



JANET T. MILLS
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

WILLIAM LONGFELLOW
DIRECTOR

August 2, 2024

Via Electronic Mail: kwilliams@providentiagroup.com
adr@crossculturalcommunityservices.org

Krystal Williams, Esq.
Providentia Group PLLC
110 Marginal Way, Suite 195
Portland, ME 04101-2442

Regina Phillips, PhD
Cross Cultural Community Services
15 Casco St.
Portland, ME 04101

**SUBJECT: Notification of Decision of Appeal Committee RFP# 202402021
Statewide Community Led Needs Assessments**

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 invalidates the contract award for RFP #202309203 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,

DocuSigned by:
A handwritten signature in blue ink that reads "William Longfellow".
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William Longfellow, Director
Bureau of General Services

cc: Brandon Martin, Acting Deputy Chief Procurement Officer
David Morris, Acting Chief Procurement Officer
Debra Downer, Deputy Director
Appeal Hearing Committee

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

In Re: Appeal of Contract Award under RFP #	}	
202402021 for Statewide Community Led Needs	}	Decision on Appeal
Assessments	}	

INTRODUCTION AND BACKGROUND

On May 30, 2024, the Bureau of General Services (BGS) received a timely request for an appeal hearing filed by Cross Cultural Community Services (CCCS) 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).

On May 31, 2024, the Bureau of General Services (BGS) received a timely request for an appeal hearing filed by Providentia Group, PLLC (Providentia) on the same contract award.

A request for proposal (RFP) was issued by DHHS, per 5 M.R.S. § 1825-B, for Statewide Community Led Needs Assessments (CLNA). The RFP and contract selection process was managed by the Department of Health and Human Services, with assistance and oversight from DAFS. Five bidders responded to DHHS, submitting all documents and information required via the RFP, which was numbered 202402021.

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)¹

DHHS made three conditional awards for this RFP. They awarded Central Maine Area Agency on Aging, dba Healthy Living for Maine (HL4ME) a total score of 86.00 out of 100 points, Mano en Mano's Migrant and Seasonal Farmworkers proposal a total score of 72.67 out of 100 points, Mano en Mano's Latino, Hispanic, Latinx Community's proposal a total score of 70.67 out of 100 points and awarded appellant Cross Cultural Community Services (CCCS) a total score of 62.18 out of 100 points and appellant Providentia Group PLLC (Providentia) a total score of 50.76 points out of 100 points.²

Based on the aforementioned results of the scoring by the RFP evaluation team, on May 16, 2024, DHHS notified the bidders via email about the contract award.³ Both Appellants timely filed a request for a hearing, which were subsequently granted by the Director of the Bureau of General Services. DAFS issued a scheduling notice on July 1, 2024. CCCS was represented by Dr. Regina Phillips, one of the organization's co-founders. Providentia was represented by Krystal Williams, Esq., the organization's founder. DHHS was represented by AAG Brendan Kreckel and AAG Margaret Machaiek.

A pre-hearing conference was held via Zoom on July 9, 2024.⁴ Presiding Officer Sarah Forster, AAG, provided the parties with an overview of the appeal hearing process, discussed scheduling and deadlines. The deadline for the parties' submission

¹ Exhibit JOINT-0017

² Exhibit JOINT-0039

³ Exhibit JOINT-0042

⁴ The Appeal Committee did not attend this pre-hearing conference.

of proposed exhibits and witness lists was set for July 12, 2024.

An appeal hearing was held via Zoom and recorded on July 16, 2024, and July 18, 2024, where the parties presented sworn testimony through witnesses, and the parties presented admitted documentary evidence in accordance with 5 M.R.S. § 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 their decision. The Presiding Officer attended the Committee's deliberations but did not participate 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.

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 team's actions were not arbitrary or capricious. *Central Maine Power Co. v. Waterville Urban Renewal Authority*, 281 A.2d 233, 242 (Me. 1971).

OVERVIEW OF PETITIONER'S COMPLAINT AND PARTIES' POSITIONS

Providentia Group, PLLC (Providentia) and Cross Cultural Community Services (CCCS) (collectively, the Appellants) argued that the appeal award should be invalidated because it included irregularities creating fundamental unfairness and it was arbitrary and capricious. In support of these arguments, Providentia asserted, *inter alia*, that “[1] the Department’s RFP design violated the law as it resulted in an outcome that was *per se* not in the best interest of the State, [2] the Department’s refusal to provide a budget target created an irregularity that was fundamentally unfair, and [3] the evaluation team misinterpreted and misapplied the RFP’s standards in a manner that was arbitrary and capricious and which resulted in a negative scoring bias...”⁵. CCCS asserted, *inter alia*, that [1] the RFP stated that one award would be made per Community of Focus, but the conditional awards include only three of the nine communities, [2] the Department’s scoring methodology and rationale are not clear, and [3] if the Department only issues award to support needs assessments in three of the nine identified communities, there is a risk that the remaining communities will continue to be underserved.⁶

In response, DHHS argued that the review committee followed the scoring procedure outlined in the RFP and the award decision should be validated.

During the appeal hearing, the Appellants presented sworn testimony from four witnesses: Ian Yaffe, DHHS; Lane Simsarian, DHHS; Rick Henning, DHHS; and Eden Silverthorn, DHHS. DHHS had the opportunity for cross examination and additional questioning of each witness.

⁵ Joint-0156

⁶ Joint-0166-0167

The Department of Health and Human Services presented sworn testimony from one witness: Debra Downer, DHHS. The Appellants had the opportunity for cross examination and additional questioning of the witness.

FINDINGS OF FACT AND CONCLUSIONS

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

I. Irregularities Creating a Fundamental Unfairness

a. Design of RFP

- i. **Scope of Services:** Testimony was provided that showed the Department did not consider the intersectionality of the Communities of Focus and how the varying needs of each Community would impact the implementation of the CLNA. The Department argued that the Scope of Services was specific and when questioned by the Committee as to if it was considered that different communities may require different needs to complete the CLNA, the Department answered that they would assume it was the same. Through testimony, the Committee heard that the Department did not provide enough information in the Scope of Services to allow Bidders to submit equitable proposals. The Department was relying on the Bidder's to identify key components of the CLNA, such as the subset of individuals within a Community of Focus being targeted, how many partnerships with other organizations were appropriate, and what a "statistically significant sample size" should be defined as. The RFP's Part I Introduction, A. Purpose and Background included reference to undefined "social determinates of health". The Q&A Summary issued told Bidders they may propose a CLNA that encompasses all determinates of health and that there were no specific determinates required. The Appellants argued that by leaving this open to Bidders' discretion, it allowed the proposed Scope of Services submitted by each Bidder to have a large variation which could not be evaluated equitably. In closing, the Department argued that the RFP was not impermissibly vague.

The committee finds the Appellant's arguments around the design of the scope of services are clear and convincing.

- ii. Cost Proposal and Funding: Testimony was provided that showed the Department knew that there were not enough funds available to make awards to all nine Communities of Focus. The Department declined to provide funding information, arguing that, had they disclosed the amount of funding available all of the proposals would have come in at the maximum available amount. The Appellants argued that had funding information been provided, Bidder's would have been able to balance the scope of services with the costs in order to provide the best value and most significant impact for the Communities of Focus. In particular, the Appellants raised concerns that the variations in proposals from the design of the Scope of Services resulted in widely varying cost proposals – specifically that Bidders who proposed fewer social determinates of health had a lower overall cost proposal. The Department testified that all RFPs are scored through a formula, with 25 points being awarded to the Bidder with the lowest cost. When questioned by the Committee on whether the Department had considered assigning points towards a consensus score of whether the costs proposed by the Bidders represented the best value for the proposed services, the Department stated that it was not needed or necessary for this RFP. The Appellants raised concerns that the method used for scoring prevented the evaluation committee from being able to evaluate equitably.

The committee finds the Appellant's arguments around the design of the cost proposal

and funding are clear and convincing.

- iii. Allowable/Non-Allowable Costs: Testimony was provided that showed the Department included requirements for how American Rescue Plan Act (ARPA) funding may or may not be used. However, they did not include any questions for the Bidder's to answer regarding whether or not a Bidder has received "duplicating or supplanting funding from other federal or State resources". The Department testified that by submitting a proposal for this RFP, Bidders are agreeing to meet this stipulation. The Appellants raised concerns about a contract held by one of the conditionally awarded bidders. They argued scope of services for the Rural Community Health Improvement Partnership (RCHIP) include similar or overlapping deliverables to the CLNA. The Department testified that RCHIP and this RFP have no overlapping deliverables, but also testified that the project under contract requires inclusive community engagement and that members of the geographic community targeted by RCHIP may also be targeted through the CLNA. The Appellants argued that by failing to include questions around this requirement, the evaluation committee was not able to verify that awards under this project would not violate ARPA funding rules.

The committee finds the Appellant's arguments around allowable/non-allowable costs to be persuasive, but not necessarily indicative of an irregularity creating a fundamental unfairness. The committee does not find the Department's argument that by submitting a proposal means that Bidders are agreeing to meet a specific requirement persuasive either; it is the responsibility of the evaluation committee to ensure that all requirements of an RFP are met.

b. Review of Proposals

- i. Review Procedure: The committee heard testimony from two of the three members of the evaluation team. The Appellants sought to show that the proposals were not reviewed in a consistent manner. One evaluator testified that based on training from the Department's Division of Contract Management, evaluators use the "PNQI" method of evaluating for their individual notes and that the individual notes inform the team consensus notes. Another evaluator testified that due to personal preference he does not use the "PNQI" method. The evaluators were questioned by the Appellants on the overall method used to determine the points awarded. The evaluators testified that they utilized a 60% threshold where 60% of the available points for each non-cost category would be awarded if a Bidder met the minimum requirements of that section. They testified that Bidders were awarded additional points when they provided details above and beyond the requested deliverables. One Appellant questioned the Department on the difference between the score awarded to their organization versus the score awarded to a conditionally awarded bidder. The Appellant raised issues with understanding how points were deducted; the Department's response was that unless the section dropped below the 60% threshold, it would not be considered as a deduction. The Department's counsel questioned one witness on the evaluation process as a whole, asking if proposals are compared to each other. Testimony was given that proposals are only evaluated against the requirements of the RFP, and not compared to one another. The Appellants questioned one witness on the thinking behind differences in how the proposals were reviewed and scored; the witness answered that they would be unable to recall any discussions that occurred during the team consensus meetings.

Witnesses testified that they are provided the Organization Qualifications and Experiences section and the Proposed Services section of the RFP for their review and that the Cost Proposal is not provided to evaluators until after the proposals are scored so that the cost does not unfairly bias the evaluators during scoring. However, the representative from DCM testified that the financial specialist had visibility to the cost proposal during the evaluation of the substantive pieces of the RFP review.

The committee finds the Appellant's arguments around the Review Procedure indicative of a fundamental unfairness. The evaluators' testimony, individual notes, and consensus scoring fail to demonstrate that sections from the proposals were weighed equitably for substantively similar information.

- ii. Team Consensus Notes: The Appellants argued that the level of detail given to each proposal throughout the review process was shown to be inequitable. Testimony was given explaining that the purpose of the Team Consensus Notes is to compile the thoughts of all evaluators together to come to consensus on how a single proposal relates to the RFP. During closing statements, the Department's counsel invited the Committee to review the Team Consensus Notes. In doing so, the Committee found that there were discrepancies between the way in which each proposal was evaluated. The language used between each proposal varied in a way that could lend bias to how points were allocated. Where one proposal specifies numbers, another was listed as "sufficient" and "extensive". Some notes identify specific projects, while others don't reference projects in the same way.

The committee finds the Appellant's arguments around the Team Consensus Notes are clear and convincing. The Committee believes that the Department failed to equitably review the proposals. This is not to be construed as the Committee believing the proposals should have been compared to each other, rather that the Committee believes that care should have been taken by the Department to ensure that each proposal be evaluated using the same framework – if something is called out in the notes for one bidder, that standard should be evaluated for all bidders.

Upon review of the evidence and testimony provided, the Committee finds that there is clear and convincing evidence to support the Appellant's claim that the RFP and the review process included irregularities creating a fundamental unfairness.

II. Arbitrary and Capricious

Arbitrary and capricious has been described as “‘wilful [sic] and unreasoning’ and ‘without consideration of facts or circumstances.’” *AngleZ Behavioral Health Services v. Dep't of Health & Human Services*, 2020 ME 26, ¶ 23, 226 A.3d 762 (citation omitted).

The clear and convincing evidence described above regarding the irregularities which caused a fundamental unfairness also serve as clear and convincing evidence that the award was arbitrary and capricious, as the award did not align with the facts presented to the review committee.


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.

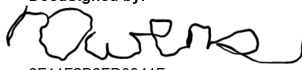
The Appellants have met the burden of proof necessary to invalidate the award. Accordingly, the Appeal Committee invalidates the Department of Health and Human Services award decision.

APPEAL COMMITTEE

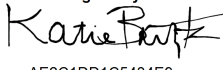
Dated: 8/1/2024

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Conner McFarland, Manager of Correctional
Operations
Department of Corrections

Dated: 8/1/2024

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Natalie Owens, Procurement Analyst
Department of Education

Dated: 8/1/2024

DocuSigned by:

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Katie Boynton, Systems Analyst
IT Procurement, Department of
Administrative and Financial Services

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