

IN THE MATTER OF BID
SOLICITATION #23DPP00796,
PIONEER CREDIT RECOVERY
INC. PROTEST OF NOTICE OF
INTENT TO AWARD, T1426 –
ADMINISTRATION OF
DEFICIENT AND DELINQUENT
TAX ACCOUNTS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3293-24

CIVIL ACTION

ON APPEAL FROM:

DEPARTMENT OF THE TREASURY,
DIVISION OF PURCHASE AND
PROPERTY

**BRIEF OF APPELLANT PIONEER CREDIT
RECOVERY INC. IN SUPPORT OF APPEAL**

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INTRODUCTION

This appeal challenges the New Jersey Department of the Treasury, Division of Purchase and Property’s (the “Division”) final agency decision awarding a public contract on behalf of the Division of Taxation (“Taxation”) for the administration, resolution, and collection of deficient and delinquent tax accounts (the “Contract”), to Coast Professional Inc. (“Coast”). Appellant Pioneer Credit Recovery Inc. (“Pioneer”), the incumbent contractor, contends that the award was improper due to Coast’s numerous material and non-waivable deviations from the bid specifications. Pioneer further asserts that the Division failed to properly evaluate its proposal in accordance with the specifications, resulting in a decision that undermines the integrity of the procurement process and disadvantages New Jersey taxpayers.

For over three decades, New Jersey courts have consistently held that a materially non-compliant bid cannot be salvaged by general assurances of compliance. A bidder’s broad statements of intent to adhere to specifications do not cure substantive defects, nor do they override contradictory terms within the proposal. Yet, the Division’s award to Coast rests on precisely this flawed rationale—accepting Coast’s general affirmations of compliance while disregarding clear material deviations.

Equally troubling is the Division's position that Coast's draft implementation plan need not conform to the specifications because it is "merely a draft." This argument defies both logic and law. The draft plan is a required component of the bid, intended to demonstrate the bidder's ability to perform the Contract. If the plan itself fails to comply, it cannot serve its intended purpose, and the bidder's proposal must be deemed non-responsive.

Finally, the Division failed to follow its own rules regarding the evaluation of Pioneer's proposed additional term, which was expressly provided for in the specifications. Rather than accept, reject, or negotiate Pioneer's proposed additional term, as it was obligated to do under the specifications, the Division ignored it entirely, creating no record of consideration and depriving the State of a potentially advantageous contractual benefit.

For these reasons, and the reasons set forth herein, the Division's final agency decision must be reversed, and award of the Contract to Coast vacated.

STATEMENT OF FACTS & PROCEDURAL HISTORY¹

On or about August 9, 2023, the Division issued Bid Solicitation #23DPP00796 for T1426 – Administration of Deficient and Delinquent Tax Accounts (the “Bid Solicitation”) on behalf of Taxation seeking a vendor to provide “administration, resolution and collection of deficient and delinquent taxes.” Pa56. The specifications to the Bid Solicitation (the “Specifications”), state:

The Division of Taxation is tasked with the responsibility of administering and collecting most State taxes.

Although most individual and business taxpayers voluntarily comply with their filing and payment tax obligations, a percentage of taxpayers may not fully or timely file and pay. Despite multiple billing and outreach notices, collection and enforcement programs operated by Taxation, some accounts do not resolve due to a consequence of purposeful evasion strategies employed by some taxpayers, the unawareness of taxpayers that tax obligations have been incurred, or changed financial circumstances requiring payment arrangements.

[*Id.*]

The Division issued five amendments to the Bid Solicitation between October 2023 and February 2024. Pa138. Bid Amendment #1 extended the quote

¹ The Statement of Facts and Procedural History are inextricably intertwined, and are presented together here for the convenience of the Court and the parties.

Pa = Appendix of Appellant Pioneer Credit Recovery, Inc.

submission due date and provided a list of vendors that attended the Pre-Quote Conference on August 24, 2023. *Id.* Bid Amendments #2 through #4 further extended the quote submission due date. *Id.* Bid Amendment #5 made several revisions to the Bid Solicitation, including its attachments, and provided answers to bidder-submitted questions. *Id.*; *see also* Pa111-35.

Although eight (8) vendors attended the Pre-Quote Conference, the Division only received two (2) quotes in response to the Bid Solicitation—one from the incumbent, Pioneer, and the other from Coast. Pa1-2. The quotes were: (a) publicly opened on February 21, 2024; (b) reviewed for compliance with mandatory requirements of the Bid Solicitation; and (c) submitted to the Evaluation Committee for evaluation and scoring based upon their technical aspects (i.e., excluding pricing). *Id.* The Evaluation Committee determined, in accordance with N.J.A.C. 17:12-2.7(f), that the Competitive Range was an average technical score of 700 (“Very Good”) and higher. Pa139. Pioneer received 810 and Coast received 798. *Id.* As a result, the Evaluation Committee found both quotes within the Competitive Range, and eligible to be evaluated based upon price. *Id.*

In accordance with Section 8.12 of the specifications, the Division requested a Best and Final Offer (“BAFO”) from Pioneer and Coast. *Id.* Both provided BAFO Responses, which were used in conducting the final pricing

evaluation. *Id.*² The cost proposals were divided into two components: (1) the contractor’s percentage fee to be applied to fee eligible revenue; and (2) the labor cost for the contractor to perform the contract. Pa142-43. Of approximately \$2.7 million in projected labor costs, only \$49,001.17 separated the two proposals. *Id.* For the fee calculation, the Evaluation Committee calculated that Coast’s collection rate averaged 9.97% over five years, while Pioneer’s averaged 11%. *Id.* According to the Evaluation Committee, the differential between the two fee proposals equates to only \$2.5 million. *Id.*

In a Recommendation Report, dated August 23, 2024, the Evaluation Committee recommended award of the Contract to Coast as having the proposal most advantageous to the State, price and other factors considered. Pa140-41. The Division agreed, and on September 6, 2024, issued a Notice of Intent to Award the Contract to Coast. Pa144. On September 20, 2024, Pioneer submitted a timely protest of the award. Pa21-50. Pioneer argued, *inter alia*, that (a)

² Chad Wilson, Pioneer’s then-President and Program Manager, was the signatory for its BAFO. Pa148. Mr. Wilson was materially involved in all aspects of Pioneer’s efforts over the past several years—from preparing its proposal and negotiating Pioneer’s contract extensions, to filing a protest of the Division’s Decision and preparing to file the within appeal. Pa296. On May 1, 2025, he provided Pioneer with his notice of resignation, with his last day scheduled to be May 30, 2025. Pa295. When asked about the reasons for resignation, Mr. Wilson provided a variety of personal justifications. Pa296. He specifically advised Pioneer, however, that he had no new employment lined up. *Id.* On or about June 2, 2025, Coast announced Mr. Wilson as its new Chief Operating Officer (“COO”). *Id.*

Coast's quote contains numerous material deviations and should have been rejected as non-conforming; and (b) the Division failed to properly consider the proposed additional term submitted by Pioneer, which was expressly permitted under the Bid Solicitation, involving a \$125 million revenue guarantee. *Id.*

On May 23, 2025, the Division issued a final agency decision denying Pioneer's protest and affirming the award to Coast (the "Decision"). Pa1-20.³ Upon review of the Decision, Pioneer learned for the first time that the Division had "solicited a response to the protest from Coast" several months earlier. Pa5. Based on this statement, counsel for Pioneer submitted an Open Public Records Act ("OPRA") request seeking "all written correspondence between [Coast] and [the Division] between September 30, 2024 and the present, including but not limited to, any response solicited by [the Division] from Coast concerning the protest filed by [Pioneer]." Pa297-98. Over the objections of Pioneer, Treasury's Government Records Access Unit ("Records Unit") extended its response deadline under OPRA by an additional twenty (20) business days to July 8, 2025. Pa299-303.

³ Pioneer agreed to a six-month extension of the current Contract from July 1, 2025 through December 31, 2025. Pa294. The Contract awarded to Coast has an effective date of July 1, 2026. Pa391.

On June 23, 2025, Treasury's Records Unit produced certain records responsive to the OPRA request. Pa304. Notably absent from that production was any response to the protest submitted by Coast. Pa305-06. On June 24, 2025, counsel for Pioneer wrote to the Records Unit, requesting that it "confirm whether, on or after September 30, 2024: (a) the Division solicited a response to the protest from Coast; (b) the Division furnished Coast with a copy of Pioneer's protest; or (c) Coast submitted a response to the protest, whether solicited by the Division or not." *Id.*

On June 26, 2025, Pioneer received an email from the Division: "We have been advised that you were not copied on correspondence from counsel with respect to its prior response in T1426. Please find the document attached." Pa307. Pioneer did not receive a response from the Records Unit regarding this omission, nor has it ever received any explanation as to why this document was not produced as part of the production in response to its OPRA request.

On June 19, 2025, Pioneer filed a notice of appeal of the Decision, and on June 26, 2025, it submitted a request to the Division that it stay implementation of the Contract pending appeal. Pa351-69; 409-12. On July 1, 2025, Coast submitted opposition to Pioneer's request. Pa370-74. On August 1, 2025, the Division denied Pioneer's request. Pa388-408. On August 4, 2025, Pioneer filed a motion with the Appellate Division to stay implementation of the Contract

pending appeal, and for acceleration of the appeal.⁴ On August 14, 2025, the Division and Coast each filed opposition to the motion.⁵ On August 21, 2025, the Court entered an order denying the motion to stay, but granting the motion for acceleration of the appeal.

LEGAL ARGUMENT

I. Coast’s Proposal Contains Numerous Material Deviations, and Should Have Been Rejected as Non-Responsive [Pa5-15]

New Jersey’s public bidding framework serves “to guard against favoritism, improvidence, extravagance and corruption,” “to secure for the public the benefits of unfettered competition,” and “to promote the honesty and integrity of those bidding and of the system itself.” *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175*, 279 N.J. Super. 566, 589-95 (App. Div. 1995) (citations omitted). Consequently, bid specifications “must apply equally to all prospective bidders; [an] individual bidder cannot decide to follow or to ignore these conditions.” *Hall Constr. Co. v. N.J. Sports & Exposition Auth.*, 295 N.J. Super. 629, 635 (App. Div. 1996). Likewise, an agency cannot “waive any material departure from bid specifications or requirements of law, and is bound to reject a non-conforming

⁴ See Trans. ID. E1713172-08042025 (M-006845-24).

⁵ See Trans. ID. E1715449-08142025 (Division); E1715464-08142025 (Coast).

bid with such defects.” *Ernest Bock & Sons-Dobco Pennsauken Joint Venture v. Twp. of Pennsauken*, 477 N.J. Super. 254, 265 (App. Div. 2023) (quoting *Serenity Contracting Grp., Inc. v. Borough of Fort Lee*, 306 N.J. Super. 151, 156 (App. Div. 1997)).

In *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307 (1994), the Supreme Court articulated a two-prong test for determining whether a particular bid deviation is material, and thus, incapable of waiver: (1) “whether the effect of a waiver would be to deprive the [governmental entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements”; and (2) “whether it is of such a nature that its waiver would adversely affect competitive bidding by [potentially] placing a bidder in a position of advantage over other bidders [or potential bidders] or by otherwise undermining the necessary common standard of competition.” *Id.* at 315.

Notably, the presence of other viable bids is not dispositive. In other words, the concept “no harm, no foul” is inapplicable under *Meadowbrook*. See, e.g., *On-Line Games*, 279 N.J. Super. at 601-02. Additionally, and critically, a material deviation cannot be cured **after** the bids have already been opened, even by good faith of the parties. *Twp. of River Vale v. Longo Constr. Co.*, 127 N.J. Super. 207, 222 (Law Div. 1974). “If the non-compliance is substantial and thus

non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” *On-Line Games*, 279 N.J. Super. at 595 (citing *River Vale*, 127 N.J. Super. at 222). “Strict compliance is required,” and “any material departure” from the bid specifications renders the bid nonconforming and invalid. *Meadowbrook*, 138 N.J. at 314.

As the following chart demonstrates, and as will be discussed in greater detail, *infra*, Coast’s proposal contains numerous material and non-waivable deviations under *Meadowbrook*, and should have been rejected as non-conforming.

Material Deviation	Reference		
	Coast’s Proposal	Pioneer’s Protest	Final Agency Decision
Coast’s proposal includes prohibited remote access and data export to third-party systems.	Pa252; 264-66; 279; 281; 290	Pa27-35	Pa7-11
Coast intends to have its caseworkers discuss federal tax liabilities with taxpayers and research taxpayer credit history in violation of the specifications and law.	Pa203	Pa35-36	Pa11-13
Coast plans to use prohibited means of communication with taxpayers.	Pa260; 277-78	Pa37-39	Pa13-14
Coast plans to use a lockbox to process check payments contrary to the required process.	Pa265	Pa39-40	Pa14
Coast attaches impermissible conditions to the required provision of twelve (12) parking spaces for state employees.	Pa174-75	Pa 40-41	Pa14-15

Before addressing each these material deviations, however, we must first confront the two main overarching arguments raised by the Division and Coast in opposition. First, they rely heavily on the repeated, conclusory assertions in Coast's proposal that it "has read, understands, and agrees to comply," suggesting that this somehow negates the impact of contradictory statements elsewhere in the proposal. *See, e.g.*, Pa7-14; Pa397-405. Second, they argue that any material deviations identified in the draft Implementation Plan found in Coast's proposal are inconsequential because the document is merely a "draft" that can be corrected after the Contract is awarded. *See, e.g.*, Pa308-16; 373; 398-99. The thrust of both arguments focuses less on rebutting the materiality of each deviation identified in Coast's proposal, and more on the reasons why these deviations should be disregarded or ignored. Each argument is without merit and must be rejected.

A. Broad offers to comply cannot correct or redeem material deviations. [Pa5-15]

In response to each of the material deviations identified in Coast's proposal, the Division and Coast both point to statements that "Coast has read, understands, and agrees to comply." Pa7-12; 372; 397-403. The Division argues that these statements constitute "unconditional affirmations of compliance," which supersede and render meaningless any contradictory and material non-

waivable deviations in Coast’s proposal. Pa396; *see* Pa160; 166; 167; 169; 202; 234. The argument is without merit. In fact, it is the very same argument the Division proffered in *In re Request for Proposals #17DPP00144*, 454 N.J. Super. 527 (App. Div. 2018) (“*Pharmacy Benefit*”). The Court rejected it then, and should reject it again here.

In *Pharmacy Benefit*, a protestor challenged the awardee’s reservation of the right to modify its proposal as a material exception to the specifications. *Id.* at 561. The Director of the Division disagreed, finding that “he could simply dismiss [the] express reservation as meaningless, thereby obviating any analysis under [*Meadowbrook*].” *Id.* at 561-62. The Court reversed, holding that the Director “is never free to accept a bid containing a material deviation. . . . Nor is he free to sidestep a bid conformity analysis by simply declaring the alleged nonconformity to be of no effect under the terms of the RFP.” *Id.* at 562 (citations omitted).

The Court reached a similar conclusion in *On-Line Games*, 279 N.J. Super. at 566. There, the evaluation committee found that one bidder’s proposal failed to satisfy the RFP’s requirement for a customer display unit “clearly visible from fifteen feet.” *Id.* at 597-98. The bidder maintained “that its general promise to meet all RFP and terminal requirements created [an] ambiguity which justified [post-opening] clarification.” *Id.* at 599. The Court firmly rejected this argument

reasoning that this view, if accepted, “would render meaningless the requirement of bid conformity,” “pave the way for a two-line proposal including only a promise and a price,” and “render any bid, no matter how superficial, subject to post-opening ‘clarification,’ thus laying the groundwork for the shenanigans which the bidding statutes were enacted to avoid.” *Id.*

The RFP in *On-Line Games* also required that a bidder’s proposal “include an implementation plan with the details of the installation and testing of the hardware and software components.” *Id.* at 604. One bidder “omitted elements of the fundamental plan under which it intended to operate” from its proposal. *Id.* Instead, the bidder stated that it “acknowledges its understanding and compliance with the . . . installation and testing requirements,” and relied upon “industry practice, generalities in its proposal, and deductive reasoning to fill in the interstices in its bid.” *Id.* (internal quotes omitted).

The agency rejected the bid as materially non-responsive, and the Court agreed, finding that the bidder’s conduct epitomized “the evil which the prohibition against waiver of material conditions was meant to address.” *Id.* at 605. Specifically, the bidder failed to satisfy its duty “to convince the Treasurer that it understands the needs of the [contract] and has the expertise and a fully conceived methodology to implement the [contract].” *Id.* Indeed, “[e]ven with [the bidder’s] representation that it would live up to the . . . implementation and

testing requirements, without more detail the Treasurer could never know exactly what the State would be getting from [the bidder] and thus could not be assured that the contract will be entered into, performed and guaranteed according to its specified requirements.” *Id* (citing *Meadowbrook*, 138 N.J. at 315; *River Vale*, 127 N.J. at 216) (internal quotes omitted).

Here, the Division ignores these well-settled principles articulated by the Courts, and instead, relies upon conclusory assertions that “Coast has read, understands, and agrees to comply” to justify its disregard for the contradictory and material non-waivable deviations found elsewhere in Coast’s proposal, and otherwise sidestep an appropriate analysis under *Meadowbrook*. As discussed, the Division cannot accept a promise and a price in lieu of actual bid conformity without nullifying the entire procurement process.

In the end, this Court should not “speculate” as to why Coast outlined conduct in its proposal that materially deviates from the specifications “if all it meant to say was that it agreed with the specifications exactly as written.” *Pharmacy Benefit*, 454 N.J. Super. at 566. As was the case in *Pharmacy Benefit*, “it is impossible to ignore that adding [the additional, non-conforming] language gave [Coast] ‘the option, after all bids were opened, to decline the contract. . . .’” *Id*. Coast’s conclusory assertions of compliance cannot reasonably be characterized as “unconditional” when elsewhere in the very same proposal,

Coast expressly contradicts those assertions. At best, these statements serve as a conditional acceptance that Coast has read and understands the specifications, and agrees to comply *unless* stated otherwise in its proposal. This is a material non-waivable deviation under *Meadowbrook*.

B. A “draft” plan that contains material deviations cannot be corrected after the opening of proposals, even by a “final” plan submitted by the bidder in good faith. [Pa308-18]

Next, the Division and Coast argue that any material deviations found in the draft Implementation Plan within Coast’s proposal are inconsequential because the “draft Implementation Plan was just that—a draft, subject to finalization by the winning applicant only after receiving an award and collaborating with the State Contract Manager.” Pa310; 399; 405. Coast does not believe it is bound by the terms of the Implementation Plan submitted with its proposal because it is “merely a draft subject to revision.” Pa308-10; 372-73. The argument is wholly without merit. Where, as here, a plan, schedule, or outline constitutes a mandatory and material requirement of a bid, it must be treated as such. New Jersey’s public bidding framework is uncompromising, and whether a “draft” or not, *Meadowbrook*’s materiality test applies.

Like any public contract solicitation, Pioneer and Coast submitted proposals to the Division under specific rules and conditions. One of those rules—arguably the most fundamental—is that any organization which submits

a proposal is bound by the promises and commitments contained therein. *See, e.g., State v. Ernst & Young, L.L.P.*, 386 N.J. Super. 600, 612 (App. Div. 2006); *Conduit & Found. Corp. v. Atl. City*, 2 N.J. Super. 433, 438-39 (Ch. Div. 1949); *Cataldo Construction Co. v. County of Essex*, 110 N.J. Super. 414, 416 (Ch. Div. 1970). This simple yet fundamental principle is central to this State’s procurement jurisprudence. Bedrock bidding concepts, including bid conformity, non-waiver of material bid deviations and the common standard of competition, are turned upside down if a bid, or a portion thereof, can be construed as something other than a binding option to the public entity to contract merely because it is a “draft.”

For example, in *In re RFP 16-X-24049, Protest of Notice of Intent to Award Bid Solicitation Title: Enhanced Motor Vehicle Inspection/Maintenance System* (January 2, 2018), a protestor argued that the awardee’s failure to submit a draft plan with its proposal, as required, was a material deviation that rendered the awardee’s proposal non-responsive. Pa381. The Division agreed, recognizing that a proposed plan—even in draft form—must still satisfy the material requirements of the request for proposal “to provide the State with an assurance the bidder had a preliminary plan to satisfy the requirements, if a contract was entered.” *Id.* If the Division were to “waive the requirement,” however, “the State would be deprived of any assurance that the bidder would

perform the contract guaranteed according to the requirements of the RFP.” Pa386. In addition, permitting such a deviation would place the awardee “in a position of advantage over other bidders who, in submitting their proposals, expended time and resources to review the RFP requirements and develop an appropriate draft . . . that could be evaluated.” *Id.*

Here, the draft Implementation Plan submitted by Coast was, in effect, the equivalent of Coast submitting no Implementation Plan at all, given the numerous material and non-waivable deviations therein. *See, e.g., On-Line Games*, 279 N.J. Super. at 595 (citing *River Vale*, 127 N.J. Super. at 216). Among other things, Coast’s draft Implementation Plan fails to provide Taxation with any guarantee, upon which it can reasonably rely, that the Contract will be performed consistent with the requirements of the Bid Solicitation. The Division cannot know whether Coast will comply with the terms of the specifications after award, when Coast proposed in its implementation plan to do differently. This is the hallmark of a material deviation. Will Taxation have an enforceable contract on the terms it specified after award or will Coast be able to walk away if Taxation attempts to enforce those terms? *See, e.g., Muirfield Const. Co. v. Essex Cnty. Improvement Auth.*, 336 N.J. Super. 126, 137 (App. Div. 2000) (“If [the bidder] had chosen for any reason not to proceed with the process after the bids were opened, it need not have forwarded any additional information about

the asserted stock transaction, and thus, had the apparent option of simply abandoning its bid.”).

Coast also erroneously relies upon *In re Bid Solicitation #20DPP00471, Parsons Env’t and Infrastructure Group, Inc. Protest of Notice of Intent to Award T1628 Enhanced Motor Vehicle Inspection Maintenance System* (May 20, 2022) for the proposition that “a draft plan is subject to revision following award and, as merely a draft, it may deviate from what is ultimately implemented by the winning bidder.” Pa310. That decision says nothing of the sort. Unlike Pioneer’s argument here, that Coast’s draft Implementation Plan contains terms *inconsistent* with the requirements of the Bid Solicitation, the protestor in that dispute was arguing only that the plans submitted by the awardee lacked the requisite *level of detail*. *Id.* Coast is mistaken that it could ignore the Specifications in its draft Implementation Plan, and correct or amend any material deviations deemed unacceptable by the Division after the award was made.

The Division drew a clear distinction, recognizing that “the level of detail required in the draft plan was not identical to that required [in the plan] to be submitted . . . after award.” Pa348. “Rather, the Bidder was required to submit information to demonstrate . . . that [it] understood the scope of work required for a successful implementation of the system, its operations and maintenance

and support.” *Id.* Here, Coast’s draft Implementation Plan was inconsistent with the very specific requirements of this Contract, regardless of the level of detail provided.

C. Coast’s proposal includes prohibited remote access and data export to third-party systems. [Pa7-11]

This Contract is the largest state-level tax collection contract in the Country. Pa294. It calls for intensive training, rigorous file management, stringent personnel management, and continuous oversight by State personnel. *Id.* In particular, the Contract involves very specific requirements as to how taxpayer data is stored and maintained, and when and how the contractor may access that data. *Id.*

Among other things, all taxpayer data must be meticulously organized and securely maintained either: (a) on the State’s TAXNET system, an assortment of tax administration systems developed by the State in the mid-1980s and only accessible by the contractor while on-site; or (b) within physical case files also maintained on-site, which are subject to specific data retention and document destruction policies, and review by state personnel at all times. Pa70-73; 80; 127; 129. The transfer or handling of *any* taxpayer data outside the manner prescribed is strictly prohibited. Consequently, the Contract mandates that “100% of the Contractor’s staff works onsite daily,” performing all tax

resolution and collection activities at a dedicated, highly secure facility using mandated State-specific systems, processes, and controls. Pa127; 294. Employees “are not permitted to work remotely.” *Id.*

The Specifications provide no room for deviation from these requirements, which stand in contrast to the traditional third-party collection model. Under that model, collection agencies operate out of their own facilities and use their own systems to facilitate various automated and manual processes to execute collection functions on behalf of their clients, including importing the client’s collection accounts to the agency’s systems, batch skip tracing (i.e., transferring the customer’s file to multiple data services providers to obtain updated demographic information), communicating directly with customers in the agency’s own name, processing payments, and enabling distributed access to agency systems across various sites with frequent remote access. Pa23; 358.

Given the very specific requirements of this Contract, Coast’s proposed use of remote access, data export to third-party systems, and other practices commonly associated with the traditional third-party collection model, is plainly a material non-waivable deviation under *Meadowbrook*. Coast unilaterally reserved for itself the ability to engage in alternative practices non-compliant with the highly secure program and processes already in place, and in doing so, not only improperly arrogated to itself an advantage shared by no other vendor,

but also deprived Taxation of any guarantee that the Contract will be performed according to its specified requirements.

Remote Access

Coast's implementation plan makes multiple, specific references to remote access:

128	4.13 Remote Access (6.14)	3 days	Fri 3/8/24	Tue 3/12/24	
129	4.13.1 Establishing Centralized Management Of The Contractor's Remote Access Infrastructure	1 day	Fri 3/8/24	Fri 3/8/24	127 CIO, Director of OPS, ISO, Security Analyst, Security Network Engineer
130	4.13.2 Implementing Technical Security Controls	1 day	Mon 3/11/24	Mon 3/11/24	129 Security Analyst, Security Network Engineer
131	4.13.3 Training Users In Regard To Information Security Risks And Best Practices Related Remote	1 day	Tue 3/12/24	Tue 3/12/24	130 Director of OPS, Training Specialist

[Pa252.]

367	13.3 User Acceptance Testing	28 days	Mon 7/1/24	Wed 8/7/24	275 Coast Team, NJTAX Team
368	13.3.1 Environment Creation And Data Load	5 days	Fri 3/1/24	Thu 3/7/24	295 Director of OPS

369	13.3.1.1 NJTAX Test Region	5 days	Mon 7/1/24	Fri 7/5/24	Director of OPS
370	13.3.1.1.1 File Development & Data Creation	5 days	Tue 7/2/24	Mon 7/8/24	Director of OPS
371	13.3.1.1.2 Data File Load, Validation, Reconciliatio	5 days	Fri 3/1/24	Thu 3/7/24	Director of OPS
372	13.3.1.1.2.1 Multiple Data Files	5 days	Tue 7/9/24	Mon 7/15/24	370 Director of OPS
373	13.3.1.1.2.2 Test Data – Number Of Account	5 days	Tue 7/16/24	Mon 7/22/24	372 Director of OPS
374	13.3.1.1.3 File Load, Validation, Reconciliation	5 days	Tue 7/16/24	Mon 7/22/24	Director of OPS
375	13.3.1.1.3.1 Multiple Image Files	5 days	Tue 7/23/24	Mon 7/29/24	373 Director of OPS
376	13.3.1.1.3.2 Test Data	5 days	Tue 7/30/24	Mon 8/5/24	Director of OPS
377	13.3.1.2 Other System Testing	15 days	Tue 8/6/24	Mon 8/26/24	Director of OPS
378	13.3.1.2.1 Lockbox	15 days	Tue 8/6/24	Mon 8/26/24	Director of OPS
379	13.3.1.3 GL Accounting Test Region	28 days	Mon 9/2/24	Wed 10/9/24	Director of OPS
380	13.3.1.3.1 Account Migration/Conversion Tran	14 days	Mon 9/2/24	Thu 9/19/24	Director of OPS
381	13.3.1.3.2 Migration Reconciliations	14 days	Fri 9/20/24	Wed 10/9/24	380 Director of OPS
382	13.3.2 User Acceptance Scripting	6 days	Thu 10/10/24	Thu 10/17/24	Director of OPS
383	13.3.2.1 NJTAX Navigation & Screens	2 days	Thu 10/10/24	Fri 10/11/24	Director of OPS
384	13.3.2.1.1 Migration/Conversion	2 days	Thu 10/10/24	Fri 10/11/24	Director of OPS
385	13.3.2.1.2 Contact Center	2 days	Mon 10/14/24	Tue 10/15/24	384 Director of OPS
386	13.3.2.1.3 Loan Servicing/Back-office	2 days	Wed 10/16/24	Thu 10/17/24	385 Director of OPS
387	13.4 User Acceptance Execution	90 days	Fri 10/18/24	Thu 2/20/25	Director of OPS
388	13.4.1 Contact Center	7 days	Fri 10/18/24	Mon 10/28/24	Director of OPS
389	13.4.1.1 Telephony	7 days	Fri 10/18/24	Mon 10/28/24	Director of OPS
390	13.4.1.2 E-mail	7 days	Tue 10/29/24	Wed 11/6/24	389 Director of OPS

391	13.4.1.3 Borrower USPS Correspondence	7 days	Thu 11/7/24	Fri 11/15/24	390 Director of OPS
392	13.4.1.4 Call Outsourcing Center	7 days	Mon 11/18/24	Tue 11/26/24	391 Director of OPS

[Pa264-66.]

672	21 Training Schedule	45 days	Wed 10/30/Tue 12/31/24	
673	21.1 New Hire Technology	8 days	Wed 10/30/Fri 11/8/24	
674	21.1.1 Security Access And Restrictions	2 days	Wed 10/30/Thu 10/31/24	Training Specialist
675	21.1.2 NJTAX Servicing System	3 days	Fri 11/1/24 Tue 11/5/24	674 Training Specialist
676	21.1.3 Telephony	3 days	Wed 11/6/2Fri 11/8/24	675 Training Specialist
677	21.2 New Hire Functional	37 days	Wed 10/30/Thu 12/19/24	
678	21.2.1 Migration/Conversion	14 days	Wed 10/30/Mon 11/18/2	
679	21.2.1.1 Account and Loan Data Load& Reconcili	1 day	Wed 10/30/Wed 10/30/2	Training Specialist
680	21.2.1.2 Loan Data Detailed Evaluation, Correction & Reconciliation	14 days	Thu 10/31/24 Tue 11/19/24	679 Training Specialist

[Pa279.]

701	22 Migration/Conversion	1.5 days	Wed 10/30/Thu 10/31/24	
702	22.1 Account and Loan Data Load & Reconciliation	0.5 days	Mon 11/25/ Mon 11/25/2	700 Training Specialist
703	22.2 Data Detailed Evaluation, Correction & Reconc	0.5 days	Mon 11/25/ Mon 11/25/2	702 Training Specialist
704	22.3 Account Release	0.5 days	Tue 11/26/2Tue 11/26/24	703 Training Specialist

[Pa280-81.]

119	8.6.9 Migration/Conversion	1.5 days	Mon 11/25/Tue 11/26/24	
120	8.6.9.1 Account and Loan Data Load & Reconciliation	0.5 days	Mon 11/25/24 Mon 11/25/24	Training Specialist
121	8.6.9.2 Data Detailed Evaluation, Correction & Reconciliation	0.5 days	Mon 11/25/24 Mon 11/25/24	Training Specialist
122	8.6.9.3 Account Release	0.5 days	Tue 11/26/2Tue 11/26/24	Training Specialist

[Pa290.]

The Division and Coast both recast the Specifications as not “precluding” remote access, but rather, mandating that the contractor have “controls in place” for remote access if Taxation ultimately permits it. Pa9; 311-12; 399. Coast even goes so far as to characterize the Specifications as “expressly contemplat[ing] that the contractor will establish remote access to its computer system.” Pa94. The Division also attempts to distinguish “remote access” from “remote work,”

a distinction without a difference, as remote access, by its very nature, involves remote work. Pa400.

The Division's current position contradicts its answers to multiple questions in Bid Amendment #5, which makes clear remote work is not permitted.

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
66	Bid Solicitation Sections 4.4.1, Office Location and Hours of Operations and Section 4.4.8 Labor Classifications	Will you allow bidders to utilize remote collectors in the State of New Jersey? No. Remote collectors are not permitted.
67	Bid Solicitation Section 4.4.1, Office Location and Hours of Operations	4.4.1 The State outlines the sizes of the current facility in this section, stating that 11,000 square feet is dedicated to collection activity. a. Does the State feel that facility size is ample for the required staff? b. Is 100% of the workforce currently working in the office? c. What percentage of the workforce is currently working remotely? 100% of the Contactor's staff works onsite daily. They are not permitted to work remotely. Contractor's current staff operates sufficiently in this space.
68	Bid Solicitation Section 4.4.1, Office Location and Hours of Operations	Does all work have to be performed at the site in NJ, or can our ancillary staff (such as Accounting or Client Service) in offices support the contract once they have received clearance from the State? All work will be performed at the Contractor's office location.
71	Bid Solicitation Section 4.4.1, Office Location and Hours of Operations	Please confirm all services provided for this project are required to be worked on-site and within the State of New Jersey. All work will be performed at the Contractor's office location.

[Pa127-28.]

Furthermore, Section 6.14 of the Specifications states:

The Contractor shall strictly control remote access to the Contractor's internal networks, systems, applications, and services. Appropriate authorizations and technical security controls shall be implemented prior to remote access being established. [Pa94.]

If anything, this language presumes that the contractor already maintains remote access to its internal networks, systems, applications, and services, and makes clear that absent prior authorization from the Division, enabling such remote access is plainly not permitted. Meanwhile, Section 3.19 of the Specifications defines the draft Implementation Plan as a “detailed timetable” used to demonstrate how the contractor will become “*fully operational*” to provide the *services required* under this Contract.” Pa66 (emphasis supplied).⁶ Given that remote access is not permitted to provide the services required under this Contract, and the Division has not authorized remote access under this Contract, Coast’s inclusion of remote access in its draft Implementation Plan was an impermissible deviation from the specifications.

Third-Party Data Export

Throughout its proposal, Coast uses terms like “data transfer,” “migration,” “conversion,” “file load,” “validation,” and “data reconciliation.” These terms unambiguously describe Coast’s intention to export and utilize taxpayer data on its own third-party systems, in a manner completely contrary to the requirements of the Bid Solicitation. For example, Task 13.3 in Coast’s draft Implementation Plan, reproduced *supra*, addresses User Acceptance

⁶ Pioneer’s draft implementation plan does not contain any reference to remote access or Section 6.14 of the Specifications.

Testing, which is commonly defined as the final stage of the software testing process. In the same context, the term “file load” refers to the process of loading data files from their source to the vendor’s system, the term “validation” refers to the process of verifying the accuracy, completeness, and consistency of uploaded data files, and the “data reconciliation” refers to the process of ensuring consistency and accuracy across different datasets, particularly when data moves between systems or is integrated from multiple sources.

The Division and Coast attempt to limit the scope of these terms as referring only to required tasks or authorized processes under Sections 4.4.1 (Office Location and Hours of Operation), 4.4.2 (Computer and Software Capability), and 4.11 (Contractor Transition Plan) of the Specifications, and not the export of taxpayer data to its own third-party systems. Pa10-11; 312-13; 400-01. The Division argues there is “no confusion” about the meaning of these terms “when viewed in context against the surrounding line items and (sic) within the full scope of the tasks required in the Bid Solicitation,” and the terms “file load,” “validation,” and “data reconciliation” are “best understood” as “standard data handling procedures” that can occur during the contractor transition contemplated in Section 4.11, or “internal processes . . . conducted within the State’s system.” Pa10-11; 400-01. The Division suggests argues that “validation” could mean “checking the accuracy of data directly within the

State’s systems, using only on-site access as permitted by the contract,” and “data reconciliation” could mean “comparing records across modules on-site, without transferring or processing data outside the State’s environment.”⁷ Coast similarly argues that any references to “data transfer” concern only permitted processes such as “transition management,” “complaint-handling,” and “HR documentation compliance.” Pa312-13.

Pioneer does not dispute that Tasks 3, 4, 7, and 9 in Coast’s draft Implementation Plan, and Task 3 in the draft Contract Schedule, address Sections 4.4.1, 4.4.2, and 4.11 of the Specifications. The Division and Coast, however, have offered no substantive rebuttal to Pioneer’s arguments concerning Tasks 13.3 (User Acceptance Testing), 21 (Training Schedule), and 22 (Migration/Conversion) in Coast’s draft Implementation Plan, or Task No. 8 (Operational Reports) in Coast’s draft Contract Schedule. Each of these tasks bears no relationship to Sections 4.4.1, 4.4.2 or 4.11 of the Specifications, and go well beyond the narrow permissions established therein. Notably, the Division declines to offer any “on-site” or “in system” definitions for the terms “file load” and “migration.”

* * *

⁷ See Trans. ID. E1715449-08142025, pgs. 12-13.

There can be no doubt, in this regard, that Coast's proposal fails both prongs of the *Meadowbrook* analysis. First, Coast's proposal deprives the State of assurances that the Contract will be entered into and performed as specified. In fact, Coast has clearly indicated that it has no intention of implementing and performing the Contract as specified. The two deviations go hand in hand and plainly describe a contract of Coast's creation in which Coast's employees work remotely on State files that have been downloaded to Coast's resident systems – a rank departure from the Contract mandated in the specifications. Second, in accepting Coast's proposal, the State has allowed Coast to propose its own, unique terms under the Contract, placing it in a position of advantage over every other vendor who conformed to the Specifications, or were otherwise deterred by the State's onerous requirements. It is beyond peradventure that the ability to run the Contract from an internal office, with remote access to the State's systems and downloaded data, provides a huge economic advantage over a vendor having to operate the Contract on-site at a dedicated State office.

Coast's implementation plan, which provides for both remote access to the State's systems and the downloading of State data to its own internal systems, is materially deficient and must be rejected as so.

D. Coast intends to have its caseworkers discuss federal tax liabilities with taxpayers and research taxpayer credit history. [Pa11-13]

It is undisputed that Section 4.3.1 of the Specifications prohibits a contractor from accessing Federal Tax Information (“FTI”).

4.3.1 ACCESS TO TAXNET AND TULIPS AND TAX INFORMATION

Taxation will provide the Contractor with access to the TAXNET and TULIPS systems and to confidential taxpayer information. However, the Contractor shall not have access to Federal Tax Information (FTI) by accessing Taxation’s electronic applications. All changes to the Contractor equipment specified in *Bid Solicitation Sections 4.4.2 - Computer and Software Compatibility* and *4.4.3 - Telephone Monitoring Access* or changes to other information technology specifications and requirements by Taxation will be provided to the Contractor by the State Contract Manager (SCM) and/or the New Jersey Office of Information Technology (NJGIT). When Contractor personnel accessing TAXNET and/or TULIPS resign or are terminated, or removed for any reason, the Contractor must notify the SCM within one (1) business day so that Taxation can revoke access to all applicable confidential taxpayer records for the employee.

[Pa73.] Coast’s proposal, however, instructs its caseworkers to “[d]iscuss other state or *federal* tax liabilities” with taxpayers, a task necessarily involving access to and sharing of FTI. Pa11; 203 (emphasis supplied). The Division and Coast recharacterize this language as nothing more than a reference to Section 4.5.2(E) of the Specifications, which obligates the contractor to “ascertain the existence or history of . . . any other tax liability the taxpayer may have.” Pa80; 313. The argument is misplaced.

First, Section 4.5.2(E) has nothing to do with FTI. Pa79-80. This Contract involves the administration, resolution and collection of deficient and delinquent *State* taxes. *See, e.g.*, Pa70-73. If anything, the reference to “other tax liability” in Section 4.5.2(E) is a reference to other *State* tax liability. *Id.* Second, Coast’s proposal already establishes caseworker responsibilities addressing the criteria

in Section 4.5.2(E) separate and apart from the caseworker responsibilities concerning other state or federal tax liabilities.

In the “Prior to Taxpayer Phone Contact” section of the caseworker responsibilities, Coast lists: “Research account history specifically for history of skip tracing, deficient or delinquent taxpayer eligibility history, monetary account activity and filing, payment history, and any other tax liability the taxpayer may have and TAXREG notes.” Pa203. The instruction to “[d]iscuss other state or *federal* tax liabilities,” however, appears in the “Upon Taxpayer Phone Contact” section. Pa203. This provision clearly has a distinct meaning, which indicates Coast’s intention to access and share FTI.

Also, in the “Prior to Taxpayer Phone Contact” section of the caseworker responsibilities, Coast lists “[r]esearch taxpayers credit bureau history.” *Id.* Although undefined in Coast’s proposal, a “credit bureau” is commonly defined as a company that collects, compiles, and sells information about a consumer’s credit and payment history. It is also referred to as a “credit reporting agency.” The Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b(a)(3)(A) governs the collection, dissemination, and use of such consumer credit information.

Where, as here, the matter involves neither a transaction for which the debtor sought credit (a consumer transaction) nor the collection of judgment debt, a collection agency such as Coast must establish a “permissible purpose”

to obtain a credit report on the debtor. *See, e.g., Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665 (9th Cir. 2010). Coast has failed to satisfy this requirement, and its reliance on *Perrill v. Equifax Info. Servs., LLC*, 205 F. Supp. 3d 869 (W.D. Tex. 2016), a decision not binding on this Court, is misplaced. In that case, the court expressly acknowledged the lack of direct precedent concerning whether the collection of delinquent taxes by a state agency can qualify as a “permissible purpose” under 15 U.S.C. § 1681b(a)(3)(A). Coast’s reliance on 15 U.S.C. § 1681c-1(i)(4)(D)—incorrectly cited as 15 U.S.C. § 1681c-1(i)(D)—is equally misplaced. The full language of that provision makes clear that the collection of delinquent taxes may, but is not certain to qualify as a “permissible purpose.”

In addition, there is nothing in Coast’s proposal to suggest that it only seeks the “limited information” contemplated under 15 U.S.C. §1681f. Pa13. This “identifying information,” limited to the name, current and former address, and current and former places of employment of the consumer, is already addressed through separate caseworker responsibilities. Pa203. On these points, Coast’s proposal, which is in plain violation of the prohibitions of the RFP, fails both prongs of the *Meadowbrook* analysis.

E. Coast plans to use prohibited means of communication with taxpayers. [Pa13-14]

The Specifications make clear that permissible methods of communication with taxpayers are restricted to telephone, letter, and email. Pa123. No other form of communication is identified. Accordingly, the various additional forms of communication set forth in Coast's draft implementation Plan, such as a website, chat functionality, and texting, are material non-waivable deviations.

285	9.2 Project Technical Component Implementation	175 days	Fri 3/1/24	Thu 10/31/24	
286	9.2.1 Project Network And Data Line Implementat	150 days	Fri 3/1/24	Thu 9/26/24	Coast Team, NJTAX Team
287	9.2.2 Coast NJ TAX Implementation Of TAXNET	175 days	Fri 3/1/24	Thu 10/31/24	Coast Team, NJTAX Team
288	9.2.3 Coast - NJ TAX Accounting System Implemen	160 days	Fri 3/1/24	Thu 10/10/24	Coast Team, NJTAX Team
289	9.2.4 Telephony Implementation	120 days	Fri 3/1/24	Thu 8/15/24	Coast Team, NJTAX Team
290	9.2.5 Website Implementation	143 days	Fri 3/1/24	Tue 9/17/24	Coast Team, NJTAX Team

[Pa260.]

626	20.2.2 Telephony Implementation (4.9.2)	60 days	Mon 3/11/24	Fri 5/31/24	
627	20.2.2.1 Create Skills Based Routing Call Flows	14 days	Mon 3/11/24	Thu 3/28/24	Coast Team, NICE Team
628	20.2.2.2 Implement Skills Based Routing Call Flows	10 days	Fri 3/29/24	Thu 4/11/24	627 Coast Team, NICE Team
629	20.2.2.3 Implement Voice Channel	10 days	Fri 4/12/24	Thu 4/25/24	628 Coast Team, NICE Team
630	20.2.2.4 Implement Chat Channel	10 days	Fri 4/26/24	Thu 5/9/24	629 Coast Team, NICE Team
631	20.2.2.5 Implement Email Channel	10 days	Fri 5/10/24	Thu 5/23/24	630 Coast Team, NICE Team
632	20.2.2.6 Test all Functions	3 days	Fri 5/24/24	Tue 5/28/24	631 Coast Team, NICE Team

653	20.2.7 Website Implementation	15 days	Mon 5/27/24	Fri 6/14/24	
654	20.2.7.1 Customer Experience Implementation	14 days	Mon 5/27/24	Thu 6/13/24	Coast Team, NICE Team
655	20.2.7.2 Test & Training Regions	1 day	Fri 6/14/24	Fri 6/14/24	654 Coast Team, NICE Team

[Pa277-78.]

683	21.2.2.1 Telephony & Scripts	4 days	Wed 10/30/Mon 11/4/24	Training Specialist
684	21.2.2.1.1 Develop Agent Scripts	1 day	Wed 10/30/2Wed 10/30/24	Training Specialist
685	21.2.2.1.2 Receive SCM Approval Of Scripts	1 day	Thu 10/31/24Thu 10/31/24	684 Project Manager,SCM
686	21.2.2.1.3 Distribute Agent Scripts	1 day	Fri 11/1/24 Fri 11/1/24	685 Training Specialist
687	21.2.2.1.4 Implement Agent Scripts	1 day	Mon 11/4/24Mon 11/4/24	686 Training Specialist
688	21.2.2.2 Messaging & Scripts	1 day	Tue 11/5/24Tue 11/5/24	683 Training Specialist
689	21.2.2.3 E-mail & Scripts	1 day	Wed 11/6/2Wed 11/6/24	688 Training Specialist
690	21.2.2.4 Texting & Scripts	1 day	Thu 11/7/24 Thu 11/7/24	689 Training Specialist
691	21.2.2.5 Website Navigation Q&A	1 day	Fri 11/8/24 Fri 11/8/24	690 Training Specialist
692	21.2.2.6 Borrower USPS Correspondence	1 day	Mon 11/11/ Mon 11/11/2	691 Training Specialist
693	21.2.2.7 Delinquency Management& Prevention Communications	1 day	Tue 11/12/24 Tue 11/12/24	692 Training Specialist
694	21.2.2.8 Basic Customer Service Skills	2 days	Wed 11/13/2Thu 11/14/24	693 Training Specialist
695	21.2.2.9 Contact Center Back Office Training	9 days	Wed 10/30/2Mon 11/11/24	
696	21.2.2.9.1 Repayment Plans	5 days	Fri 11/15/24Thu 11/21/24	694 Training Specialist
697	21.2.2.9.2 Bills & Refunds	0.5 days	Fri 11/22/24Fri 11/22/24	696 Training Specialist
698	21.2.2.9.3 Account Demographic Changes	0.5 days	Fri 11/22/24Fri 11/22/24	697 Training Specialist
699	21.2.2.9.4 Account Financial Activities	2 days	Mon 11/25/ Tue 11/26/24	698 Training Specialist

[Pa280.]

The Division and Coast both take the position that because the Specifications do not expressly prohibit forms of communication beyond those identified (i.e., telephone, letter, and email), additional forms of communication must be permissible. Pa13; 315-16; 404. This is the tail wagging the dog. The Specifications do not expressly prohibit carrier pigeons, but Pioneer is confident the Division would not find that a permissible method of communication. Question #47 to Amendment #5 of the Bid Solicitation plainly states:

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
47	Bid Solicitation Section 4, Scope of Work	<p>Can you please indicate what inbound and outbound contact methods, beyond phone calls or letters (such as email and text), would be permitted by the scope of work?</p> <p>Phone calls, letters, emails are permitted. Accessing and sharing of FTI with the taxpayer is not permitted.</p>

The question asked whether email, text, or another means of communication were permitted contact methods in addition to phone calls and letters. The Division responded that phone calls, letters and emails are permitted. By including email as the only additional permitted contact method, the Division clearly indicated that texting is prohibited. There is no other reasonable reading of the Division's response. If the Division intended to allow texting as a permissible contact method, it would have included it in its response to the question. It did not, and cannot now be permitted to rewrite a response upon which other vendors, including Pioneer, relied. Coast's suggestion that "the answer did not provide a specific response" is disingenuous. Pa347. So too is the Division's suggestion that its answer does not address whether texting is prohibited. Pa404.

Equally without merit is Coast's argument that any references to "multichannel communication capabilities such as texts, chats, and websites" in its draft Implementation Plan reflect only "standard internal readiness planning, platform capabilities, or tools utilized on other contracts," and "does not state that such channels will necessarily be used." Pa315-16. The only takeaway from this argument is that Coast could not be bothered to tailor its model Implementation Plan to the specific requirements of this contract, and left it to the Division to identify and ignore any irrelevant or inapplicable provisions.

Finally, the Division points to other sections of the specifications that purportedly permit text message communication. None of the sections cited support this claim. Section 4.4.9 of the Specifications states, “The [Call Outsourcing Center] will investigate all complaints and alleged violations of policies, procedures and/or laws, whether the complaint is lodged telephonically, or in a written communication to the Contractor or to Taxation.” Pa79. This is clearly consistent with the Division’s response to Question #47 to Amendment #5 of the Bid Solicitation—phone calls (i.e., telephonically), letters and emails (written communication). The terms “telephonically” and “written communication” cannot reasonably be read as encompassing texting. The same is true for the term “written correspondence” in Section 4.6.1, and the permissible means of communication in Sections 4.9.4 and 4.9.6.1 (i.e., phone, letter, and e-mail). Pa82; 85. Neither is reasonably understood as referencing texting.

The reference to “facsimile” in Section 4.5.2.1 does not concern communications between the contractor and a taxpayer. Pa80. Instead, it refers to the means by which the contractor may receive proof of delivery for any notifications sent to the taxpayer, i.e., “proof of certified mail delivery through USPS.com, or subsequently via facsimile.” *Id.* This is consistent with language in the following paragraph stating that “the proof of certified mail delivery

signed by the taxpayer upon receipt from the USPS and returned to the Contractor must be retained in the physical Case file.” *Id.* If the contractor were permitted to communicate with the taxpayer via facsimile, the Specifications would certainly not declare that “proof of certified mail delivery is essential legal proof” that the taxpayer is in receipt of proper notice. *Id.* Similarly, the reference to a website in Section 4.7 does not involve inbound and outbound contact methods with taxpayers.

Coast’s inclusion of additional contact methods not permitted by the Specifications undoubtedly runs afoul of the *Meadowbrook* analysis. First, Coast has arrogated to itself an advantage over all other bidders and potential bidders who were constrained by three permitted contact methods in formulating their proposal. Second, Coast has taken upon itself the right to communicate with taxpayers beyond those channels explicitly permitted by the Division, depriving the State of any guarantee that the Contract will be performed according to its specified requirements.

F. Coast plans to use a lockbox to process check payments. [Pa14]

Coast’s Implementation Plan refers to a “Lockbox.” Pa265. This term, when used in the context of the collection of deficient and delinquent taxes, generally has only one logical meaning: a bank-operated mailing address (i.e., a designated P.O. box) through which the bank can receive, process, and deposit

payments on behalf of the business, instead of the business handling incoming payments itself. This payment processing mechanism is entirely inconsistent with the State's mandatory and specific requirements in violation of *Meadowbrook*.

Although the Division and Coast disagree, they fail to ascribe any other legitimate meaning to Coast's use of the term, or otherwise justify its inclusion in the quote. Pa14; 316. Their argument, in sum and substance, is that because the term "lockbox" is undefined in Coast's proposal, it must mean nothing, and any attempt to give it meaning is "speculation." Pa14; 405. Replace the term "lockbox" with "data monetization," however, and the Division is likely taking a different position. Coast has undoubtedly arrogated itself an advantage shared by no other vendor in violation of the *Meadowbrook* analysis by including a material and undefined term in its proposal. Once the Contract is awarded, Coast is free to define the term "lockbox" however it pleases.

G. Coast attaches impermissible conditions to the provision of the required twelve (12) parking spaces for state employees. [Pa14-15]

Section 4.4.1.3 of the Specifications requires that the Contractor provide "a minimum of 12 parking spaces designated for State employee parking." Pa75. This is the only requirement. There is no additional requirement or specific qualification in the Specifications as to how the contractor should designate

these parking spaces. Nevertheless, Coast's proposal fabricates a condition to be negotiated (i.e., signage), and in doing so, accords to itself an advantage shared by no other vendor. Pa174-75. The Division, in rejecting Pioneer's argument, fails to recognize that Coast had no legitimate reason to address signage in its proposal, and by doing so, freed itself from the obligations of the Contract if negotiations with its landlord ultimately fail.

The Division acknowledges that a landlord's refusal to permit physical signage does not, a practical matter, impede Coast's ability to ensure that there are twelve parking spaces available to State employees. This is precisely why the creation of an additional condition where none exists materially deviates from the requirements of the Bid Solicitation. Coast's hedge, although seemingly innocuous, fails the *Meadowbrook* analysis by providing Coast with an advantage no other bidder shared and depriving the State of the Contract it specified. Indeed, as the Division acknowledges, "Coast will have to negotiate with the landlord or management to provide twelve designated parking spaces."⁸

⁸ See Trans. ID. E1715449-08142025, pg. 20.

II. The Division Failed to Follow Its Own Specifications in Not Properly Evaluating and Considering Pioneer’s Proposed Revenue Guarantee as an Additional Term and Condition Expressly Permitted Under the Specifications and Consistent with the Bid Solicitation. [Pa15-19]

The specifications are clear that to be deemed responsive, the bidders must satisfy the material terms and conditions of the Bid Solicitation. The specifications are also clear, however, that a bidder who otherwise satisfies the material terms and conditions of the Bid Solicitation, may propose additional terms and conditions for the Division’s review, provided those proposed additional terms and conditions are consistent with, and do not conflict with the existing terms and conditions of the Bid Solicitation. Pa61. Then upon review, the Division may choose to accept, reject, or negotiate, the proposed additional terms in whole or in part. *Id.*

3.11 BIDDER ADDITIONAL TERMS SUBMITTED WITH THE QUOTE

A Bidder may submit additional terms as part of its Quote. Additional terms are Bidder-proposed terms or conditions that do not conflict with the scope of work required in this Bid Solicitation, the terms and conditions of this Bid Solicitation, or the State of New Jersey Standard Terms and Conditions. Bidder proposed terms or conditions that conflict with those contained in the State of New Jersey Standard Terms and Conditions will render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

Quotes including Bidder proposed additional terms may be accepted, rejected, or negotiated, in whole or in part, at the State’s sole discretion.

If the Bidder intends to propose terms and conditions that conflict with the State of New Jersey Standard Terms and Conditions, those Bidder proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure. Bidders shall not submit exceptions or modifications as part of the Quote or on the “Terms and Conditions” Tab through [iSTART](#).

In accordance with Section 3.11 of the Specifications, Pioneer submitted with its quote a proposed annual minimum revenue target guarantee. Pa145. This was not, as the Division originally mischaracterized it, a proposal of “alternative

pricing,” which would have conflicted with the Bid Solicitation and rendered Pioneer’s proposal non-responsive. Pa15; 61; 319-21. Instead, it was a proposed additional term expressly authorized under Section 3.11 of the Specifications, operating separate and apart from Pioneer’s “completed pricing,” and otherwise consistent with the Bid Solicitation. *Id.* In fact, the Division now readily concedes that “the revenue guarantee ***did not*** make [Pioneer’s] submission non-responsive,” and therefore did not conflict with the Bid Solicitation. Pa407.

Accordingly, the Division was obligated under Section 3.11 of the Specifications to evaluate Pioneer’s proposed revenue guarantee, and either accept, reject, or negotiate it, in whole or in part. Pa61. Nowhere in the evaluation report, or in any other document in the evaluation file, is there any analysis addressing, in any manner, the proposed revenue guarantee. The Division maintains, “[c]ontrary to Pioneer Credit’s position, the Division’s (sic) did consider the revenue guarantee.” Pa405. The record suggests otherwise.

In fact, the Division concedes there is “an absence of discussion in the evaluation report.” Pa406. The Division maintains, however, that the absence of discussion does not demonstrate that it failed to evaluate the proposed revenue guarantee. Pa406-07. The Division claims it was not obligated to “separately” evaluate the proposed revenue guarantee, and could instead “act on the Quote as a whole.” *Id.* The Division’s arguments are misplaced.

It is well-settled that “a determination predicated on unsupported findings is the essence of arbitrary and capricious action.” *In re Holy Name Hosp.*, 301 N.J. Super. 282, 296 (App. Div. 1997) (quoting *In re Boardwalk Regency Corp. for a Casino License*, 180 N.J. Super. 324, 334 (App. Div. 1981)). Consequently, “[a]dministrative agencies must ‘articulate the standards and principles that govern their discretionary decisions *in as much detail as possible*.’” *Noble Oil Co. v. Dep’t of Env’tl. Prot.*, 123 N.J. 474, 476 (1991) (quoting *Van Holten Grp. v. Elizabethtown Water Co.*, 121 N.J. 48, 67 (1990) (emphasis supplied).

Ultimately, “[i]t is incumbent on the agency to explain its decision in sufficient detail to assure [the reviewing court] that the agency *actually considered* the evidence and addressed all of the issues before it. Failure to address critical issues, or to analyze the evidence in light of those issues, renders the agency’s decision arbitrary and capricious and is grounds for reversal.” *Green v. State Health Benefits Comm’n*, 373 N.J. Super. 408, 414 (App. Div. 2004) (emphasis supplied); *see also Mainland Manor Nursing & Rehab. Ctr. v. New Jersey Dep’t of Health & Senior Servs.*, 403 N.J. Super. 562, 571 (App. Div. 2008) (“It is the agency head’s obligation . . . to state the basis of decision with clarity; and, with sufficiency, to articulate the factual determinations and legal standards that inform the action taken.”) (quoting *In re Certificate of Need Application of Arnold Walter Nursing Home*, 277 N.J. Super. 472, 479 (App.

Div. 1994)); *Atl. City Med. Ctr. v. Squarrell*, 349 N.J. Super. 16, 25 (App. Div. 2002) (finding that a “fair review” of agency action requires “a clear statement . . . as to the basis of [the agency’s] decisions”).

Simply stated, the record is devoid of any evidence demonstrating that the Division followed its own specifications and properly evaluated Pioneer’s proposed revenue guarantee as an additional term authorized under Section 3.11 of the Specifications. If anything, the record demonstrates the Division did not evaluate the proposed revenue guarantee until *after* Pioneer had already filed its protest.

As a basis for *now* rejecting Pioneer’s proposed revenue guarantee, the Division argues that by removing it as a requirement in the Bid Solicitation, it “rendered [the revenue guarantee] not a relevant factor or advantageous to the State in the current procurement.” Pa18. By including a proposed revenue guarantee in its quote anyway, Pioneer “erroneously (sic) relied on information based its (sic) prior contract with the State, despite clear instruction [to the contrary] in the Bid Solicitation,” and the Evaluation Committee found Pioneer’s quote “less adventagious (sic) to the State.” Pa16; 406. The Division’s reasoning is flawed.

First, there is no logical basis for the Evaluation Committee to have concluded that Pioneer’s submission of a proposed additional term rendered its

quote less advantageous to the State, when the State is under no obligation to accept the proposed additional term in the first place. Pa61. Unless a proposed additional term is found to be in conflict with the Bid Solicitation, and thus, renders the entire quote non-responsive, it can only serve to benefit the quote or at minimum, have no impact. It is the epitome of arbitrary and capricious for the Division to use a proposed additional term consistent with the Bid Solicitation—which the Division is ultimately free to reject in its sole discretion—to negatively evaluate a bidder’s otherwise valid quote.

Second, Section 1.2.1 of the Specifications states, “Bidders should not rely upon or use data or information from the current contract when preparing a response to this Bid Solicitation as this Bid Solicitation addresses the State’s current requirements.” Pa57. Although a bidder *may* submit additional terms or conditions as part of its quote, it is not a *requirement* of the Bid Solicitation. Pa61. Moreover, the mere use of a revenue guarantee cannot reasonably be characterized as “data or information from the current contract.” Pa57. If that were the case, the bidders would be prohibited from discussing the administration, resolution and collection of deficient and delinquent taxes.

Finally, it is difficult to envision how a guarantee by a vendor to meet a specific revenue goal for the State can be anything other than advantageous for the State. Such a guarantee removes the risk to the State that the transition to

the new Contract will result in any drop in revenue. With all other evaluative factors otherwise being accorded negligible differences as between the two proposals, it was arbitrary for the State not to consider and evaluate this offered term.

CONCLUSION

For all the foregoing reasons, it respectfully requested that the Court reverse the Division's final agency decision and direct that award be made to Pioneer, as the most advantageous proposal, price and other factors considered.

Dated: September 22, 2025

Respectfully submitted,

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