



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BUREAU OF GENERAL SERVICES  
BURTON M. CROSS BUILDING  
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AUGUSTA, MAINE  
04333-0077

PAUL R. LEPAGE  
GOVERNOR

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COMMISSIONER

BETTY M. LAMOREAU  
ACTING DIRECTOR

June 30, 2011

Julius Ciembroniewicz  
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Attorney General  
#6 State House Station  
Augusta, ME 04333-0006

Re: Appeal of Award by the Department of Health and Human Services  
Healthy Maine Partnership, RFP # 201010788

Dear Attorneys Ciembroniewicz, Cleary and Gauvreau:

I am forwarding the Final Decision of the Appeal Panel for the above-referenced appeal. The Panel validates the award for the reasons set forth in the attached decision.

This represents final agency action in this matter and as such may be eligible for judicial review. Any person aggrieved by this decision may appeal to Maine's Superior Court in the manner provided in 5 M.R.S.A. 1101, et seq, and M.R. Civ. P. 80C. A party must file a petition for review within thirty days after receipt of notice of the decision.

Regards,

A handwritten signature in cursive script that reads 'Betty M. Lamoreau'.

Betty M. Lamoreau, Acting Director  
Bureau of General Services

cc: William Laubenstein, AAG, Hearing Officer  
Appeal Panelists  
Andrew Finch, Department of Health and Human Services

Attachment: Decision of the Appeal Panel

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

In the Matter of	)	
Healthy Communities of Hancock County	)	
Appeal of Award by	)	
Department of Health and Human Services	)	
Maine Centers for Disease Control &	)	
Prevention and Office of Substance Abuse	)	Decision of Appeal Panel
	)	
RFP No. 201010788 HMP	)	

**INTRODUCTION AND PROCEDURAL BACKGROUND**

This is an appeal by Healthy Communities of Hancock County (“HCHC”) from a decision of the Department of Health and Human Services, Maine Centers for Disease Control & Prevention and Office of Substance Abuse (in partnership with Maine Department of Education) (“Department” or “MCDC”) awarding a contract for a Healthy Maine Partnership, Comprehensive Community Health Coalition in Hancock County pursuant to a Request for Proposals issued in October 2010. The appeal is pursuant to 5 M. R. S. A. § 1825-E and Chapter 120 of the Rules of the Bureau of General Services, Department of Administrative and Financial Services (“Rules”). The Bureau of General Services granted the request of HCHC for a hearing. The Bureau granted intervenor status to the successful bidder, Healthy Acadia (“Acadia”).

The Appeal Panel (“Panel”) was comprised of three members chosen from state service. A presiding officer conducted the hearing but did not have a vote in the decision. A hearing was held on June 6, 2011, at which the testimony of witnesses and

documentary evidence was presented. The record was closed on June 15, 2011 upon submission of closing arguments by the parties.

After reviewing the arguments and the evidence presented by the parties, the Panel makes the following findings.

### **FINDINGS OF FACT**

The Department issued a Request for Proposals (“RFP”) in October 2010 and provided responses to bidders’ questions posed in writing and at a bidders’ conference held on November 22, 2010. The RFP required bidders to submit proposals by 2:00 pm, February 3, 2011. The Department requested proposals to: “(1) continue the implementation of a statewide coalition-based public health infrastructure... (2) provide ongoing enhancement to this coalition-based public health infrastructure and, (3) implement categorical health promotion and prevention activities through the enactment of health related policy and environmental change at the community and school level.” The contract for the Program would be for a twelve-month period with an option for annual renewal of up to four additional years.<sup>1</sup>

In the RFP the Department stated that its goal was to continue and expand the work of local Healthy Maine Partnerships (“HMP”); to further develop policy and environmental change to address key public health issues and to enhance connections between local HMPs and clinical care services. These goals were to be accomplished while building on existing efforts and infrastructure.

In order to be eligible for a grant award under the RFP, an applicant was required to be a public entity or 501 (c) (3) not-for-profit entity or have a Lead Agency who

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<sup>1</sup> The Department had established eight public health districts. The appeal addressed in this decision is for the award for the Downeast District or Hancock County.

qualifies as a public entity or 501 (c) (3) not-for-profit entity; have a primary office within the proposed Local Service Area; and possess the organizational ability to meet the performance standards attached to each of enumerated Threshold Core Competencies.

The first step in the RFP process was the submittal by prospective bidders of a Letter of Intent that was to include a demonstration that the bidder met nine Threshold Core Competencies: Governance, Funding, Management and Administrative, Leadership, Convening and Mobilizing, Assessment, Planning and Program, Communication and Evaluation. The letters of intent, with the accompanying documentation of the Threshold Core Competencies, were reviewed separately from bidders' proposals and were not part of the evaluation of the proposals. All bidders who submitted a Letter of Intent was determined to be eligible to submit a proposal.

A bidders' conference was held on November 22, 2010 and bidders were given the opportunity to submit written questions that were due November 29, 2010. In response to a series of questions regarding the structure of a Healthy Maine Partnership, the Department stated that multiple Comprehensive Community Health Coalitions ("CCHC") could be "brought together to form a single HMP through the use of MOUs, subcontracts, and other such tools. In this event, there must be one HMP Director, one HMP Advisory Governance board, and DHHS Maine CDC will issue only one contract which must be to an incorporated party. This party will be "the HMP if it is an incorporated coalition, a Lead agency if it is the fiscal or sponsoring agent for the HMP coalition, and will be solely accountable for the achievement of the work plan and other identified deliverable."

The Department in the RFP set forth in detail its expectations as to Governance and Leadership, stressing the primary role of the HMP Governance or Advisory Board in overseeing and directing the work of the HMP; the need for HMP and HMP Board to have sufficient authority and autonomy from a Lead Agency to respond to the needs of the service; and requiring a Memorandum of Understanding (“MOU”) between the Lead Agency and the HMP Advisory Board.

The Department required that the HMP have a single full-time Partnership Director and that a bidder’s proposal contain a staffing plan adequate to carry out the required staff functions and achieve the required deliverables. The Department reserved the right to reject or negotiate with applicants for changes in work plans and budgets “if it believes that inappropriate or insufficient levels of resources have been directed to any of these staffing functions.” The Department advised applicants to avoid placing responsibility for too many different functions in a single position.

Under the RFP an Evaluation Committee would judge the merits of HMP proposals in accordance with the criteria outlined in the RFP and would be scored: (1) Local Service Area--20 points; (2) Governance and Leadership--40 points; (3) Staffing Plans, Component A--15 points and Component B --15 points; (4) Development & Implementation of Workplans, Component A Narrative—20 points, Component B Narrative—20 points and Component B Workplan—20 points; and Cost, Budget Narrative & Forms—25 points and Determination of Appropriate Dedication of Resource—25 points.

The Department received four proposals. The Evaluation Team prepared score sheets for each bidder. The record contains consensus notes and notes of individual

evaluators. The proposal were scored by consensus. A summary of the scoring submitted by the Department shows that Healthy Acadia received a total score of 174, with 15 points awarded for Local Service Area, 34 points awarded for Governance and Leadership, a total of 29 points for Staffing, a total of 50 points for Development & Implementation of Workplans and a total of 46 points for cost. Healthy Communities received a total score of 148, with 14 points awarded for Local Service Area, 22 points awarded for Governance and Leadership, a total of 20 points for Staffing, a total of 46 points for Development & Implementation of Workplans and a total of 46 points for cost. St.Croiz Valley Health received a total score of 96, with 10 points awarded for Local Service Area, 20 points awarded for Governance and Leadership, a total of 11 points for Staffing, a total of 22 points for Development & Implementation of Workplans and a total of 33 points for cost. Washington County One Community received a total score of 160 points, with 14 points awarded for Local Service Area, 30 points awarded for Governance and Leadership, a total of 23 points for Staffing, a total of 46 points for Development & Implementation of Workplans and a total of 47 points for cost.

## **DECISION**

### **I. Governing Law and Standard of Review**

When there is an appeal of an award of a contract made through the bidding process, the petitioner must show by clear and convincing evidence that the award was (1) in violation of the law; (2) contained irregularities that created a fundamental unfairness, or (3) was arbitrary or capricious. This standard is contained in the law at 5 M.R.S.A. §§ 1825-D and 1825-E and Chapter 120 of the Rules for Appeals of Contract and Grant Awards. The clear and convincing standard requires the

Committee be convinced that the truth of the assertions on appeal is highly probable, as opposed to more probable as not. *Pine Tree Legal Assistance, Inc. v. Department of Human Servs.*, 655 A.2d 1260, 1264 (Me. 1995). The Panel may only decide whether to validate or invalidate the award decision that is under appeal. 5 M.R.S.A. § 1825-E (3); Chapter 120(4) (1) (A) & (B) of the Rules.

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

II. Discussion. The Panel has determined that HCHC has not met its burden of proving by clear and convincing evidence that the award of the contract was in violation of law, contained irregularities creating fundamental unfairness or was arbitrary or capricious.

A. Request for Proposals and Evaluation of Proposals. In its request for an appeal hearing, and in subsequent submissions and closing argument, HCHC repeatedly argued that the Evaluation Committee was predisposed to awarding the contract to an applicant with a particular governance structure and further enumerated a litany of examples showing that the scores awarded to HCHC could not be reconciled with the consensus scoring comments and the RFP.

At the outset, the Panel notes that the issues properly presented for review are issues related to the RFP process, the evaluation process and the scoring process. It is not the role of the Panel to go behind the scores assigned and reevaluate the proposals.

The primary focus of HCHC's appeal, however, was the scoring of proposals and thus not properly before the Appeal Committee. Notwithstanding, the Panel undertook to review the various claims of HCHC as if the claims demonstrated the RFP and evaluation process were in violation of law, fundamentally unfair or an arbitrary or capricious. With regard to the claim that the Evaluation Committee was predisposed to awarding the contract to an applicant with a particular governance structure, the Panel considered this be a claim of bias, a claim that HCHC failed to substantiate with clear and convincing evidence.

B. Governance and Leadership. The RFP assigned 40 points for Governance and Leadership. This is a strong indication of the importance of this requirement in the creation of a HMP and the consensus scoring comments reflect this. HCHC claims that it was fundamentally unfair and arbitrary or capricious not to award a better score to HCHC on Governance and Leadership. HCHC based its claim on the statements in the RFP that the HMP was to build on existing local infrastructure and take full advantage of previous investments in capacity building; the determination of the Department that HCHC met the Threshold Core Competencies; and on the Department's affirmative response to a series of questions raised by HCHC as to whether a HMP could consist of more than one CCHC. HCHC argued that because the Department determined that HCHC's letter of intent met the Threshold Core Competencies, including Governance, its subsequently submitted proposal should have been more favorably evaluated.

The Panel is not persuaded by the arguments of HCHC. The record shows that the Evaluation Committee thoroughly reviewed all the proposals and reasonably and carefully undertook to determine whether the structure proposed by a bidder would meet



the needs of the clients to be served. In other words, the evaluation process involved more than whether the bare structure alone met the substantive requirements of the RFP. Accordingly, the Panel finds that the evaluation of Governance was not in violation of law, was not fundamentally unfair and was not arbitrary or capricious.

C. Management Structure. In its appeal presentation, HCHC repeatedly argued that its approach to management of its proposed HMP met the requirements of the RFP and the Evaluation Committee's work with regard to HCHC was fundamentally unfair and arbitrary or capricious. The record shows, however, that the Evaluation Committee documented its reasons for the scores given to the proposals that were submitted. With regard to HCHC, the Evaluation Committee indicated its concerns about the relationships between the HMP Advisory Board, the Lead Agency and the member coalitions and whether mechanisms were in place for required program oversight. For example, notably absent was any documentation delineating the respective responsibilities of the Advisory Board and the member coalitions for program development and implementation. The Evaluation Committee also noted concerns about the dual role of the Executive Director as Executive Director of the HMP and as Executive Director of one of the member coalitions. The Appeal Panel finds, therefore, that evaluation of the management structure was not in violation of law, was not fundamentally unfair and was not arbitrary or capricious.

D. Staffing. It was a requirement of the RFP that each HMP hire qualified staff, with sufficient hours "to carry out the required functions and achieve the required objectives" of the program components. The Department reserved the right to reject applications or negotiate work plan or budgets if it believed that inappropriate or

insufficient levels of resources have been directed to any of the necessary staffing functions. While the Department left open the possibility that staff functions could be distributed across staff positions, it cautioned against placing responsibility for too many different functions in a single position. The record shows that the Evaluation Committee was not satisfied that HCHC's staffing plan adequately addressed the requirement that staff have sufficient hours to meet program objectives and, further, was not persuaded that HCHC's proposal adequately addressed the service needs of Mount Desert Island. The Panel finds that, with regard to staffing, HCHC failed to establish that there was a violation of law, an error creating fundamental unfairness or that the Evaluation Committee's work was arbitrary or capricious.

E. Process of Evaluation/Double Counting. HCHC argued that the Evaluation Committee members' notes show that the Committee assigned or deducted multiple points for the same perceived weakness in HCHC's proposal. The evidence presented at the hearing does not support this argument. The evaluation tool used to score the proposals had many subsections to each broad evaluation criteria but these subsections were not assigned points. Rather, the Department allotted a certain number of points for each broad evaluation criteria. The Evaluation Committee scored each broad evaluation criteria by consensus and assigned points based on the Committee's determination of the extent to which each proposal was responsive to the requirements of the RFP. In this regard, too, there was no evidence presented at the hearing to support the argument that the Evaluation Committee compared the proposals in the evaluation process. Accordingly, the Panel finds that the process followed in the evaluation of the


proposals was not in violation of law, was not fundamentally unfair and was not arbitrary or capricious.

#### CONCLUSION

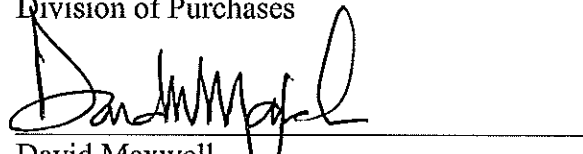
HCHC has not established by clear and convincing evidence that the awarding of the contract for Healthy Maine Partnership in Hancock County to Acadia was in violation of law, contained irregularities that created a fundamental unfairness, or was arbitrary or capricious. The Panel therefore validates the award made by the Maine Centers for Disease Control & Prevention and Office of Substance Abuse.

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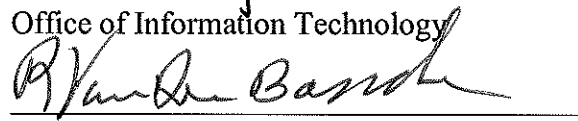
Dated: 6/30/2011

  
Mike Wenzel  
Division of Purchases

Dated: 6/27/11

  
David Maxwell  
Office of Information Technology

Dated: 6/29/2011

  
Tony VanDenBossche  
State Planning Office

#### STATEMENT OF APPEAL RIGHTS

This decision constitutes 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 with 30 days of receipt of this decision.