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GOVERNOR

**STATE OF MAINE**  
**BUREAU OF GENERAL SERVICES**  
**77 STATE HOUSE STATION**  
**AUGUSTA, MAINE 04333-0077**

**DEPARTMENT OF**  
**ADMINISTRATIVE &**  
**FINANCIAL SERVICES**

**KIRSTEN LC FIGUEROA**  
COMMISSIONER

BUREAU OF GENERAL SERVICES

**BRIAN KEEZER**  
DIRECTOR

5/22/2025

**Via Electronic Mail:** [mwarner@preti.com](mailto:mwarner@preti.com)

Aunt Bertha, dba Findhelp  
3429 Executive Center Drive  
Austin, TX 78731

**SUBJECT: Notification of Decision of Appeal Committee – RFP #202409164**  
**Configurable OTS-Saas Data Collection System to Support Help Me**  
**Grow Data Collection System**

To All Parties:

Enclosed please find the final decision of the appeal committee for the above-referenced appeal, per 5 M.R.S. § 1825-E(3). The appeal committee validates the contract award for RFP #202409164 for the reasons set forth in the attached decision.

This decision constitutes final agency action for purposes of judicial review. Any person aggrieved by this decision may appeal to Maine's Superior Court in the manner provided in 5 M.R.S. §§ 11001, *et seq.*, and M.R. Civ. P. 80C. A party must file a petition for review within thirty (30) days after receipt of notice of the decision.

Regards,

Signed by:

*Brian Keezer*

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Brian Keezer, Director  
Bureau of General Services

Enclosure

cc: Rebekah Smith, Presiding Officer  
Nancy Tan, Acting Deputy Chief Procurement Officer  
David Morris, Acting Chief Procurement Officer  
Appeal Hearing Committee

**MAINE DEPARTMENT OF ADMINISTRATIVE AND  
FINANCIAL SERVICES  
BUREAU OF GENERAL SERVICES**

In Re: Appeal of Contract Award under RFP #	}	
202409164 for Configurable OTS-Saas Data Collection	}	
System to Support Help Me Grow Data Collection System	}	Decision on Appeal

**INTRODUCTION AND BACKGROUND**

On January 21, 2025 the Bureau of General Services (BGS) received a timely request for an appeal hearing filed by Aunt Bertha dba Findhelp on a contract award decision by the Department of Administrative and Financial Services (DAFS), on behalf of the Department of Health and Human Services (DHHS).

A request for proposal (RFP) was issued by DHHS, pursuant to 5 M.R.S. Section 1825-B, for a “Configurable OTS-Saas Data Collection System to Support Help Me Grow Data Collection System”. The RFP and contract selection process was managed by DHHS, with assistance and oversight from DAFS. Four bidders responded to DHHS, submitting all documents and information required via the RFP, which was numbered 202409164.

With the competitive bidding process, bidders’ proposals must be evaluated and ranked based on the scoring weights and the process enumerated within the RFP, as well as applicable laws, through the team consensus evaluation method. For this RFP, proposals were evaluated under the following sections as follows:

- Section II. Organization Qualifications and Experience (35 points)
- Section III. Proposed Services (40 points)
- Section IV. Cost Structure Acknowledgement (25 points)<sup>1</sup>

DHHS awarded KJMB Solutions a total score of 76 out of 100 points and awarded Aunt Bertha dba Findhelp a total score of 52.79 points out of 100 points.<sup>2</sup>

Based on the aforementioned results of the scoring by the RFP evaluation team, on

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<sup>1</sup> Exhibit JOINT-0018

<sup>2</sup> Exhibit JOINT-0083

January 6, 2025, DAFS notified the bidders via email about the DHHS contract award.<sup>3</sup> Findhelp filed a timely request for a hearing on January 21, 2025, which was granted by the Director of the Bureau of General Services.<sup>4</sup> DAFS issued a scheduling notice on March 14, 2025. Findhelp was represented by Matthew Warner, Esq., and Alexandra Harriman, Esq. DHHS was represented by Assistant Attorneys General Stanley Abraham, Esq., and Brendan Kreckel, Esq.

The deadline for the parties' submission of proposed exhibits and witness lists was set for March 17, 2025. A pre-hearing conference was held via Zoom on March 25, 2025. Presiding Officer Rebekah Smith, Esq., provided the parties with an overview of the appeal hearing process and discussed scheduling and deadlines.

An appeal hearing was held via Zoom on April 14, 2025, by agreement of the parties, where the parties presented sworn testimony through witnesses, and the parties presented admitted documentary evidence in accordance with 5 M.R.S. Section 1825-E and 18-554 C.M.R. Chapter 120 ("Chapter 120").

The Appeal Committee (Committee) was comprised of three state employees appointed by DAFS who were not involved in the RFP or contract award process. All Committee members attended the hearing and met after the hearing to deliberate on their decision. The Presiding Officer consulted with the Committee during deliberation, but did not vote in the decision. After a review of the testimony and documentary evidence presented by the parties, the Committee makes the following findings of fact and decision on appeal.

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<sup>3</sup> Exhibit JOINT-0070-0082

<sup>4</sup> Exhibit JOINT-0327

### **GOVERNING LAW AND STANDARD OF REVIEW**

Pursuant to laws applicable to contract award appeals, a petitioner has the burden to show by clear and convincing evidence that the state agency's contract award decision (1) was in violation of law, (2) contained irregularities that created a fundamental unfairness, or (3) was arbitrary or capricious. 5 M.R.S. § 1825-E; Chapter 120, Sec. 3(2); Sec. 4(1). The clear and convincing standard requires that the Committee be convinced that the appeal's assertions are highly probable, as opposed to more probable than not. *Pine Tree Legal Assistance, Inc. v. Department of Human Services*, 655 A.2d 1260, 1264 (Me. 1995). The Committee may only decide whether to validate or invalidate the contract award under appeal; it cannot make a new contract award, make adjustments, or assess monetary damages. See 5 M.R.S. § 1825-E (3); Chapter 120 (4) (1).

In determining whether an award is arbitrary or capricious, the Committee must not substitute its judgement for that of the Review Team. *International Paper Co. v. Board of Environmental Protection*, 1999 ME 135, ¶ 29, 737 A.2d 1047, 1054. There is a presumption that the Review Team's actions were not arbitrary or capricious. *Central Maine Power Co. v. Waterville Urban Renewal Authority*, 281 A.2d 233, 242 (Me. 1971).

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## **OVERVIEW OF PETITIONER'S COMPLAINT AND PARTIES' POSITIONS**

Findhelp argued that the appeal award should be invalidated because it included irregularities creating fundamental unfairness, it was arbitrary and capricious, and it violated the law. In support of these arguments, Findhelp asserted, *inter alia*, that “(1) KJMB’s non-responsive proposal should have immediately disqualified it from the competition; and (2) KJMB failed to include costs for all of the required items in the RFP and gained an unfair advantage in the evaluation process; (3) the Evaluation Team’s scoring of KJMB’s Technical and Cost Proposals violated Maine procurement law, was fundamentally unfair, and was arbitrary and capricious because it incorrectly and baselessly stated that this “cost [was] included in [KJMB’s] current cost proposal;” and (4) the Department’s sole-source award to KJMB during the subject solicitation process violated Maine law and was fundamentally unfair.”<sup>5</sup>

In response, DHHS argued that the award decision should be validated, that KJMB’s cost proposal included all costs described in its bid, and that DHHS’ previous sole-source contract did not influence RFP scoring.

During the appeal hearing, Findhelp presented sworn testimony from two witnesses: Rachel Harris, Findhelp’s Director of Enterprise Sales, and Katherine Lund (nee Rossum), a Help Me Grow Specialist from DHHS. DHHS had the opportunity for cross examination and additional questioning of each witness.

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<sup>5</sup> CLOSING STATEMENT OF APPELLANT AUNT BERTHA dba FINDHELP, page 6

## FINDINGS OF FACT AND CONCLUSIONS

In reviewing the issues raised on appeal, the committee has made the following findings of fact and conclusions:

FindHelp asserted that KJMB should have been disqualified for failing to meet mandatory deliverables, specifically the ability to communicate directly with families through text messaging and the requirement to fully implement the system within 90 days of the start of the contract. The RFP indeed listed technical requirements for the Data Collection System, including “the ability to...[c]ommunicate directly to families through texting”<sup>6</sup> and to “[e]nsure the DCS is fully implemented within ninety (90) days of the start of the initial period of performance.”<sup>7</sup>

Concerning qualifications for consideration, the RFP requires proposals “... to meet or exceed the stated minimum scoring requirements of the stage in which the proposal is being evaluated to move onto the next stage of evaluation. Any proposal not meeting the stated minimum scoring requirements of a stage will be ineligible for award consideration and, at that point, be removed from the evaluation process.”<sup>8</sup> Proposed Services would be scored “...up to a maximum of 40 points for this section with the minimum score of 24 being required for a proposal to move onto Stage Four - Demonstrations.”<sup>9</sup>

KJMB’s proposal address the texting requirement in the solicitation, stating: “This feature not currently available in STAR. Text platform could be added to STAR as new functionality in a future update of STAR. Built in interface to communicate with families

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<sup>6</sup> Exhibit JOINT-0033

<sup>7</sup> Exhibit JOINT-0009

<sup>8</sup> Exhibit JOINT-0019

<sup>9</sup> Id.

through texting is included in future costs (Cost Proposal Schedule 3)”<sup>10</sup> KJMB’s cost proposal included a cost to “Communicate directly to families through texting; Would require external text platform subscription or per text cost” with a completion date of April 1, 2026, after 100 hours of work to complete at a cost of \$15,000.<sup>11</sup>

Individual notes from the evaluation committee noted KJMB’s lack of current texting functionality and plans to release the feature in a future update in both the scope of services review and the demonstration notes.<sup>12</sup> The consensus scoring notes acknowledged that the feature would not be deployed until a year after the start of the service. The evaluation committee awarded 30 of 40 available points for proposed services<sup>13</sup> KJMB’s proposal was moved to the next phase of evaluation.<sup>14</sup>

The appellant’s argument that the lack of a texting feature available within 90 days of the contract award should have led to KJMB’s disqualification is not supported by clear and convincing evidence. The RFP does not define the absence of a specific feature as an automatic disqualifier but instead relies on minimum scoring thresholds at each stage of evaluation. There is insufficient evidence to conclude that the evaluation committee’s score for KJMB’s proposed services was fundamentally unfair or arbitrary or capricious. The record shows that KJMB’s proposal clearly acknowledged the missing feature and provided a timeline for its implementation. The evaluation committee awarded 30 out of 40 points for Proposed Services, explicitly taking into account the lack of a texting functionality. The appeal committee may not weigh the impact of the lack of a texting feature for one year on the score, as it cannot substitute

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<sup>10</sup> Exhibit JOINT-0289

<sup>11</sup> Exhibit JOINT-0314

<sup>12</sup> Exhibit JOINT-0131, JOINT-0133, JOINT-0138, JOINT-0141, JOINT-0142

<sup>13</sup> Exhibit JOINT-0131

<sup>14</sup> Exhibit JOINT-0083

its own judgement for that of the evaluation committee.<sup>15</sup> Because KJMB achieved the minimum score required to advance to the next stage of the evaluation, the appeal committee finds that the evaluation of KJMB's proposed services was not fundamentally unfair, or arbitrary or capricious.

Next, FindHelp challenged the scoring of KJMB's cost proposal, arguing that the failure to include certain expenses, such as the external texting platform and per-text costs, rendered the cost evaluation unfair. KJMB's proposed deliverable states that the texting feature "...would require external text platform subscription or per text cost."<sup>16</sup> The RFP prescribes a formula for cost proposal scoring, defined as (Lowest submitted cost proposal / Cost of proposal being scored) x 25 = pro-rated score.<sup>17</sup>

The appeal committee finds that FindHelp did not demonstrate that these excluded costs would have materially altered the outcome of the cost scoring. The RFP's cost scoring methodology is formulaic, and the evidence presented did not establish that any adjusted cost would have been significant enough to change KJMB's cost score of 25 out of 25 points.

FindHelp also argued that a prior sole-source contract awarded to KJMB was irregular and biased the evaluation process. The Procurement Justification Form was signed six months after the contract had started<sup>18</sup>, which does not comply with the Office of State Procurement Services normal procedures. One evaluator did note that KJMB's system was currently already being used by the Department.<sup>19</sup> KJMB's contract in fact has been in place since June 2022.<sup>20</sup>

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<sup>15</sup> *International Paper Co. v. Board of Environmental Protection*, 1999 ME 135, ¶ 29, 737 A.2d 1047, 1054.

<sup>16</sup> Exhibit JOINT-0314

<sup>17</sup> Exhibit JOINT-0019

<sup>18</sup> Exhibit APPELLANT-004,005

<sup>19</sup> Exhibit JOINT-0101

<sup>20</sup> Exhibit APPELLANT-001



The appeal committee agrees that the contract's documentation was completed months after the services began, which deviates from standard procurement practices. However, this is insufficient evidence to conclude that this irregularity had any material impact on the evaluation process. While one evaluator acknowledged the familiarity with KJMB's system due to the prior contract, the presence of an incumbent vendor alone does not constitute fundamental unfairness. State procurement law does not prohibit incumbent vendors from competing, and there is no evidence of favoritism or bias in the evaluation scoring attributable to the earlier contract.

Finally, FindHelp contended that the appeal committee should draw an adverse inference because DHHS did not call three potential witnesses. However, the burden of proof in these proceedings rests with the Appellant. FindHelp had the opportunity to subpoena or call additional witnesses, including individuals originally identified as DHHS witnesses, but chose not to do so. The appeal committee declines to draw an adverse inference based solely on the Department's strategy.

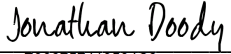
## **SUMMARY OF DECISION**

As reflected herein, the Committee reviewed the documentary evidence, considered the testimony of the witnesses, and carefully considered the closing arguments by the parties.

Findhelp has not met the burden of proof necessary to invalidate the award. Accordingly, the Appeal Committee validates the Department of Health and Human Services' award decision.

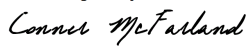
## APPEAL COMMITTEE

Dated 5/22/2025

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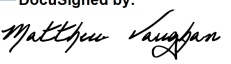
Jonathan Doody, Financial Analyst  
Secretary of State

Dated 5/22/2025

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Conner McFarland, Manager of  
Correctional Operations  
Department of Corrections

Dated 5/22/2025

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Matthew Vaughan, Resource Administrator  
Department of Education

### **STATEMENT OF APPEAL RIGHTS**

This decision constitutes a final agency action. Any aggrieved party may appeal this decision by filing a petition for review in Superior Court for the County where one or more of the parties reside or have their principal place of business, where the agency has its principal office, or where activity which is the subject of this proceeding is located. Any such appeal must be filed within 30 days of the receipt of this decision