



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION

Department of Administration

DIVISION OF LEGAL SERVICES

One Capitol Hill, 4th Floor

Providence, RI 02908-5890

Tel: (401) 222-8880

Fax: (401) 222-8244

October 31, 2018

SENT VIA REGULAR MAIL AND ELECTRONIC MAIL

[dwollin@hinckleyallen.com]:

David A. Wollin, Esq.
Hinckley Allen
100 Westminster Street, Suite 1500
Providence, Rhode Island 02903

RE: Bid Protest Determination in Response to LogistiCare Solutions, LLC
RFP #7591562 - Transportation Brokerage Services

Dear Mr. Wollin:

The Chief Purchasing Officer for the Rhode Island Division of Purchases has issued a determination in response to your letter received on or about October 11, 2018, on behalf of LogistiCare Solutions, LLC. For your information, the determination is attached.

Sincerely,

Daniel W. Majcher, Esq.

DWM/njr

Enclosure

- c. Patrick Tigue, Medicaid Director
- Nancy McIntyre, Division of Purchases
- David Francis, Division of Purchases




STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

Michael DiBiase, Director
One Capitol Hill
Providence, RI 02908

Office: (401) 222-2280
Fax: (401) 222-6436

TO: Nancy McIntyre
State Purchasing Agent

FROM: Michael DiBiase 
Director/Chief Purchasing Officer

DATE: October 30, 2018

SUBJECT: RFP # 7591562 – Transportation Brokerage Services – Final Determination
for LogistiCare Bid Protest

I. Introduction & Background

On or about October 11, 2018, the Department of Administration (“Department”) received correspondence, hereto attached as **Appendix A**, from Attorney David A. Wollin, Esq., on behalf of LogisitCare Solutions, LLC (“LogistiCare”) alleging a protest of RFP # 7591562 – Transportation Brokerage Services. In accordance with R.I. Gen. Laws § 37-2-53 and 220-RICR-30-00-1.6(F), the procurement/award was temporarily put on hold.

The LogistiCare correspondence did not provide a substantive basis for a protest, but simply complained that records requested under the Rhode Island Access to Public Records Act (“APRA”) were not yet provided.

On behalf of the Department, a timely APRA response was sent to Attorney Wollin on Thursday, October 11, 2018, attached hereto as **Appendix B**, making the procurement file available, along with six (6) redacted proposals received by the Department in response to RFP # 7591562. LogistiCare’s correspondence had stated in part that “LogistiCare reserves the right and expects to submit additional information and briefing in support of this Bid Protest.”

On October 17, 2018, the Department received a memorandum, attached hereto as **Appendix C**, from Patrick Tigue, Medicaid Director, on behalf of the Executive Office of Health and Human Services (“EOHHS”) requesting the Chief Purchasing Officer approve the continuation of “readiness work” related to RFP # 7591562 during the review of the Bid Protest. On or about October 18, 2018, to protect a substantial interest of the State and make certain that there would be no disruption for these critical services, the Chief Purchasing Officer issued a written determination for the continuation of the award, pursuant to R.I. Gen. Laws § 37-2-53, attached hereto as

Appendix D.

In the two (2) calendar weeks after providing access to the procurement file and proposals, the Department has not received any additional information and/or briefing in support of the LogistiCare protest.

R.I. Gen. Laws § 37-2-52(b) provides:

“Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the chief purchasing officer. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after the aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.” (Emphasis added.)

State Procurement Regulation 220-RICR-30-00-1.6(D)(1)(b) echoes the statutory requirement and provides: “In all other cases, protests must be received by the chief purchasing officer not later than fourteen (14) calendar days after the protester knew or should have known, whichever is earlier, the facts giving rise to a protest.”

The purpose of this narrow statute of limitations of two (2) calendar weeks to bring forth a protest is to make certain that important government services continue without disruption from losing bidders. As stated by the Rhode Island Supreme Court in Bradford Associates, et al. v. R.I. Div. of Purchases, 772 A.2d 485, 492 (R.I. 2001), “it is well settled that no person has a legal right to do business with the government” and that simply doing business with the State does not rise to the level of a liberty interest. See id. (citations omitted). Moreover, in accordance with R.I. Gen. Laws § 37-2-51 and decades of case law, the decisions of procurement officials shall not be overturned absent fraud, bad faith or a palpable abuse of discretion. See Gilbane Bldg. Co. v Bd. of Trs. of State Colls., 267 A.2d 396, 399 (R.I. 1970).

II. Determination

As Chief Purchasing Officer, in accordance with R.I. Gen. Laws 37-2-53, I hereby determine as follows:

In the present circumstances, on Thursday, October 11, 2018, the procurement file and redacted proposals were made available to Attorney Wollin. As of even date, based on the Department’s records being made available in accordance with APRA, LogistiCare should have known any facts giving rise to a protest involving the procurement process. LogistiCare did not submit any additional information or provide any further basis for its bid challenge within two (2) calendar weeks. Therefore, LogistiCare is now out of time to further supplement its challenge and its protest, as it presently stands, is denied.

Moreover, based on a review of the well-documented procurement file, it appears that EOHHS and the Division of Purchases conducted a comprehensive procurement with an award to MTM, Inc. Based on the procurement file, there does not appear to be any evidence of fraud, bad faith or a palpable abuse of discretion. Accordingly, EOHHS shall continue with its transition to MTM, Inc. to ensure there is no disruption for this critical service.

cc: Patrick Tigue, Medicaid Director,
David Francis, Division of Purchases
Daniel W. Majcher, Esq., Division of Legal Services

Appendix A



RECEIVED BY
OCT 11 2018
DIVISION OF LEGAL SERV.

100 Westminster Street, Suite 1500
Providence, RI 02903-2319
p: 401-274-2000 f: 401-277-9600
hinckleyallen.com

David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

October 9, 2018

VIA FEDERAL EXPRESS

Chief Purchasing Officer (BID PROTEST)
State of Rhode Island Department of Administration
c/o Office of the Director
One Capitol Hill, 2nd Floor
Providence, RI 02908

Re: Bid Protest Letter ("Bid Protest") pursuant to the Rhode Island Purchasing Act, R.I. Gen. Laws § 37-2-1 et seq. (the "Act")

Dear Chief Purchasing Officer:

This office represents LogistiCare Solutions, LLC, a Rhode Island limited liability company ("LogistiCare"). LogistiCare is the incumbent provider of transportation brokerage services (the "Service") subject to bid by the State of Rhode Island Department of Administration, Division of Purchases (the "Division") in RFP No. 7591562 titled Rhode Island Transportation Brokerage Services (the "RFP").

As you know, the Division selected another bidder for the RFP on September 26, 2018. Pursuant to R.I. Gen. Laws § 37-2-52 and the applicable regulations, LogistiCare protests any award of the contract for this Service to any bidder other than LogistiCare.

On multiple occasions, the undersigned has filed requests under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. (the "APRA") with the Division and the Rhode Island Executive Office of Health and Human Services ("EOHHS") including (1) APRA request to EOHHS dated August 30, 2018 which is attached hereto as **Exhibit A**, (2) APRA request to the Division dated August 31, 2018 which is attached hereto as **Exhibit B**, (3) APRA request to EOHHS dated September 14, 2018 which is attached hereto as **Exhibit C**, and (4) renewed APRA request to the Division dated October 1, 2018 which is attached hereto as **Exhibit D**.

Both the Division and EOHHS (collectively the "State") have failed to produce requested records relating to this matter including, but not limited to, bids or bid responses, analysis or evaluations conducted concerning or as a result of the RFP, minutes and notes reflecting the Division's consideration of the RFP, the procurement file for the RFP, documentation showing compliance or noncompliance with the Act and Rhode Island Procurement Regulations, requests relating to

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Proposed Rulemaking entitled Medicaid and Providers: Transportation Services (Rule Identifier 201-RICR-20-00-2 ERLID #8863, among other requests. The State's withholding of responsive public documents that are within the scope of the APRA has prejudiced the rights of LogistiCare. Due to the slow response from the State to the pending APRA requests and the State's assertion that more time is needed to respond, LogistiCare has filed this Bid Protest with the Division to reserve its rights under the Act.

In light of the foregoing, and in the interest of protecting its rights, LogistiCare files this Bid Protest pursuant to R.I. Gen. Laws § 37-2-52(b). LogistiCare respectfully requests that the Chief Purchasing Agent not execute any contract with any entity until such time as this Bid Protest is resolved. In addition, LogistiCare further requests that the Chief Purchasing Agent direct the Division and EOHHS to immediately produce all documents and information responsive to the pending APRA requests.

In no way or manner shall this Bid Protest or any assertion herein be construed as a waiver by LogistiCare of its rights or remedies under the Act, any other applicable law, or its rights in equity. LogistiCare hereby reserves all of its rights and remedies under applicable law, including, but not limited to, commencing litigation over the RFP award. LogistiCare reserves the right and expects to submit additional information and briefing in support of this Bid Protest.

Very truly yours,


David Wollin

cc: Eric Beane, Secretary, EOHHS

Division of Legal Services (BID PROTEST)
Department of Administration

Exhibit A



100 Westminster Street, Suite 1500
Providence, RI 02903-2319

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David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

VIA FEDERAL EXPRESS

August 30, 2018

Eric J. Beane, Secretary
Executive Office of Health and Human Services
3 West Road
Cranston, RI 02920

Re: Request for Public Records under the Access to Public Records Act

Dear Secretary Beane:

Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., I am requesting the following public records from the Executive Office of Health and Human Services ("EOHSS") regarding RFP No. 7591562 titled Rhode Island Transportation Brokerage Services ("RFP"):

1. All documents reflecting the reason(s) for issuing the RFP as drafted, including but not limited to the program goals and requirements.
2. Any requests for audits, reviews, recommendations, required changes and other related correspondence with any governmental entity (including federal, state or local government) regarding Rhode Island Medicaid Non-Emergency Medical Transportation Program ("NEMT"), the Elderly Transportation Program and Temporary Assistance to Needy Families/RI Works.
3. All documents and communications with the Centers for Medicare and Medicaid Services ("CMS"), a division within the United States Department of Health and Human Services, regarding Rhode Island's compliance or non-compliance with the NEMT including but not limited to compliance with applicable rules, regulations, guidelines and laws.
4. A copy of the RFP and any changes thereto.
5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.
6. Any bids or responses to the RFP.
7. Any analysis or evaluations conducted concerning or as a result of the RFP.

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HINCKLEY, ALLEN & SNYDER LLP, ATTORNEYS AT LAW

Eric J. Beane
August 30, 2018
Page 2

8. Any minutes, notes or other documents reflecting EOHSS's consideration of the RFP.
9. Any negotiations, awards or contracts in connection with or regarding the RFP.
10. The audit trail and bid abstract for the RFP.
11. The procurement file for the RFP.
12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.
13. Any requests for public records regarding the RFP and responses to those requests.

In accordance with R.I. Gen. Laws § 38-2-7, you have ten (10) business days to provide the requested documents or to notify me in writing the specific reasons for denying me access to the requested records. If the exemption you are claiming applies only to a portion of the records that I seek, please delete that portion and provide photocopies of the remainder of the records. R.I. Gen. Laws § 38-2-3(b). I understand that for "good cause," the ten (10) business day time period may be extended for an additional twenty (20) business days, provided that I am notified of the "good cause" in writing within the original ten (10) business days of my request.

I agree to pay a maximum of \$.15 per page for the cost of photocopying and a maximum of \$15.00 per hour for search and retrieval, with the first hour being free.

Thank you for your assistance in this matter.

Very truly yours,



David A. Wollin

58067640 v1

Exhibit B



100 Westminster Street, Suite 1500
Providence, RI 02903-2319

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David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

VIA FACSIMILE (401-574-8387)

August 31, 2018

State of Rhode Island Department of Administration
Division of Purchases
Attn: Record Request
One Capitol Hill, 2nd Floor
Providence, RI 02908

Re: Request for Public Records under the Access to Public Records Act

Dear Sir or Madam:

Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., I am requesting the following public records from the State of Rhode Island Department of Administration, Division of Purchases ("Division"), regarding RFP No. 7591562 titled Rhode Island Transportation Brokerage Services ("RFP"):

1. All documents reflecting the reason(s) for issuing the RFP as drafted, including but not limited to the program goals and requirements.
2. Any requests for audits, audits, reviews, recommendations, required changes and other related correspondence with any governmental entity (including federal, state or local government) regarding Rhode Island Medicaid Non-Emergency Medical Transportation Program ("NEMT"), the Elderly Transportation Program and Temporary Assistance to Needy Families/RI Works.
3. All documents and communications with the Centers for Medicare and Medicaid Services ("CMS"), a division within the United States Department of Health and Human Services, regarding Rhode Island's compliance or non-compliance with the NEMT including but not limited to compliance with applicable rules, regulations, guidelines and laws.
4. A copy of the RFP and any changes thereto.
5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.
6. Any bids or responses to the RFP.
7. Any analysis or evaluations conducted concerning or as a result of the RFP.

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8. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.
9. Any negotiations, awards or contracts in connection with or regarding the RFP.
10. The audit trail and bid abstract for the RFP.
11. The procurement file for the RFP.
12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.
13. Any requests for public records regarding the RFP and responses to those requests.

In accordance with R.I. Gen. Laws § 38-2-7, you have ten (10) business days to provide the requested documents or to notify me in writing the specific reasons for denying me access to the requested records. If the exemption you are claiming applies only to a portion of the records that I seek, please delete that portion and provide photocopies of the remainder of the records. R.I. Gen. Laws § 38-2-3(b). I understand that for "good cause," the ten (10) business day time period may be extended for an additional twenty (20) business days, provided that I am notified of the "good cause" in writing within the original ten (10) business days of my request.

I agree to pay a maximum of \$.15 per page for the cost of photocopying and a maximum of \$15.00 per hour for search and retrieval, with the first hour being free.

Thank you for your assistance in this matter.

Very truly yours,



David A. Wollin

58069611 v1

Exhibit C



100 Westminster Street, Suite 1500
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David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

VIA FEDERAL EXPRESS

September 14, 2018

Eric J. Beane, Secretary
Executive Office of Health and Human Services
3 West Road
Cranston, RI 02920

Re: Request for Public Records under the Access to Public Records Act

Dear Secretary Beane:

Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., I am requesting the following public records from the Executive Office of Health and Human Services ("EOHSS"), Medicaid Policy Unit, regarding Proposed Rulemaking entitled Medicaid Payments and Providers: Transportation Services (Rule Identifier 210-RICR-20-00-2 ERLID# 8863) (collectively "Proposed Rulemaking"):

1. All documents (including emails and texts) reflecting communications between the Medicaid Policy Unit or any person or entity acting on its behalf and Medical Transportation Management, Inc. ("MTM, Inc.") or any person or entity acting on its behalf regarding the Proposed Rulemaking.
2. All documents (including emails and texts) reflecting communications between the Medicaid Policy Unit or any person or entity acting on its behalf and MTM, Inc. or any person or entity acting on its behalf about the public hearing on August 30, 2018 regarding the Proposed Rulemaking.
3. All transcripts, meeting notes and sign-in sheets created by the Medicaid Policy Unit or any person or entity acting on its behalf related to the public hearing on August 30, 2018 regarding the Proposed Rulemaking.
4. All written comments or testimony by MTM, Inc. or any person or entity acting on its behalf about the public hearing on August 30, 2018 regarding the Proposed Rulemaking.

Eric J. Beane
September 14, 2018
Page 2

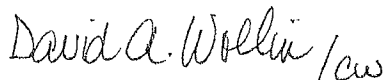
5. All documents and communications (including emails and texts) between Jason Lyon and/or Mario Oliveiri of the Medicaid Policy Unit and Eric Reynolds, an MTM, Inc. employee, contractor or agent.
6. All documents and communication between the Medicaid Policy Unit or any person or entity acting on its behalf (including the Office of Budget) regarding any contract amendments related to the current Medicaid Non-Emergency Medical Transportation Program contract.

In accordance with R.I. Gen. Laws § 38-2-7, you have ten (10) business days to provide the requested documents or to notify me in writing the specific reasons for denying me access to the requested records. If the exemption you are claiming applies only to a portion of the records that I seek, please delete that portion and provide photocopies of the remainder of the records. R.I. Gen. Laws § 38-2-3(b). I understand that for "good cause," the ten (10) business day time period may be extended for an additional twenty (20) business days, provided that I am notified of the "good cause" in writing within the original ten (10) business days of my request.

I agree to pay a maximum of \$.15 per page for the cost of photocopying and a maximum of \$15.00 per hour for search and retrieval, with the first hour being free.

Thank you for your assistance in this matter.

Very truly yours,

Handwritten signature of David A. Wollin in cursive script, with the initials 'cw' at the end.

David A. Wollin

58095999 (74654.178183)

Exhibit D



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David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

VIA FEDERAL EXPRESS

October 1, 2018

State of Rhode Island Department of Administration
Division of Purchases
Attn: APRA Request
One Capitol Hill, 2nd Floor
Providence, RI 02908

Re: Renewed Request for Public Records under the Access to Public Records Act

Dear Ms. Stein:

On August 31, 2018, the undersigned filed a request pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. (the "Act"), to the State of Rhode Island, Division of Purchases (the "Division") which is attached hereto as **Exhibit A** (the "Request"). The Division's reply dated September 17, 2018 is attached hereto as **Exhibit B** (the "Reply").

In the Reply, the Division failed to produce and withheld requested records relating to Paragraphs 5, 6, 7, 8, 9, 11, 12, and 13 of the Request citing the fact that the RFP had not yet been awarded by the Division. The Division awarded the RFP on September 26, 2018.

I hereby renew the Request with respect to the following:

5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.
6. Any bids or responses to the RFP.
7. Any analysis or evaluations conducted concerning or as a result of the RFP.
8. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.
9. Any negotiations, awards or contracts in connection with or regarding the RFP.
11. The procurement file for the RFP.
12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.

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HINCKLEY, ALLEN & SNYDER LLP, ATTORNEYS AT LAW

Donna Stein
October 1, 2018
Page 2

13. Any requests for public records regarding the RFP and responses to those requests.

As the protest period from the date of the bid award is fourteen (14) days, the Division must provide an immediate response to avoid further prejudicing the rights of my client. It is imperative that all responsive documentation is provided immediately and not be withheld in order for my client to understand the vetting process for the RFP so that my client may exercise all of its legal rights, including, but not limited to, protesting the aforementioned RFP bid award.

I look forward to your response and compliance with this renewed Access to Public Records Act Request.

Very truly yours,



David A. Wollin

DAW:cw
Enclosures

cc: Daniel W. Majcher, Esq.

EXHIBIT A



100 Westminster Street, Suite 1500
Providence, RI 02903-2319

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David A. Wollin
dwollin@hinckleyallen.com
Direct Dial: 401-457-5356

VIA FACSIMILE (401-574-8387)

August 31, 2018

State of Rhode Island Department of Administration
Division of Purchases
Attn: Record Request
One Capitol Hill, 2nd Floor
Providence, RI 02908

Re: Request for Public Records under the Access to Public Records Act

Dear Sir or Madam:

Pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq., I am requesting the following public records from the State of Rhode Island Department of Administration, Division of Purchases ("Division"), regarding RFP No. 7591562 titled Rhode Island Transportation Brokerage Services ("RFP"):

1. All documents reflecting the reason(s) for issuing the RFP as drafted, including but not limited to the program goals and requirements.
2. Any requests for audits, audits, reviews, recommendations, required changes and other related correspondence with any governmental entity (including federal, state or local government) regarding Rhode Island Medicaid Non-Emergency Medical Transportation Program ("NEMT"), the Elderly Transportation Program and Temporary Assistance to Needy Families/RI Works.
3. All documents and communications with the Centers for Medicare and Medicaid Services ("CMS"), a division within the United States Department of Health and Human Services, regarding Rhode Island's compliance or non-compliance with the NEMT including but not limited to compliance with applicable rules, regulations, guidelines and laws.
4. A copy of the RFP and any changes thereto.
5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.
6. Any bids or responses to the RFP.
7. Any analysis or evaluations conducted concerning or as a result of the RFP.

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HINCKLEY, ALLEN & SNYDER LLP, ATTORNEYS AT LAW

8. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.
9. Any negotiations, awards or contracts in connection with or regarding the RFP.
10. The audit trail and bid abstract for the RFP.
11. The procurement file for the RFP.
12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.
13. Any requests for public records regarding the RFP and responses to those requests.

In accordance with R.I. Gen. Laws § 38-2-7, you have ten (10) business days to provide the requested documents or to notify me in writing the specific reasons for denying me access to the requested records. If the exemption you are claiming applies only to a portion of the records that I seek, please delete that portion and provide photocopies of the remainder of the records. R.I. Gen. Laws § 38-2-3(b). I understand that for "good cause," the ten (10) business day time period may be extended for an additional twenty (20) business days, provided that I am notified of the "good cause" in writing within the original ten (10) business days of my request.

I agree to pay a maximum of \$.15 per page for the cost of photocopying and a maximum of \$15.00 per hour for search and retrieval, with the first hour being free.

Thank you for your assistance in this matter.

Very truly yours,



David A. Wollin

58069611 v1

EXHIBIT B



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
DIVISION OF LEGAL SERVICES
One Capitol Hill, 4th Floor
Providence, RI 02908-5890

Tel: (401) 222-8880
Fax: (401) 222-8244

September 17, 2018

VIA REGULAR MAIL AND ELECTRONIC MAIL ONLY [dwollin@hinckleyallen.com]:

David A. Wollin
Hinckley Allen
100 Westminster Street, STE 1500
Providence, RI 02903

RE: APRA Request Received on August 31, 2018

Dear Mr. Wollin,

The Rhode Island Department of Administration, Division of Purchases ("Division"), received your request on August 31, 2018 for the below listed records:

1. All documents reflecting the reason(s) for issuing the RFP as drafted, including but not limited to the program goals and requirements.
2. Any requests for audits, audits, reviews, recommendations, required changes and other related correspondence with any governmental entity (including federal, state or local government) regarding Rhode Island Medicaid Non-Emergency Medical Transportation Program ("NEMT"), the Elderly Transportation Program and Temporary Assistance to Needy Families/RI Works.
3. All documents and communications with the Centers for Medicare and Medicaid Services ("CMS"), a division within the United States Department of Health and Human Services, regarding Rhode Island's compliance or non-compliance with the NEMT including but not limited to compliance with applicable rules, regulations, guidelines and laws.
4. A copy of the RFP and any changes thereto.
5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.
6. Any bids or responses to the RFP.
7. Any analysis or evaluations conducted concerning or as a result of the RFP.
8. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.
9. Any negotiations, awards or contracts in connection with or regarding the RFP.
10. The audit trail and bid abstract for the RFP.
11. The procurement file for the RFP.

12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.
13. Any requests for public records regarding the RFP and responses to those requests.

Your request is governed by the Rhode Island Access to Public Records Act ("APRA") contained in R.I. Gen. Laws § 38-2-1 *et seq.* This response is solely on behalf of the Division and not any other agency. My understanding is that you have also submitted a similar request to the Executive Office of Health and Human Services ("EOHHS"). EOHHS will respond separately and independently.

The Division responds as follows:

1. All documents reflecting the reason(s) for issuing the RFP as drafted, including but not limited to the program goals and requirements.

Response: Please see attached Requisition and EOHHS Critical Expense Form submitted to the Division of Purchases which may be responsive to your request.

2. Any requests for audits, audits, reviews, recommendations, required changes and other related correspondence with any governmental entity (including federal, state or local government) regarding Rhode Island Medicaid Non-Emergency Medical Transportation Program ("NEMT"), the Elderly Transportation Program and Temporary Assistance to Needy Families/RI Works.

Response: The Division does not have responsive records to your request for "audits, reviews, recommendations, required changes and other related correspondence" with any external governmental entity (including federal, state or local).

3. All documents and communications with the Centers for Medicare and Medicaid Services ("CMS"), a division within the United States Department of Health and Human Services, regarding Rhode Island's compliance or non-compliance with the NEMT including but not limited to compliance with applicable rules, regulations, guidelines and laws.

Response: The Division does not have responsive records to this part of the request. Any communications, if any, would be between EOHHS, HHS agencies and their federal partners.

4. A copy of the RFP and any changes thereto.

Response: The RFP and Addenda are publicly available on the Division's website at <http://www.purchasing.ri.gov/bidding/BidSearch.aspx> and by entering in the solicitation # and checking the box "Search every solicitation status." The RFP and Addenda can also be accessed directly by using the following links:

<http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7591562.pdf>
<http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7591562A1.pdf>
<http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7591562A2.pdf>
<http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7591562A3.pdf>

5. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.

Response: Communication (emails or correspondence) sent or received in connection with or regarding the RFP that is in the Division's possession, would be contained in the Division's procurement file. Presently, an award has not yet been issued for the current solicitation and the procurement file is in active use. Further, because the award has not yet been issued, any records (including emails or correspondence) in the procurement file related to the evaluation and/or the nature of the proposals are not yet public in accordance with 220-RICR-30-00-6.3(A)(3), and exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(I),(K) and/or (S).

The Division requires more time to review and redact the comprehensive procurement file for any records which are exempt from disclosure at the present time. Additionally, some records contained in the procurement file are exempt from disclosure prior to an award, but then become public after award. Thus, without waiving any exemptions under APRA, the Division invokes the extension in accordance with R.I. Gen. Laws § 38-2-3(e) for up to an additional twenty (20) business days to complete its search, retrieval and review of these records. The Department will respond further to this part of your request. The Department also invites you to resubmit your request for these records again after award because additional records would be considered public at that time.

6. Any bids or responses to the RFP.

Response: Because the award has not yet been issued, the proposals are not yet public in accordance with 220-RICR-30-00-6.3(A)(3), and exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(I),(K) and/or (S). Releasing these records prior to an award may put the State at a competitive disadvantage in the event that further negotiation is required. Proposals will become public upon award, but may be redacted if they contain records otherwise exempt from disclosure under APRA. Please monitor the Division's website for the status to be changed to "Awarded." and resubmit your APRA request for the bids/proposals at that time.

7. Any analysis or evaluations conducted concerning or as a result of the RFP.

Response: The evaluation memo contains information regarding the nature of the proposals and may also contain statements of strategy or negotiation related to this procurement. Because the award has not yet been issued, the evaluation memo is not yet public in accordance with 220-RICR-30-00-6.3(A)(3), and exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(I),(K) and/or (S). Releasing evaluation records prior to an award may put the State at a competitive disadvantage if further negotiation is required. The evaluation memo will become public upon award. Please monitor the Division's website for the status to be changed to "Awarded." and resubmit your APRA request for the evaluation memo at that time.

8. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.

Response: Same as #7 above. Additionally, even after award, preliminary drafts, notes, impressions, memoranda, working papers, and work products may be exempt from disclosure in accordance with R.I. Gen. Laws § 38-2-2(4)(K).

9. Any negotiations, awards or contracts in connection with or regarding the RFP.

Response: No award has been issued by the Division and therefore there is no contract in effect at present. Once an award is issued, a contract will become effective and will become publicly available. Any contract at this point without the issuance of a Purchase Order represents work product, which is exempt from disclosure in accordance with R.I. Gen. Laws § 38-2-2(4)(K). Please monitor the Division's website for a status change to "Awarded" and resubmit your request for "awards or contracts" at that time.

10. The audit trail and bid abstract for the RFP.

Response: The "audit trail" is the "procurement file"; please see Responses #5 and # 11. The Download Listing for bid #7591562 is available on the Division's website and is also attached. Please note that a "bid abstract" is only applicable for competitive sealed bidding simply based on price; this procurement is a request for proposals ("RFPs") involving both technical and cost factors. For RFPs, in accordance with 220-RICR-30-00-6.3(A)(3), only the name of the offeror and the offeror's location is made public, which is included in the Download Listing (attached).

11. The procurement file for the RFP.

Response: Presently, an award has not yet been issued for the current solicitation and the procurement file is in active use. Further, because the award has not yet been issued, any records in the procurement file related to the evaluation and/or the nature of the proposals are not yet public in accordance with 220-RICR-30-00-6.3(A)(3), and are exempt from disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(I),(K) and/or (S).

The Division requires more time to review and redact the comprehensive procurement file for any records which are exempt from disclosure at the present time. Please note that records contained in the Procurement File which are not public before award may become public after award. The Department invites you to resubmit your request at that time. Without waiving any exemptions under APRA, the Division invokes the extension in accordance with R.I. Gen. Laws § 38-2-3(e) for up to an additional twenty (20) business days to complete its search, retrieval and review for these records.

12. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.

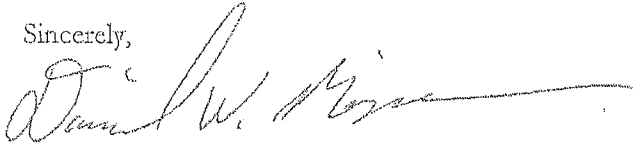
Response: All response records to this request would be contained in the Division's procurement file. Please see response to #11 below.

13. Any requests for public records regarding the RFP and responses to those requests.

Response: See attached APRA request and response. The address contained in the APRA request and response was redacted in accordance with R.I. Gen. Laws § 38-2-2(4)(A) & (B). It is unclear whether this is a personal address and whether disclosure would represent a clearly unwarranted invasion of privacy. Disclosure of the address does not further the interests of open government and has therefore been redacted.

As stated, the Division will further respond to the requests in #5 & #11 above. Otherwise, if you would like to appeal any portion of this response you may do so in accordance with the provisions of R.I. Gen. Laws § 38-2-8 to the Chief Administrative Officer at the Department (Michael DiBiase, Director, Department of Administration, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908), to the Rhode Island Attorney General, or in the Superior Court through judicial action.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Majcher". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel W. Majcher, Esq.

CC: Donna Stein, Division of Purchases

FedEx

Express

earth smart
FedEx carbon-neutral envelope shipping

ORIGIN ID: PVD4 (401) 274-2000
DAVID A. WOLLIN, ESC.
100 WESTMINSTER STREET
SUITE 1300
PROVIDENCE, RI 02903
UNITED STATES US

SHIP DATE: 09OCT18
ACT WT: 0.50 LB
CAD: 21005861NET4040
BILL SENDER

TO CHIEF PURCHASING OFFICER-BID PROTES
RI DEPARTMENT OF ADMINISTRATION
ONE CAPITOL HILL, 2ND FLOOR
C/O OFFICE OF THE DIRECTOR
PROVIDENCE RI 02908
REF: 74654178183
DEPT.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Department of Administration
DIVISION OF PURCHASES
One Capitol Hill
Providence, RI 02908-5855

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Appendix B



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION
Department of Administration
DIVISION OF LEGAL SERVICES
One Capitol Hill, 4th Floor
Providence, RI 02908-5890

Tel: (401) 222-8880
Fax: (401) 222-8244

October 11, 2018

SENT VIA REGULAR MAIL AND ELECTRONIC MAIL (Cover letter only)
[dwollin@hinckleyallen.com]:

David A. Wollin, Esq.
Hinckley Allen
100 Westminster Street, Suite 1500
Providence, Rhode Island 02903

RE: APRA Request Received on August 31, 2018

Dear Mr. Wollin:

The Rhode Island Department of Administration, Division of Purchases (“Division”), received your request on October 3, 2018 for the below listed records:

1. **Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.**
2. **Any bids or responses to the RFP.**
3. **Any analysis or evaluations conducted concerning or as a result of the RFP.**
4. **Any minutes notes or other documents reflecting the Division's consideration of the RFP.**
5. **Any negotiations, awards or contracts in connection with or regarding the RFP.**
6. **The procurement file for the RFP.**
7. **All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.**
8. **Any requests for public records regarding the RFP and responses to those requests.**

Your request is exclusively governed by the Rhode Island Access to Public Records Act (“APRA”) contained in R.I. Gen. Laws § 38-2-1 *et seq.* This response is solely on behalf of the Division and not any other agency. My understanding is that you have also submitted a similar request to the Executive Office of Health and Human Services (“EOHHS”). EOHHS will respond separately and independently.

The Division has identified responsive records which it has placed on two discs with electronic files:

1. Procurement File for RFP 7591562
2. Redacted Proposals for RFP 7591562.

The Department spent seven (7) hours searching, retrieving, scanning and reviewing the requested records. In accordance with R.I. Gen. Laws § 38-2-4(b), the Department may charge up to \$15.00 per hour with the first hour free. Therefore, please make a check payable to the "General Fund" for \$90.00 (\$15 x 6 hours) and send it to my attention. Once the payment is received, please contact my assistant Nancy Russolino at (401)222-8880 or at nancy.russolino@doa.ri.gov to arrange pickup or mailing of the discs.

The Division responds as follows:

- 1. Any emails or correspondence sent or received in connection with or regarding the RFP, including but not limited to emails or correspondence about current or prospective bidders or the current holder of the contract for transportation brokerage services.**

RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division.

- 2. Any bids or responses to the RFP.**

RESPONSE: The redacted proposals are included in a disc marked "Redacted Proposals for RFP 7591562." More specifically, the disc includes the Technical Proposals for:

Access2Care, LLC
One Call
Logisticare
MTM
Transdev
Coordinated Transportation Solutions

The technical proposals were narrowly redacted in accordance with R.I. Gen. Laws § 38-2-2:

(A)(I)(b) Personnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et seq.;

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.

The technical proposals contain resume information, corporate financial information, tax identification numbers and proprietary information which is exempt from disclosure and was redacted accordingly. You may appeal any of the redactions in accordance with the instructions below.

The disc also includes the cost proposals, in their entirety, for:

Logisticare
MTM

The cost proposals for the other offerors were not opened and were not reviewed by the State because the technical proposals submitted by these offerors was not deemed to meet the technical evaluation criteria threshold in order to consider the cost. Therefore, the cost proposals for these other vendors remained sealed with the Division.

3. Any analysis or evaluations conducted concerning or as a result of the RFP.

RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division. Specifically, the procurement file includes:

1. The Transportation Brokerage Services Technical Evaluation Memo
2. The Transportation Brokerage Services Final Recommendation Memo
3. The Transportation Brokerage Services Determination Form

4. Any minutes, notes or other documents reflecting the Division's consideration of the RFP.

RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division.

5. Any negotiations, awards or contracts in connection with or regarding the RFP.

RESPONSE: The contract is available on the Rhode Island Transparency portal at: <http://www.transparency.ri.gov/contracts/> (type in the RFP #) or directly at http://www.transparency.ri.gov/contracts/bids/3590503_7591562.pdf

If you would like a hardcopy of the contract, please submit \$23.55 (157 pages x \$.15 per page) made payable to the "RI General Fund."

6. The audit trail and bid abstract for the RFP.

RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division.

7. The procurement file for the RFP.

RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division.

8. All documents showing compliance or noncompliance with the State Purchasing Act and the Procurement Regulations for the RFP including Section 1.4 of the Regulations.

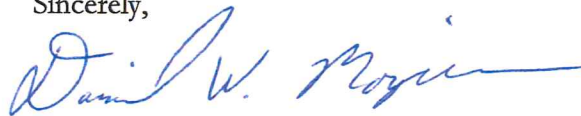
RESPONSE: The attached disc marked "Procurement File for RFP 7591562" contains the responsive records to this part of your request in the possession and control of the Division.

9. Any requests for public records regarding the RFP and responses to those requests.

RESPONSE: In response to a previous request on or about September 17, 2018, the Department already provided you with responsive records to this part of your request. There were no additional APRA requests as of the date of your request. If you wish to receive a copy of your own request, please let me know.

If you would like to appeal any portion of this response you may do so in accordance with the provisions of R.I. Gen. Laws § 38-2-8 to the Chief Administrative Officer at the Department (Michael DiBiase, Director, Department of Administration, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908), to the Rhode Island Attorney General, or in the Superior Court through judicial action.

Sincerely,

A handwritten signature in blue ink that reads "Daniel W. Majcher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel W. Majcher, Esq.

DWM/njr


c. Donna Stein, Division of Purchases

Appendix C



3 West Road | Virks Building | Cranston, RI 02920

TO: Michael DiBiase
Director of Administration/Chief Purchasing Officer

FROM: Patrick Tigue, Medicaid Director 

DATE: October 17, 2018

SUBJECT: RFP# 7591562, Rhode Island Transportation Brokerage Services, EOHHS

Request for Authorization to Proceed with Contract and Transportation Readiness During the Review of the Bid Protest

The Executive Office of Health & Human Services (“EOHHS”) requests that the Chief Purchasing Officer approve continuation of readiness work related to RFP # 7591562 during the review of the Bid Protest.

As grounds therefore, EOHHS states that it is in the best interest of the State and EOHHS to allow MTM, Inc. (“MTM”) to continue to complete logistical and strategic planning for transition of essential Transportation Brokerage Services from the current provider so that there is no disruption of services when the current contract expires on December 31, 2018. As further grounds therefore, EOHHS states as follows:

The vendor chosen, MTM, Inc., was not the incumbent (Logisticare). As such, EOHHS must undertake a significant amount of readiness and transition work to onboard MTM.

For a successful transition of vendors on January 1, 2019, MTM needs to be configured in the States’ MMIS system so that it can identify our members, authorize services, submit claims, and coordinate the essential contract transition activities with the current vendor, Logisticare. There can be no interruption of services between the expiration of the Logisticare contract and commencement of the MTM contract. Thus, MTM must successfully and seamlessly transition 311,000 members and approximately 130,000 trips per month in the Medicaid program alone from Logisticare to MTM. Most of these trips are for critical services such as dialysis, substance use treatment, wound care, pre- and post-surgical visits, etc. Please be advised that the first production enrollment files will be shared on December 9, 2018.

In addition, EOHHS must continue to engage in the following readiness activities:

- Work with MTM and EOHHS' fiscal intermediary, DXC Technology, on system implementation so that MTM can accept and submit the various necessary files from and to EOHHS.
 - Estimated hours for this work is 2,500–3,000 hours.
- Work with Logisticare and MTM to coordinate the transition of currently authorized transport services.
- Allow MTM to move forward with the acquisition of a Rhode Island location for their call center.
- Allow MTM to hire and train staff.
- Allow MTM to begin contractual negotiations with the approximately 70 transportation providers that are currently contracted with Logisticare.
- Allow MTM to coordinate with RIPTA for bus pass purchases and distribution.

EOHHS is seeking consideration in this matter, in order to protect a substantial interest of the State and its beneficiaries to begin the work involved in such a major transition as soon as possible to ensure the most successful outcome. Any delays in readiness or transition planning, will jeopardize the start date of the contract.

Thank you for your consideration in this matter.

Appendix D



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

Michael DiBiase, Director
One Capitol Hill
Providence, RI 02908

Office: (401) 222-2280
Fax: (401) 222-6436

TO: Nancy McIntyre
State Purchasing Agent

FROM: Michael DiBiase *Michael DiBiase*
Director/Chief Purchasing Officer

DATE: October 18, 2018

SUBJECT: RFP # 7591562 – Transportation Brokerage Services -- Determination for Continuation of the Award during the Pendency of the LogistiCare Bid Protest

I. Introduction

On or about October 11, 2018, the Department of Administration (“Department”) received correspondence, hereto attached as **Appendix A**, from Attorney David A. Wollin, Esq., on behalf of LogisitCare Solutions, LLC (“LogistiCare”) alleging a protest of RFP # 7591562 – Transportation Brokerage Services. In accordance with R.I. Gen. Laws § 37-2-53 and 220-RICR-30-00-1.6(F), the procurement/award was put on hold.

The LogistiCare correspondence did not provide a substantive basis for a protest, but simply complained that records requested under the Rhode Island Access to Public Records Act (“APRA”) were not yet provided.

On behalf of the Department, a timely APRA response was sent to Attorney Wollin on Thursday, October 11, 2018, attached hereto as **Appendix B**, making the entire procurement file available, along with six (6) redacted proposals received by the Department in response to RFP # 7591562. LogistiCare’s correspondence stated in part that “LogistiCare reserves the right and expects to submit additional information and briefing in support of this Bid Protest.”

On October 17, 2018, the Department received a memorandum, attached hereto as **Appendix C**, from Patrick Tighe, Medicaid Director, on behalf of the Executive Office of Health and Human Services (“EOHHS”) requesting the Chief Purchasing Officer approve the continuation of “readiness work” related to RFP # 7591562 during the review of the Bid Protest. In support of the request, Mr. Tighe provides in pertinent part as follows:

The vendor chosen, MTM, Inc., was not the incumbent (LogistiCare). As such, EOHHS must undertake a significant amount of readiness and transition work to onboard MTM.

For a successful transition of vendors on January 1, 2019, MTM needs to be configured in the States’ MMIS system so that it can identify our members, authorize services, submit claims, and coordinate the essential contract transition activities with the current vendor, LogistiCare. There can be no interruption of services between the expiration of the

LogistiCare contract and commencement of the MTM contract. Thus, MTM must successfully and seamlessly transition 311,000 members and approximately 130,000 trips per month in the Medicaid program alone from LogistiCare to MTM. Most of these trips are for critical services such as dialysis, substance use treatment, wound care, pre- and post-surgical visits, etc. Please be advised that the first production enrollment files will be shared on December 9, 2018.

EOHHS concludes that that any delays in readiness or transition planning will jeopardize the start date of the contract and proceeding is necessary to protect a substantial interest of the State.

II. Determination

As Chief Purchasing Officer, in accordance with R.I. Gen. Laws 37-2-53, I hereby determine as follows:

- The contract is set to become effective on January 1, 2019.
- Disruption of this contract would jeopardize an important service to thousands of vulnerable citizens of the State who are relying on transportation to critical services such as dialysis, substance use treatment, wound care, pre- and post-surgical visits;
- Significant readiness work and planning is necessary to prevent any disruption to a contract that involves 130,000 trips per month;
- LogistiCare has received its requested records from the Department in accordance with APRA and may supplement its Bid Protest within two (2) calendar weeks from October 11, 2018;
- LogistiCare has at this time stated no basis for a bid protest; and
- Even if supplemented, in accordance with R.I. Gen. Laws 37-2-51 and decades of case law, the decisions of procurement officials shall not be overturned absent fraud, bad faith or a palpable abuse of discretion. See Gilbane Bldg. Co. v Bd. of Trs. of State Colls., 267 A.2d 396, 399 (R.I. 1970); thus, LogistiCare faces a significant burden to protest the award of this contract.

The continuation of the procurement/award is necessary to protect a substantial interest of the State. The Division of Purchases and EOHHS shall proceed with contract readiness activities and transition planning to prevent any disruption. In the event that LogistiCare timely supplements its alleged bid protest, the Division of Purchases and EOHHS may continue to proceed with the procurement/award activities unless and until a further determination by the Chief Purchasing Officer is issued to the contrary.

cc: Patrick Tigue, Medicaid Director,
David Francis, Division of Purchases
Daniel W. Majcher, Esq., Division of Legal Services