletion of certain populations or the inclusion or exclusion of certain services or other significant program changes as defined and published by the Department. For instance, in April 2014, the childless adult population was included into the capitation

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rate by the State, as they became eligible for Medical Assistance coverage, which increased the number of recipients of the NEMT service and added an extra category. Therefore, the Department reserves the right to negotiate a change to the base per member per month (PMPM) rate in response to these policy changes.

The Supplier's responsibilities include, but are not limited to:

- A. Informing and educating members on the NEMT program and process.
- B. Verifying member eligibility for Medicaid or BadgerCare Plus.
- C. Assessing transportation needs.
- D. Authorizing transportation services.
- E. Scheduling and assigning trips.
- F. Coordinating trip status information with supporting networks, such as HMOs, counties, tribes, and other community service providers.
- G. Operating a call center.
- H. Recruiting, maintaining, and improving a transportation provider network in Wisconsin.
- I. Ensuring compliance with driver and vehicle requirements.
- J. Providing reimbursement for transportation services.
- K. Developing and implementing a quality monitoring plan.
- L. Collecting transportation data.
- M. Providing administrative oversight.
- N. Submitting management reports.
- O. Protecting member confidentiality.
- P. Maintaining adequate staff and facilities.
- Q. Interacting directly with DHS, DHS' Fiscal Agent, and any other support agency authorized to work on behalf of DHS.

1.2 Background/History

Medicaid is a public program that provides health care coverage to low-income individuals in the following eligibility categories:

- Children.
- Pregnant women, parents, and caretakers.
- Adults without dependent children.
- Elderly, blind, and disabled individuals.

The program covers a wide range of health care benefits, including hospital, physician, dental, behavioral health, and other healthcare services.

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All states operate Medicaid programs, which are jointly administered by the Federal and state governments. At the Federal level, CMS oversees Medicaid and is responsible for setting general policies and rules. At the State level, the DHS administers the Medicaid program and is responsible for policy development, day-to-day operations, and program oversight. Medicaid programs are funded jointly by the Federal and state governments.

The term "BadgerCare Plus" is used to refer to the part of Wisconsin's Medicaid program that provides coverage to children, pregnant women, parents, caretakers, and adults without dependent children. The term "EBD Medicaid" is used to refer to the part of Wisconsin's Medicaid program that provides coverage to elderly, blind, and disabled individuals.

Under §1902(a)(4) of the Social Security Act, state Medicaid programs are required to ensure necessary non-emergency medical transportation (NEMT) to and from Medicaid-covered services for members who have no other way to get to their healthcare appointments. Effective July 2011, DHS implemented a manager model to oversee the NEMT program for certain Medicaid and BadgerCare Plus members. Effective September 2012, DHS expanded the manager model statewide.

DHS' goals of the NEMT manager model are to:

- Ensure that all eligible members have reasonable and timely access to transportation to and from Medicaid-covered services.
- Ensure that eligible members use the most appropriate and economical mode of transportation.
- Eliminate fraud and abuse and increase efficiency in the NEMT program.
- Collect and report NEMT data.

1.3 Cost Structure History

The previous procurement required that the Vendors provide a Per Member Per Month all-inclusive capitated rate for each of three populations: Elderly, Blind, & Disabled (EBD), children, and Parents & Caretakers. These rates were a fixed monthly capitated rate for each respective population for the initial three-year contract term. Rates were negotiated at the beginning of each contract renewal period. The BadgerCare Plus Childless Adults (CLA) population was introduced in April 2014. No other costs, including but not limited to other direct, indirect, allocated, travel, or incidental expenses were to be proposed or charged to the ensuing contract.

The payment structure for NEMT services under this request for proposal is a risk-based, prospective capitated payment structure. See Section 6.3 *NEMT Payment Structure for NEMT Services* for additional information.

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1.4 Contract Term

The Contract shall be effective on the date indicated on the purchase order or the execution date of the accompanying Contract and shall run for three (3) years from that date, with an option by mutual agreement of the agency and the Supplier, to renew for an additional two (2), one-year periods.

Any Contract resulting from this solicitation shall not be, in whole or in part, subcontracted, assigned or otherwise transferred to any other Supplier without prior written approval from DHS.

1.5 Number of Contracts

It is the intention of DHS to award a single Contract for the services required in this solicitation. However, the Supplier(s) shall not have exclusive rights to provide all services covered under the Contract during the term of the Contract(s) or any extension thereof.

1.6 Procurement Manager

All communication and/or questions on all matters regarding this Proposal must be made in writing and refer to Request for Proposal number S-0663 DMS-18 and be directed to the DHS Procurement Manager: Susanne Matschull at DHSProcurement@wi.gov.

Any contact or communication with any employee or officer of the State of Wisconsin concerning this RFP except the Procurement Manager is strictly prohibited from the date this RFP is released until the date the notice of intent to award is issued. The Procurement Manager may authorize in writing contact or communication with another State employee or officer as circumstances dictate. Vendors who hold a current Contract with DHS may continue to communicate with the appropriate Contract Administrator regarding the performance of that current Contract.

1.7 eSupplier System Registration

Registration on the State of Wisconsin's eSupplier System (<https://esupplier.wis.gov>) is available free of charge to all businesses and organizations. By registering on eSupplier, a Vendor may register for a Vendor's list for any commodity or service the Vendor is interested in providing to the State. The eSupplier System also provides automatic email notification each time a State Agency, including the University of Wisconsin System campuses, posts a solicitation with an estimated value over \$50,000 in their designated commodity and/or service area(s). Only registered Vendors with a valid email address at the time a solicitation is posted will receive email notifications of amendments. Vendors who obtain the solicitation from a third party, through the State of Wisconsin Public Notices website, or by any other means assume the responsibility for checking for updates to the solicitation.

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1.8 Reasonable Accommodations

DHS will provide reasonable accommodations, including the provision of informational material in an alternative format for qualified individuals with disabilities upon request. If a Vendor needs accommodations at the outset of this solicitation process, please contact the Procurement Manager.

1.9 Other Eligible Parties

Wisconsin Statutes §16.73 establishes authority to allow Wisconsin Municipalities to purchase from State contracts. This gives Vendors the opportunity for additional sales without additional bidding, while assisting Municipalities with expedited purchases.

For the purposes of this solicitation, participation in Wisconsin's cooperative purchasing service is:

☐ MANDATORY: Vendors must agree to furnish the commodities or services of this Bid/Proposal to Wisconsin municipalities. Vendors should note any special conditions on form DOA - 3333.

☒ OPTIONAL: Vendors may or may not agree to furnish the commodities or services of this Bid/Proposal to Wisconsin municipalities. A Vendor's decision on participating in this service has no effect on awarding this Contract. Vendors should indicate their decision on form DOA - 3333.

In addition to Wisconsin's cooperative purchasing service, this Contract may be utilized by other Wisconsin State agencies, Managed Care Organizations, and non-profit organizations specifically linked by their missions to DHS.

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2.0 VENDOR QUALIFICATIONS

All Vendor qualifications in this section are mandatory. Failure to meet a qualification will disqualify your Proposal. However, DHS reserves the right to waive any qualification if no Vendor is able to satisfy that qualification.

Before the award of any Contract, DHS shall be satisfied that the Vendor has sufficient qualified resources available for performing the work described in this Proposal. It is the Vendor's responsibility to acquaint DHS with these qualifications by submitting appropriate or supporting documentation.

Vendors must have a minimum of five years' experience managing NEMT services for a population of at least 600,000 members prior to the date of this solicitation.

Provide your attestation on Attachment B -- Vendor Checklist. Please also identify one or more contacts on the Vendor Reference Form (DOA-3478) who can verify your firm meets this requirement.

3.0 REQUIREMENTS

This section of the solicitation contains an overview and description of the DHS objectives and requirements, categorized by process areas. The Vendor is required to provide narrative responses in this section, outlining the specifics of how their proposed solution will meet the associated objectives and requirements.

Instructions: Use the response sections below to provide specific details of the proposed approach to meeting the objectives and functional requirements in each process area. Responses in this section must be highly focused on the DHS requirements and not generic or marketing descriptions of capabilities. Responses should be comprehensive and contain details of the full solution being proposed.

3.1 NEMT Management Experience

The Vendor must have experience as an NEMT Manager for state, Federal and/or local transportation programs where the Vendor:

- a. Managed NEMT services for a population of at least 600,000 members.
- b. Managed NEMT services in diverse geographic locations including urban, suburban, rural, and remote rural areas.
- c. Worked with member populations who were frail, elderly, and disabled; low-income; racially and culturally diverse; and had limited English proficiency.
- d. Recruited, trained, and retained a diverse statewide transportation provider network, including enforcing performance and contracting standards.
- e. Established statewide reimbursement rates and processes for network providers, including electronic processing of claims.

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- f. Operated a call center with multiple service lines and handled more than 100,000 calls per month.
- g. Maintained an adequate computer system to support all operational and reporting functions of an NEMT program.
- h. Provided education, training, and outreach to diverse member populations and a variety of different stakeholder groups.

Vendor Response #1: Describe your experience and demonstrated abilities working as an NEMT Manager for state, Federal, and/or local transportation programs, including your experience and demonstrated abilities with all of the requirements listed in Section 3.1. Include the number of years of your experience, the number of Medicaid members you served and how your experience working with other transportation programs relates to your ability to meet the requirements of this RFP. List any NEMT contracts ended during the most recent 3 years by request of the client and prior to the contract expiration date, including the reason for the early termination.

3.2 Provision of NEMT Services

The Supplier shall arrange and pay for NEMT services to and from Medicaid-covered services for eligible members. The Supplier shall ensure that NEMT services are available 24 hours per day, seven days per week, and every day of the year, without exception.

The Supplier may arrange for NEMT services by:

- a. Negotiating service agreements with qualified transportation providers, including ambulance providers, Specialized Medical Vehicle (SMV) providers, and common carriers.
- b. Leveraging public transportation when the member has the capacity to use such service.
- c. Providing mileage reimbursement where the member or their representative provided the transportation.

The Supplier shall follow all policy guidelines established in ForwardHealth Online Handbooks <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx>, this RFP and resulting contract. Additionally, the Supplier must strictly comply with all applicable State and Federal regulations including, but not limited to, 42 CFR 431.53

(<https://www.gpo.gov/fdsys/search/searchresults.action?st=42+CFR+431.53>) and 42 CFR 440.170 (<https://www.gpo.gov/fdsys/granule/CFR-2012-title42-vol4/CFR-2012-title42-vol4-sec440-170>).

The Supplier shall implement the requirements of this RFP, and resulting Contract, no later than the mutually agreed upon date. The Supplier agrees that the Department be entitled to assess penalties, if the Vendor fails to comply with the requirements of this RFP and resulting Contract, including a failure to fully implement by the Implementation Date. The Supplier shall, at the sole discretion of the Department, be subject to a penalty, in an amount up to \$20,000 per day of noncompliance, or per day of delay in implementation, not to exceed one-half of the annual value of the Contract. The Department

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may collect penalties assessed either by deduction from the Supplier's invoices or by direct billing to the Supplier.

3.2.1 Authorization Process

The Vendor shall develop an authorization process to determine a member's eligibility and need for requested NEMT services.

The Supplier's authorization process must provide the ability for members, members' representatives, healthcare facilities, providers and caseworkers to request NEMT services by phone and through an online reservation system that is mobile responsive. The Supplier may require members to contact the Supplier to request NEMT services at least two (2) business days prior to a scheduled appointment, with the exception of urgent care and follow-up appointments when the timeframe does not allow advance scheduling. The two (2) business day advance scheduling includes the day of the call but not the day of the appointment.

When requesting NEMT services, the member is responsible for providing:

- a. Accurate and complete information to determine the need for NEMT services.
- b. Information on Medicaid eligibility.
- c. Information, when requested, related to the need for services.

The Supplier shall accept the information provided verbally by the member or the member's representative as valid when determining the need for NEMT services unless the Supplier has cause to doubt the validity of the provided information, in which case the Supplier may require documentation of that information.

Through its authorization process, the Supplier shall:

- a. Verify a member's Medicaid eligibility using a daily ForwardHealth member eligibility file, the ForwardHealth Portal, the ForwardHealth Automated Voice Response system, commercial enrollment verification vendors, 270/271 Health Care Eligibility/Benefit Inquiry and Response transactions, or a phone call to ForwardHealth Provider Services.
- b. Consider the member's needed level of transportation and ability to provide for his or her transportation outside of the NEMT program, pursuant to ForwardHealth NEMT policy.
- c. Notify the member of the authorization decision and provide verbal notice to the member within two business days after the business day on which the service authorization request is received or no later than one business days prior to the requested trip, whichever is sooner.
- d. Notify the member of transportation arrangements and confirm with the member the pick-up time for transportation to healthcare appointments.

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Vendor Response #2: Describe your proposed authorization process and how it will meet all of the requirements in Section 3.2.1.

3.2.2 Denial Process

The Supplier may deny requests for NEMT services that meet one or more of the following criteria:

- a. The member is not eligible for NEMT services on the date of service.
- b. The healthcare appointment for which the NEMT service is requested is not a Medicaid-covered service.
- c. The member has access to available transportation and states that they do not require financial assistance.
- d. Transportation to the healthcare appointment for which the NEMT service is requested is covered under another program.
- e. The healthcare appointment is not scheduled or was not kept.
- f. The member did not request the NEMT service timely, as described in this RFP.
- g. Additional documentation was requested to determine the validity of verbally-provided information and was not received timely.
- h. The member refuses the appropriate mode of transportation.
- i. The member refuses the transportation provider assigned to the trip and another appropriate transportation provider is unavailable.
- j. The member refuses to cooperate in determining the status of his or her Medicaid eligibility.
- k. The member exhibits uncooperative behavior or misuses/abuses NEMT services.
- l. The member is not ready to board NEMT transport ten (10) minutes after the scheduled pick-up time.

DHS, at its sole discretion, may add, modify, or delete denial criteria or reasons without additional payment to the Supplier or a contract amendment. Additionally, DHS, at its sole discretion, may review and reverse a denial decision made by the Supplier.

For denied NEMT requests, the Supplier must:

- a. Enter the reason(s) for the denial in its database.
- b. Verbally notify the member of the denial on the same day as the denial decision.
- c. Generate and mail a denial letter to the member no later than the next business day following the date of the denial decision. The denial letter must notify the member of the right to appeal the denial and include appeal and fair hearing information. DHS will work with the Supplier to develop the criteria for sending denial notices and will review and approve the template denial letter. The Supplier must use a current denial letter template that has been approved by DHS.

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For transportation requests that the Supplier incorrectly denied, the Supplier must:

- a. Verbally notify the member of the correction on the same day that the correction was made.
- b. Generate and mail a letter to the member to confirm the correction no later than the next business day following the date of the correction.

Vendor Response #3: Describe your process for denying NEMT requests and how your process will meet all of the requirements in Section 3.2.2, including your process for reversing incorrect denials to prevent unsuccessful trips.

3.2.3 Scheduling

The Supplier shall schedule the most appropriate mode of transportation that meets the member's needs pursuant to ForwardHealth policy outlined in the ForwardHealth NEMT Online Handbook. The Supplier must consider the member's current level of mobility and functional independence when determining the most appropriate mode of transportation for a member.

The Supplier must utilize an automated method to schedule authorized NEMT services and must ensure that dispatching activities are performed efficiently. The Supplier must use a scheduling method capable of accommodating recurring trips, one-time trips, advance reservations, hospital and emergency room discharges, and urgent trips.

Vendor Response #4: Describe your proposed scheduling process and how your process will meet all of the requirements in Section 3.2.3.

3.2.4 Urgent Transportation

The Supplier must provide urgent transportation within a maximum of three (3) hours of the time the request is made. Urgent transportation, for the purpose of this RFP, is defined as:

- a. An unscheduled episodic situation in which there is no immediate threat to life or limb but the member must be seen on the day of the request and treatment cannot be delayed until the next day.
- b. A hospital discharge.
- c. Healthcare appointments established by healthcare providers allowing insufficient time for routine two day scheduling.

The Supplier may verify with the healthcare provider that the need for urgent transportation exists.

The Supplier must notify the member immediately of the authorization decision and provide verbal notice to the member for urgent transportation requests.

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Vendor Response #5: Describe your proposed process for providing urgent transportation, including if you are able to provide urgent transportation in within the designated timeframe.

3.3 Transportation Provider Network

The Supplier shall create a transportation provider network that includes ambulance providers, Specialized Medical Vehicle (SMV) providers, and common carriers. Common carriers may include volunteer drivers who are reimbursed for their mileage, but not their services. Standards for each mode of transportation are described in detail within this RFP. Please refer to Section 8.0, Addenda 1.1 – 7.2 for specified trip data.

3.3.1 Transportation Provider Network

The Vendor must be independent in relationship from the entire population of transportation providers contracted for the provision of NEMT services under this RFP. For purposes of this Contract, independence is defined as the absence of full or partial ownership of, financial investment in, a non-appraisal business agreement with, litigation, or any other relationship, inclusive of immediate family members, to or with a Transportation Provider contracted for the provision of NEMT services under this RFP and/or their parent company (ies) that may affect or be construed to affect the conduct of NEMT services. DHS shall be the sole judge of acceptable degree of independence.

The Supplier shall avoid conflicts of interest. If an unforeseen conflict arises during the course of the contract, the Supplier shall immediately cease providing trip requests to the Transportation provider, promptly disclose the conflict to DHS, and shall not continue providing trip requests to that Transportation provider without the written consent of DHS.

The Supplier shall negotiate service agreements with ambulance providers, SMV providers, and common carriers within its transportation provider network. The Supplier is not required to negotiate service agreements with volunteer drivers. The Supplier shall maintain in its files a copy of the Supplier's executed service agreement for each contracted transportation provider.

Service agreements must include the minimum following requirements:

- a. Prohibition from sub-contracting NEMT services to a third-party.
- b. Payment administration plan.
- c. Levels of transportation provided.
- d. Attendant services.
- e. Telephone and vehicle communication systems.
- f. Computer requirements.
- g. Scheduling plan.
- h. Pick-up and delivery standards.
- i. Urgent transportation service conditions and availability.

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- j. Driver and attendant qualifications.
- k. Driver conduct.
- l. Vehicle requirements.
- m. Back-up service arrangements.
- n. Quality assurance standards.
- o. Non-compliance with standards.
- p. Training for drivers and attendants.
- q. Confidentiality of information.
- r. Indemnification language.
- s. Evidence of adequate insurance.
- t. Ability to interface with the Supplier's electronic tracking system (described later in this RFP).
- u. Submission of documentation as required by the Department.

All service agreements must also include the following provision:

"In the instance of default by the Supplier, at the request of the Department of Health Services, the agreement will pass to the Department or its agent for continued provision of transportation services. All terms, conditions, and rates established by the agreement shall remain in effect until or unless renegotiated with the Department or its agent subsequent to default action or unless otherwise terminated by the Department at its sole discretion."

The Supplier must submit a finalized Master Service Agreement (MSA) that the Supplier will use with transportation providers within ten (10) business days following issuance of the Intent to award the contract for Department review and approval. The Supplier must submit all amendments to the MSA to the Department for its review and approval.

The Supplier must terminate a service agreement with a transportation provider when substandard performance is identified and when the transportation provider has failed to take satisfactory corrective action within a reasonable period of time. The Department reserves the right to direct the Supplier to terminate any service agreement with a transportation provider when the Department determines it to be in the best interest of the State.

Vendor Response #6: Submit a copy of the proposed Master Service Agreement that addresses all of the requirements listed within Section 3.3.1.

3.3.2 Transportation Providers

The Supplier shall contract with ambulance providers, Specialized Medical Vehicle providers, and common carrier providers. The Supplier shall ensure and monitor that all transportation providers meet all driver/attendant standards and all vehicle standards. The Supplier shall develop other strategies to improve the quality of Wisconsin's transportation provider network, such as recruitment, screening, training, monitoring, or other strategies. The Supplier shall not

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permit transportation to be provided where the vehicle or driver does not meet the standards and requirements stated in this RFP and resulting Contract. The Acceptable Service Level (ASL) is 100% compliance. Where the Department determines in its sole discretion that the ASL is not met, the Department shall assess a penalty of up to \$1,000 per instance where the ASL is not met.

3.3.2.1 Ambulances

The Supplier shall only contract with ambulance providers that are Medicaid-enrolled and meet all ForwardHealth policy requirements described in the ForwardHealth Ambulance Online Handbook (<https://www.forwardhealth.wi.gov/wlportal/default.aspx>) and DHS Administrative Code (https://docs.legis.wisconsin.gov/code/adminn_code/dhs). In certain specific instances, the Supplier may use an ambulance for SMV transportation.

The Supplier shall reimburse claims from non-contracted ambulance providers for NEMT services that are directly coordinated by a hospital, clinic, or other originating facility (e.g., provided through the "post-authorization" process as described in ForwardHealth Update 2014-32 - <https://www.forwardhealth.wi.gov/kw/pdf/2014-32.pdf>). The Supplier shall make a good faith attempt to negotiate a service agreement with any non-contracted ambulance provider that has submitted a claim to the Supplier through the post-authorization process in order to minimize the use of non-contracted providers. Failure to resolve post-authorizations completed by ambulance providers who correctly followed the post-authorization process constitutes non-compliance and will be deemed as the Supplier's failure to provide transportation.

3.3.2.2 Specialized Medical Vehicles

The Supplier shall only contract with SMV providers that are Medicaid-enrolled and meet ForwardHealth policy requirements for SMVs as described in the ForwardHealth SMV Online Handbook (<https://www.forwardhealth.wi.gov/wlportal/default.aspx>) and DHS Administrative Code (https://docs.legis.wisconsin.gov/code/adminn_code/dhs).

The Supplier shall have available in its transportation provider network specialized medical vehicles equipped with restraints that secure gots and stretchers to the side and floor for transporting members confined to a got or stretcher. The transportation provider network must have, at a minimum, one transportation provider with SMVs equipped for got and stretcher transportation available near major cities. SMVs that are used for got or stretcher transportation

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must meet the additional requirements of DHS 107.23 (3) (b) 10, SMV Driver and Attendant Standards

(<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Print.aspx?ia=1&p=1&sa=60&s=2&c=61&nt>).

The Supplier shall ensure that SMV drivers and attendants meet the following standards at all times:

- a. Drivers must have an appropriate and unrestricted (with the exception of corrective lenses) valid U.S. driver's license, be legally licensed by the State of Wisconsin to operate their assigned vehicle, and must be competent in their driving habits.
- b. Drivers and attendants must be at least twenty-one years of age, be courteous and helpful to all passengers, and be neat and clean in appearance.
- c. Drivers and attendants must have received all of the following prior to providing services:
 - i. Basic Red Cross or equivalent training in First Aid and Cardio Pulmonary Resuscitation (CPR) with hands-on training.
 - ii. Specific instructions on care of passengers in seizure.
 - iii. Specific instructions in the use of all ramps, lift equipment, and restraint devices used by the provider.
- d. Drivers and attendants must receive refresher training and remain current at all times in Basic First Aid and CPR.
- e. Drivers must report any citations they receive to the Supplier for recordkeeping and reporting to the Department upon request.
- f. Drivers must pass a criminal background check, with no felony convictions and may not have any felony convictions during the Contract period.
- g. Drivers must pass an initial drug test and random drug test at least once annually.

The Supplier may establish additional standards. Any additional standards require written approval by the Department.

The Supplier shall not utilize, and must immediately remove from service, any driver or attendant in the following circumstances:

- a. Drivers who currently have a suspended, expired, or revoked commercial or other driver's license.
- b. Drivers who receive a citation and are convicted of two (2) moving violations per calendar year while providing transportation provided under this RFP.
- c. Drivers or attendants receiving two (2) or more complaints from passengers concerning the driver and attendant standards included in this RFP within a five (5) business day period until corrective action is taken.

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- d. Drivers or attendants receiving a pattern of complaints related to unsafe or inappropriate behavior.

The Supplier shall document all complaints against drivers and attendants, which shall become a part of the driver or attendant's permanent record.

3.3.2.3 SMV Vehicle Standards

The Supplier shall ensure that all transportation providers maintain all vehicles and vehicle equipment adequately to meet the requirements of this RFP. Vehicles and all components must comply with or exceed the manufacturers, State, and Federal safety and mechanical operating and maintenance standards for the particular vehicles and models used under this contract. Vehicles must comply with all applicable Federal laws, including the Americans with Disabilities Act (ADA) regulations (<https://www.ada.gov/>).

The Supplier shall inspect the vehicles of contracted SMV providers annually for compliance with TRANS 301

(<https://docs.legis.wisconsin.gov/code/adminin/code/TRANS/301>).

The Supplier shall immediately remove a vehicle from service under any of the following circumstances:

- a. The vehicle is found deficient with the Department's SMV licensing and equipment/restraint device requirements.
- b. The vehicle is found deficient with ADA regulations, Department of Motor Vehicles licensing requirements, safety standards, or the annual vehicle inspections by the Supplier for compliance with TRANS 301.
- c. The vehicle is placed out of service by the Wisconsin State Patrol.
- d. The vehicle's overall condition creates a health or safety hazard for the vehicle occupants.
- e. The vehicle's manufacturer malfunction indicator light is active, including, but not limited to, the check engine light or the brake light.
- f. The vehicle receives two (2) or more substantiated complaints from passengers concerning cleanliness, temperature deficiencies, or other deficiencies within a five (5) day period. The vehicle must be removed from service until the Supplier inspects the vehicle and takes the appropriate corrective actions. Substantiated complaints must be corrected prior to the vehicle re-entering service, and such actions must be documented and become a part of the vehicle's permanent record.
- g. The vehicle is found to be noncompliant with the vehicle standards created under this RFP or any other state or Federal standards (until verified for correction of deficiencies).

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3.3.2.4 Common Carrier Driver Standards

The Supplier shall ensure that common carrier drivers meet the following standards at all times:

- a. Drivers must be legally licensed by the State of Wisconsin to operate their assigned vehicle.
- b. Drivers must be competent in their driving habits, courteous and helpful to all passengers, and neat and clean in appearance.
- c. Drivers must pass a criminal background check, with no felony convictions and may not have any felony convictions during the Contract period.
- d. Drivers must pass an initial drug test and random drug test at least once annually.

3.3.2.5 Common Carrier Vehicle Standards

The Supplier shall ensure that all common carrier transportation providers maintain all vehicles and vehicle equipment adequately to meet the requirements of this RFP. Vehicles and all components must comply with or exceed the manufacturers, State and Federal, safety and mechanical operating and maintenance standards for the particular vehicles and models used under this contract. Vehicles must comply with all applicable Federal laws, including the Americans with Disabilities Act (ADA) regulations (<https://www.ada.gov/>).

The Supplier shall immediately remove a vehicle from service under any of the following circumstances:

- a. The vehicle is found deficient with ADA regulations (<https://www.ada.gov/>), Wisconsin Department of Transportation licensing requirements (<http://wisconsin.gov>), Wisconsin insurance requirements (<https://oclawt.gov/Documents/Consumers/Pl-223.pdf>), safety standards (<http://wisconsin.gov/Documents/safety/veh-inspec/reconst-veh/305.pdf>), or TRANS 301 requirements (https://docs.legis.wisconsin.gov/code/admin_code/transport/301).
- b. The vehicle is currently placed out of service by the Wisconsin State Patrol.
- c. The vehicle's overall condition creates a health or safety hazard for the vehicle occupants.
- d. The vehicle's manufacturer malfunction indicator light is active, including, but not limited to, the check engine light and the brake light.
- e. The vehicle receives two (2) or more substantiated complaints from passengers concerning cleanliness, temperature deficiencies, or other deficiencies within a five (5) day period. The vehicle must be removed from service until the Supplier inspects the vehicle and takes the appropriate

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corrective actions. Such actions must be documented and become a part of the vehicle's permanent record.

- f. The vehicle is found to be noncompliant with the vehicle standards created under this RFP or any other State or Federal standards (until verified for correction of deficiencies).

3.3.2.6 Unannounced Inspections

Separate from annual vehicle inspections, the Supplier shall perform at least one (1) unannounced vehicle inspection and trip compliance audit within each four-month period for each unique transportation provider onsite at scheduled pick-up and drop-off locations. The Supplier shall also perform additional unannounced inspections on transportation providers and service areas as requested by the Department.

Vendor Response #7: Describe your process for performing unannounced vehicle inspections and how it will meet all of the requirements in Section 3.3.2.

3.3.3 Provider Training

The Vendor shall develop an Orientation Plan for all contracted transportation providers that includes, at a minimum:

- a. An overview of the NEMT program and division of responsibilities between the Supplier and transportation providers.
- b. An overview of applicable State statutes, Wisconsin Administrative Code, and ForwardHealth policies.
- c. Vehicle requirements.
- d. Procedures for handling accidents, moving violations, and vehicle breakdowns.
- e. Driver qualifications and conduct.
- f. The proper use of attendants.
- g. Scheduling procedures during regular operating hours, including criteria for determining the most appropriate mode of transportation for the member.
- h. Scheduling procedures for after hours, weekends, and holidays.
- i. Procedures for handling requests for urgent transportation.
- j. Criteria for trip assignments.
- k. Dispatching and delivery of services.
- l. The process for reporting trip issues and deviations from the scheduled pick-up time.
- m. Procedures for obtaining reimbursement for authorized trips.
- n. Driver standards and requirements during pick-up, transport, and drop-off.
- o. Record keeping and documentation requirements for scheduling, dispatching and driver personnel, including completion of required logs.
- p. Procedures for handling complaints from members or providers.

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- q. Procedures for notifying members when services are denied or terminated by the Supplier.
- r. Criteria and procedures for documenting and notifying members when services are denied or terminated by the transportation provider.
- s. Procedures, sensitivity, and awareness training surrounding trips for dialysis, cancer treatment, and day treatment for children, including emphasis that timeliness is critical for dialysis and cancer treatment trips.
- t. A written policy that includes all of the above items.

In addition, the Orientation Plan must address ongoing training required to educate the transportation providers of any changes in State statutes, Wisconsin Administrative Code, and ForwardHealth policies.

The Supplier shall submit a final Orientation Plan to the Department Contract Administrator, listed within the eventual contract, one month prior to contract implementation.

The Supplier shall establish and implement its own SMV driver, attendant, and personnel training standards in addition to the standards established in this RFP, subject to advance review and approval by the Department. If the Supplier elects to expand the training requirements of this RFP, Basic First Aid and CPR training must meet or exceed the minimum course standard of the American Red Cross.

Vendor Response #8: Submit a copy of the proposed Orientation Plan that addresses, at a minimum, all of the requirements listed in Section 3.3.3.

3.3.4 Provider Payment Administration

The Supplier shall make full payment of undisputed claims to transportation providers for all authorized trips as agreed to between the parties through written terms of the service agreement or, otherwise, within the following guidelines:

- a. Ninety percent (90%) of all transportation provider, and member claims must be processed and paid or denied within ten (10) business days of receipt of a complete and valid claim form.
- b. Ninety-five percent (95%) of all transportation provider, and member claims must be processed and paid or denied within fifteen (15) business days of receipt of a complete and valid claim form.
- c. One-hundred percent (100%) of all transportation provider, and member claims must be processed and paid or denied within 20 business days of receipt of a complete and valid claim form. 100% shall be considered the monthly Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does

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not meet this ASL, the Department may require the Supplier to pay a penalty of up to \$10,000 for each month the ASL is not met.

The Supplier shall validate that paid transportation services are properly authorized and actually rendered.

Vendor Response #9: Describe in detail your proposed process for provider payment and how it will meet all of the requirements in Section 3.3.4, including any process for the electronic processing of claims.

3.4 Service Requirements

3.4.1 Service Delivery Requirements

The Supplier shall meet all of the following service delivery requirements, including Supplier service delivery requirements, transportation provider service delivery requirements, and driver/attendant service delivery requirements. The Supplier shall prevent unsuccessful and late trips. Additionally, the Supplier shall leverage group rides and public transportation when possible.

3.4.1.1 Vendor Service Delivery Requirements

The Supplier shall comply with the following minimum service delivery requirements:

- a. The Supplier shall prevent unsuccessful trips. For purposes of this RFP, an unsuccessful trip is defined as a requested trip that did not occur because the Supplier was unable to locate and schedule an appropriate vehicle for transport or the assigned transportation provider did not arrive for the scheduled pick-up or return ride. A trip log without a member signature confirming completion of the trip will be deemed as an unsuccessful trip. Zero (0) unsuccessful trips shall be considered the Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does not meet this ASL, the Department may require the Supplier to pay a penalty of \$1,000 for each unsuccessful trip and/or enter into a Corrective Action Plan with the Department.
- b. The Supplier shall prevent late trips. For purposes of this RFP, a late trip is defined as any deviation from the scheduled pick-up time of more than fifteen (15) minutes. Zero (0) late trips shall be considered the Acceptable Service Level (ASL). Where the Department determines in its sole discretion the Supplier does not meet this ASL, the Department may require the Supplier to pay a penalty of \$100 for each late trip and/or enter into a Corrective Action Plan with the Department.

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- c. For the return pick-up from an appointment without a pre-scheduled pick-up time (a "will call"), the vehicle must arrive within one (1) hour from time of notification.
- d. In multiple passenger situations, the Supplier must ensure that no member is forced to remain in the vehicle more than forty-five (45) minutes longer than the average travel time for direct transport from the point of pick-up to the destination.
- e. The Supplier shall monitor trips to ensure members are delivered to their homes in a timely manner from appointments.
- f. The Supplier shall arrange for back-up vehicles and/or personnel when notified by a member, a provider, or the Department that a vehicle is excessively late, is otherwise unavailable for services, or when specifically requested by the Department. The vehicle is considered excessively late if it is twenty (20) minutes late in meeting its assigned schedule. The Supplier must have a back-up vehicle in place within thirty (30) minutes after a vehicle has been deemed unavailable or excessively late.
- g. The Supplier shall not use any driver or attendant receiving two (2) or more substantiated complaints from passengers concerning the driver and attendant standards included in this RFP within a ninety (90) day period until corrective action is taken. The Supplier must document all complaints to include in the driver's or attendant's permanent record.

3.4.1.2 Transportation Provider Service Delivery Requirements

The Supplier shall ensure that transportation providers comply with the following minimum service delivery requirements when providing NEMT services:

- a. The transportation provider must establish the specific pick-up time and location with the member at least 24 hours ahead of the scheduled healthcare appointment. The transportation provider must notify the Supplier of the specific pick-up time prior to the trip.
- b. The driver or attendant must properly identify and announce their presence at the entrance of the building at the specified pick-up location if a curbside pick-up is not apparent.
- c. The driver must not require a member to board the vehicle before the scheduled pick-up time. The driver is not required to wait more than ten (10) minutes after the scheduled pick-up time.
- d. The driver or attendant must exit the vehicle to open and close vehicle doors when passengers enter or exit the vehicle and provide assistance as necessary to or from the main door of the place of destination.
- e. The driver or attendant, while on board, must assist the passengers in the process of being seated, including the fastening of the seat belts and securing

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of infants and children under age five in properly installed and functioning child safety seats. The member is responsible for providing child safety seats for the trip.

- f. The driver must confirm, prior to allowing any vehicle to proceed, that wheelchairs or cot/stretchers are properly secured and that all passengers are properly seat-belted or secured/restrained in their wheelchair or cot/stretcher. The member is responsible for providing their own wheelchair for the trip.
- g. The driver or attendant must assist all passengers in the process of exiting the vehicle and in moving to the building access of the passenger's destination.
- h. The driver and attendant must confirm prior to vehicle departure that the delivered passenger is safely inside the destination.
- i. The driver and attendant must provide adequate support and visual/oral directions to passengers. Such assistance must also apply to the movement of wheelchairs and mobility-limited persons as they enter or exit the vehicle using the wheelchair lift. Such assistance must also include stowage by the driver of mobility aids and folding wheelchairs. Drivers and attendants are not responsible for passenger's personal items.
- j. The driver or attendant must prohibit smoking in the vehicle while providing NEMT services. "No Smoking" signs must be visible to all passengers. The Supplier must require drivers and attendants to contact the Supplier immediately if passengers fail to comply with this prohibition.
- k. Drivers must deliver members to their destinations on time for their healthcare appointments.
- l. The driver must report late arrivals as soon as possible to the transportation provider and Supplier for providing advance notice to the healthcare provider of the late arrival. The transportation provider must contact the member at his or her pick-up location to inform them of the delay. The transportation provider must advise the member of alternate pick-up arrangements when appropriate.

13.4.1.3 Driver/Attendant Service Delivery Requirements

The Supplier shall include the following driver and attendant standards within all service agreements for transportation providers and must ensure that all drivers and attendants adhere to the following required standards when providing NEMT services:

- a. Drivers and attendants must not use or be under the influence of alcohol, narcotics, illegal drugs or drugs that impair their ability to perform while on duty.
- b. Drivers and attendants must not touch any passenger except as appropriate and necessary to assist the passenger into or out of the vehicle, into a seat and

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to secure the seatbelt, or as necessary to render first aid or assistance for which the driver has been trained.

- c. Drivers and attendants must not smoke at any time while in the vehicle, while involved with member assistance, or in the presence of any member.
- d. Drivers and attendants must not wear any type of headphones or earphones at any time while on duty.
- e. Drivers must not use a cell phone, unless it is operated as a hands-free device.
- f. Drivers must not text while driving.
- g. Drivers must be flexible in maintaining a temperature that is considered comfortable to the member at all times while the vehicle is occupied by a member or an attendant.
- h. Drivers and attendants must wear or have visible easily readable official company identification.
- i. Drivers and attendants must not eat or consume any beverage at any time while in the vehicle or while involved with or in the presence of a member.

3.4.1.4 Group Rides and Public Transportation

The Supplier may leverage group rides for members with similar pick-up and drop-off locations with recurring appointments at around the same times. The Supplier shall only assign members to group rides when the mode of transportation is medically appropriate for the individual member.

The Supplier may arrange for public transportation for members who meets the eligibility criteria for public transportation as described in the ForwardHealth NEMT Online Handbook.

If assigning public transportation, the Supplier shall:

- a. Have procedures for timely distribution of public transportation passes to the member.
- b. Provide the member with the tracking or delivery information for public transportation passes sent fewer than two business days from the appointment time and require signature at delivery.
- c. Send the member replacements for reloadable public transportation passes that are defective or unusable.
- d. Ensure that the public transportation schedule is compatible with the member's healthcare appointment time. The Supplier must not require the member to use public transportation if the public transportation schedule requires the member to arrive at the drop-off location more than ninety (90) minutes prior to the scheduled appointment time or allows the member fewer than forty-five (45) minutes after the appointment's

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estimated end time to arrive at the pick-up location for the return trip.
Please review Section 8.0, Addenda 4.1 and 4.2 for previous year's data.

Vendor Response #10: Describe your process for meeting all of the preceding service delivery requirements, including Vendor service delivery requirements, transportation provider service delivery requirements, and driver/attendant service delivery requirements. Highlight how you will prevent unsuccessful and late trips. Additionally, describe your plan for leveraging group rides and public transportation.

3.4.2 Electronic Tracking System

The Supplier shall provide an electronic tracking system to track vehicles in real-time that are providing NEMT services under this Contract. The Supplier's electronic tracking system shall be capable of capturing the actual pick-up time and location and the actual drop-off time and location for each assigned trip. The Supplier shall use data from the electronic tracking system to monitor the timeliness and success of assigned trips and to provide monthly reports to the Department that measure unsuccessful and late trips.

The Supplier shall comprehensively test the electronic tracking system in vehicles in various service areas no less than thirty (30) days prior to the implementation date. The Department reserves the right to require additional testing to ensure the electronic tracking system provides appropriate and accurate data. Testing is deemed complete once the Supplier receives written acceptance from the Department.

The Supplier shall have the electronic tracking system in place on the date of implementation.

Vendor Response #11: Describe your proposed electronic tracking system and how it will meet all of the above minimum requirements. Include how you will ensure the electronic tracking system is accurate and has minimal down time or loss of connectivity. Describe the information that the electronic tracking system will capture and report. Describe your proposed process for adequately testing the electronic tracking system, including testing in rural areas of the State.

3.4.3 Trip Log

The Vendor shall maintain a daily electronic Trip Log for members receiving NEMT services, which documents the following data elements, at a minimum:

- a. Member name and ID number.
- b. Requester name (if different than member).
- c. Date/time of request and date/time of healthcare appointment.
- d. Mode of transportation requested and authorized.
- e. Scheduled time and actual time of pick-up/drop-off.
- f. Pick-up and drop-off locations.
- g. Referral, approval, or denial (including reason) of transportation.

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- h. Ancillary services authorized (parking, attendant, children).
- i. Date/time of notification to transportation provider.
- j. Transportation provider name and provider ID/NPI.
- k. Vehicle information or number provided allowing the vehicle number to be crossed referenced to the vehicle's Vehicle Identification Number (VIN), License Plate Number and the registered owner.
- l. Odometer readings.
- m. Mileage and waiting time.
- n. Staff member referring/authorizing/denying request.
- o. Notes (e.g., cancellations, incomplete requests, no-shows, abusive behavior occurrences)
- p. Other data elements not listed above, from the Specialized Medical Vehicle Trip Ticket found on the ForwardHealth website, <http://dhs.wisconsin.gov/forms/F0/F01050.pdf>.

Vendor Response #12: Describe your proposed process for maintaining a daily electronic Trip Log for members that captures all of the required information listed above.

3.4.4 Service Complaints and Appeals

The Supplier shall have a formal written complaint process to record and respond to all complaints and appeals about the delivery of services required under this Contract made by members, providers, or other individuals or groups who contact the Supplier.

Through its complaint process, the Supplier shall:

- a. Provide the ability for members, providers, and other individuals and groups to initiate complaints through an online complaint web page, by phone, or in writing.
- b. Acknowledge a complaint within 24 hours of receipt.
- c. Provide the complainant with an update of its review of the complaint within ten (10) business days.
- d. Deem all complaints as substantiated or unsubstantiated within thirty (30) business days.
- e. Send all complainants a letter documenting disposition within thirty (30) business days.
- f. Upon request, provide DHS a written record of the complaint and resolution, including any corrective action within three (3) working days of receipt of the Department request.

The Department shall approve all documentation used in the Supplier's complaint process for content and format before they are put into use. Resolution of complaints by the Supplier is subject to the discretionary review of the Department and may be overridden. The Supplier may be required to implement and submit proof of any corrective policies or procedures as a result of the Department review.

The Supplier shall remove from public contact or retrain service personnel who receive two (2) substantiated complaints within a ninety (90) day period. The Supplier must remove from public contact any personnel who have received four (4) substantiated complaints within a twelve (12)

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consecutive month period. The Supplier shall comply with the request of the Department to investigate, remove from public contact, or retrain any personnel deemed in need of retraining.

The Supplier shall designate an individual within the Supplier's organization to act as a liaison with the Department to ensure prompt action regarding all complaints.

The Supplier shall maintain a database of all complaints received that includes, at a minimum, the following information:

- i. Name and contact information of complainant.
- ii. Date complaint filed.
- iii. Member information, if applicable.
- iv. Narrative explaining the details of the complaint.
- v. Relevant trip information and provider information pertaining to the complaint.
- vi. Trip log information, if applicable.
- vii. Outcome/resolution of the complaint.
- viii. Date of response and resolution.

The Supplier shall ensure that the average percentage of trips without substantiated complaints meets or exceeds 99.7%. 99.7% shall be considered the monthly Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does not meet this ASL, the Department may require the Supplier to pay a penalty of up to \$10,000 for each month the ASL is not met.

Members may appeal an adverse decision of the Supplier to the Supplier, DHS, or directly to the Division of Hearings and Appeals in the Wisconsin Department of Administration. The Supplier's denial process may not be a prerequisite to, or a replacement for, the member's right to use the State's appeal process. For appeals to the Division of Hearing and Appeals, the Supplier shall prepare a hearing summary and present its case. The decision of the Division of Hearing and Appeals is a final and binding decision.

Vendor Response #13: Describe your complaint process and how it will meet all of the requirements in Section 3.4.4. Include how you plan to receive, resolve, and ensure that complaints are tracked and reported correctly. Describe how you plan to analyze complaints and ensure the information is used to improve business practices.

3.4.5 Fraud and Abuse

The Supplier shall develop safeguards against fraudulent activity and abuse by transportation providers and Medicaid members.

The Supplier shall continually monitor the U.S. Department of Health and Human Services (DHHS) Office of Inspector General's (OIG) excluded provider list located at <https://oig.hhs.gov/fraud/exclusions.asp>.

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The Supplier shall monitor criminal prosecutions by the Wisconsin Medicaid Fraud Control Unit (MFCU) and removal of a transportation provider from Medicaid enrollment.

The Supplier shall not contract with any provider or any business identified on any of the above named lists. The Supplier shall immediately terminate its service agreement with any transportation provider identified on any of the above named lists during the term of a service agreement.

Vendor Response #14: Describe your proposed process for meeting the requirements in Section 3.4.5. Additionally, describe any creative solutions or approaches you intend to leverage to help identify and minimize NEMT fraud, such as verification of member appointments or verification of trip mileage.

3.5 Communications

The Supplier shall create a Member Communications Plan and a Partner Communication Plan to inform and educate members and partners, respectively, about the NEMT program. Additionally, the Supplier shall inform the Department of all forms of media, legislature or executive level inquiries within one (1) day of receipt following Department-defined guidelines.

3.5.1 Member Communication

The Supplier shall create a Member Communications Plan to inform and educate members about the NEMT program.

The Member Communication Plan must include, at a minimum:

- a. Provisions to mail, at the Supplier's own cost and in a manner specified by the Department, a ForwardHealth Member update and other materials reviewed and approved by the Department to inform members of the availability of NEMT services during implementation. The materials must be mailed thirty (30) days prior to implementation and must include the Supplier's name, address, telephone numbers, and hours of operation; a brief description of how to arrange for NEMT services; and member rights and responsibilities for use of NEMT services.
- b. A member education policy for members who are chronically late or absent for scheduled trips, members who do not comply with established policies and procedures, and members whose behavior on route threatens the safety of others or the safe operation of the vehicle. The Supplier must promptly document incidents in the transportation database.
- c. Information on outreach, education, and marketing.

All member materials must:

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- i. Be multilingual and include culturally sensitive materials produced in English, Spanish, Hmong and/or any other languages when that language is used by at least five percent of the population in the service region.
- ii. Be written at a sixth grade reading level.

The Supplier is encouraged to develop supplemental written materials for members.

The Department must approve in writing all materials developed by the Supplier for distribution under this RFP at least ten (10) business days before distribution. The Department requires ten (10) business days to review and approve materials.

Vendor Response #15: Provide your proposed Member Communication Plan that address all of the requirements listed in Section 3.5.1, including a description of your approach for creating and maintaining a collaborative working relationship with members. Include examples of culturally sensitive materials produced in English, Spanish, and Hmong written at a sixth grade reading level.

3.5.2 Partner Communication

The Supplier shall create a Partner Communication Plan to inform and educate counties, HMOs, healthcare providers, provider associations, community-based organizations, and consumer representatives about the NEMT program.

The Partner Communication Plan must include, at a minimum:

- a. Provisions to arrange and hold a minimum of six (6) regional training sessions throughout the State prior to implementation. The Department must approve the training presentation and materials and the Department may participate in these trainings. The Department has ten (10) business days to review and approve all training presentations and materials. Training presentations and materials must be approved at least ten (10) business days before the first scheduled training.
- b. Provisions to conduct multiple webinar training sessions prior to implementation and ensure they are archived and made available online for future viewing.
- c. Provisions to staff and organize meetings of the Transportation Advisory Council, which is comprised of stakeholders selected by the Department from around the State. The Department established the Council to act in a non-binding advisory capacity to provide feedback and suggestions to the Supplier and the Department regarding methods of enhancing the NEMT program. The Supplier shall meet with this Council as requested by the Department in various geographical regions of the State to ensure diverse input. Department staff may attend each Council meeting.
- d. Provisions to participate and provide transportation-related information at other community and regional meetings as specified by the Department. Information provided may include details on how to access services, member and provider rights and

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responsibilities, complaint procedures, and other information as specified by the Department.

- e. Examples of other educational materials that emphasize the availability of NEMT services, eligibility for these services, the authorization process for single trips and standing orders, medical documentation of need, and how to access and use these services properly.
- f. Information on outreach, education, and marketing.

The Supplier is encouraged to develop supplemental written materials for partners.

The Supplier shall submit its Partner Communication Plan no later than five (5) days after Contract award and begin conducting training no later than thirty (30) days prior to the Implementation date.

The Department shall approve in writing all materials developed by the Supplier for distribution under this RFP at least ten (10) business days before distribution. The Department requires ten (10) business days to review and approve materials.

Vendor Response #16: Provide your proposed Partner Communication Plan that addresses all of the requirements listed in Section 3.5.2, including a description of your approach for creating and maintaining a collaborative working relationship with partners. Your plan should also include information on outreach and educational marketing.

3.5.3 Website

The Supplier shall provide and maintain a website for members, healthcare providers, and transportation providers to access information about the NEMT program. The website must be functional upon the Implementation date. Content will be approved by the Department and any changes accepted by the Supplier prior to upload. The website design and content must be presented in a user-friendly, intuitive manner and provide for the information and content to be viewed and/or downloadable.

The Supplier shall update the website as needed to reflect changes to the NEMT program and to reflect Department-specific requirements. The Supplier must apply updates to the website within three (3) business days of receipt of Department-approved content changes.

The Supplier shall correct any non-availability of the website within one (1) hour of discovery.

The Supplier shall submit any website content specific to Wisconsin's NEMT program to the Department for review and acceptance one (1) month prior to posting the information on the website.

The website must provide, at a minimum, the following information for transportation providers:

- a. Central business office address, phone, and fax number.

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- b. Directions to the Supplier's central business office and office hours.
- c. Frequently asked questions (FAQ).
- d. NEMT policies, procedures, and manuals.
- e. Transportation provider meeting/training dates, times, and locations.
- f. Sample reporting requirements, instructions, and templates, as applicable.
- g. Transportation provider education and training plan updates.

The website must provide, at a minimum, the following information for members:

- i. Call center contact information, including information for after-hours assistance.
- ii. Description of NEMT services available and how to access them.
- iii. How to file a complaint or appeal.
- iv. Member responsibilities.
- v. Links to other websites as determined by the Department.
- vi. Frequently asked questions (FAQ), including definitions.
- vii. The ability to submit a complaint.
- viii. The ability for members and healthcare facilities to schedule rides for members.
- ix. Overview of the reservation process and expectations produced in English, Spanish, Hmong, and other languages where the language is used by at least five percent (5%) of the population in the service region and written at a sixth grade reading level.
- x. Information about the online reservation system.

The Supplier shall ensure the website has been developed and populated with the required information and available to the public prior to the start of education, trainings, and communication to members and partners.

Vendor Response #17: Describe your plan for developing and maintaining a website that meets the requirements in Section 3.5.3, including how you may leverage the website to allow members and healthcare facilities to manage scheduled trips, submit forms and claims, and receive notifications. Provide links to any similar websites you currently maintain.

3.6 Business Operations

3.6.1 Wisconsin Business Office

The Supplier shall establish a duly licensed, non-residential Wisconsin Business Office that is located within fifteen (15) miles of the DHS Central Office at 1 West Wilson Street, Madison, Wisconsin to ensure accessibility by the Department for monitoring purposes. The Vendor must show willingness at the time of submission of proposal under this RFP to establish a Wisconsin based office if awarded the Contract.

The Vendor's Wisconsin Business Office must:

- a. Have a secured entry.

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- b. Be open to conduct the general administrative functions of the business between the hours of 7:00 a.m. and 6:00 p.m., Central Time, Monday through Friday, except on legal State holidays.
- c. Have the capacity to send and receive facsimiles at all times during business hours.
- d. Be equipped with an adequate high-speed Internet connection.

The Supplier may establish a satellite office in the Milwaukee area or other regions for the purpose of managing the local transportation provider network and collaborating with county agencies, HMOs, healthcare providers, provider associations, community-based organizations and consumer representatives.

Vendor Response #18: Describe the proposed Wisconsin Business Office to be used for this contract, including the geographic location (contact details such as address) and how the Wisconsin Business Office will meet the requirements in Section 3.6.1.

3.6.2 Key Staff

Vendor Response #19: Provide a proposed organizational chart that includes all key staff positions described in this Section. Describe the role and qualifications for all key staff members, including either resumes for key staff that are already identified or position descriptions that describe needed qualifications for key staff that are not yet identified. Describe your plan for meeting all of the following requirements, including requirements regarding key staff diversion and other key staff changes.

3.6.2.1 General Manager

The Supplier shall appoint and maintain, subject to written Department approval, a fulltime General Manager for this Contract. The General Manager must have sufficient authority for resource control to manage the allocation of resources to meet all RFP requirements without service interruption to members.

3.6.2.2 Member Advocate

The Supplier shall employ a full-time and dedicated Member Advocate (Ombudsman) for purposes of assisting and advocating on behalf of members with the goal of quicker resolution of member concerns. The Member Advocate shall:

- a. Answer member questions about problems obtaining NEMT services.
- b. Assist members in solving any problems that may arise from interaction with the Supplier.
- c. Help members through the complaint process.
- d. Advocate on behalf of the member.
- e. Work directly and collaboratively with third parties and the Department regarding the adjudication of complaints.

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- f. Be free from conflict of interest and have the ability to advocate independently on behalf of members free of interference and influences from the Supplier that may cause an adverse decision.
- g. Attend all meetings, trainings, and workshops requested by the Department.
- h. Investigate and resolve special assignments from the Department.

13.6.2.3 Other Key Staff

The Supplier shall hire or assign qualified key staff to the following other positions:

- a. Assistant General Manager/Director of Operations.
- b. Senior Manager of Transportation Network.
- c. Senior Manager of Call Center Operations.
- d. Call Center Supervisor.
- e. Senior Manager of QA, Complaints, and Grievances.
- f. Senior Manager of Facilities, Outreach, Education, and Training.
- g. Senior Manager of Information Systems.
- h. Reporting Manager.
- i. Transportation Provider Ombudsman.
- j. Project/Implementation Manager - This function and its incumbent must be located at the Wisconsin Business Office, Monday through Friday, during the entire transition phase and a minimum of 60 days after the implementation date. The incumbent shall work directly with Department staff.

The Supplier shall maintain sufficient levels of other supervisory and support staff at its Wisconsin Business Office with appropriate training and work experience to perform all Contract requirements on an ongoing basis. The Supplier shall maintain staff representative of, or consistent with, the demographic pattern of the State.

13.6.2.4 Key Staff Work Requirements

The Supplier shall submit three (3) letters of reference, each from a different source, for each proposed key staff if the proposed key staff possess fewer than two (2) years of experience performing activities similar to the key position. The letters of reference shall be from entities that employed the person in a similar position and must describe how the employee is qualified for the key position. The Supplier shall not have key staff begin work without prior written approval from the Department.

The General Manager and all other key staff must be located full time at the Wisconsin Business Office for the duration of this Contract.

The Supplier shall provide the Department with urgent contact numbers for key staff and with an administrative phone number to contact key staff without having to go through the

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call center. In case of an urgent situation, the Supplier shall ensure that staff will be available to answer the administrative phone number twenty-four (24) hours a day and seven (7) days per week.

Supervisory personnel shall be available to the Supplier's staff in person or by telephone within a fifteen (15) minute response time during all hours of administrative operation.

The Supplier shall provide all staff with Department-approved training that includes, but is not limited to, NEMT policy, call center procedures, HIPAA, PHI, cultural sensitivity training, customer service skills, and training for handling difficult callers.

The Supplier's key staff shall be available to meet with Department representatives at the DHS Central Office at least monthly and upon request by the Department to discuss the NEMT program and to answer pertinent inquiries regarding the program, its implementation, and its operation. The Supplier may be required to attend other meetings as requested by the Department. The Supplier shall be required to document and provide meeting minutes within two (2) business days following the meeting.

3.6.2.5 Key Staff Diversion

The Supplier shall not divert key staff for any period except in accordance with the procedure identified in this section. For purposes of this RFP, "diversion" is defined as the transfer of key staff by the Supplier to another assignment within the control of the Supplier. "Diversion" does not include the resignation, death, disablement, or dismissal for cause of key staff which is beyond the control of the Supplier.

The Supplier shall provide a notice of proposed diversion to the Department at least sixty (60) calendar days in advance, together with the name and qualifications of the person(s) who will replace the diverted key staff. At least thirty (30) calendar days before the proposed diversion, the Department will notify the Supplier whether the proposed diversion is approved or rejected. The Supplier shall ensure replacement staff is on-site at least two (2) weeks prior to the departure date of the diverted key staff. The Supplier shall provide the Department with reasonable access to any diverted staff.

Unapproved diversion of key staff will cause damage to the Department that would be difficult to determine. Where the Department determines in its sole discretion that the Supplier fails to meet the requirements of the RFP, the Department may require the Supplier to pay a penalty of up to \$2,000 per business day for any such unapproved diversion of Supplier key staff. The penalty shall begin on the first business day of the diversion and will continue until the Supplier's replacement is accepted by the Department and begins work. The maximum assessable penalty, under this provision, per each unapproved diversion, is \$60,000.00 per contract year.

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3.6.2.6 Other Key Staff Changes

The Supplier shall replace key staff members, which have left employment for reasons other than diversion, with people of equal ability and qualifications. The Department shall have the right to conduct separate interviews for proposed replacements for key staff. The Department has the right to approve, in writing, the replacement of key staff. If the replacement of key staff is not accepted by the Department and beginning work by a date previously determined by the Department, the Supplier will be subject to liquidated damages in the same manner as provided in the event of unapproved diversion of key staff.

The Supplier shall remove any Supplier staff member that is reasonably determined by the Department to be non-cooperative, inept, incompetent, or otherwise unacceptable, after such problematic behavior has been documented by the Department, and the Supplier has been given reasonable time, not less than thirty (30) calendar days, to remedy the problems identified with the staff member and has failed to do so. In the event that a staff person is removed pursuant to a request by the Department, the Supplier must fill the vacancy within thirty (30) calendar days with another employee with acceptable experience and skills subject to the prior written approval of the Department. The Department will not unreasonably withhold or delay such approval.

3.6.3 Call Center

The Supplier shall operate a call center for members, providers, healthcare facilities, and other stakeholders that meet all of the following staffing standards, performance standards, phone line and equipment standards, and tracking standards.

The Supplier shall establish a duly licensed call center dedicated to Wisconsin members to:

- a. Intake and process requests for NEMT services for members.
- b. Resolve problems that may arise during a trip.
- c. Respond to reports of fraud and/or abuse.
- d. Respond to other telephone and written inquiries from members and their representatives, healthcare providers, transportation providers, and other stakeholders.

The Supplier shall:

- i. Develop operational procedures, manuals, forms, and reports necessary for the efficient operation of the call center.
- ii. Comply with all Federal and State confidentiality policies and procedures in the operation of the call center.
- iii. Develop Department-approved protocols/scripts for call management and use the Department-approved protocols/scripts for responding to telephone inquiries.

3.6.3.1 Call Center Staffing Standards

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The Supplier shall provide a sufficient number of call center staff to handle all calls and contacts. 'Live' agent positions must be staffed during all hours of operation. The Supplier shall maintain this level of call center staffing, at a minimum, at all times.

The Supplier shall staff:

- a. The reservation line for urgent and non-urgent trips and the complaint line Monday through Friday from 7 a.m. to 6 p.m. Central Time at its Wisconsin Call Center.
- b. The reservation line, for urgent trips, 24 hours per day, 365 days per year, preferably at its Wisconsin dedicated Call Center.
- c. The complaint line, 24 hours per day, 365 days per year, preferably at its Wisconsin dedicated Call Center.

The Supplier shall provide all call center staff with Department-approved training that includes, but is not limited to, NEMT policy, call center procedures, HIPAA, PHI, cultural sensitivity training, customer service skills, and training for handling difficult callers.

The Supplier shall ensure all staff:

- i. Treat callers with dignity and respect the caller's right to privacy and confidentiality.
- ii. Relay emergency requests to 911 or an appropriate local emergency (ambulance) service.

The Supplier shall have available sufficient qualified staff on site to communicate with callers who speak Spanish and shall have available interpretive telephone service (language lines) for callers who speak other languages. A member may request interpretive services by a family member or acquaintance. Members shall not incur a cost for interpretation services.

The Supplier shall identify for the Department, and include in their policy and procedures manual, an on-call process by which 'live' staff will be available to respond to after-hours phone reservations for NEMT services. The after-hours reservation system shall be seamlessly integrated into the daily reservation system and include the ability to offer the member a confirmation for their ride. The Supplier shall also maintain a backup plan for after-hours transportation no-shows.

3.6.3.2 Call Center Performance Standards

The call center shall meet the following performance standards:

- a. Callers shall never receive a busy signal.
- b. Calls shall be answered by a 'live' operator within two-hundred and forty (240) seconds, as measured on a daily average basis. The daily average shall be calculated by totaling the hold time for all calls each day and dividing it by the total number of calls answered each day. 90% of the daily average basis equaling or less than 240 seconds per month shall be considered the monthly Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does not meet this ASL, the Department

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may require the Supplier to pay a penalty of up to \$15,000 for each month the ASL is not met.

- c. During the business operating hours of 7AM to 9:59AM, calls must be answered by a 'live' operator on average within two-hundred and forty (240) seconds. The daily average shall be calculated by totaling the hold time for all calls between 7AM to 9:59AM and dividing it by the total number of calls answered between 7AM to 9:59AM. 90% of the daily average basis equaling or less than 240 seconds per month shall be considered the monthly Acceptable Service Level (ASL). If the Supplier does not meet this ASL. Where the Department determines in its sole discretion that the Supplier does not meet this ASL, the Department may require the Supplier to pay a penalty of up to \$15,000 for each month the ASL is not met.
- d. During the business operating hours of 10:00AM to 1:00PM, calls must be answered by a live operator on average within two-hundred and forty (240) seconds. The daily average shall be calculated by totaling the hold time for all calls between 10:00AM to 1:00PM and dividing it by the total number of calls answered between 10:00AM to 1:00PM. 90% of the daily average basis equaling or less than 240 seconds per month shall be considered the monthly Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does not meet this ASL, the Department may require the Supplier shall pay a penalty of up to \$15,000 for each month the ASL is not met.
- e. The call abandonment rate must be no more than 5% on an average daily basis. If the average daily hold time performance requirement is met, the call abandonment rate requirement will not be enforced for that same date.
- f. Average call time required to schedule a trip must be no more than seven (7) minutes.
- g. Provide a finalized response to written inquiries within five (5) business days of receipt.
- h. Respond to calls/contacts referred from the Department to the Supplier within one (1) business day of receipt.

3.6.3.3 Call Center Phone Line and Equipment Standards

The Supplier shall use a single toll-free telephone number for the call center for caller convenience and communication purposes. The Supplier shall agree to relinquish ownership of the toll-free number to the Department upon contract termination.

The Supplier must supply a sufficient number of toll-free telephone lines to handle all calls.

The Department shall approve call flow routing and phone system queues during the transition phase. The Department may require additional queues with written notice to the Supplier. The Supplier shall obtain Department approval prior to implementing any queue not required by the Department. The Supplier shall maintain and operate a telephone device (TDD) for the deaf and hard of hearing callers who need such a device.

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The Supplier's call center shall have an Automatic Call Distribution (ACD) telephone and reporting system that supports traditional call processing such as call routing, volume tracking and reporting, call forwarding and caller connection to a customer service representative. The system should include, but not be limited to, the following features:

- a. An automatic phone call attendant function that uses hierarchical menu-driven capability to direct calls to appropriate customer service staff.
- b. A PBX (Public Branch Exchange) system and companion applications that provide a minimum of twenty (20) ACD groups. This system should have the capability to add, change and delete ACD categories and hunt groups; change routing between auto-attendant, ACD groups and/or hunt groups; and manipulate reporting structure to provide the necessary data on the system performance.
- c. Voicemail capability.
- d. Capability to record calls for quality assurance. Callers must be advised that calls are monitored and recorded for quality assurance purposes.
- e. Interactive supervisory monitoring devices that continuously monitor call volumes, performance levels and staffing.
- f. Capability to route a caller based on the incoming telephone number.
- g. Capability to modify recorded announcements in 30 minutes.
- h. Capability to report a full range of call history statistics, including hourly, daily, weekly, and monthly summary views. The system should have the capability of reporting by ACD group on the following call statistics, at a minimum:
 - i. Total number of incoming and outbound calls;
 - ii. Number of incoming calls answered;
 - iii. Average handle time;
 - iv. The number of calls answered per pre-defined interval;
 - v. Abandoned call statistics such as number of abandoned calls, length of time until call is abandoned, and abandoned call rate percent;
 - vi. Agent statistics such as number of agents, number of calls answered by agent and agent available times (hours logged on), talk time per agent, and amount of after-call work per agent;
 - vii. Average queue time;
 - viii. Average talk time (minutes);
 - ix. Busiest hour;
 - x. Total calls received after hours;
 - xi. Number of messages left on voice mail;
 - xii. Trunk group usage reports;
 - xiii. Number of busy signals in minutes; and
 - xiv. Average line time per call.

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The Supplier shall examine data collected from its phone system as requested by the Department on a quarterly basis and as necessary to perform quality assurance and improvement, fulfill the reporting and monitoring requirements of the Contract, and ensure adequate staffing.

The Supplier shall have a back-up system in the event of a power failure that is capable of operating the telephone system for a minimum of eight (8) hours, at full capacity, with no interruption of services or data collection. The Supplier shall notify the Department when its phone system is on a back-up system or is inoperative. The Supplier shall have a manual back up procedure to allow requests to continue being processed if the system is down.

The Supplier shall have the capacity to reproduce all documents relating to the phone system upon request, at no cost to the Department.

3.6.3.4 Call Center Tracking Standards

The Supplier's call center shall implement and maintain an automated call/contact management tracking system that tracks call/contacts with basic identifying information, including, but not limited to:

- a. Time and date of call/contact.
- b. Unique number or ID for each recorded call or contact.
- c. Caller name and ID number, if applicable.
- d. Nature and details of the call/contact.
- e. Type of inquiry (telephone, written, email).
- f. Customer service correspondent name and ID.
- g. Response given by customer service correspondent and the format in which the response was given (written, telephone, email).
- h. Status of inquiry (closed, follow-up needed).
- i. Capacity for free form text to describe problems and resolutions.

The call center shall allow inquiry and online display of call/contact records by type, original call/contact date, caller's name, caller ID number, customer service correspondent name or ID, or any combination of these data elements.

The Supplier shall create Department-defined extract files that contain summary information on all calls/contacts received during a specified timeframe. The Supplier shall generate other reports and data, as required and at a time pre-determined by the Department, that are available in the format specified by the Department with export and import functions. The Supplier shall purge calls/contacts from the call/contact management system, as directed by the Department.

3.6.4 Policy and Procedure Manual

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The Supplier shall develop a Policies and Procedures Manual (PPM) that details all policies and procedures for scheduling and delivering transportation services. The PPM shall include policies for operations, services, personnel, and equipment; the reservation call script; and vehicle maintenance procedures. The Supplier shall submit a final version of the PPM to the Department for review and approval at least thirty (30) calendar days prior to the implementation date. The Supplier must incorporate modifications required by the Department within ten (10) working days of notification. The Supplier shall not begin operations without written approval from the Department of its PPM.

The Supplier shall incorporate the PPM into its training program for new employees and into its Orientation Plan for transportation providers. The Supplier shall ensure that all providers are trained and educated with all applicable manual policies and procedures and with any subsequent policy updates.

The Supplier shall update the PPM whenever changes in the operation of the business are made. The Supplier shall obtain written approval for updates to the PPM from the Department before distribution. The Department reserves the right to require modifications to the PPM throughout the life of the Contract. The Supplier shall submit required updates to the Department for approval within ten (10) working days of the request.

The PPM developed as part of this Contract will become the property of the Department.

Vendor Response #20: Include a copy of your proposed Policy and Procedure Manual that addresses all of the requirements listed in Section 3.6.4.

Vendor Response #21: Describe your plan for operating a call center for members, providers, healthcare facilities, and other stakeholders that meets all of the following staffing standards, performance standards, phone line and equipment standards, and tracking standards. Describe any experience and demonstrated abilities in operating similarly-sized call centers, including experience meeting similar performance standards, handling peak caller periods, and maintaining call center resources and training. Include sample scripts that will be used by call center staff and describe how you will handle urgent calls.

3.7 Technological Capabilities

The Supplier shall maintain an adequate computer system to support all operational and reporting functions under this RFP.

3.7.1 Computer Systems and Data

The Supplier shall maintain sufficient computer hardware, software, and Internet capability to support service authorization, trip scheduling/dispatch, provider reimbursement, complaint

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monitoring, as well as to meet all data capture, data storage, and reporting requirements established under this RFP.

The Supplier's computer system shall comply with the American Disabilities Act (ADA) development standards for user screens.

The Supplier shall possess and maintain a claims processing system that:

- a. Assures only claims for appropriate services provided by authorized providers for eligible members are paid.
- b. Has appropriate edits and audits to monitor, detect, and correct duplicate billings and/or services, service and/or coverage limitations, and fraudulent billings or billing practices.
- c. Accepts and processes HIPAA 837 electronic claims, CMS 1500 claim forms (https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducers/downloads/form_cms-1500_fact_sheet.pdf), and https://www.cms.gov/Medicare/Billing/ElectronicBillingEDITrans/t6_1500.html), and proprietary claim forms. Proprietary claim forms must have the minimum data elements necessary to pay the claim and support submission of encounter data for the services provided by non-traditional providers such as common carriers.

The Supplier shall obtain maintenance contracts with equipment and software suppliers for the duration of the Contract. Maintenance contracts shall ensure the efficient operation of the system in compliance with this RFP. Software maintenance contracts shall include upgrades, enhancements, and bug fixes. The Supplier shall maintain adequate licensing agreements for all software used under this Contract. Hardware maintenance contracts shall include service and replacement or repair for all hardware used under this Contract.

The Supplier shall ensure that all hardware, software, and firmware products, individually and in combination, are compatible with and able to exchange data with the Department and the Department's Fiscal Agent, including member enrollment data, provider data, encounter data, and other information and/or reports.

The Supplier shall perform all file and system maintenance functions to the system. The Supplier shall provide, at no additional cost to the Department, data processing expertise, data processing equipment, programmers and operators, and other related technical support associated with the operation and maintenance of the computer system(s) used under this Contract.

Vendor Response #22: Describe in detail your proposed computer system and how it will meet all of the above system and data requirements.

3.7.2 Security

The system shall:

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- a. Provide user access through role-based security. The application must provide tests for authentication (generally a login process) and role based security, authorization (determines whether a user has the required role to access a resource).
- b. Provide data protection and recovery plans.
- c. Ensure unauthorized users do not gain access to records.
- d. Be configurable to allow multiple access rights and security levels based on the user account.
- e. Allow for authentication through username and password. The systems may allow for authentication through a shared core service (that also provides authentication for other applications).
- f. Provide secure data transmission (e.g., SSL encryption for communication over the Internet). This includes data transmitted via the Internet, email, or other electronic transmission.
- g. Provide 24-7 system maintenance and support service for system failures that would prevent a member from getting services.
- h. Ensure that scheduled system maintenance hours occur between midnight and 4:00 a.m. Central Standard Time (DST applies).
- i. Back up the database on a regular schedule, at least once each day. Back-up data must be stored at an off-site location approved by the Department.
- j. Employ user-configurable online and batch audit trail functionality that provides electronic capture and storage of audit trail information related to all data inputs and uploads, changes and modifications, inquiries, authorizations, access requests, archive and retrieval processes, and log files, and makes them available for inquiry. This must include:
 - i. Identification of the date and time of any input, change, and access request, and the date and time the change is to become effective;
 - ii. Identification of User IDs of any individuals accessing, inquiring, making, or approving any changes to the proposed solution;
 - iii. Identification of the changed data by element name;
 - iv. Identification of changed data, both before and after the change;
 - v. Identification of edits encountered and their outcomes for all proposed solution processes;
 - vi. Documented reasons for inputs, changes, inquiries, access requests, and other functions (when applicable), including standard codes and free form text fields;
 - vii. Online real-time querying, retrieving, and report generation of all audit trail and audit history information by authorized users; and
 - viii. Online real-time viewing and printing of all audit trail and audit history information by authorized users.
- k. Meet or exceed all other applicable Federal and State requirements for security and privacy, including but not limited to, HIPAA
(<https://www.ciscoonline.com/article/2126072/compliance/compliance-the-security-laws-regulations-and-guidelines-directory.html>).

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Vendor Response #23: Describe how your proposed system will meet all of the security requirements described above. List any experience in meeting similar security requirements under other contracts.

3.7.3 Software

The Supplier shall use reservation/scheduling/NEMT software that:

- a. Maintains or interfaces with a database of contracted transportation providers, including reimbursement and other information needed to determine trip assignments.
- b. Automatically validates addresses, calculates distances, and prices trips, if applicable.
- c. Has standing order subscription trip and random trip reservation capability.
- d. Can determine if public transportation or other fixed route services are available to the member.
- e. Can capture all data elements required by the electronic member worksheet.
- f. Is currently commercially available, or, if proprietary or a modified commercial product, is currently operational in at least one site and available for demonstration to the Department.

Vendor Response #24: Describe your proposed software and how it will meet all of the requirements in Section 3.7.3.

3.7.4 Databases

Vendor Response #25: Describe your plan for, and experience with, establishing, maintaining, and enhancing a member database and a provider database that meet all of the following requirements and capture all of the following information.

3.7.4.1 Member Database

The Supplier shall establish and maintain a Member Database capable of maintaining such information as basic demographic information, Medicaid eligibility, and special transportation needs. The member database shall include, but not be limited to:

- a. Member name and ID.
- b. Member address, sex, and date of birth.
- c. Contact information (telephone, email).
- d. Program eligibility information.
- e. Third party liability information.
- f. Special needs (e.g., medical condition, language).
- g. Required or preferred mode of transportation (e.g., wheelchair, cot/stretchers).
- h. Notes (e.g., abusive behavior, complaint history, no-shows).

The member database shall have the ability for the Department to query member trip history and access other reports online through secure internet access.

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Prior to implementation of the Contract, the Department will provide the Supplier with a list of all member names and addresses for members eligible for services under this RFP that have recently used NEMT services. The Supplier must manage this list through regularly updating their data files and adding individual member case notes designed to indicate specific transportation needs and other pertinent case facts required for ongoing transportation transactions.

3.7.4.2 Provider Database

The Supplier shall establish and maintain a transportation provider network database that includes, but is not limited to:

- a. Provider ID (assigned by the Department for SMV providers) and NPI (for ambulance providers). The Supplier shall maintain the provider ID and NPI for identification purposes. In addition, the Supplier shall assign a unique provider ID for non-Medicaid enrolled providers including common carriers. The format of the ID must be such as to not cause duplicates of the Medicaid-assigned ID, NPI or ID assigned by the Supplier. Measures must be put in place to ensure no duplicate provider IDs are assigned or reused.
- b. Provider demographic information (e.g., name, address, phone).
- c. Effective and end dates of contract period and/or Medicaid enrollment dates.
- d. The following documentation for each vehicle, at a minimum:
 - i. Provider name, address, and county code;
 - ii. Type of vehicle, such as car or minivan;
 - iii. Manufacturer, model year, Vehicle Identification Number, and license plate number;
 - iv. Fleet number, if assigned;
 - v. Odometer reading at the time the vehicle entered service under this Contract;
 - vi. Capacity (number of passengers and/or wheelchair capacity);
 - vii. Insurance certifications;
 - viii. HSV registration, Yes/No;
 - ix. Special equipment, such as lift, cot/stretchers/stanchions/sidewall tie-downs; and
 - x. Date, odometer reading, and description of inspection activity including verification that the vehicle meets all RFP vehicle requirements and inspection of equipment such as brakes, tire tread, turn signals, horn, seat belts, and air conditioning/heating.
- e. The following documentation for each driver, at a minimum:
 - i. Driver's name and date of birth;
 - ii. Copy of the Wisconsin driver's license;
 - iii. First aid training certificates and CPR training certificate;
 - iv. Driver training course certificate; and
 - v. Documentation of any complaints received about the driver and any accidents or moving violations involving the driver.

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- f. Driver information.
- g. Other information that may be necessary to support transportation operations and reporting.

The Department shall provide the Supplier with a file of Medicaid-enrolled SMV and ambulance providers in a format to be determined. The Supplier shall load this provider data into the system and utilize the data when scheduling and dispatching transportation. The Supplier shall obtain and maintain data for all non-Medicaid enrolled providers (e.g., common carriers, and public transportation).

3.7.5 Encounter Data

The Supplier shall submit encounter data to the Department on a monthly basis within ten (10) business days after the close of the month for all NEMT services provided on behalf of a member. The encounter data shall be created from paid claims data and other data created or maintained by the Supplier on services, providers, and members.

The data elements on the encounter record will be based on the Centers for Medicare and Medicaid Services (CMS) 1500 claim form data elements. Other data elements may be specified by the Department, such as trip log data, network provider information, and reimbursement amounts. The content and layout of the encounter data are subject to change to accommodate the needs of the Department. The Supplier shall update subsequent versions of the encounter data format, at no additional cost.

The Supplier shall establish quality control procedures and edits to allow for the detection and correction of errors prior to submission of encounter data to the Department.

The Supplier shall electronically submit encounter data via Secure File Transfer Protocol (SFTP) using Department-defined standardized naming conventions and in a format specified by the Department. Files must be compressed using a standard zip program (e.g., WinZip, Kip).

The Department shall process the Supplier's encounter file against established validation criteria and create an error file of those records that fail the validation process. The Supplier shall review the error file to determine the need for changes and resubmission. In the event the data submission contains erroneous data as determined by the Department, the Supplier shall correct the errors and resubmit to the Department within thirty (30) days.

The Supplier shall test encounter data submission until the State is satisfied that the Supplier is capable of submitting valid, accurate, and timely encounter data according to the requirements of this RFP.

The Supplier shall have a computer processing and reporting system that is capable of following or tracing an encounter within its system using a unique encounter record identification number (RIN) for each encounter.

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As part of the monthly encounter data submission, the Supplier shall reconcile the data of paid trips within the encounter data file with data on associated scheduled rides. The Department will consider any scheduled ride without a reconciled paid trip an unsuccessful trip unless otherwise documented by the Supplier. If a scheduled trip did not have an associated paid trip due to a member no-show, the Department will still consider the trip as an unsuccessful trip unless the Supplier provides confirmation from its electronic tracking system that the assigned transportation provider was present at the pick-up location at the scheduled pick-up time.

The Acceptable Service Level (ASL) for the Supplier to report encounter data in an accurate and timely manner is 100% compliance. Where the Department determines in its sole discretion that the ASL is not met, the Department shall assess a penalty of up to \$1,000 per instance.

Vendor Response #26: Describe your process for and experience with submitting accurate encounter data that meets all of the requirements in Section 3.7.5. Describe any experience with validating encounter data, correcting encounter data when errors are identified, and reconciling encounter data with associated data on scheduled rides. Additionally, include a detailed process map that shows how trip data will move from completed trips to paid trips to encounters. The detailed process map must include the process cycles for reconciling encounters records with paid trips.

3.7.6 Disaster Recovery

The Supplier shall develop and maintain a Disaster Recovery Plan designed to minimize any disruption to NEMT services. It is the sole responsibility of the Supplier to maintain adequate backup to ensure continued scheduling and transportation capability.

At a minimum, the disaster recovery plan must include the following components:

- a. Measures taken to minimize the threat of a disaster at the Supplier's central business office and other facilities, including physical security and fire detection and prevention.
- b. Provisions for accepting member telephone calls and scheduling transportation in the event of a disaster at the Supplier's central business office or the failure of the Supplier's telephone system.
- c. Procedures utilized to minimize the loss of required records in the event of fire, flood or other disaster.
- d. Off-site storage.

The Supplier shall submit a final disaster recovery plan to the Department for review and approval at least thirty (30) calendar days prior to the start of operations. The Supplier shall incorporate modifications required by the Department within ten (10) calendar days of notification. In no case will a Supplier be allowed to begin operations without an approved disaster recovery plan.

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- a. Central Office operations including telephone and computer systems.
- b. Member NEMT authorization process.
- c. Scheduling and trip notification procedures.
- d. After-hours coverage arrangements.
- e. Service delivery protocols.
- f. Denial process.
- g. Quality assurance.
- h. Grievance process.
- i. Model service agreements.
- j. Encounter data submission procedure.
- k. Reporting procedures.
- l. Successful use of options available for member eligibility verification.
- m. Process to accept, load, and utilize the provider file.
- n. Electronic tracking system.
- o. Any other items or functions as deemed necessary by the Department.

The Department may visit the Supplier's facilities and determine whether all systems are operational and ready for full-time service.

3.9 Turnover Phase

Prior to the conclusion or non-renewal of the Contract, or in the event of a termination for any reason, the Supplier shall provide assistance in turning over the Supplier functions to the Department or its agent.

3.9.1 Turnover Plan

The Supplier shall provide a Turnover Plan to the Department for approval no later than six (6) months after the Contract is awarded or upon a date approved by the Department. The objectives of the Turnover Plan is to provide for an orderly and controlled turnover of the Supplier's responsibilities to a successor at the conclusion of the Contract period or for any other reason the Supplier cannot complete the responsibilities of the Contract.

The Turnover Plan shall include, but will not be limited to:

- a. Proposed approach to ensure transportation services will be maintained throughout the transition process to avoid any disruption in member services.
- b. Proposed approach to transition, in paragraph form, along with a work plan, including the tasks and timeline schedule for the turnover.
- c. An estimate of the number of full-time equivalents (FTEs) and type of personnel needed to operate all functions of the turnover plan.
- d. A statement of all resources currently required to operate the Supplier functions, including, but not limited to, data processing equipment, reservation/scheduling software,

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system and spacial software (database and telecommunications), office space, and other equipment. The Supplier shall base the statement of resource requirements on its experience in the operation of the Supplier functions and shall include actual Supplier resources devoted to the operation of all tasks required by the RFP.

The Supplier shall provide an updated Turnover Plan to the Department six (6) months prior to the conclusion of the Contract or as requested by the Department.

3.9.2 Resource Turnover

The Supplier shall, at a date determined by the Department, provide all current reference files and all other records as will be required to perform the duties of the Contract. This includes, but is not limited to:

- a. Recruiting and negotiating with transportation providers.
- b. Payment administration.
- c. Reservations and trip assignments.
- d. Quality assurance.
- e. Administrative oversight/reporting.
- f. Any inventory of training manuals, operational procedures manuals, brochures, pamphlets, and all other written materials developed in support of this RFP/contract activity.
- g. Release and transfer the toll-free telephone number(s) to the Department or a successor Supplier.

Additionally, the Supplier shall at no additional cost to the Department:

- i. Upon request by the Department, begin training the staff of the Department or its designated agent in the required Supplier operations. Such training must be completed at least one (1) month prior to the end of the Contract or on a date specified by the Department.
- ii. Follow specific instructions from the Department regarding boxing, labeling, and shipment of all records utilized under this Contract.
- iii. Assist the Department with obtaining appropriate software licenses which may include allowing the Department to utilize the Supplier's software until a new Supplier can be selected and become operational.

Vendor Response #30: Provide your proposed Turnover Plan that describes how you will successfully meet the turnover requirements listed in Section 3.9.

3.10 Quality Assurance Planning

3.10.1 Quality Assurance Plan

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The Supplier shall develop and maintain an ongoing Quality Assurance Plan to support the provision of high-quality NEMT services to members.

The Quality Assurance Plan must include, at a minimum:

- a. Key quality indicators related to scheduling and delivery of NEMT services.
- b. A description of how the Supplier plans to monitor these key quality indicators.
- c. Descriptions of how the Supplier will develop, implement, and evaluate corrective actions, or modifications to overall operations, as necessary, to address quality concerns.
- d. A description of how the Supplier will monitor the quality of transportation providers.
- e. A description of the staffing resources responsible for quality assurance activities.
- f. Samples of all reports related to quality assurance and performance monitoring, along with descriptions of their use and who is responsible for reviewing them.

The Supplier shall submit a final Quality Assurance Plan to the Department for review and approval at least thirty (30) working days prior to the start of operations. In no case will a Supplier be allowed to begin operations without an approved Quality Assurance Plan.

The Supplier shall incorporate any Department-required modifications to the Quality Assurance Plan within ten (10) working days of notification.

The Supplier shall review the quality assurance plan at least annually and submit any revisions to the Department for review and approval at least thirty (30) days prior to implementation.

3.10.2 Department Quality Monitoring

The Supplier shall provide access for the Department to conduct a review of the Supplier's records or to conduct an on-site review at any time to ensure compliance with RFP requirements.

The Supplier shall agree to make all electronic or other records related to services available for such reviews by the Department or its agent who may monitor the Supplier's performance under this Contract by telephone contact, record reviews, customer service satisfaction surveys, and other means. The Department reserves the right to audit the Supplier's records to validate service delivery reports and other information.

The Department staff or their official agent may ride on trips to monitor services. The Supplier shall make all transportation provider vehicles available to the Department or its agent(s) for inspection at any time. The Supplier may be required to provide transportation and provide support for the Department's staff or their official agent to monitor NEMT services in the field.

The Department staff or its official agent shall review reports of complaints from members, providers, or any individuals or groups who contact the Supplier regarding the delivery of services under this RFP.

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The Supplier shall acknowledge inquiries from the Department within thirty (30) minutes and provide an acceptable response within twenty-four (24) hours or sooner, as requested.

During on-site monitoring of the Supplier's locations, the Supplier shall provide the Department's staff:

- a. Unrestricted access into the Wisconsin Business Office(s).
- b. Dedicated office space, a desk and chair, and printing.
- c. A secure land line telephone and technology, including, but not limited to, reliable secure wireless internet access.
- d. Parking.

Vendor Response #31: Provide your proposed Quality Assurance Plan that addresses all of the requirements listed in Section 3.10. Describe how you plan to utilize quality assurance information to facilitate any changes necessary to improve services required of this RFP and ensuing Contract. Describe any experience and demonstrated abilities in monitoring quality. Include any examples of how you have used a similar Quality Assurance Plan to improve service in a documented and measurable way.

3.11 Reports

The Supplier shall provide the reports described in the RFP and any additional reports the Department deems necessary at a frequency determined by the Department.

The Supplier shall work with the Department during implementation to determine the design of reports. The Supplier shall provide reports in accordance with the specifications and format approved by the Department.

The Supplier shall provide a secure internet site to post reports for access by the Department.

The Supplier shall submit correct and complete reports as identified by the Department and in this section to the Department by the stated deadlines. Timely Supplier delivery of the correct and complete reports shall be considered the monthly Acceptable Service Level (ASL). Where the Department determines in its sole discretion that the Supplier does not meet this ASL the Department may require the Supplier to pay a penalty of up to \$100 per day until the correct and complete report is submitted for each instance of each report the ASL is not met.

Vendor Response #32: Submit sample reports related to the NEMT program that will demonstrate your ability to ensure you comply with the reporting requirements of the RFP. Each report for which a sample shall be submitted is identified and described below.

- a) Provider and Driver Reports.
- b) Accident and Moving Violation Report.
- c) Vehicle Reports.

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- d) Complaints Summary Reports.
- e) Telecommunications Systems Reports.
- f) Annual Fiscal Audit Report.
- g) Weekly HMO Advanced Trip Notice Report.
- h) Graphical Relationship Report.
- i) Unannounced Vehicle Inspection Report.
- j) Daily Report.
- k) Monthly Report.

3.11.1 Provider and Driver Reports

The Supplier shall provide a report listing the entities providing transportation services on behalf of the Supplier and a roster of all drivers before the start of operations. The roster shall indicate, at a minimum, the driver's name and license number and shall list drivers separately for each transportation provider. The report shall be updated to reflect additions and deletions in carriers and personnel. The report shall be delivered to the Department each calendar quarter by the 30th calendar day of the month, following the end of the reporting quarter.

3.11.2 Accident and Moving Violation Report

The Supplier shall notify the Department, or its agent, immediately of any incident or accident resulting in driver or passenger injury or fatality while delivering services under this Contract. The Supplier shall file a written incident or accident report with the Department within seventy-two (72) hours of the accident and within twenty-four (24) hours if the incident or accident involved an injury. The Supplier shall cooperate with the Department during any ensuing investigation. The Supplier shall submit a police report as supporting documentation. The Supplier shall maintain copies of each accident report in the files of both the vehicle, and the driver involved in the accident.

The Supplier shall notify the Department immediately of any moving violations that occur while delivering services under this Contract. The Supplier shall provide a copy of the police report within ten (10) working days of the moving violation. The Supplier shall maintain police reports associated with moving violations in the file of the responsible driver.

3.11.3 Vehicle Reports

The Supplier shall provide the Department with a report of all vehicles (excluding public transportation), placed in service under this RFP, before the start of operations. The report shall include the following information for each vehicle:

- a. Name, address, and county code of the transportation provider.
- b. Manufacturer, model, and model year.
- c. Vehicle Identification Number, plate number, and fleet number (if assigned).

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- d. Type of vehicle (car, minivan, wheelchair van or non-emergency ambulance).
- e. HSV registration current YES/NO.
- f. Proof of insurance.

The Supplier shall update the report to reflect vehicle additions and deletions. The Supplier shall deliver the report to the Department no later than the 30th calendar day of each month.

3.11.4 Complaint Summary Reports

The Supplier shall provide a report that compiles and analyzes complaints, including the number of complaints by type, a brief description of each complaint, details of corrective actions taken, and patterns or trends of the complaints received. The Supplier shall deliver the report to the Department on a monthly basis, by the 30th calendar day of the month, following the month of activity.

3.11.5 Telecommunications Systems Reports

The Supplier shall provide reports from the telephone system used in scheduling appointments. The Department will determine the included elements and frequency of the reports.

3.11.6 Annual Fiscal Audit Report

The Supplier shall submit an annual certified financial audit through the close of each organizational fiscal year, calendar year, or tax-reporting year, within six (6) months of the close of the year just ended. The Supplier shall inform the Department of the Supplier's choice of reporting year within thirty (30) calendar days of contract execution. The Supplier shall also submit un-audited quarterly financial reports forty-five (45) calendar days following the end of each quarter of the Supplier's reporting year.

3.11.7 Weekly HMO Advanced Trip Notice Report

The Supplier shall provide each HMO with a report listing all trips scheduled for the coming two (2) weeks for the HMO's members. Data elements must include, but are not limited to:

- a. HMO Name.
- b. Trip date and trip ID.
- c. Member name, ID, address, and phone number.
- d. Pick-up time and pick-up address.
- e. Drop-off time and drop-off address.
- f. Drop-off facility name and type.
- g. Transportation provider name.
- h. Transportation level of service.

3.11.8 Graphical Relationship Maps

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The Supplier shall provide accurate and precise graphical representations (heat maps) of the following data on a monthly basis using colors to indicate the level of activity from data that is provided and collected under this Contract:

- a. Unsuccessful trips by mode of transportation.
- b. On-time and late trips by mode of transportation.
- c. Complaints by appointment location.
- d. Trip denial reasons by appointment locations and appointment reasons.
- e. Trips to and from an address location or locations based on appointment reasons.

3.11.9 Unannounced Vehicle Inspection Report

The Supplier shall provide a monthly 'unannounced vehicle inspections' report that summarizes findings to the Department within thirty (30) days after the close of the reported-upon calendar month. The report shall include, at a minimum, the following:

- a. Transportation provider.
- b. Driver name.
- c. Vehicle credential status at time of inspection.
- d. Documentation of non-compliances.
- e. Re-inspection follow-up date, if applicable.
- f. Date and location of inspection.
- g. Name of inspector.
- h. Inspection time.
- i. Timeliness, if applicable.
- j. Vehicle information.

3.11.10 Daily Report

The Supplier shall provide a daily report detailing NEMT program performance and quality data. The report shall include the following metrics for all trips, reported both Statewide and by each Medicaid-contracted HMO:

- a. Gross trips by level of service, net authorized trips by level of service, and number of unique members having a trip.
- b. Number of cancelled trips by level of service, cancellation percentage by level of service, and cancelled trip details (count of trips cancelled by each reason).
- c. Number of complaints (both substantiated and unsubstantiated) and complaint details (count of complaints by each complaint reason).
- d. Number of trip denials, percentage of trips denied, and denial details (count of trip denials by each denial reason).

3.11.11 Monthly Report

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The Supplier shall provide a monthly report detailing NEMT program performance and quality data. The report shall include, but is not limited to:

- a. Number of eligible members, number of unique members utilizing transportation, and the utilization rate.
- b. Number of reservations and number of trips scheduled with less than 24 hour notice.
- c. Number of completed trips, number of cancelled trips, number of trip denials, and number of standing order trips.
- d. Number of trips, broken down by transport mode (ambulatory, wheelchair vehicle, stretcher van, Advanced Life Support ambulance, Basic Life Support ambulance, air, mass transit, gas reimbursement and any other modes not listed herein).
- e. Cost and number of reimbursed lodging nights and meals.
- f. Number of calls received, average hold time per call, average talk time per call, and average abandonment rate.
- g. Number of complaints, complaint percentage, and complaint free rate (percentage of trips without a complaint).
- h. Number of unsuccessful trips (the provider did not show or a vehicle was not available), the number of late trips, and the number of trips where the rider did not show.
- i. Trip and complaint counts by county.

3.12 Administrative Functions

Vendor Response #33: Describe in detail the elements in your budget plan. The actual dollar amounts should go in Table 3: Administrative Cost Schedule in Attachment A: Wisconsin - NEMT Administrative Services Percentage and Administrative Cost Schedule. Identify the items in your budget plan, and where the costs are located in Table 3: Administrative Cost Schedule:

Administrative Costs in Wisconsin

- A. Total Payroll Expense.
- B. Total Employee Benefits.
- C. Total Intake and Dispatch.
- D. Total Operating Expense.
- E. Total Computer Systems.
- F. Total Utilities.
- G. Total Interest and Depreciation.

Allocated Central Service Costs

- A. Total Payroll Expense.
- B. Total Employee Benefits.

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- C. Total Intake and Dispatch.
- D. Total Operating Expense.
- E. Total Computer Systems.
- F. Total Utilities.
- G. Total Interest and Depreciation.

Do not include dollar amounts in this response, any dollar amounts will be redacted prior to evaluation.

4.0 CONTRACT TERMS AND CONDITIONS

The Department reserves the right to negotiate the following terms and conditions when it is in the best interest of the State to do so. Vendors may not submit their own Contract document as a substitute for the State's Terms and Conditions.

Vendors must accept all terms and conditions or submit point-by-point exceptions along with proposed alternative or additional language for each point. The State may or may not consider any of the Vendor's suggested revisions. Any changes or amendments to any of the terms and conditions will occur only if the change is in the best interest of the State. Pricing submitted should assume that no changes to these terms and conditions will be accepted.

If a Contract document is executed as a result of this procurement, additional terms and conditions may be contained in that document and negotiated at that time.

4.1 Order of Precedence

In the event of Contract award, the contents of this RFP (including all attachments), RFP addenda and revisions, the Proposal response from the successful Vendor as accepted by the Procuring Agency, and any additional terms agreed to in writing by the parties shall be incorporated into the Contract. Failure of the successful Vendor to accept these elements into the Contract will result in the cancellation of the Contract award.

In the event of conflict with the incorporated elements of the Contract, the following order of precedence will prevail:

1. Business Associate Agreement (if applicable, see Section 4.11).
2. Final Signed Contract, including all exhibits and attachments.
3. Official Purchase Order.
4. The State's RFP, including all attachments, addenda, and revisions.
5. The Vendor's RFP Response as accepted by the State of Wisconsin.

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4.2 Modifications of Contract

The resulting Contract must only be used to purchase services within the scope and intent of the original Request for Proposal. Any modifications made to the resulting Contract must fall within the scope of the Proposal. All modifications must be made in writing and signed by both parties.

4.3 Standard Terms and Conditions

The State of Wisconsin Standard Terms and Conditions (DOA - 3054) and Supplemental Standard Terms and Conditions for Procurements for Services (DOA - 3681) shall apply to this solicitation and subsequent award, in addition to the Terms and Conditions specified in this solicitation.

4.4 Payment Terms and Schedule

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

4.4.1 Prompt Payment Law

DHS shall pay properly submitted Supplier invoices within 30 days of receipt, providing that the services to be provided to DHS have been delivered, rendered, or installed (as the case may be), and accepted as specified in this Contract and all documents incorporated herein by reference. A good faith dispute in regard to an invoice creates an exception to prompt payment pursuant to Wis. Stat. § 16.528.

4.4.2 State Tax Exemption

DHS is exempt from payment of Wisconsin sales or use tax on all purchases.

4.4.3 Payment Offset for Supplier's Delinquency

The State of Wisconsin may offset payments made to the Supplier under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State or any state or local unit of government. DHS reserves the right to cancel this Contract as provided in Section 35.4, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the Contract term.

4.4.4 Refund of Credits

DHS may request a refund of credits owed at any time. Supplier agrees to refund credits owed within 60 days of DHS' request.

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4.5 Requesting Price Adjustments

In the sole determination of the department that a rate modification may be necessary to maintain stability of NEMT services, special rate setting provisions may be considered during a contract period.

4.5.1 Price Decreases

Any price decreases from a manufacturer or third party that are passed through to the Supplier are required to be passed on to the Department within thirty (30) days of the effective date of the price decreases.

4.5.2 Price Increases

PMPM Base Rates shall be rebased annually by the Department per the Contract year schedule.

4.6 Background Checks

Prior to the commencement of any Services under this Contract, in order to ensure safety and security at its premises, DHS may request a background or criminal history investigation of contracted personnel at any time during the term of this Contract for any of Suppliers' contracted personnel and Subcontractor's employees, who will be providing Services to DHS under the Contract. If any contracted personnel, including Subcontractor's employees, providing Services to DHS under this Contract are not acceptable to DHS to ensure safety and security in its premises, in its sole discretion as a result of the background or criminal history investigation, DHS shall provide notice to the Supplier that the contracted personnel do not meet DHS' safety and security needs and that the personnel will not be allowed on DHS premises. Supplier shall as soon as practicable replace the contracted personnel with another of its contracted personnel in order to ensure compliance with this Contract.

4.7 Supplier Compliance and Responsibility for Actions

The Supplier shall at all times comply with and observe all Federal, State, and local laws, ordinances, regulations, and DHS work rules that are in effect during the term of this Contract that may affect the Supplier's work or obligations hereunder. The Supplier shall be solely responsible for its actions and those of its agents, employees, or Subcontractors.

4.8 Use of Subcontractors

Vendors must identify any potential Subcontractors in their Proposal. The resulting Contract will be between DHS and the awarded Supplier. The Supplier will be responsible for its Subcontractors' performance of the pertinent Contract obligations and ensure Subcontractors abide by all terms and conditions of the RFP and resulting Contract. All Subcontractors must be approved in writing by the Department. Upon written approval of DHS, the Vendor may subcontract part of this Contract. When

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the Vendor enters into a sub contractual relationship, DHS reserves the right of approval of the following:

- i. The process used by the Vendor to solicit proposals or bids,
- ii. The criteria used by the Vendor in choosing a subcontractor,
- iii. The terms and conditions of the subcontract(s), and
- iv. The subcontractor(s) selected.

Approval of the processes used by the Vendor to select a subcontractor and of the subcontractor(s) chosen by the Vendor will not be unreasonably withheld, nor will the Vendor invoke its approval right in order to reject procedures or subcontractors on unlawful grounds.

The Vendor retains responsibility for fulfillment of all terms and conditions of this Contract when it enters into sub contractual contracts. The Vendor continues to be subject to the enforcement of all terms and conditions of this Contract, even when issues of noncompliance are attributable to the Vendor's subcontractor rather than the Vendor.

4.9 Replacement of Vendor Personnel

DHS shall make Supplier aware of any business concerns with Supplier's/Subcontractor's personnel and Supplier shall take necessary action to insure that its employees do not interfere with the operations of DHS, including removing Supplier's/Subcontractor's personnel from the DHS facility or site, if necessary. DHS' right to do so does not implicate DHS as a party to any of the Supplier's obligations in the Contract. DHS may request that key personnel or personnel that will perform Services on-site at a DHS facility be replaced within timeframes listed within Section 3.0 of this RFP.

4.10 Confidentiality, Proprietary, and Personally Identifiable Information

In connection with the performance of work hereunder, it may be necessary for DHS to disclose to the Vendor certain information that is considered to be confidential, proprietary, or containing Personally Identifiable Information ("Confidential Information"). The Vendor shall not use such confidential information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations herein. The Vendor shall hold all confidential information in confidence, and shall not disclose such confidential information to any persons other than those directors, officers, employees, and agents who have a business-related need to have access to such Confidential information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

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The Vendor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the confidential information while in its possession or control including transportation, whether physically or electronically.

The Vendor shall ensure that all indications of confidentiality contained on or included in any item of confidential information shall be reproduced by the Vendor on any reproduction, modification, or translation of such confidential information. If requested by DHS, the Vendor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain confidential information of DHS, as directed.

If requested by DHS, Vendor shall return or destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Contract.

The Business Associate Agreement (BAA) incorporated into the eventual Contract must be completed by the Supplier. The BAA specifies additional details that apply to this Section 4.10.

Legal Disclosure

If Vendor or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, Vendor shall give DHS prompt notice thereof (unless it has a legal obligation to the contrary) so that DHS may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Vendor and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

Unauthorized Use, Disclosure, or Loss

1. If Vendor becomes aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Contract, or if any Confidential Information is lost or cannot be accounted for, Vendor shall notify the DHS (Contract Manager/Contact Liaison/Privacy Officer) within the same business day the Vendor becomes aware of such use, disclosure, or loss. Such notice shall include, to the best of the Vendor's knowledge at that time, the persons affected, their identities, and the Confidential Information disclosed.
2. The Vendor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Vendor shall reasonably cooperate with the Department's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a reasonable Corrective Action Plan.
3. If the unauthorized use, disclosure, or loss is of Personally Identifiable Information, or reasonably could otherwise identify individuals, Vendor shall, at its own cost, take any or

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all of the following measures that are directed by DHS as part of a Corrective Action Plan.

- a. Notify the affected individuals by mail or the method previously used by the Department to communicate with the individual. If the Vendor cannot with reasonable diligence determine the mailing address of the affected individual and the DHS has not previously contacted that individual, the Vendor shall provide notice by a method reasonably calculated to provide actual notice.
 - b. Notify consumer-reporting agencies of the unauthorized release.
 - c. Offer credit monitoring and identity theft insurance to affected individuals from a company, and under terms, acceptable to DHS for one (1) year from the date the individual enrolls in credit monitoring.
 - d. Provide a customer service or hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as established by DHS.
 - e. Adequately staff customer service telephone lines to assure an actual wait time of less than five (5) minutes for callers.
4. If the unauthorized use, disclosure, or loss is of Individually Identifiable Health Information, Vendor shall, at its own cost, notify the affected individuals by mail or the method previously used by DHS to communicate with the individual. If the Vendor cannot with reasonable diligence determine the mailing address of the affected individual and DHS has not previously contacted that individual, the Vendor shall provide notice by a method reasonably calculated to provide actual notice. In addition, the Vendor will take other measures as are directed by DHS as part of a Corrective Action Plan.

Indemnification, Equitable Relief, Liquidated Damages

1. Indemnification

In the event of a breach of this section by the Vendor, the Vendor shall indemnify and hold harmless the State and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Vendor, and its subcontractors, employees and agents, in violation of this section, including but not limited to, costs of monitoring the credit of all persons whose confidential information was disclosed, disallowances or penalties from Federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by DHS in the enforcement of this section.

2. Equitable Relief

The Vendor acknowledges and agrees that the unauthorized use, disclosure, or loss of confidential information may cause immediate and irreparable injury to the individuals whose information is disclosed and to Vendor, which injury will not be compensable by

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money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that DHS, in its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

3. Liquidated Damages

The Vendor agrees that an unauthorized use or disclosure of Confidential Information may result in damage to the State's reputation and ability to serve the public interest in its administration of programs affected by this Contract. Such amounts of damages which will be sustained are not calculable with any degree of certainty and thus shall be set forth herein. Assessment under this provision is in addition to other remedies under this Contract and as provided in law or equity, DHS shall assess reasonable damages as appropriate and notify the Vendor in writing of the assessment. The Vendor shall automatically deduct any assessed damages from the next appropriate monthly invoice, itemizing the assessment deductions on the invoice. Liquidated Damages shall not exceed the following:

- i. \$1,000 for each individual whose Confidential Information was used or disclosed;
- ii. \$2,500 per day for each day that the Vendor fails to substantially comply with the Corrective Action Plan under this Section

DHS may conduct a compliance review of the Vendor's security procedures to protect Confidential Information under Section 4.17 of this RFP.

This Section shall survive the termination of the Contract.

4.11 Business Associate Agreement

In agreements for the provision of services, activities, or functions covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Supplier must complete the Business Associate Agreement (BAA) F-00759. This document must be fully executed before Contract performance begins.

4.12 Security of Premises, Equipment, Data, and Personnel

During the performance of services under this Contract, the Supplier may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to DHS. The Supplier shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of the Department, in accordance with the instruction of DHS. The Supplier shall be responsible for damage to DHS' equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Supplier, contracted personnel, or Subcontractors, and shall reimburse DHS accordingly upon

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demand. This remedy shall be in addition to any other remedies available to the DHS by law or in equity.

4.13 Affirmative Action Plan and Civil Rights Compliance

- A. Affirmative Action Plan. As required by Wisconsin's Contract Compliance Law, Wis. Stat. §16.765 and Wis. Admin. Code §50.04, the Vendor must agree to equal employment and affirmative action policies and practices in its employment programs:

The Vendor agrees to make every reasonable effort to develop a balance in either its total workforce or in the project-related workforce that is based on a ratio of work hours performed by handicapped persons, minorities, and women except that, if DHS finds that the Vendor is allocating its workforce in a manner which circumvents the intent of this chapter, DHS may require the Vendor to attempt to create a balance in its total workforce. The balance shall be at least proportional to the percentage of minorities and women present in the relevant labor markets based on data prepared by DHS of Workforce Development, the office of Federal contract compliance programs or by another appropriate government entity. In the absence of any reliable data, the percentage for qualified handicapped persons shall be at least 2% for whom the Vendor must make a reasonable accommodation.

The Vendor must submit an Affirmative Action Plan within 15 working days of the signed contract. Exemptions exist, and are noted in the instructions for the Vendor posted on the following website:

<http://vendornet.state.wi.us/vendornet/DOAforms/DOA-3021P.pdf>

The Vendor must submit its Affirmative Action Plan or request for exemption from filing an Affirmative Action Plan to:

Department of Health Services
Division of Enterprise Services
Bureau of Strategic Sourcing
Affirmative Action Plan/CRC Coordinator
1 West Wilson Street, Room 655
P.O. Box 7850
Madison, WI 53707
dhscontractcompliance@dhs.wisconsin.gov

- B. Civil Rights Compliance (CRC). As required by Wis. Stat. §16.765, in connection with the performance of work under this Contract, the Vendor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat

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§51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Vendor further agrees to take affirmative action to ensure equal employment opportunities. The Vendor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

In accordance with the provisions of Section 1557 of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. §18116), Title VI of the Civil Rights of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §1601 et seq.), and regulations implementing these Acts, found at 45 CFR Parts 80, 84, and 91 and 92. The Vendor shall not exclude, deny benefits to, or otherwise discriminate against any person on the basis of sex, race, color, national origin, disability, or age in admission to, participation in, in aid of, or in receipt of services and benefits under any of its programs and activities, and in staff and employee assignments to patients, whether carried out by Vendor directly or through a subcontractor or any other entity with which the Vendor arranges to carry out its programs and activities.

Furthermore, in accordance with Section 1557 of the Affordable Care Act and its implementing regulations found at 45 CFR Part 92, the Vendor agrees to all of the following:

1. The Vendor will provide language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to Limited English Proficiency (LEP) individuals, as required by 45 CFR §92.8 and 92.201. The Vendor will design and implement an LEP plan to ensure meaningful access to individuals who need LEP language assistance.
2. The Vendor will communicate effectively with people who have vision, hearing, or speech disabilities, in compliance with Title II of the Americans with Disabilities Act and Section 1557 of the Affordable Care Act and provide auxiliary aid and services when needed to individuals with communications disabilities at no cost to the person with a disability, as required by 45 CFR §§92.204 and 92.207. The Vendor will ensure that any newly constructed and altered facilities are physically accessible to individuals with disabilities, as required by 45 CFR §92.203.

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3. The Contactor shall have in place a discrimination complaint process that meets the requirements of 45 CFR §92.7 and the Vendor shall provide notices of its complaint process and other notices required under 45 CFR §92.8, translated into the major primary languages of the LEP individuals in their service area. The Vendor will post nondiscrimination statements and taglines in its significant publications and significant communications, in conspicuous physical locations and on its website in the top 15 languages spoken by LEP individuals in the State, as required by 45 CFR §92.8.

In accordance with the provisions of Section 11 of the Food and Nutrition Act of 2008 (7 USC §2020), the Age Discrimination Act of 1975 (42 USC §6101 et. Seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC §701 et. Seq.), the Americans with Disabilities of 1990 (42 USC §12101 et. Seq.), and Title VI of the Civil Rights Act of 1964 (42 USC §2000d et. Seq.), and the regulations implementing these Acts, found at 7 CFR, Parts 15, 15a and 15b and Part 16, 28 CFR, Part 35 and 45 CFR, Part 91, the Vendor shall not discriminate based on race, color, national origin, sex, religious creed, disability, age, or political beliefs or engage in reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by the United State Department of Agriculture.

- C. Civil Rights Compliance Plan. The Vendor must file a Civil Rights Compliance Letter of Assurance (CRC LOA) for the compliance period of January 1, 2014 through December 31, 2017, within 15 working days of the effective date of the contract. If the Vendor employs 50 or more employees and receives at least \$50,000 in funding, the Vendor must complete a Civil Rights Compliance Plan (CRC Plan). The CRC Plan must be kept on file by the Vendor and made available upon request to any representative in DHS. The Civil Rights Compliance Requirements are published by DHS of Health Services (DHS), either on its own or in conjunction with other state agencies, and includes the Civil Rights Compliance Requirements and all appendices here to. The current Civil Rights Compliance Requirements and all appendices for the civil Rights Compliance period of January 1, 2014 to December 31, 2017 is hereby incorporated by reference into this Agreement and is enforceable as if reinstated herein in its entirety. The Civil Rights Compliance Requirements, including the template and instructions for the CRC Plan can be found at <https://www.dhs.wisconsin.gov/civil-rights/requirements.htm> or by contacting:

Department of Health Services
Civil Rights Compliance
Attn: Attorney Pamela McGillivray
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850

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Telephone: (608) 266-1258 (voice)
711 or 1-800-947-3529 (TTY)
Fax: (608) 267-1434 Email: DHSCRC@dhs.wi.gov

If the Vendor subcontracts to administer its Federally-funded (through DHS) programs, services and/or activities, it must require its subcontractor to provide the Vendor CRC LOA within 15 working days of the effective date of the subcontract. If the Vendor employs 50 or more employees and receives at least \$50,000 in funding, the Vendor must require its subcontractor to complete a Civil Rights Compliance Plan (CRC Plan) as a term of its sub-contract. The CRC Plan must be kept on file by the Vendor and made available upon request to any representative of DHS. Civil Rights Compliance Letters of Assurances should be sent to:

Department of Health Services
DES/BSS – AA/CRC Coordinator
1 West Wilson Street, Room 655
P.O. Box 7850
Madison, WI 53707-7850
Email: dhscontractcompliance@dhs.wi.gov

The Vendor agrees to cooperate with DHS in any complaint investigations, monitoring or enforcement related to civil rights compliance of the Vendor or its sub-contractor under this Contract.

DHS agrees to coordinate with the Vendor in its efforts to comply with the Vendor's responsibilities under these non-discrimination provisions.

4.14 Indemnification

Supplier shall hold DHS harmless and shall defend and indemnify DHS, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Supplier, its agents, officers, employees or Subcontractors.

In addition, the Supplier shall indemnify DHS for any Federal funding disallowances or sanctions imposed on DHS for reasons attributable to the Vendor's failure to perform in compliance with this Contract.

4.15 Liquidated Damages

DHS may suffer damages due to the Supplier's lack of performance of certain terms and conditions of the resulting Contract. DHS reserves the right to negotiate liquidated damages, as required by the State, at the time of Contract.

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The Supplier agrees that DHS shall have the right to liquidate such damages through deduction from the Supplier's invoices in the amount equal to the damages incurred, or by direct billing to the Supplier.

4.16 Certificates of Insurance

The Supplier shall maintain the following insurance coverage:

- a) Worker's compensation insurance, as required by Wis. Stat. ch. 102 or applicable State law where contracted personnel are employed, for Supplier's contracted personnel engaged in work performed under this Contract with no exemptions;
- b) As the employer of the contracted personnel, Supplier shall fund an account with the Wisconsin unemployment reserve fund or, if the Supplier employs contracted personnel to work under this Contract in another state, the reserve fund in the state where the contracted employees are employed, as required by applicable statutes and regulations;
- c) Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) General aggregate including liability for bodily injury and property damage including products liability and completed operations a minimum coverage of one million dollars (\$1,000,000) for each occurrence;
- d) Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of two million dollars (\$2,000,000) per occurrence combined single limit for automobile liability and property damage within the State of Wisconsin, combined single limit;
- e) Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of five million dollars (\$5,000,000) per occurrence combined single limit for automobile liability and property damage outside the State of Wisconsin, combined single limit; and
- f) The vendor shall add the "State of Wisconsin, its officers, employees and agents" as an additional insured under the commercial general and automobile liability policies.

The Supplier shall maintain a Certificate of Insurance, showing up-to-date coverage, and shall be made available to DHS upon request.

4.17 Audits

An Audit is required for the resulting Contract. Please find the requirements of the required audit in the DHS Audit Guide here: <https://www.dhs.wisconsin.gov/publications/p01714.pdf>

a. Requirement to Have an Audit

Unless waived by DHS, the Vendor shall submit an annual audit to DHS if the total amount of annual funding provided by DHS (from any and all of its Divisions taken collectively) for all contracts is \$25,000 or more. In determining the amount of annual

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funding provided by DHS the Vendor shall consider both: (1) funds provided through direct contracts with DHS; and (2) funds from DIIS, passed through another agency which has one (1) or more contracts with the Vendor.

b. Audit Requirements

The audit shall be performed in accordance with generally accepted auditing standards, Wisconsin Statute s. 46.036, Government Auditing Standards as issued by the U.S. Government Accountability Office and other provisions specified in this Contract. In addition, the Vendor is responsible for ensuring that the audit complies with the other standards and guidelines that may be applicable depending on the type of services provided and the amount of pass-through dollars received. Please reference the following audit documents for complete Department audit requirements:

- 2 Code of Federal Regulations (CFR), Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F – Audits. The guidance also includes an Annual Compliance Supplement that details specific Federal agency rules for accepting Federal sub-awards.
- The State Single Audit Guidelines (SSAG) expand on the requirements of 2 CFR Part 200 Subpart F by identifying additional conditions that require a State single audit. Section 1.3 lists the required conditions.
- DHS's Audit Guide is an Appendix to the SSAG and contains additional Department-specific audit guidance for those entities that meet the SSAG requirements. It also provides guidance for those entities that are not required to have a Single Audit but need to comply with DHS Vendor audit requirements. An audit report is due to DHS if a Vendor receives more than \$25,000 in pass-through money from DHS, as determined by Wisconsin Statute s. 46.036.

DHS shall provide funding information to all Vendors for audit purposes, including the name of the program, the Federal agency where the program originated, the CFDA number, and the percentages of Federal, State, and local funds constituting the contract.

c. Audit Reporting Package

A Vendor that is required to have a Single Audit based on 2 CFR Part 200, Subpart F and the State Single Audit Guide is required to submit to DHS a reporting package which includes the following:

- i. General Purpose Financial Statements of the overall agency and a Schedule of Expenditures of Federal and State Awards, including the independent auditor's opinion on the statements and schedule.

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- ii. Schedule of Findings and Questioned Costs, Schedule of Prior Audit Findings, Corrective Action Plan and the Management Letter (if issued).
- iii. Report on compliance and on internal control over financial reporting based on an audit performed in accordance with Government Auditing Standards.
- iv. Report on compliance for each major program and a report on internal control over compliance.
- v. Report on Compliance with Requirements Applicable to the Federal and State Program and on Internal Control over Compliance in Accordance with the Program-Specific Audit Options.
- vi. Settlement of DHS's Cost Reimbursement Award. This schedule is required by DHS if the Vendor is a non-profit, a governmental unit other than a tribe, county Chapter 51 board or school district; if the Vendor receives funding directly from DHS, if payment is based on or limited to an actual allowable cost basis; and if the Vendor reported expenses or other activity resulting in payments totaling \$100,000 or more for all its grant(s) or contract(s) with DHS.*
- vii. Reserve Supplemental Schedule is only required if the Vendor is a non-profit and paid on a prospectively set rate.*
- viii. Allowable Profit Supplemental Schedule is only required if the Vendor is a for-profit entity.*
- ix. Additional Supplemental Schedule(s) required by funding agency may be required. Check with the funding agency.*

***NOTE:** These schedules are only required for certain types of entities or specific financial conditions.

For the Vendor that does not meet the Federal audit requirements of 2 CFR Part 200 and SSAG, the audit reporting package to DHS shall include all of the above items, except Items IV and V.

In limited situations, the Vendor may be allowed to have a program audit rather than an agency-wide audit. If applicable, please reference SSAG, Section 1.3 and DHS's Audit Guide, Illustration 1.4 to find the audit reporting package requirements for program audits.

d. Audit Due Date

Audits that comply with 2 CFR Part 200 and the State Single Audit Guidelines are due to the granting agencies nine (9) months from the end of the fiscal period or 30 days from

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completion of the audit, whichever is sooner. For all other audits, the due date is six (6) months from the end of the fiscal period unless a different date is specified within the contract.

e. Submitting the Reporting Package

The Vendor or auditor must send a copy of the audit report to all granting agencies that provided funding to the Vendor. Check the contract or contact the non-Department funding agencies for information on where to send the audit report and the proper submission format.

DHS no longer accepts paper copies of audit reports. Audit reports must be electronically-created PDF documents that are text searchable, unlocked, and unencrypted. To ensure that PDF files are unlocked and text-searchable, do not scan a physical copy of the audit report and do not change the default security settings in your PDF creator. The reports must be sent by either the Vendor or auditor to dhsauditorg@wisconsin.gov and a copy also sent to the auditor or Vendor respectively.

f. Access to Vendor's Records

The Vendor must provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the required audit.

The Vendor shall permit appropriate representatives of DHS to have access to the Vendor's records and financial statements as necessary to review the Vendor's compliance with Federal and State requirements for the use of the funding. Having an independent audit does not limit the authority of DHS to conduct or arrange for other audits or review of Federal or State programs. DHS shall use information from the audit to conduct their own reviews without duplication of the independent auditor's work.

g. Access to Auditor's Work Papers

The auditor shall make audit work papers available upon request to the Vendor, Department or their designee as part of performing a quality review, resolving audit findings, or carrying out oversight responsibilities. Access to working papers includes the right to obtain copies of working papers.

h. Failure to Comply with Audit Requirements

DHS may impose sanctions when needed to ensure that Vendors have complied with the requirements to provide DHS with an audit that meets the applicable standards and to administer State and Federal programs in accordance with the applicable requirements. Examples of situations when sanctions may be warranted include:

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- i. The Vendor did not have an audit.
- ii. The Vendor did not send the audit to DHS or another granting agency within the original or extended audit deadline.
- iii. The auditor did not perform the audit in accordance with applicable standards, including the standards described in the SSAG.
- iv. The audit reporting package is not complete; for example, the reporting package is missing the corrective action plan or other required elements.
- v. The Vendor does not cooperate with DHS or another granting agency's audit resolution efforts; for example, the Vendor does not take corrective action or does not repay disallowed costs to the granting agency.

f. Sanctions

DHS will choose sanctions that suit the particular circumstances and also promote compliance and/or corrective action. Possible sanctions may include:

- i. Requiring modified monitoring and/or reporting provisions;
- ii. Delaying payments, withholding a percentage of payments, withholding or disallowing overhead costs, or suspending the award until the Vendor is in compliance;
- iii. Disallowing the cost of audits that do not meet these standards;
- iv. Conducting an audit or arranging for an independent audit of the Vendor and charging the cost of completing the audit to the Vendor;
- v. Charging the Vendor for all loss of Federal or State aid or for penalties assessed to DHS because the Vendor did not comply with the audit requirements;
- vi. Assessing financial sanctions or penalties;
- vii. Discontinuing contracting with the Vendor; and/or
- viii. Taking other action that DHS determines is necessary to protect Federal or State pass-through funding.

j. Close-Out Audits

A contract specific audit of an accounting period of less than 12 months is required when a contract is terminated for cause, when the Vendor ceases operations or changes its accounting period (fiscal year). The purpose of the audit is to close-out the short

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accounting period. The required close-out contract specific audit may be waived by DHS upon written request from the Vendor, except when the contract is terminated for cause. The required close-out audit may not be waived when a contract is terminated for cause.

The Vendor shall ensure that its auditor contacts DHS prior to beginning the audit. DHS, or its representative, shall have the opportunity to review the planned audit program, request additional compliance or internal control testing and attend any conference between the Vendor and the auditor. Payment of increased audit costs, as a result of the additional testing requested by DHS, is the responsibility of the Vendor.

DHS may require a close-out audit that meets the audit requirements specified in 2 CFR Part 200 Subpart F. In addition, DHS may require that the auditor annualize revenues and expenditures for the purposes of applying 2 CFR Part 200 Subpart F and determining major Federal financial assistance programs. This information shall be disclosed in a note within the schedule of Federal awards. All other provisions in 2 CFR Part 200 Subpart F – Audit Requirements apply to close-out audits unless in conflict with the specific close-out audit requirements.

4.18 Lobbying Activity Certification

Supplier shall certify to DHS that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Supplier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Supplier shall use Standard Form LLL for Disclosure of Lobbying Activities available at: <https://forms.sec.gov/usfa.gov/cfecommon/efileServices/eForms/SFLLL.PDF>. A completed disclosure must be provided upon Department request.

4.19 Cancellation and Termination

4.19.1 Non-Appropriation

DHS reserves the right to cancel this Contract in writing, in whole or in part, without penalty, if the Wisconsin Legislature, United States Congress, or any other direct funding entity contributing to the financial support of this contract fails to appropriate funds necessary to complete the contract.

Any termination of contract must include a transition / turnover requirement as noted below:

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The Vendor and the Department acknowledge that the continuing provision of high quality services requires that there be no disruption of services during a turnover from the Supplier to the State or to a successor Supplier, if any, at the expiration or termination of the eventual Contract. Accordingly, the Supplier will cooperate fully in providing for an orderly and controlled transition to the Department or to a successor Supplier and will minimize any disruption in the services to be performed under the eventual Contract.

Notwithstanding any other provision in the eventual Contract, the Supplier shall continue providing Contracted services until the Department determines that the Department or a successor Supplier is prepared to fully assume the Supplier's duties and obligations under the eventual Contract. All the terms and conditions of the eventual Contract will apply during this continuation period.

The Supplier shall maintain the staffing requirements in the eventual Contract until the Department or a successor supplier fully assumes the Supplier's responsibilities under the eventual Contract.

The Department's Contract Administrator will oversee the turnover by coordinating turnover activities and approving the turnover plan. The Supplier shall designate a person responsible for coordinating its turnover responsibilities and will assign staff as the Department determines is necessary to assist in the turnover. Status meetings including staff from all parties involved in the turnover will be held as frequently as the Department determines is necessary.

The Supplier shall provide the Department with a plan for the complete turnover of its responsibilities under the eventual Contract in a manner to allow for uninterrupted continuation of services and will revise the plan until acceptable to the Department. The Supplier shall submit the plan at one of the following times, depending upon which applies: no less than 90 days prior to the eventual Contract's expiration; within 10 working days of notice of termination by the Department; or, along with Supplier's notice of termination. The plan will include provisions for the transfer of all client related information held by the Supplier or its subcontractors and not also held by the Department.

4.19.2 Termination for Convenience

Either party may terminate this Contract at any time, without cause, by providing a written notice to the other party at least 120 calendar days in advance of the intended date of termination.

In the event of termination for convenience by the Vendor, the Vendor shall be entitled to receive compensation for any payments owed under the contract only for deliverables that have been approved and accepted by DHS. In the event of termination for convenience by DHS, the Vendor shall be entitled to receive compensation for any payments owed under the contract for deliverables that have been approved and accepted by DHS and may be compensated for partially completed services that have value for DHS going forward. In this event, compensation

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for such partially completed services shall be no more than the percentage of completion of the services requested, at the sole discretion of DHS, multiplied by the corresponding payment for completion of such services as set forth in the contract. Alternatively, at the sole discretion of DHS, the Vendor may be compensated for the actual service hours provided. DHS shall be entitled to a refund for services paid for but not received or implemented, such refund to be paid within 30 days written notice to the Vendor requesting the refund.

4.19.3 Termination for Cause

The Department may terminate this Contract after providing the Supplier with 30 calendar days written notice of the Supplier's right to cure a failure of the Supplier to perform under the terms of this Contract.

- i. The Supplier may terminate this Contract after providing the Department with 30 calendar days written notice of the Department's right to cure its failure to perform under the terms of this Contract.
- ii. Upon the termination of this Contract for any reason, or upon contract expiration, each party shall be released from all obligations to the other party arising after the date of the termination or expiration, except for those that by their terms survive such termination or expiration.
- iii. All terms of the contract will survive through the transition / turnover phase.

In the event of termination for cause by the Department, due to Supplier breach, the Supplier shall be entitled to receive compensation for any payments owed under the contract only for deliverables that have been approved and accepted by the Department. In the event of termination for cause by the Supplier, due to Department breach, the Supplier shall be entitled to receive compensation for any payments owed under the contract for deliverables that have been approved and accepted by the Department and may be compensated for partially completed services that have value for the Department going forward. In the event, compensation for such partially completed services shall be no more than the percentage of completion of the services requested, at the sole discretion of the Department, multiplied by the corresponding payment for completion of such services as set forth in the contract. Alternatively, at the sole discretion of the Department, the Supplier may be compensated for the actual service hours provided. The Department shall be entitled to a refund for services paid for but not received or implemented, such refund to be paid within 30 days written notice to the Supplier requesting the refund.

4.19.4 Contract Cancellation

The Department reserves the right to immediately cancel this Contract, in whole or in part, without penalty and without an opportunity for Supplier to cure if the Supplier:

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- i. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- ii. Makes an assignment for the benefit of creditors;
- iii. Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
- iv. Incurs a delinquent Wisconsin tax liability;
- v. Fails to submit a non-discrimination or Affirmative Action Plan as required herein;
- vi. Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law);
- vii. Becomes a State or Federally debarred Vendor;
- viii. Is excluded from Federal contracts;
- ix. Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- x. Fails to maintain the confidentiality of the State's information that is considered to be confidential information, proprietary, or containing Personally Identifiable Information, or otherwise breach the terms of the Business Associate Agreement (Attached);
- xi. If at any time the Vendor's performance threatens the health or safety of a State employee, citizen, or customer.

4.20 Default and Remedy

If the Contractor fails to remedy any delay or other problem in its performance of this Contract after receiving reasonable notice from the Department to do so, the Contractor shall reimburse the Department for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction.

In case of failure to deliver services in accordance with this Contract, the Department, upon written notice to the Contractor, may procure such services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the Department. Prior written notice shall not be required where, in the opinion of the Department, the public health, safety, or welfare is endangered by the act or omission of the Contractor.

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4.21 Debarment

The Primary Contractor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three (3) year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of certification; and
- d. Have not within a three (3) year period preceding this Contract had one (1) or more public transaction (Federal, State, or local) terminated for cause or default.

If the prospective primary Contractor is unable to certify to any of the statements in this certification, such prospective Contractor shall attach an explanation to this response.

5.0 PROPOSAL PROCEDURE AND INSTRUCTIONS

5.1 Calendar of Events

Listed below are dates and times of actions related to this solicitation. The events with specific dates must be completed as indicated unless otherwise amended by the State. In the event that the State finds it necessary to change any of the specific dates and times in the calendar of events listed below, it will do so by issuing an amendment to this solicitation. There may or may not be a formal notification issued for changes in the estimated dates and times.

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| Date | Event |
|--------------------------------------|-------------------------------------------------------------------------------------|
| 1/4/18 | Date of issue of the solicitation - Posted to eSupplier |
| 1/25/18 | 1 st Round Written Questions Due |
| 2/15/18 | 1 st Round Responses to Questions Posted on eSupplier - <i>Estimated</i> |
| 3/8/18 | 2 nd Round Written Questions Due |
| 3/29/18 | 2 nd Round Responses to Questions Posted on eSupplier - <i>Estimated</i> |
| 4/5/18 | Intent to Respond |
| 4/19/2018 at 2:00 PM Central Time | Proposals Due - late submissions will not be accepted |
| 6/14/2018 - <i>Estimated</i> | Notification of Intent to Award - <i>Estimated</i> |
| 4/1/2019 | Contract Start Date - <i>Estimated</i> |

5.2 Intent to Respond

The Vendor should submit a letter via email to the Procurement Manager indicating their intent to submit a response to this solicitation by Intent to Respond Date. See Section 1.6 for contact information.

5.3 Vendor Questions and Clarifications

Vendors are expected to raise any questions, exceptions, or additions they have concerning the RFP document by the Question Due Date specified in section 5.1. Questions must be submitted to the Procurement Manager in writing using the Questions Template provided in Attachment C.

If at any time prior to the due date, a Vendor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the Vendor must immediately notify the Procurement Manager of the issue in writing and request modification or clarification of the RFP document.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, supplements or revisions will be posted on eSupplier (<https://esupplier.wi.gov>).

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5.4 Faxed or Emailed Proposals

Faxed or Emailed proposals will **NOT** be accepted.

5.5 Submitting a Proposal

Materials may be submitted via Common Carrier, US Postal Service, or hand delivered. Please use the appropriate address below depending on your chosen submission method.

| <u>COMMON CARRIER ADDRESS:</u> | <u>USPS ADDRESS:</u> | <u>HAND DELIVERED PROPOSALS:</u> |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Department of Health Services Attn: Susanne Matschull 1 West Wilson Street Madison, WI 53703 | Department of Health Services Attn: Susanne Matschull 1 West Wilson Street PO Box 7850 Madison, WI 53707-7850 | Department of Health Services Main Reception Desk, First Floor Attn: Susanne Matschull 1 West Wilson Street Madison, WI 53703 <u>Directions to the 1 W. Wilson St.</u> building |

All proposals **MUST** be received and time-stamped no later than Submission Due Date and Time. Proposals that are not time-stamped will be considered late and rejected. Receipt of a Proposal by the State mail system does not constitute receipt of a Proposal by DHS.

All materials must be packaged, sealed, and clearly marked with the following information on the outside of the package. Failure to put this information on the outside of the package may delay routing to the correct room and Procurement Manager.

Vendor's name and address

NEMT

S-0663 DMS-18

4/19/18

Procurement Manager Name: Susanne Matschull

For Hand Delivered Proposals, please note that DHS has building security and access to the Purchasing Office is restricted. Allow ample time for security clearance if using this submission method.

5.6 Format of Proposal Response

Vendors must submit their materials in **BOTH** hard copy (paper) and electronic format.

5.6.1 Hard Copies of Proposal

Vendors must submit one original signed Technical Proposal and six copies. Only one original is required for the materials listed in Section 7.0.

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The Proposal should be well organized and each page marked by a page number, the name of the responding Vendor, and the solicitation number (Solicitation S-0663 DMS-17). The response should be typed and submitted on 8.5 x 11 inch paper bound securely. Font size and style throughout the Proposal must be 12-point font or greater with the exception of any applicable diagrams and footnotes.

The State reserves the right to disqualify any proposals that do not follow the required formatting.

5.6.2 Electronic Copies of Proposal

Vendors must submit **two non-password protected CDs**, one containing the entire proposal response **including** any proprietary information, and the other containing the entire proposal response **excluding** the proprietary information reported on the Designation of Confidential and Proprietary Information form DOA - 3027. The CDs must be labeled as follows:

DISC ONE

Proposal Response
Proprietary Information Included ;
Procurement Title
Name of Vendor
Solicitation S-0663 DMS-17

DISC TWO

Proposal Response
Proprietary Information Excluded
Procurement Title
Name of Vendor
Solicitation S-0663 DMS-17

NOTE: Only information that is identified as a proprietary and confidential on form DOA - 3027 will be treated as such by DHS. Vendors may not label or identify their entire submission as confidential. It is the Vendor's responsibility to verify that the information provided on Disc Two omits the proprietary information designated on DOA-3027.

5.6.3 Hard Copy of Cost Proposal

Vendors must submit **one (1) hard copy of the cost proposal** in a separate, sealed envelope labeled with the following information:

COST PROPOSAL

Non-emergency medical transportation
Name of Vendor
Solicitation S-0663 DMS-17

5.6.4 Electronic Copy of Cost Proposal

Vendors must submit **one (1) non-password protected CD**, containing the cost proposal labeled with the following information:

Non-Emergency Medical Transportation Services

COST PROPOSAL

Non-emergency medical transportation

Name of Vendor

Solicitation S-0663 DMS-17

5.7 Response Organization and Content

Vendor's response must contain all required documentation organized and labeled in the sections and order described in Attachment B, the Vendor Checklist. Use tabs to separate sections as shown in Attachment B.

5.8 Cost Proposal

Attachment A contains the Wisconsin -- NEMT Administrative Services Percentage and Administrative Cost Schedule for this solicitation, and must be completed in full and returned at the time of Proposal. Vendors may not alter the Cost Proposal in any manner. **Alternate pricing formats will not be accepted and may result in disqualification of the Proposal.**

Pricing submitted must include all costs to furnish the services included in the Proposal, in accordance with the terms and conditions of this RFP, including labor, travel, and insurance. The following additional costs or fees are not allowed in any Proposal:

- Delivery location fees
- Small Order/Minimum Order fees
- Special Order fees
- Purchasing Card (P-Card) related charges
- Return/Restocking fees

All prices must be quoted in U.S. Dollars.

5.9 Multiple Proposals

Multiple Proposals from a single Vendor will be permissible; however, each Proposal must conform fully to the requirements for response. Each such Proposal must be separately submitted and should be labeled as Proposal #1, Proposal #2, onward, as appropriate for each separate proposal on each page included in the response.

5.10 Incurring Costs

The State of Wisconsin is not liable for any cost incurred by Vendors in replying to this solicitation.

Non-Emergency Medical Transportation Services

5.11 Withdrawal of Proposals

Proposals shall be irrevocable until Contract award unless the Proposal is withdrawn. Vendors may withdraw a response at any time up to the Proposal closing date and time. To accomplish this, the written request must be signed by an authorized representative of the Vendor and submitted to the Procurement Manager. If a previously submitted response is withdrawn before the deadline for Proposal, the Vendor may submit another response at any time up to the Proposal closing date and time.

6.0 SELECTION AND AWARD PROCESS

6.1 Preliminary Review and Acceptance of Proposal

All Proposals will be reviewed by the Procurement Manager to ensure compliance with submittal requirements. DHS shall be the sole judge as to Vendors' compliance with the Proposal instructions.

Proposals that do not comply with Vendor Qualifications or Mandatory Specifications *will be* disqualified. Proposals that do not comply with Contract Terms and Conditions *may* be disqualified. DHS in its sole discretion retains the right to accept or reject any or all Proposals, or accept or reject any part of a Proposal, if deemed to be in the best interest of the State.

6.2 Evaluation Criteria

Proposals will be scored using the following criteria:

| Solicitation Section | Points |
|----------------------|--------|
| Technical Proposal | 1780 |
| Cost Proposal | 592 |
| Total | 2372 |

6.3 NEMT Payment Structure for NEMT Services

The payment structure for Non-Emergency Medical Transportation Services (NEMT) under this request for proposal is a risk-based, prospective capitated payment structure. Capitation payments shall be made monthly based on per-member, per-month (PMPM) rates for populations eligible for NEMT services. The department shall pay the selected Vendor a separate PMPM payment rate for each eligible population group. The specific populations eligible for NEMT services for which the department calculates individual PMPM payment rates include Wisconsin Medicaid recipients who are: (1) children

Non-Emergency Medical Transportation Services

(2)parent and caretaker adults (3)childless adults and (4)elderly, blind or disabled. Monthly payments are calculated by multiplying each population payment rate times the number of eligible members enrolled for each group in a given month. The base rate is the rate developed annually by the Department to cover trip costs (see Section 8.0, Addenda 1.1 and 1.2).

The payment rate for each population includes a direct cost component and an administration component. Note that under this request for proposal, Vendors will submit only administrative rate proposals to be scored as the proposed administrative component of the capitation rate. No proposal is requested for the direct cost component.

The direct cost component reflects the actual costs paid by the selected Vendor for direct transportation service provision. This rate component is calculated according to each population's respective trip utilization and cost per trip and will be re-established annually by the Department in advance of the contract period based on transportation encounter data submitted by the current contract Supplier. Based on this payment structure, the Department does not seek cost proposals for the direct cost component associated with each population's direct transportation cost. Rather, the Department is providing two (2) years of recent direct cost data for Vendors to evaluate direct transportation cost trends for each covered population as well as the current direct cost component paid under the current contract. While the current direct cost rates are subject to change, the detailed data provided in the addendum is intended for Vendors to understand recent trends in order to evaluate the ability to competitively perform and provide services in this current direct cost environment.

Vendors who provide proposals agree to rate setting for direct cost based on the terms described above and understand that, while the detailed data trends provided in the attached addenda, are intended to inform prospective Vendors, evolving data used for future rate setting is subject to change. In the sole determination of the Department that a rate modification may be necessary to maintain stability of NEMT services, special rate setting provisions may be considered during a Contract period.

To establish the administrative rate component, prospective Vendors are asked to provide their proposed administrative payment rate (administrative load) stated as a single percentage of direct cost. This single percentage submitted as the bid will represent the amount by which the PMPM capitated rate is calculated above the Department's established based rates for each of the four (4) populations. Please note that the current administrative load used for the current contract period's rate setting was provided using an admin load representing 25% of the total capitation rate for each population. Vendors are strongly encouraged not to exceed this administrative load level in their proposals. The cost calculation for administrative services must consist of an all-inclusive proposal for all costs associated with this Contract, and all costs to perform the requirements enumerated in the RFP.

In order to complete the financial bid portion of this RFP, Vendors must also complete the Wisconsin - NEMT Administrative Services Percentage and Administrative Cost Schedule in Attachment A, Table 3 in order for the Department to understand the reimbursement levels required for Vendors according to their cost structure. Please note a template is being provided to ensure adequate detail is reported for this

Non-Emergency Medical Transportation Services

purpose. If certain cost categories are not reflected based on a Vendor's unique operation, space is provided for respondents to include additional cost detail. Any allocated costs based on home office or central headquarter expenditures need to include supporting documentation describing the detailed basis of the allocation. This pricing will be informational only, and not part of the bid award. The schedule in Table 3 does not guarantee or represent any level of payment under this Contract.

6.4 Method of Award

6.4.1 Technical Evaluation

The evaluation committee will evaluate submissions accepted through the preliminary review process and score against the established evaluation criteria. Scores will be given in accordance with the points referenced in section 6.2. Award(s) will be made on the basis of the highest point score received by a responsive, responsible Vendor.

State of Wisconsin certified MBE and DVB Vendors may receive up to a 5% preference on their Proposal. See Sections 6.8.1 and 6.8.2 for more information.

The committee may request oral demonstrations or interviews and perform financial stability and/or litigation analysis. DHS reserves the right to request and consider any information, regardless of the source, including but not limited to information identified in the submission or resulting from communication with other entities involved with projects of similar size and scope.

Information requested may include, but is not limited to, project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (e.g., poor quality Deliverables, contract disputes, work stoppages), overall performance, and whether or not the firm or individual would be considered for future engagements.

6.4.2 Cost Calculation

Step 1: The Vendor shall enter the Administrative Services Percentage in Attachment A: Wisconsin – NBMT Administrative Services Percentage and Administrative Cost Schedule, Table 2.

Step 2: DHS will use the following formula to score Vendor cost proposals. Proposal cost is Administrative Services Percentage for each Vendor's cost proposal:

(Lowest proposal cost (constant)/Proposal cost being scored x 592 maximum cost points) rounded to nearest integer = Cost Points Awarded.

6.4.3 Rankings

Non-Emergency Medical Transportation Services

Cost points awarded will be added to the technical points awarded to arrive at each Vendor's total score. Award will be made on the basis of the highest point score by a responsive and responsible Vendor.

State of Wisconsin certified MBE and DVB Vendors may receive up to a 5% preference on their Proposal. See Sections 6.7.1 and 6.7.2 for more information.

6.5 Right to Reject Proposals

DHS reserves the right to reject any and all proposals and may negotiate the terms of the Contract, including the award amount, with the selected Vendor prior to entering into a Contract. If Contract negotiations cannot be concluded successfully with the highest scoring Vendor, DHS may negotiate a Contract with the next highest scoring Vendor.

6.6 Best and Final Offer (BAFO)

After the initial scoring of the proposals, the highest scoring Vendors may receive requests to provide a best and final offer (BAFO). BAFOs can be related to either the cost proposal, technical proposal, or both and will be evaluated against the original criteria by the evaluation committee. The BAFO scores will be used to adjust the points given, and the award will be granted to the highest scoring Vendor.

Vendors should NOT assume that the BAFO process will be used when submitting their initial proposals.

6.7 Vendor References

The proposal response must include a completed Vendor Reference Form (DOA-3478) listing at least four (4) names or companies with whom the Vendor has done business similar in size and scope as required by this RFP within the last five years preceding the issue date of this solicitation. Identify one or more references on the Vendor Reference Form DOA-3478 who can verify your firm meets the requirements of Section 2.0 Vendor Qualifications.

DHS will determine which, if any, references to contact and reserves the right to exclude a Vendor from further consideration at any point during the solicitation process should DHS determine that one or more references are unsatisfactory, inadequate, or inappropriate.

6.8 Supplier Diversity

6.8.1 Minority-Owned Business Enterprise

Minority-owned business enterprises (MBEs) are certified by the Wisconsin Department of Administration. This program can be found at: <http://www.doa.wi.gov/Divisions/Enterprise>

Non-Emergency Medical Transportation Services

~~Operations/Supplier Diversity Program~~, The State of Wisconsin is committed to the promotion of MBEs in the State's purchasing program. Wisconsin statutes provide for a permissive 5% price preference for certified MBEs that compete for State contracts. This means that State agencies may make an award to the MBE submitting the lowest qualified proposal when that qualified proposal is not more than 5% higher than the apparent low proposal. A MBE preference will not be considered on a printing or stationery procurement. Policy provides that MBEs should have the maximum opportunity to participate in the performance of its contracts. The Supplier is strongly urged to use due diligence to further this policy by awarding subcontracts to MBEs or by using such enterprises to provide commodities and services incidental to this agreement.

If applicable, the Vendor shall furnish appropriate quarterly information about its efforts, including the identities of such businesses certified by the Wisconsin Supplier Diversity Program, their contract amount, and spend for each period to the DHS. A listing of certified MBEs, as well as the services and commodities they provide, is available at: <https://wisdp.wis.gov/search.aspx>.

6.8.2 Disabled Veteran-Owned Business

Disabled veteran-owned businesses (DVBs) are certified by the Wisconsin Department of Administration. This program can be found at: <https://www.das.wis.gov/Divisions/Enterprise-Operations/Supplier-Diversity-Program>. The State of Wisconsin is committed to the promotion of DVBs in the State's purchasing program. Wisconsin statutes provide for a permissive 5% price preference for certified DVBs that compete for State contracts. This means that State agencies may make an award to the DVB submitting the lowest qualified proposal when that qualified proposal is not more than 5% higher than the apparent low proposal. (A preference will not be considered on a printing or stationery procurement.) Policy provides that DVBs should have the maximum opportunity to participate in the performance of its contracts. The Vendor is strongly urged to use due diligence to further this policy by awarding Subcontracts to DVBs or by using such enterprises to provide commodities and services incidental to this agreement.

If applicable, the Vendor shall furnish appropriate quarterly information about its efforts, including the identities of such businesses certified by the Supplier Diversity Program and their contract amount. A listing of certified DVBs, as well as the services and commodities they provide, is available at: <https://wisdp.wis.gov/search.aspx>.

6.8.3 Veteran-Owned Business

The State of Wisconsin encourages the participation of veteran-owned businesses (VBs) in the statewide purchasing program by inviting VBs to actively solicit public purchasing business and by reducing undue impediments to such participation. VBs are certified by the Department of Veterans Affairs (DVA). Applicants must complete a Veteran-owned Business Request for

Non-Emergency Medical Transportation Services

Certification form (WDVA 1037). Contact the DVA at: <http://dva.state.wi.us/Pages/home.aspx>. There is no price preference for certified VBs that compete for State contracts.

6.8.4 Woman-Owned Business Enterprise

Woman-owned business enterprises (WBEs) are certified by the Wisconsin Department of Administration. This program can be found at: <http://www.don.wi.gov/Divisions/Enterprise-Operations/Supplier-Diversity-Program>.

State certified WBEs are able to provide both governmental entities and private companies with a credible recognition of the business' ownership. The WBE certification may serve as an additional marketing tool when seeking contract opportunities with entities that place a value on having a diverse supplier base. There is no price preference for certified WBEs that compete for State contracts. A listing of certified WBEs, as well as the services and commodities they provide, is available at: <https://wisdp.wisgov/sch/cb.aspx>.

6.9 Intent to Award Notification

All Vendors who respond to this solicitation will be notified in writing of the Department's intent to award the Contract as a result of this RFP.

6.10 Protest and Appeals Process

The protest and appeals process applies to Requests for Proposals for services that result in a Contract greater than \$50,000. Any protest of this solicitation or intent to award must be made in writing and based on an alleged violation of a Wisconsin State Statute or a provision of the Wisconsin Administrative Code.

6.10.1 Protest

The Notice of Intent to Protest must be filed in writing and received no later than five (5) business days after the Notice of Intent to Award is issued.

The actual Protest must be filed in writing and received within ten (10) business days after the Notice of Intent to Award is issued.

Protest documents must be sent to the DHS Secretary with a copy to the DHS Director of the Bureau of Strategic Sourcing at the following addresses:

Secretary's Office
Wisconsin Department of Health Services
1 West Wilson Street, Room 650
Madison, WI 53703

Copy to:
Director, Bureau of Strategic Sourcing
Wisconsin Department of Health Services
1 West Wilson Street, Room 672
Madison, WI 53703

Non-Emergency Medical Transportation Services

6.10.2 Appeals

The decision of the DHS Secretary may be appealed to the Department of Administration (DOA) within five (5) business days of issuance. Appeals must be made in writing and as specific as possible.

Appeals documents must be sent to the DOA Secretary with a copy to the DHS Director of the Bureau of Strategic Sourcing at the following addresses:

Secretary's Office
Wisconsin Department of Administration
101 East Wilson Street, 10th Floor
P.O. Box 7864
Madison, WI 53703-7864

Copy to:
Director, Bureau of Strategic Sourcing
Wisconsin Department of Health Services
1 West Wilson Street, Room 672
Madison, WI 53703

7.0 REQUIRED FORMS AND ADDITIONAL DOCUMENTATION

The following section contains forms and additional documentation pertaining to this RFP that must be submitted at the time of Proposal.

7.1 Required Forms

Attachment B contains a list of forms that must be submitted as a part of the Proposal response. Links to each form are provided within Attachment B.

7.2 Disclosure Statements

Any Vendor other than a political subdivision of the State must include a written statement with their Proposal that discloses and provides relevant information on any of the following conditions should they exist:

- A. An officer or an employee of the contracting or procuring agency or his or her immediate family owns or controls, directly or indirectly, any equity, or is associated with the Vendor.
- B. The Vendor currently employs, or has offered or agreed to employ, any person who is or has been an officer or employee of the contracting or procuring agency within the 12 month period preceding the solicitation.
- C. The Vendor has a contract for materials, supplies, equipment, or contractual services with the contracting or procuring agency or provides or anticipates providing materials, supplies, equipment, or contractual services during the term of the Contract to, a person or organization that is regulated by, or receives State funds from, the contracting or procuring agency.
- D. Any administrative action or lawsuit, threatened or pending, that involves:

Non-Emergency Medical Transportation Services

- i. A financial matter that could significantly affect the organization's solvency or financial ability to successfully perform under this Contract.
 - ii. A matter that has been or would be brought against the organization as a party to a Contract by another party to that Contract.
 - iii. A licensing or regulatory matter that would affect the organization's credentials or ability to perform under this Contract.
- E. Any past Contract actions brought against the organization for breach of Contract, or any Contracts that were terminated because of the organization's breach or financial instability within the last ten (10) years.

If none of the above conditions exist, the Vendor must include a written statement to that effect.

If the Vendor is a subsidiary, this information must also be submitted for all parent companies. If the Vendor will use Subcontractors, associated companies, or others to complete the work of the project, the Vendor's responses must include pertinent Subcontractor information.

7.3 Financial Statements

Vendors and Subcontractors must be able to substantiate their financial stability. Independently audited financial statements for the last three (3) completed fiscal years, along with additional supporting documentation (Income Statement, Statement of Cash Flows, Balance Sheet, and Statement of Change in Financial Position along with all auditors' notes) must be submitted with the Proposal response. If the Vendor is a subsidiary, the parent company must be identified and the consolidated audited financial statements of the parent company must be submitted. The State may request reports on financial stability from independent financial rating services to substantiate the Vendor's stability. Vendor name is to be included on each page submitted.

If no audit was required, please explain why and submit two (2) years of financial statements.

8.0 ADDENDA

8.1 Addenda

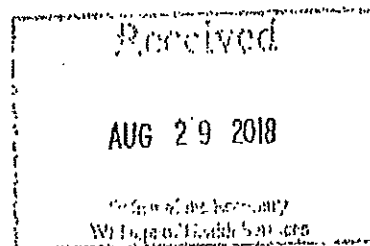
Addenda posted with this RFP (in a separate excel document) are provided for reference only and are an estimate. This level of detail is provided for information purposes only and is there to assist the Vendor in understanding the current projected member populations and to use in preparing the fiscal component of your proposal. Please refer to <https://www.dhs.wisconsin.gov/neml/data.htm> for member enrollment, utilization, reservation, mode of transportation, call center statistics, and quality management information. *Please note: The information provided in the link above is based on reservation data and does not reflect paid encounter data. The data provided in the addenda below reflects only paid encounter data for calendar years 2015 and 2016.

August 29, 2018

**EXHIBIT
B**

VIA HAND DELIVERY

Wisconsin Department of Health Services
Attn: Linda Seemeyer, Secretary
1 West Wilson Street
Madison, WI 53703



Re: Protest of Notice of Intent to Contract
Request for Proposal S-0663 DMS-18
Non-Emergent Medical Transportation (NEMT) Services

Dear Secretary Seemeyer:

This letter, filed on behalf of Medical Transportation Management, Inc. ("MTM") by its counsel Foley & Lardner LLP, serves as MTM's protest, pursuant to Request for Proposal S-0663 DMS-18 (hereinafter "NEMT RFP" attached as Exhibit 1) § 6.10 and Wis. Admin. Code, Adm. § 10.15(1), of the Notice of Intent to Award Contract issued by the Department of Health Services ("DHS") to LogistiCare Solutions, LLC ("LogistiCare") on August 15, 2018.¹

As explained more fully below, DHS's evaluation of the responses to the NEMT RFP was fundamentally flawed in a manner that grossly distorted and biased DHS's decision-making process. Specifically:

- DHS failed to provide a "fair and equal" process for presentations because one-third of the evaluators were absent from MTM's oral presentation, but not the presentations of the other bidders, in violation of Wisconsin procurement law. See Wis. Admin. Code, Adm. § 10.08(4)(b). The result was an evaluation committee process that which inherently biased the final scoring;

¹ This protest is intended to be accurate and complete; however, MTM reserves the right to amend or supplement this response based on additional information or allegations that may be discovered, including information requested via a public records request that still has not been provided to MTM. MTM incorporates by reference all documents produced or to be produced in response to that public records request, regardless of whether they are specifically attached as exhibits. Further, while not attached separately as exhibits, MTM incorporates the full proposals by all four bidders as part of this record.

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- The RFP process also violated state law based on evaluation committee members' bidder contacts;
- The evaluators ignored numerous deficiencies in the other bidders' applications;
- This flawed process resulted in MTM's score being significantly and arbitrarily altered in amounts that changed the outcome of the RFP process; and
- The flawed process resulted in DHS announcing its intent to award the contract to LogistiCare, a company that walked away from an identical contract with Wisconsin in 2014 amid a flurry of complaints about service, and was subsequently the focus of critical U.S. Inspector General reports in New Jersey and Oklahoma which were not addressed in the evaluators' scoring.

BACKGROUND

Non-emergency medical transportation (NEMT) is among the most crucial services Wisconsin provides to its most vulnerable residents. Under § 1902(a)(4) of the Social Security Act, Wisconsin's Medicaid program is required to ensure necessary NEMT to and from Medicaid-covered services. Wisconsin's NEMT program provides critical transportation services for individuals enrolled in Wisconsin Medicaid, BadgerCare Plus, Family Planning Only Services, Tuberculosis-Related Services-Only Benefit, and BadgerCare Plus Express Enrollment for Pregnant Women. *See* RFP § 1.1.

On January 4, 2018, DHS issued RFP No. S-0663 DMS-18 to solicit proposals to provide NEMT. On April 19, 2018, four bidders submitted responses to the RFP: MTM; LogistiCare; Veyo, LLC; and Access2Care, LLC.

DHS's RFP Evaluation Committee consisted of six members: Nick Di Meo, Lauren Pan, Soktheap Pom, Carrie Porter-Diamond, Shawn Thomas, and Brandon Watson. On April 20, 2018, the Committee met to begin their review of the proposals. **Exhibit 2** (Evaluation Committee Report at 4-5.) At that meeting, each member signed the Department of Administration's required Assurance of Compliance with Procedures and Ethical Guidelines for Proposal Evaluation. *Id.* *See also* **Exhibit 3**. In the Assurance, each member attested they would comply with the requirement that: "Only the purchasing lead in charge of the procurement or his/her designee is authorized to have contact with any proposers once the Request for Proposal is issued, during the evaluation process and until the contract is signed unless coordinated by the purchasing lead." *Id.* at 1.

Despite those representations, four of the evaluators (consisting of two-thirds of the entire Evaluation Committee) continued to have significant discussions with MTM about its NEMT work for the State. On April 9, 2018, evaluators Nick Di Meo and Soktheap ("Tip") Pom met with MTM officials at a medical facility to conduct an onsite inspection. *See* **Exhibit 4** (Affidavit of Tim Hopfensperger, ¶ 5.) On April 20, 2018, Shawn Thomas and Tip Pom met with MTM's Wisconsin leadership at a quarterly review meeting. *Id.* ¶ 6. On May 17, 2018, Shawn Thomas, Tip Pom and

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Carrie Porter-Diamond met with MTM at the quarterly Transportation Advisory Committee ("TAC") meeting. *Id.* ¶ 7. Throughout the procurement process, Mr. Pom also continued to have regular communication with MTM (in both weekly onsite meetings at MTM's offices, and through emails) as the program manager for MTM's current NEMT services contract. *Id.* ¶ 8.

In addition, Ms. Porter-Diamond is a consultant to Greater Wisconsin Agency on Aging Resources, Inc. ("GWAAR"), an agency that provides transportation services in the community. *Id.* ¶ 10. In her role as a consultant, Ms. Porter-Diamond previously approached MTM about forming a business relationship with GWAAR, but MTM ultimately rejected the offer. *Id.* ¶ 11. Ms. Porter-Diamond's consulting related contacts continued throughout 2017. *Id.* ¶ 12.

On June 5 and 6, 2018, the evaluators met to determine their initial scoring of each proposal. Ex. 2 at 3. All six evaluators participated in these meetings. *Id.* At the end of the initial scoring, MTM was the leading bidder, scoring 80.34 points higher than LogistiCare and 86.34 points higher than Veyo, who were in second and third place. *See Exhibit 5* at 5. The evaluators then requested that all applicants provide oral presentations regarding the following three topics: 1) the applicant's electronic tracking system; 2) trip reconciliations and encounters; and 3) a demonstration of the applicant's website. Ex. 2 at 3. Those topics correspond with Sections 3.4.2, 3.5.3, and 3.7.5 of the RFP. *See Ex. 1.* They also requested that all applicants provide written responses to a list of clarification questions which were due on June 19th, prior to the oral presentations. Ex. 2 at 3.

The oral presentations took place on June 20 and 27, 2018.² *Id.* at 3, 5. All six evaluators attended the oral presentations of LogistiCare, Veyo, and Access2Care. *Id.* at 5. MTM, however, was treated differently. Carrie Porter-Diamond and Nick Di Meo did not attend MTM's oral presentation, but did attend LogistiCare's presentation which was held the same day, as well as the other two bidders' presentations which were held a week later. *Id.*

The evaluators' scoring of the bidders changed dramatically after the oral presentations. On July 2, 2018, all six evaluators met to reach their final scoring decisions before making requests for best and final offers ("BAFO"). MTM, which had been ahead by 80.34 points, now lost 94.02 points and dropped into third place. *See Exhibit 6* at 6.

At that point, records produced in response to MTM's public records request show DHS's purchasing lead, Susanne Matschull, had already made up her mind about MTM. In an email to Committee members, she wrote: "[T]here is no way that Access2Care and MTM are able to win an award at this point, no matter how much they lowered their cost." *Exhibit 7.* In fact, there were a number of scenarios under which MTM still could have been the prevailing bidder, as is documented in *Exhibit 19.* Yet after the BAFOs were received, the final scoring was: LogistiCare, 1834.91;

² It is also significant that the Procurement Officer was changed on June 5, 2018, naming Sue Handrich-Herr for the remainder of the procurement process. The responses of all bidders were due April 19, 2018, and thereafter, for almost six weeks the Evaluation Committee was meeting with the previous Procurement Officer and not with Ms. Handrich-Herr.

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Veyo, 1793.72; MTM, 1793.15.³ *See* Ex. 6 at 6. MTM's final score was less than one point behind Veyo.⁴ *Id.*

The final scores also did not reflect that LogistiCare and Veyo failed to provide appropriate responses to several portions of the RFP.⁵

LogistiCare

- Section 3.6.2 set forth requirements for key staff to be employed by the bidder and required bidders to submit resumes for all staff already identified. LogistiCare provided no resumes for any of these key staff positions, yet somehow still tied with MTM to have the highest score in this category. *See* LogistiCare's RFP Response at 80; *see also* Ex. 6.
- Section 3.6.1 required bidders to "[d]escribe the proposed Wisconsin Business Office to be used for this contract, including the geographic location (contact details such as address)" and to confirm that the office would meet certain basic requirements. LogistiCare did not provide the required contact details or discuss whether it met the other requirements. *See* LogistiCare's RFP Response at 79. Nevertheless, LogistiCare scored higher in this section than any other bidder. By contrast, MTM received the lowest score of all the bidders despite already having a business office in Wisconsin that meets all of the RFP's requirements.
- Section 3.6.3 required bidders to provide sample scripts to be used at their call centers. LogistiCare failed to provide those scripts. *See* LogistiCare's RFP Response at 98-99.
- Section 3.5.1 required bidders to "include examples of culturally sensitive reading materials produced in . . . Hmong written at a sixth grade reading level." LogistiCare's proposal failed to include those materials, yet received just 1.39 total weighted points less than MTM (who complied with the requirement) in this section. *See* LogistiCare's RFP Response at 71.

³ These scores include each applicant's best and final offer. Access2Care, the lowest scorer, was removed from consideration and not asked to make a best and final offer.

⁴ MTM's references were not shared with the committee until after scoring was completed. *See* Exhibit 16 at 1.

⁵ An appendix addressing additional deficiencies not discussed in this letter is attached. *See* Exhibit 18.

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Veyo

- During the official question and answer portion of the process, the evaluation committee clearly stated that bidders could not have their call center staff working from home. *See Exhibit 8* at 33. Despite that clear direction from the committee, Veyo's proposal repeatedly stated that it would utilize "virtual agents," i.e., call center agents working from home. *See Veyo's RFP Response* at 13, 435. Following Veyo's original RFP submission but prior to their oral presentation, the Evaluation Committee asked Veyo, and only Veyo, for additional information about how Veyo, in using virtual agents, would keep member personal information secure. *See Exhibit 17* at 4-5. Asking this question, when the RFP Q&A clearly stated virtual agents were not permitted, points to the lack of knowledge of the RFP by the evaluators, and further demonstrates the evaluation process was flawed. The use of virtual agents can reduce administrative costs and could have provided the State with savings if offered to all bidders.
- Section 3.3.3 required bidders to provide an Orientation Plan for all contracted transportation providers that includes "at a minimum" information about "the proper use of attendants," "procedures for notifying members when services are denied," and "procedures, sensitivity, and awareness training surrounding trips for dialysis, cancer treatment, and day treatment for children." Veyo's proposed Orientation Plan failed to address these required topics. *See Veyo's RFP Response* at 145.
- Section 3.5.2 required bidders to provide a proposed Partner Communication Plan that addressed all of the requirements of this section. Veyo failed to provide that plan. *See Veyo's RFP Response* at 260.
- Section 3.6.2 required bidders to describe their plan for meeting the RFP staffing requirements, "including requirements regarding key staff diversions and other key staff changes." Veyo failed to provide this essential information.
- Section 3.6.2.4 required bidders to submit three letters of reference for each proposed key staff person who possessed less than two years of experience in the proposed staff position. Veyo failed to provide those letters of reference for their proposed senior manager of quality assurance, proposed reporting manager, and proposed project/implementation manager, despite all three of them having less than two years of experience.

Moreover, LogistiCare and Veyo both have a history of disputes with states regarding NEMT contracts and significant complaints about the quality of service they provide that were not reflected in the scoring by evaluators.



FOLEY & LARDNER LLP

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LogistiCare

From July 1, 2011 to 2013, LogistiCare served as DHS's non-emergency medical transportation (NEMT) provider. During that time, LogistiCare was the subject of articles in the Milwaukee Journal Sentinel about a dramatic increase in complaints against LogistiCare and LogistiCare's failure to respond to Medicaid members' complaints about the quality of LogistiCare's services. (See **Exhibit 9**.) LogistiCare then terminated its contract with the State early, citing a lack of profitability under the contract. (*Id.*) DHS issued a new RFP and MTM eventually stepped in to replace LogistiCare.

LogistiCare has also experienced serious problems in other states. In July 2016, the Office of the Inspector General for the U.S. Department of Health and Human Services found that for New Jersey's NEMT program, "2,538,674 claims totaling \$64,758,476, for which LogistiCare reimbursed transportation providers, did not comply with certain contract provisions and State requirements" and "only 12 of the 100 claims in [a] random sample complied with contract provisions and State requirements." **Exhibit 10** (NJ OIG Rep. at 4.)

In 42% of the New Jersey claims sampled by the Inspector General, "the vehicle used by the transport provider to transport the Medicaid beneficiary did not meet vehicle standards and requirements." *Id.* In 26% of the sampled claims, "driver background check and training requirements were not met." *Id.* In 8% of the claims, LogistiCare did not have automobile liability insurance, general liability insurance, or workers' compensation insurance. *Id.* at 6.

Perhaps most disturbing, for 8% of the claims, "the driver's background check for any criminal history indicated that the driver should have been disqualified from being hired because of a prior criminal conviction." *Id.* at 4-5. The Inspector General concluded that LogistiCare's "noncompliance with certain contract and State requirements for the licensing and qualifications of vehicle safety and transport personnel could have jeopardized the health and safety of Medicaid beneficiaries." *Id.*

One year later, in August 2017, the Inspector General similarly found that for Oklahoma's NEMT program, "LogistiCare reimbursed transportation providers for 128,364 claims that did not comply with certain requirements, and LogistiCare paid \$6,858,131 for improper claims." See **Exhibit 11** (OK OIG Rep. at 4.) In 42% of the claims sampled, "LogistiCare did not comply with State requirements and contract provisions, or both." *Id.*

Veyo

Veyo began providing NEMT services in Connecticut in January of this year. Within one month, the state placed Veyo on a corrective action plan which remains in place today. See **Exhibit 12**. By June, Veyo had already been fined repeatedly by the state for having Medicaid patients wait more than an hour for pick-ups and improperly transporting an immunocompromised patient. See **Exhibit 13**. The volume of complaints against Veyo so soon into its contract with Connecticut led to legislative committee hearings in July. *Id.*

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Veyo was also placed on a corrective action plan in Colorado. *See Exhibit 14.*

Similar to Wisconsin's previous experience with LogistiCare, earlier this year Veyo terminated its contract with Idaho early amid complaints about service and Veyo's underbidding of the contract. *See Exhibit 15.* As a result, MTM has replaced Veyo as the NEMT provider in Idaho.

DISCUSSION

THE RFP PROCESS WAS FUNDAMENTALLY FLAWED AND DHS SHOULD WITHDRAW THE NOTICE OF INTENT TO AWARD CONTRACT TO LOGISTICARE.

The RFP process in Wisconsin is governed both by statute and the Administrative Code. *See, e.g., Wis. Stat. § 16.75(2m); Wis. Stat. § 16.705(2); Adm. 10.08.*

Wisconsin's competitive bidding laws are designed to "prevent fraud, collusion, favoritism and improvidence in the administration of public business, as well as to ensure that the public receives the best work . . . at the most reasonable price practicable." *Aqua-Tech, Inc. v. Como Lake Prot. & Rehab. Dist.*, 71 Wis. 2d 541, 550, 239 N.W.2d 25 (1976). These laws attempt to "ensure that contracts for contractual services are entered into only in the best interests of the state." *PRN Assocs. LLC v. Wis. Dep't of Admin.*, 2009 WI 53, at ¶ 33, 317 Wis. 2d 656, 766 N.W.2d 559.

To protect those important state interests, the Wisconsin Department of Administration has made it clear that the competitive bidding of government contracts must be conducted in a "fair and equal" manner. *See Wis. Admin. Code, Adm. §§ 10.08(4)(e) & (5).* Any agency administering an RFP process must strictly abide by the applicable statutes and code provisions. An agency cannot ignore its own rules and procedures as doing so would violate "the basic concepts of fair administrative procedures." *Waste Mgmt., Inc. v. Wis. Solid Waste Recycling Auth.*, 84 Wis. 2d 462, 477, 267 N.W.2d 659 (1978).

1) THE EVALUATION PROCESS WAS NOT "FAIR AND EQUAL" NOR CONDUCTED WITH THE REQUIREMENTS OF WISCONSIN PROCUREMENT LAW BECAUSE NOT ALL EVALUATORS PARTICIPATED IN THE ORAL PRESENTATIONS, WHICH SERIOUSLY DISTORTED THE SCORING.

Wis. Admin. Code, Adm. § 10.08(5) requires all discussions the evaluation committee has with proposers must be "fair and equal." Wisconsin Admin. Code, Adm. § 10.08(4)(e) also requires that the evaluation committee must "[g]ive all proposers an equal opportunity to make a presentation, if presentations are permitted . . ." Consistent with that requirement, the Department of Administration's State Procurement Manual requires evaluation committee members to "participate in *all* formal, scheduled oral conferences and presentations with proposers that affect the evaluation process." State Procurement Manual § VI.B. (emphasis added); *see also* Wisconsin Admin. Code, Adm. § 10.08(4)(b).

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Here, the evaluation committee did not provide MTM with a fair and equal opportunity with respect to the oral presentation portion of the process. The oral presentations of LogistiCare, Veyo, and Access2Care were all attended by the full panel of evaluators. By contrast, for MTM's presentation, two of the evaluators—one-third of the committee—did not attend. Moreover, although only four evaluators attended MTM's oral presentation, five evaluators reduced MTM's scores after the oral presentation.

There is a requirement of "fair and equal" presentations because oral presentations can be a crucial component of any bid process. Indeed, here the committee's final scoring decisions were made shortly after the presentations. *See* Ex. 2 at 6. This flaw in the committee's decision-making process was plainly material to the outcome of the RFP, because MTM's score subsequently dropped by 94.02 points, the largest swing in scoring for any of the applicants. By contrast, Veyo's score *increased* by 59.09 points, while LogistiCare's score dropped by just 3.92 points, and Access2Care's score dropped by 29.66 points.

The evaluation committee's clear failure to conduct a fair and equal presentation process violates Wis. Admin. Code, Adm. § 10.08(4)(e) & 5, and thus requires DHS to withdraw the Notice of Intent to Award. *See Waste Mgmt.*, 84 Wis. 2d at 477 (a state agency is required to "award its contracts in accordance with the rules and procedures it sets forth).

2) THE RFP PROCESS ALSO VIOLATED STATE LAW BASED ON EVALUATION COMMITTEE MEMBERS' BIDDER CONTACTS.

The committee's failure to provide a fair and equal evaluation of MTM's oral presentation was compounded by committee members' contact with MTM during the RFP process. Because MTM is the State's existing MTM provider, it is especially important that measures be taken to ensure its members are not improperly biased, to MTM's advantage or disadvantage, by their interactions with MTM. Because the other three competitors are not currently providing service in Wisconsin, committee members are more likely to evaluate them neutrally based upon their written submissions and oral presentations. To provide as equal a process as possible, Wisconsin law requires protections to provide incumbents like MTM (and to protect the interests of the State) with an RFP process that is neutral and unbiased. That did not happen here.

The Department of Administration's Assurance of Compliance with Procedures and Ethical Guidelines for Proposal Evaluation is intended to ensure that evaluators adhere to ethical practices that will maximize the likelihood of a fair, unbiased decision-making process. Therefore, the fact that four of the committee's members had extensive contact with MTM outside of the formal RFP proceedings added to the unfair and unequal nature of the process.

For example, Mr. Pom had regular contact with MTM, often multiple times weekly, to discuss operational issues, and would receive and have access to all of the information MTM is required to regularly report to DHS about its provision of services to the State. Hopfensperger Aff. ¶ 8. None of the committee members had access to similar information about the other three bidders. Similarly, Ms. Porter-Diamond's proposed business relationship with MTM runs counter to

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the spirit of the Ethical Guidelines she signed. *See* Guidelines at 2 (requiring attestation of absence of certain financial interests with bidders). Tip Pom's access to all of this additional information about MTM, and the other members' contacts with MTM outside of the RFP process, made it impossible for them to conduct a "fair and equal" evaluation of MTM's proposal.

3) THE SCORING OF LOGISTICARE'S PROPOSAL WAS ARBITRARY AND UNREASONABLE.

An RFP award must be set aside if the scoring of the proposals was arbitrary and unreasonable. "An arbitrary action or decision is one that is either so unreasonable as to be without rational basis, or one that is the result of an unconsidered, willful or irrational choice of a conduct—a decision that has abandoned the sifting and winnowing process so essential to reasoned and reasonable decision making." *Glacier State Distrib. Servs., Inc. v. Wis. Dept. of Transp.*, 221 Wis. 359, 369-70, 585 N.W.2d 652, 656 (Ct. App. 1998).

Here, there were clear errors in the scoring of winning bidder LogistiCare's proposal that show the committee's process was arbitrary and unreasonable. As discussed above, LogistiCare failed to comply with requirements of Section 3.5.1 of the RFP (failure to include materials written in Hmong), yet received just 1.39 total weighted points less than MTM (who complied with the requirement) in this section. LogistiCare failed to provide all of the information required by Section 3.6.1 (failure to identify a Wisconsin business office), yet scored higher than any other bidder, while MTM fully complied with this section's requirements. LogistiCare failed to fully comply with Section 3.6.2 (failure to provide resumes of any key staff members), yet somehow still tied with MTM to have the highest score in this section. Section 3.6.3 required bidders to provide sample scripts to be used at their call centers, yet LogistiCare failed to provide those scripts.

This arbitrary and unreasonable scoring further supports the conclusion that DHS must set aside the Notice of Intent to Award.

4) AWARDED THE CONTRACT TO LOGISTICARE UNDER THESE CIRCUMSTANCES IS NOT IN THE BEST INTERESTS OF THE STATE GIVEN LOGISTICARE'S HISTORY IN WISCONSIN, OKLAHOMA, AND NEW JERSEY.

Finally, the serious concerns about LogistiCare's performance of similar contracts in Wisconsin, Oklahoma, and New Jersey show that DHS should not move forward with the award given the flaws in the committee's evaluation process.

The purpose of Wisconsin statutes and administrative rules governing RFPs are to "ensure that contracts for contractual services are entered into only in the best interests of the state." *PRN Assocs. LLC v. Wis. Dep't of Admin.*, 2009 WI 53, at ¶ 33, 317 Wis. 2d 656, 766 N.W.2d 559. There is a legitimate question about whether awarding this contract to LogistiCare is in the best interests of the state. In its last contract with Wisconsin, LogistiCare significantly underbid the contract and terminated the contract early, resulting in DHS having to issue a new RFP and MTM eventually stepping in to replace LogistiCare. *See supra* at 6. The concerns raised by the U.S. Inspector



FOLEY & LARDNER LLP

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General in its evaluations of Oklahoma's and New Jersey's NEMT programs are even more troubling, identifying widespread failures to comply with contract and state requirements that resulted in millions of dollars of potentially improper claim payments. *See* Exs. 10 & 11. Nor would these concerns be alleviated by awarding the contract to the second-place bidder, Veyo, because it has experienced its own troubling problems in some of the states it has served. *See supra* at 6.

Nothing in the evaluation committee's summary notes or documentation suggests that any of these serious concerns about LogistiCare's and Veyo's performance in other states were addressed in the RFP scoring at all. The failure to consider this information, and to award the bid to LogistiCare under these circumstances, is not in the best interest of the State and should be remedied by the issuance of a new and properly evaluated RFP that protects Wisconsin from the kind of massive improper overpayment that the U.S. Inspector General found under LogistiCare's provision of NEMT services in other states.

CONCLUSION

DHS's decision to issue the Notice of Intent to Award Contract to LogistiCare clearly violated the administrative rules that govern the RFP process and the Department of Administration's Ethical Guidelines that govern the conduct of RFP evaluators. The process was not "fair and equal" and the scoring was arbitrary and unreasonable. For all of the reasons stated herein, MTM respectfully requests that DHS withdraw the Notice of Intent to Award Contract and reissue a new RFP.

Sincerely,

Michael D. Leffel
Jeffrey A. Simmons
Eric J. Hatchell

Enclosures

cc: Director, Bureau of Strategic Sourcing



State of Wisconsin
Department of Health Services

Scott Walker, Governor
Linda Seemeyer, Secretary

EXHIBIT
C

December 7, 2018

Medical Transportation Management, Inc.
c/o Attorney Michael Leffel
Foley & Lardner LLP
150 East Gilman St.
Madison, WI 53701-1497

Attorney Leffel:

This letter is in response to the Protest of Award of non-emergency medical transportation (NEMT) broker services under Request for Proposal (RFP) No. S-0663 DHS-18 you filed on behalf of Medical Transportation Management, Inc. (MTM). The protest is hereby denied for the following reasons.

History of the NEMT broker contract.

Prior to 2012, NEMT in Wisconsin was provided through the counties, with no statewide standards to track rides, monitor access, or report complaints. In an effort to provide better service, and to allow for oversight and tracking of NEMT spending, Wisconsin moved to a statewide NEMT management model in 2012.

LogistiCare was the first vendor selected under the new model. LogistiCare terminated its contract in 2013 amid rising complaints, citing the fact that it was losing money. (Protest, Exhibit 9). MTM took over as the NEMT broker at a cost of several million dollars more per year than LogistiCare was receiving. (Protest, Exhibit 9). MTM soon faced complaints similar to those raised regarding LogistiCare. (DHS Exhibit 001). These complaints spurred state legislators to seek an audit of MTM. (DHS Exhibit 002). In addition, the Department of Health Services (DHS) placed MTM on a performance improvement plan. (DHS Exhibit 003). The Legislative Audit Bureau (LAB), at the request of the Joint Legislative Audit Committee, completed an audit of MTM's performance under the NEMT broker contract and offered several suggestions for improvement. (DHS Exhibit 004).

DHS understands that the NEMT program has undergone some growing pains, and has always taken the complaints raised about NEMT broker services (against both LogistiCare and MTM) seriously. DHS has worked to implement the improvements outlined in the 2015 LAB audit, worked in partnership with stakeholders and vendors to improve the program, and revised the conditions of the contract to provide for more quality controls. This includes changes and

improvements represented in the current RFP that are intended to be implemented in the resultant contract.

The RFP process was not fundamentally flawed.

MTM argues that RFP No. S-0663 DHS-18 was "fundamentally flawed" and requests that DHS withdraw the notice of intent to award the contract to LogistiCare. However, none of MTM's arguments are compelling.

1. The evaluation process was fair and equal.

MTM argues that, because two of the six evaluation committee members were not present at MTM's formal presentation of its services, it was not given a fair and equal opportunity to make its presentation. (Protest, pp. 7-8).

Wis. Admin. Code § Adm 10.08(4)(e) requires a procuring agency to "give all proposers an equal opportunity to make a presentation." In addition, the State Procurement manual indicates that one of the "duties of the evaluation committee is to...participate in all formal, scheduled oral conferences and presentations with proposers." (State Procurement Manual, PRO-C-29, Section VI.B). Contrary to the implication made in MTM's protest, this does not mean that each committee member must be present for every presentation.

Wis. Admin. Code § Adm 10.08(5) provides that "fair and equal discussions may be conducted with all proposers for the purpose of clarification." It does not require that all discussions be identical. DHS strives for 100% participation by each member of the evaluation committee in all committee meetings, interviews, and demonstrations. However, there are occasionally unavoidable situations which prevent members from participating. DHS acknowledges that 2 of the 6 members of the committee were unable to attend MTM's demonstration on June 20, 2018, but were in attendance at the other proposers' demonstrations.

Despite the absence of two members of the committee, MTM was given a fair and equal opportunity to make a presentation. The missing members were provided copies of MTM's presentation materials. (DHS Exhibit 005). They additionally received the information provided in response to the clarification questions which MTM submitted on June 19, 2018. (DHS Exhibit 006). Final scoring decisions were based upon the submitted proposals as well as both the presentation and the clarification questions and answers. All members were present for all scoring meetings and had equal opportunity to discuss all proposals and presentations and to contribute to discussions.

While it is DHS's belief that all of the evaluators had adequate information upon which to base their decisions and that the RFP process was conducted fairly, to address any perceived bias DHS has considered what the final scoring would be if it were to withdraw all scoring by those evaluators who were unable to attend MTM's demonstration. If DHS were to remove those two members from the committee, it would still have four members, sufficient to make an award. The removal of the scores of the committee members who missed MTM's presentation does not

change the outcome of the award. LogistiCare would have been the winner, with Veyo in second place, and MTM in third. (DHS Exhibit 007).

2. Contacts between evaluation committee members who work on the NEMT program and MTM regarding the day-to-day operations of the NEMT program were not improper and had no impact on the procurement.

MTM next argues that contacts between evaluation committee members and MTM in the regular course of NEMT business somehow tainted the RFP process. (Protest, pp. 8-9). This argument is somewhat puzzling. MTM does not indicate that they discussed matters related to the procurement. MTM cites no law or precedent, but baldly asserts that it was somehow biased by such contacts.

Generally speaking, incumbents have a built in advantage in the procurement process; by virtue of doing the work being procured for, they already have knowledge of what exactly that work entails. It is commonplace (and desirable) for evaluation committee members to be staff responsible for overseeing the services being procured, as these staff are best able to evaluate proposals to perform these services. If MTM's argument were accepted, the only solutions would be to either form evaluation committees out of people unfamiliar with the services being procured for, or to prevent committee members from performing their regular duties.

It is clear that evaluation committee members who oversee the services being procured for are allowed to have contact with incumbent vendors to discharge their normal, day to day duties. They would not, however, be allowed to discuss the procurement with any vendor, including the incumbent. This is the purpose of the Assurance of Compliance with Procedures and Ethical Guidelines for Proposal Evaluation Form (Assurance Form) cited by MTM. (Protest, Exhibit 3). The Assurance Form states: "Each evaluation committee member, staff member, subject matter expert and any others associated with the evaluation process are individually responsible for safeguarding proposal and evaluation materials and processes, at all times." The restriction on communications with any potential proposers cited by MTM must be viewed in this context, as preventing communications related specifically to the procurement. The protest cites only situations where members of the evaluation team were involved in management of current operations. In none of the instances cited was the RFP discussed.

3. The subjective scoring of LogistiCare's proposal was not arbitrary and unreasonable.

MTM argues that the scoring of certain sections was "arbitrary and unreasonable." (Protest, p. 9).

Some of MTM's complaints refer to areas where MTM scored higher than LogistiCare. For example, MTM points out that in its proposal LogistiCare failed to provide examples of certain scripts. (Protest, p. 4). The RFP calls for sample scripts among a number of other things to be provided in Vendor Response #21. (Protest, Exhibit 1, p. 46). LogistiCare's response does not

include sample scripts but discusses how such scripts would be created. (DHS Exhibit 010, p. 24). These scripts were not scored separately, but rather the call center responses as a whole were scored. (Protest, Exhibit 6.) LogistiCare scored lower than MTM in the section that included these scripts. MTM does not provide any reasoning as to why LogistiCare's scores in this area should have been even lower than they were or how scoring MTM higher was "arbitrary and unreasonable."

In addition, MTM complains that LogistiCare's score for its response to RFP Section 3.5.1 was too high in comparison to MTM's because LogistiCare did not provide a Hmong translation of culturally sensitive materials. (Protest, p. 4). Section 3.5.1 of the RFP required vendors, in Vendor Response #15, to provide a Member Communication Plan, including among many other things "examples of culturally sensitive materials produced in English, Spanish, and Hmong." (Protest, Exhibit 1, p. 35). LogistiCare submitted its Member Communication Plan. (DHS Exhibit 008). LogistiCare's Member Communication Plan indicates that its materials can be generated in any language desired by DHS. (DHS Exhibit 008, p. 5). However, LogistiCare only provided examples in English and Spanish. (DHS Exhibit 008, pp. 11-16). The sample communications were not scored separately, but rather Section 3.5.1 was scored a whole. (Protest, Exhibit 6). LogistiCare scored lower than MTM for Section 3.5.1. MTM does not provide any reasoning as to why LogistiCare's scores in this area should have been even lower than they were or how scoring MTM higher was "arbitrary and unreasonable."

MTM's other complaints appear to be based in misunderstandings regarding what the RFP was asking for. For example, MTM complains that LogistiCare did not submit an address for a potential office. (Protest, p. 4.) RFP Section 3.6.1 required vendors, in Vendor Response #18, to include a geographic location for a proposed local office, including "contact details such as address." (Protest, Exhibit 1, p. 38.) In response, LogistiCare indicated proposed options for its business office by using photographs to indicate the geographic location, thereby fulfilling the need for details "such as" address. (DHS Exhibit 009).

MTM also complains that LogistiCare did not provide resumes for key staff. (Protest, p. 4). Section 3.6.2 of the RFP required vendors, in Vendor Response #19, to include "either resumes for key staff that are already identified or position descriptions that describe needed qualifications for key staff that are not yet identified." (Protest, Exhibit 1, p. 38). MTM appears to ignore the stated option to provide position descriptions. In response to RFP Section 3.6.2, LogistiCare included position descriptions. (DHS Exhibit 010, pp. 1-18).

The evaluation committee's scoring in these areas was not arbitrary or unreasonable, but rather the proper exercise of each evaluator's subjective judgment. MTM's argument is simply an attack on the subjective scoring. Pursuant to the State Procurement Manual, PRO-I-13(1), the subjective judgment of evaluators is not appealable.

4. LogistiCare is a responsible bidder.

MTM argues, based on LogistiCare's performance in other states and at the onset of the NEMT broker program in Wisconsin that DHS should exercise its discretion and rescind the award to LogistiCare "in the best interests of the State." (Protest, pp. 9-10).

Pursuant to Wis. Admin. Code § Adm 10.08(7), an RFP "award shall be based on the evaluation committee recommendation" unless one of a list of enumerated exceptions is present, none of which MTM argues. (emphasis added). None of these exceptions were present in this procurement.

Essentially, MTM is arguing that LogistiCare is not a responsible vendor. Determination of the lowest responsible bidder implies the exercise of discretion. *Aqua-Tech v. Como Lake Protect. & Rehab. Dist.*, 71 Wis.2d 541, 549, 239 N.W.2d 25 (1976). After reviewing the materials submitted by MTM as well as the entire procurement file, DHS declines to exercise its discretion to rescind the award to LogistiCare.

DHS performed its normal due diligence throughout this procurement, including gathering reference checks. DHS checked with staff in Maine, Michigan, and New Jersey regarding LogistiCare's performance of NEMT broker services in those states, and the references were generally positive. (DHS Exhibit 011).

As discussed above, DHS is aware of the complaints regarding LogistiCare at the outset of the NEMT broker program. Similar complaints regarding MTM prompted an LAB audit. DHS has worked in partnership with stakeholders and vendors to improve the program and revise the conditions of the contract to provide for quality controls. This includes changes and improvements represented in the current RFP that are intended to be implemented in the resultant contract. DHS is confident the new requirements will ensure that Medicare recipients will receive appropriate access to covered services. Any delay in implementing these new safeguards would not be in the best interests of the State.

5. MTM's other miscellaneous complaints had no impact on the procurement.

MTM appears to make two additional arguments which require discussion.

First, MTM argues without any evidence that it is "significant" that Susanne Matschull, the procurement staff person assigned to RFP No. S-0663 DHS-18, resigned from her position and transferred to another agency during the procurement. (Protest, p. 3, footnote 2). Her last day at DHS was July 6, 2018. Susanne was able to spend 3 weeks transitioning the procurement to her supervisor, Sue Handrich-Herr, for completion. This change was unavoidable and would have no more or less impact on MTM than on any other proposer, and MTM provides no argument as to why a routine staff change would have improperly influenced the result of the RFP.

Second, MTM refers to an email in which Susanne Matschull suggested that MTM be excluded from the Best and Final Offers (BAFOs). (Protest, p. 3, Exhibit 7). It appears from the email that Ms. Matschull did not believe MTM would be numerically capable of winning award of the contract via the BAFO process. MTM views this as Ms. Matschull having "made up her mind"

Attorney Leffel
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about MTM; however, MTM provides no basis for its implication of bias. In any event, the email was sent after all final technical scoring had been submitted, so it could not have influenced the committee's scoring. Additionally, her suggestion was disregarded, and MTM was invited to submit a BAFO.

For all of the aforementioned reasons, MTM's protest is denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Seemeyer". The signature is written in dark ink and is positioned above the printed name and title.

Linda Seemeyer
Secretary

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December 14, 2018

**EXHIBIT
D**

RECEIVED

DEC 14 2018

Division of Legal Services
Department of Administration

VIA HAND DELIVERY

Wisconsin Department of Administration
Attn: Ellen Nowak, Secretary
101 W. Wilson Street, 10th Floor
Madison, WI 53707

Re: Appeal of Department of Health Services' Bid Protest Decision
Request for Proposal S-0663 DMS-18
Non-Emergent Medical Transportation (NEMT) Services

Dear Secretary Nowak:

This letter, filed on behalf of Medical Transportation Management, Inc. ("MTM") by its counsel Foley & Lardner LLP, serves as MTM's appeal pursuant to Wis. Admin. Code, Adm. § 10.15(5) of the Department of Health Services' ("DHS") December 7, 2018 decision¹ denying MTM's protest of DHS's August 15, 2018 Notice of Intent to Award Contract regarding Request for Proposal S-0663 DMS-18 (hereinafter the "NEMT RFP").² Copies of MTM's bid protest letter and DHS's decision denying the protest, along with the exhibits thereto, are attached as **Exhibit A** and **Exhibit B**.

As explained more fully below, the process DHS used to evaluate MTM's NEMT RFP response plainly violated the Department of Administration's ("DOA") administrative rules, the requirements of DOA's State Procurement Manual, and DOA's Ethical Guidelines for evaluators of requests for proposal. In her letter denying MTM's protest, the DHS Secretary does not deny these violations occurred. Instead, the Secretary suggests the violations are irrelevant because, in her

¹ Although DHS's letter announcing its decision is dated December 7, 2018, MTM did not receive the letter until five days later on December 12, 2018, when it was hand-delivered to MTM's counsel by courier.

² MTM intends its appeal to be an accurate and complete discussion of the record. However, as of today, DHS has still not responded in full to MTM's written request for all documents relating to the NEMT RFP approval process. MTM reserves the right to supplement the record should those documents be provided. MTM incorporates by reference all documents produced or to be produced in response to that public records request, regardless of whether they are specifically attached as exhibits. Further, while not attached separately as exhibits, MTM incorporates the full proposals by all four bidders as part of this record.

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view, DHS would have reached the same decision regardless. But that is not the law. The Wisconsin Supreme Court has held that “basic concepts of fair administrative procedures” require an agency to “award its contracts in accordance with the rules and procedures it sets forth.” *Waste Mgmt., Inc. v. Wis. Solid Waste Recycling Auth.*, 84 Wis. 2d 462, 477, 267 N.W.2d 659 (1978). The facts clearly show that this legal requirement was not followed in this case.

BACKGROUND

Non-emergency medical transportation (NEMT) is among the most crucial services Wisconsin provides to its most vulnerable residents. Under § 1902(a)(4) of the Social Security Act, Wisconsin’s Medicaid program is required to ensure necessary NEMT to and from Medicaid-covered services. Wisconsin’s NEMT program provides critical transportation services for individuals enrolled in Wisconsin Medicaid, BadgerCare Plus, Family Planning Only Services, Tuberculosis-Related Services-Only Benefit, and BadgerCare Plus Express Enrollment for Pregnant Women. (See RFP § 1.1; a copy of the NEMT RFP is attached as Exhibit 1 to MTM’s bid protest letter (hereafter “Letter”).)

On January 4, 2018, DHS issued RFP No. S-0663 DMS-18 to solicit proposals to provide NEMT. On April 19, 2018, four bidders submitted responses to the RFP: MTM; LogistiCare; Veyo, LLC; and Access2Care, LLC.

DHS’s RFP Evaluation Committee consisted of six members: Nick Di Meo, Lauren Pan, Soktheap (“Tip”) Pom, Carrie Porter-Diamond, Shawn Thomas, and Brandon Watson. On April 20, 2018, the Committee met to begin their review of the proposals. (Letter, Ex. 2, Evaluation Committee Report at 4-5.) At that meeting, each member signed the Department of Administration’s required Assurance of Compliance with Procedures and Ethical Guidelines for Proposal Evaluation (“Ethical Guidelines”). (*Id.*; see also Letter, Ex. 3.) By signing the Ethical Guidelines, each member attested they would comply with the requirement that: “Only the purchasing lead in charge of the procurement or his/her designee is authorized to have contact with any proposers once the Request for Proposal is issued, during the evaluation process and until the contract is signed unless coordinated by the purchasing lead.” (*Id.* at 1.)

Despite those representations, four of the evaluators (consisting of two-thirds of the entire Evaluation Committee) continued to have significant discussions with MTM about its NEMT work for the State. On April 9, 2018, evaluators Nick Di Meo and Tip Pom met with MTM officials at a medical facility to conduct an onsite inspection. (See Protest Letter, Ex. 4, Affidavit of Tim Hopfensperger, ¶ 5.) On April 20, 2018, Shawn Thomas and Tip Pom met with MTM’s Wisconsin leadership at a quarterly review meeting. (*Id.* ¶ 6.) On May 17, 2018, Shawn Thomas, Tip Pom and Carrie Porter-Diamond met with MTM at the quarterly Transportation Advisory Committee (“TAC”) meeting. (*Id.* ¶ 7.) Throughout the procurement process, Mr. Pom also continued to have regular communication with MTM (in both weekly onsite meetings at MTM’s offices, and through emails) as the program manager for MTM’s current NEMT services contract. (*Id.* ¶ 8.)

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In addition, Ms. Porter-Diamond is a consultant to Greater Wisconsin Agency on Aging Resources, Inc. ("GWAAR"), an agency that provides transportation services in the community. (*Id.* ¶ 10.) In her role as a consultant, Ms. Porter-Diamond previously approached MTM about forming a business relationship with GWAAR, but MTM ultimately rejected the offer. (*Id.* ¶ 11.) Ms. Porter-Diamond's consulting related contacts continued throughout 2017. (*Id.* ¶ 12.)

On June 5 and 6, 2018, the evaluators met to determine their initial scoring of each proposal. (Letter, Ex. 2 at 3.) All six evaluators participated in these meetings. (*Id.*) At the end of the initial scoring, MTM was the leading bidder, scoring 80.34 points higher than LogistiCare and 86.34 points higher than Veyo, who were in second and third place. (See Letter, Ex. 5 at 5.)

The evaluators then requested that all applicants provide oral presentations regarding the following three topics: 1) the applicant's electronic tracking system; 2) trip reconciliations and encounters; and 3) a demonstration of the applicant's website. (*Id.*, Ex. 2 at 3.) Those topics correspond with Sections 3.4.2, 3.5.3, and 3.7.5 of the RFP. (See *id.*, Ex. 1.) They also requested that all applicants provide written responses to a list of clarification questions which were due on June 19th, prior to the oral presentations. (*Id.*, Ex. 2 at 3.)

The oral presentations took place on June 20 and 27, 2018. (*Id.*, Ex. 2 at 3, 5.) For the oral presentations, each proposer was required to perform a live demonstration of their electronic tracking system and website. All six evaluators attended the oral presentations of LogistiCare, Veyo, and Access2Care. (*Id.* at 5.) MTM, however, was treated differently. Carrie Porter-Diamond and Nick Di Meo -- one-third of the Evaluation Committee -- did not attend MTM's oral presentation, but did attend LogistiCare's presentation which was held the same day, as well as the other two bidders' presentations which were held a week later. (*Id.*)

The evaluators' scoring of the bidders changed dramatically after the oral presentations. On July 2, 2018, all six evaluators met to reach their final scoring decisions before making requests for best and final offers ("BAFO"). MTM, which had been ahead by 80.34 points, now lost 94.02 points and dropped into third place. (See Letter, Ex. 6 at 6.)

After the oral presentations were completed, five of the evaluators changed their previous scores, despite only four evaluators attending the presentations. Moreover, because the identities of the evaluators were not disclosed on the score sheets, it is possible that the two absentees had a dramatic negative impact on the scoring. (See Letter, Ex. 6.)

At that point, records produced in response to MTM's public records request show DHS's purchasing lead, Susanne Matschull, had already made up her mind about MTM. In an email to Committee members, she wrote: "[T]here is no way that Access2Care and MTM are able to win an award at this point, no matter how much they lowered their cost." (Letter, Ex. 7.) In fact, there were a number of scenarios under which MTM still could have been the prevailing bidder, as is documented in Exhibit 19 to the Letter. Yet after the BAFOs were received, the final scoring was:

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LogistiCare, 1834.91; Veyo, 1793.72; MTM, 1793.15.³ (See Letter, Ex. 6 at 6.) MTM's final score was less than one point behind Veyo.⁴ (*Id.*)

The final scores also did not reflect that LogistiCare and Veyo failed to provide appropriate responses to several portions of the RFP. Some of those deficiencies are described below.⁵

LogistiCare

- Section 3.6.2 set forth requirements for key staff to be employed by the bidder and required bidders to submit resumes for all staff already identified. LogistiCare provided no resumes for any of these key staff positions, yet somehow still tied with MTM to have the highest score in this category. (See LogistiCare's RFP Response at 80; see also Letter, Ex. 6.)
- Section 3.6.1 required bidders to "[d]escribe the proposed Wisconsin Business Office to be used for this contract, including the geographic location (contact details such as address)" and to confirm that the office would meet certain basic requirements. LogistiCare did not provide the required contact details or discuss whether it met the other requirements. (See LogistiCare's RFP Response at 79.) Nevertheless, LogistiCare scored higher in this section than any other bidder. By contrast, MTM received the lowest score of all the bidders despite already having a business office in Wisconsin that meets all of the RFP's requirements.
- Section 3.6.3 required bidders to provide sample scripts to be used at their call centers. LogistiCare failed to provide those scripts. (See LogistiCare's RFP Response at 98-99.)
- Section 3.5.1 required bidders to "include examples of culturally sensitive reading materials produced in . . . Hmong written at a sixth grade reading level." LogistiCare's proposal failed to include those materials, yet received just 1.39 total weighted points less than MTM (who complied with the requirement) in this section. (See LogistiCare's RFP Response at 71.)

³ These scores include each applicant's best and final offer. Access2Care, the lowest scorer, was removed from consideration and not asked to make a best and final offer.

⁴ MTM's references were not shared with the Evaluation Committee until after scoring was completed. (Letter, Ex. 16 at 1.)

⁵ An appendix addressing additional deficiencies is attached as Exhibit 18 to the Letter.

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Veyo

- During the official question and answer portion of the process, the Evaluation Committee clearly stated that bidders could not have their call center staff working from home. (See Letter, Ex. 8 at 33.) Despite that explicit direction from the Committee, Veyo's proposal repeatedly stated that it would utilize "virtual agents," i.e., call center agents working from home. (See Veyo's RFP Response at 13, 435.) Following Veyo's original RFP submission but prior to their oral presentation, the Evaluation Committee asked Veyo, and only Veyo, for additional information about how Veyo, in using virtual agents, would keep member personal information secure. (See, Letter, Ex. 17 at 4-5.) Asking this question, when the RFP Q&A clearly stated virtual agents were not permitted, further demonstrates the evaluation process was flawed. Moreover, Veyo's score after the oral presentations increased by 59.09 points.
- Section 3.3.3 required bidders to provide an Orientation Plan for all contracted transportation providers that includes "at a minimum" information about "the proper use of attendants," "procedures for notifying members when services are denied," and "procedures, sensitivity, and awareness training surrounding trips for dialysis, cancer treatment, and day treatment for children." Veyo's proposed Orientation Plan failed to address these required topics. (See Veyo's RFP Response at 145.)
- Section 3.5.2 required bidders to provide a proposed Partner Communication Plan that addressed all of the requirements of this section. Veyo failed to provide that plan. (See Veyo's RFP Response at 260.)
- Section 3.6.2 required bidders to describe their plan for meeting the RFP staffing requirements, "including requirements regarding key staff diversions and other key staff changes." Veyo failed to provide this essential information.
- Section 3.6.2.4 required bidders to submit three letters of reference for each proposed key staff person who possessed less than two years of experience in the proposed staff position. Veyo failed to provide those letters of reference for their proposed senior manager of quality assurance, proposed reporting manager, and proposed project/implementation manager, despite all three of them having less than two years of experience.

LogistiCare, the company that jumped into the scoring lead after the oral presentations and to whom DHS now proposes to award the contract, has a history of disputes with states regarding its NEMT contracts and significant complaints about the quality of service. From July 1, 2011 to 2013, LogistiCare served as DHS's NEMT provider. During that time, LogistiCare was the subject of articles in the Milwaukee Journal Sentinel about a dramatic increase in complaints against LogistiCare and LogistiCare's failure to respond to Medicaid members' complaints about the quality of LogistiCare's services. (Letter, Ex. 9.) LogistiCare then terminated its contract with the State

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early, citing a lack of profitability under the contract. (*Id.*) DHS issued a new RFP and MTM eventually stepped in to replace LogistiCare.

LogistiCare also experienced serious problems in other states. In July 2016, the Office of the Inspector General for the U.S. Department of Health and Human Services found that for New Jersey's NEMT program, "2,538,674 claims totaling \$64,758,476, for which LogistiCare reimbursed transportation providers, did not comply with certain contract provisions and State requirements" and "only 12 of the 100 claims in [a] random sample complied with contract provisions and State requirements." (Letter, Ex. 10, NJ OIG Rep. at 4.)

In 42% of the New Jersey claims sampled by the Inspector General, "the vehicle used by the transport provider to transport the Medicaid beneficiary did not meet vehicle standards and requirements." (*Id.*) In 26% of the sampled claims, "driver background check and training requirements were not met." (*Id.*) In 8% of the claims, LogistiCare did not have automobile liability insurance, general liability insurance, or workers' compensation insurance. (*Id.* at 6.)

Perhaps most disturbing, for 8% of the claims, "the driver's background check for any criminal history indicated that the driver should have been disqualified from being hired because of a prior criminal conviction." (*Id.* at 4-5.) The Inspector General concluded that LogistiCare's "noncompliance with certain contract and State requirements for the licensing and qualifications of vehicle safety and transport personnel could have jeopardized the health and safety of Medicaid beneficiaries." (*Id.*)

One year later, in August 2017, the Inspector General similarly found that for Oklahoma's NEMT program, "LogistiCare reimbursed transportation providers for 128,364 claims that did not comply with certain requirements, and LogistiCare paid \$6,858,131 for improper claims." (*See* Letter, Ex. 11, OK OIG Rep. at 4.) In 42% of the claims sampled, "LogistiCare did not comply with State requirements and contract provisions, or both." (*Id.*)

Despite this history in other states, in an August 27, 2018 written response to MTM's Open Records Law request, DHS's purchasing agent stated that references were not shared with the Evaluation Committee until "after the final technical scoring was completed" and that there are no written records showing whether references were factored into any of the scoring.

DISCUSSION

DHS FAILED TO FOLLOW GOVERNING ADMINISTRATIVE RULES, ADMINISTRATIVE PROCEDURES, AND ETHICAL REQUIREMENTS.

Wisconsin's competitive bidding laws are designed to prevent "favoritism and improvidence in the administration of public business." *Aqua-Tech, Inc. v. Como Lake Prot. & Rehab. Dist.*, 71 Wis. 2d 541, 550, 239 N.W.2d 25 (1976). Any agency administering an RFP process must strictly abide by the applicable statutes and code provisions. An agency cannot ignore its own rules and

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procedures as doing so would violate "the basic concepts of fair administrative procedures." *Waste Mgmt., Inc. v. Wis. Solid Waste Recycling Auth.*, 84 Wis. 2d 462, 477, 267 N.W.2d 659 (1978).

To guard against abuses in the awarding of state contracts, Wis. Admin. Code, Adm. § 10.08(5) expressly requires all discussions that an evaluation committee has with proposers must be "fair and equal." Similarly, Wisconsin Admin. Code, Adm. § 10.08(4)(e) requires that an evaluation committee must "[g]ive all proposers an *equal* opportunity to make a presentation, if presentations are permitted" (Emphasis added.) Consistent with those legal requirements, DOA's State Procurement Manual requires evaluation committee members to "participate in *all* formal, scheduled oral conferences and presentations with proposers that affect the evaluation process." State Procurement Manual, Evaluation Committee (Request for Proposal) § VI.B. (emphasis added); *see also* Wisconsin Admin. Code, Adm. § 10.08(4)(b).

In addition, to further safeguard the integrity of the decision-making process, DOA requires all evaluation committee members to sign the Ethical Guidelines. That form requires evaluation committee members to certify that they will comply with the following requirement:

Only the purchasing lead in charge of the procurement or his/her designee is authorized to have contact with any proposers once the Request for Proposal is issued, during the evaluation process and until the contract is signed unless coordinated by the purchasing lead.

(Letter, Ex. 3 at 1.)

In this case, the members of DHS's evaluation committee violated all of these requirements.

1. The Evaluation Committee Plainly Violated the Requirement that Its Process Be "Fair and Equal."

There is no question that the crucial oral presentation portion of the Evaluation Committee's process did not comply with DOA's administrative rules and the State Procurement Manual. One-third of the Evaluation Committee failed to attend MTM's oral presentation, yet all of the Committee members attended the presentations made by the other competitors. There is no way such a gross imbalance in the deliberation process can be considered "fair and equal." The subset of the Committee who witnessed MTM's presentation was literally not equal to the full Committee that witnessed those of the competitors.

Moreover, the oral presentations cannot be written off as an insignificant portion of the process. In fact, it was clearly the turning point in the Evaluation Committee's deliberations. Immediately following the oral presentations, MTM went from being in first place and 80.34 points ahead of Logisticare after the initial scoring of the RFP written responses, to being in third place and 39.42 points behind Logisticare.

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In her letter denying MTM's protest, the Secretary rests her argument on untenably strained interpretations of the applicable DOA rules and requirements. She concedes that § 10.08(5) requires the Evaluation Committee's discussions be "fair and equal," but argues the failure of one-third of the Committee to attend MTM's oral presentation met that requirement because "[t]he missing members were provided copies of MTM's presentation materials" and had an "opportunity to discuss" the presentations with other members. (DHS Appeal Letter at 2.) Obviously, the entire purpose of oral presentations is to permit an open discussion with the proposers so they can address questions and explain details of their proposals that might not otherwise come through in written materials. That was especially true in this case, where each proposer was required to perform a live demonstration of its electronic tracking system and website, an interactive experience that is impossible to adequately reproduce in writing. If reviewing copies of written presentation materials were sufficient, then oral presentations would be unnecessary.

The Secretary also concedes that the State Procurement Manual requires the Evaluation Committee to "participate in all formal, scheduled oral conferences and presentations with proposers." However, she claims "this does not mean that each committee member must be present for every presentation." (DHS Appeal Letter at 2.) The Secretary offers no legal support for that argument, because none exists. Nothing in Adm. Code, Adm. 10.08 or the State Procurement Manual remotely suggests it is acceptable for individual committee members to pick-and-choose the portions of the evaluation process in which they will participate. Section 10.08(4) states the duties of the entire evaluation committee. For example, § 10.08(4)(a) states: "An evaluation committee shall . . . [r]eview all proposals submitted in response to an RFP" Under the Secretary's interpretation, it would be acceptable for a portion of committee members to choose not to review the proposals and instead just rely on what other committee members told them.

Taken to its logical extreme, the Secretary's interpretation of the applicable administrative rules and the State Procurement Manual would mean that a single evaluation committee member could perform the review of all of the written RFP responses and listen to all of the oral presentations, and the rest of the committee could just rely on that person to summarize the information. The absurdity of that proposition demonstrates that the Secretary's interpretation of the administrative rules and other requirements would not survive a legal challenge.

2. Two-Thirds of the Committee Members Clearly Violated DOA's Ethical Guidelines.

In her letter, the Secretary does not dispute that DOA's Ethical Guidelines prohibit Evaluation Committee members other than the purchasing lead from having contact with proposers after an RFP has issued. Nor does she dispute that four of the Evaluation Committee members had contact with MTM after the NEMT RFP was issued. Nor does she claim the purchasing lead authorized those contacts. Instead, the Secretary argues that the Ethical Guidelines must be read "in context" and that the Committee members' contacts with MTM outside of the formal RFP deliberations were actually beneficial to the Committee's decision-making. Again, the Secretary provides no legal support for that argument, because none exists.

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The language of the Ethical Guidelines is crystal clear:

Only the purchasing lead in charge of the procurement or his/her designee is authorized to have contact with any proposers once the Request for Proposal is issued, during the evaluation process and until the contract is signed unless coordinated by the purchasing lead.

(Letter, Ex. 3 at 1.) There is no question that four of the Committee members violated the express terms of that requirement – an ethical obligation with which they certified they would comply.

The purpose of that requirement is to ensure the integrity of the RFP process and that all proposers receive the “fair and equal” treatment required by law. For that purpose to be achieved, the requirement must be enforced as written. If individual evaluation committee members are permitted to have contact with individual proposers at their own discretion, it makes “fair and equal” treatment impossible. The Secretary’s view seems to be that violations of the ethical requirement are acceptable if, in hindsight, the Secretary thinks the contact was harmless or beneficial. But if that view were adopted, it would effectively eliminate the requirement. Moreover, it is inherently unfair for committee members to have communications with some proposers, but not others. If individual committee members wish to contact proposers, the Ethical Guidelines require that it must be approved by the purchasing lead, who can ensure that a level playing field is maintained. The Secretary does not claim this approval was obtained here. Thus, those Evaluation Committee members violated the Ethical Guidelines and tainted the process.

3. There is No Evidence That MTM Was Performing Poorly.

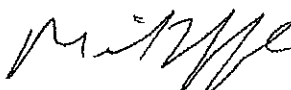
Finally, in her letter, the Secretary suggests that it was appropriate for DHS to reject MTM’s RFP proposal because in May 2015 the Legislative Audit Bureau issued a report critical of the NEMT program. Without debating the details of the LAB report, it is important to note two facts. First, in 2016, DHS extended MTM’s contract for an additional year, strongly indicating that MTM had corrected any deficiencies identified in the report. Second, and more important, none of the Evaluation Committee members ever mentioned the LAB report at any time during their interactions with MTM or in their scoring of MTM’s proposal. This issue is a red herring that is irrelevant to the issue at hand: whether the Evaluation Committee violated the rules and other requirements governing the RFP process. As shown above, there is no question that they did.

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CONCLUSION

For all of the reasons stated herein, MTM respectfully requests that the Department of Administration order DHS to withdraw the Notice of Intent to Award Contract and reissue a new RFP.

Sincerely,



Michael D. Leffel
Jeffrey A. Simmons
Eric J. Hatchell

Enclosures

cc: Director, Bureau of Strategic Sourcing,
Wisconsin Department of Health Services
(by hand-delivery)

AFFIDAVIT OF TIM HOPFENSBERGER

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE).

**EXHIBIT
E**

Tim Hopfensberger, being duly sworn, states as follows;

1. I am the Director of Operations for Medical Transportation Management, Inc. ("MTM"). I make this affidavit based on my personal knowledge and based on review of MTM's corporate records kept in the ordinary course of business.
2. As the Director of Operations for MTM, I oversee MTM's non-emergency medical transportation ("NEMT") services it provides in the state of Wisconsin.
3. The Wisconsin NEMT program provides critical transportation services for individuals enrolled in Wisconsin Medicaid, BadgerCare Plus, Family Planning Only Services, Tuberculosis-Related Services-Only Benefit, and BadgerCare Plus Express Enrollment for Pregnant Women.
4. As part of overseeing the Wisconsin NEMT program, I have contact with individuals from the Wisconsin Department of Health Services, including contact with individuals from the RFP evaluation committee.
5. On April 9, 2018, committee evaluators Nick Di Meo and Soktheap ("Tip") Pom met with MTM officials at a medical facility to conduct an onsite inspection.
6. On April 20, 2018, Shawn Thomas and Tip Pom met with MTM's Wisconsin leadership at a quarterly review meeting.
7. On May 17, 2018, Shawn Thomas, Tip Pom, and Carrie Porter-Diamond met with MTM at the quarterly Transportation Advisory Committee ("TAC") meeting.
8. Throughout the procurement process, Mr. Pom also continued to have regular communication with MTM (in both weekly onsite meetings at MTM's offices, and through

emails) as MTM's current NEMT services contact.

9. Mr. Pom had access to all of the information MTM is required to regularly report to DHS about its provisions of services to the State.

10. In addition, Ms. Porter-Diamond is a consultant to Greater Wisconsin Agency on Aging Resources, Inc. ("GWAAR"), an agency that provides transportation services in the community.

11. In her role as a consultant, Ms. Porter-Diamond previously approached MTM about forming a business relationship with GWAAR, but MTM ultimately rejected the offer.

12. These consulting related contacts continued throughout 2017.

Dated this 29th day of August, 2018



Tim Hopfensperger

