



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF GENERAL SERVICES
BURTON M. CROSS BUILDING
4TH FLOOR, 77 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0077

JOHN ELIAS BALDACCI
GOVERNOR

RYAN LOW
COMMISSIONER

M.F. CHIP GAVIN
DIRECTOR

May 28, 2009

Dave Hamlin
Hamlin's Marine
290 West River Road
Waterville, ME 04901

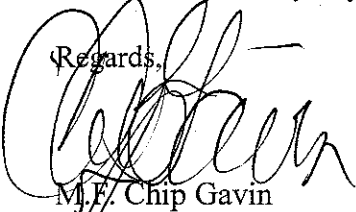
Re: Decision of Appeal Panel, Appeal of the Department of Administrative and Financial Services, Division of Purchases' Award Decision Pursuant to Solicitation # 090313000000000640 for 2009 Warden Service Boating Needs

Dear Mr. Hamlin:

I am forwarding the Final Decision of the Appeal of the Department of Administrative and Financial Services, Division of Purchases' award of the Request for Quotations for 2009 Warden Service Boating Needs. 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,


M.F. Chip Gavin
Director, Bureau of General Services

cc: William Laubenstein, AAG
Betty M. Lamoreau, Director, Purchases
Appeal Panelists
Terry DeMerchant, Division of Purchases

Enclosure

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

Re: HAMLIN'S MARINA APPEAL) DECISION OF
APPEAL OF AWARD:) APPEAL PANEL
WARDEN SERVICE BOAT)

Introduction

This is an appeal by Hamlin's Marina ("Hamlin") from a decision of the Division of Purchases, Bureau of General Services ("BGS") to award a contract for a Warden Service Boat. The appeal is brought pursuant to 5 M. R. S. A. §1825-E and Chapter 120 of the Rules of the Bureau of General Services of the Department of Administrative and Financial Services ("Rules"). BGS awarded the contract to Melvin Village Marina ("Melvin Village"). The Appeal Panel ("Panel") was comprised of three members chosen from state service. An evidentiary hearing was held on June 12, 2009, at which testimony of witnesses and documentary evidence was presented. After review of the evidence and arguments presented, the Panel makes the following findings.

Findings of Fact

BGS issued a Request for Quotations ("RFQ") on March 13, 2009. The RFQ sought proposals for a boat and trailer for the Maine Warden Service. The RFQ included a detailed list of specifications for the boat and trailer. The specifications included in the RFQ were for a 20' Lund Wilderness Series 2000 Alaskan SS Boat and Trailer. Although not stated in the RFQ, BGS is obligated by State law to consider equal alternatives that serve the best interests of the State.

After a review of the quotations submitted, BGS, in consultation with the Warden Service awarded the contract to Melvin Village for a 2009 20' Lund Alaskan SS, Boat and Trailer Package. Hamlin has appealed that award.

The Panel has determined that Hamlin has not met its burden of proving that the award was in violation of law, contained irregularities creating a fundamental unfairness or was arbitrary and capricious.

Discussion

I. Governing Law and Standard of Review.

The issue in this case is whether Hamlin has met its burden of proving by clear and convincing evidence that BGS's award of the contract (1) was in violation of law; (2) contained irregularities that created a fundamental unfairness; or, (3) was arbitrary and capricious. See 5 M. R. S. A. §1825-E and Chapter 120 of the Rules. In order to invalidate the contract award because of irregularities creating fundamental unfairness, the Appeal Panel must find an irregularity so basic that it would be inequitable to uphold the award decision. Arbitrary and capricious conduct by an administrative agency is defined as "willful and unreasoning action, without consideration of facts or circumstances." *Help-U-Sell, Inc. v. Maine Real Estate Commission*, 611 A.2d 981, 984 (Me. 1992). When applying the arbitrary and capricious standard, the Appeal Panel is not to substitute its judgment for that of the Review Team. *Seider v. Board of Examiners of Psychologists*, 2000 ME 118, ¶ 29, 754 A.2d 986, 993; *International Paper Co., v. Board of Environmental Protection*, 1999 Me. 135, ¶29, 737 A.2d 1047, 1054.

The "clear and convincing evidence" standard of proof requires the Panel be convinced that it is "highly probable" that the award was illegal, unfair or arbitrary or

capricious. *Dubois v. Madison Paper Co.*, 2002 ME 1 ¶¶ 10, 11, 795 A.2d 696, 699; *Taylor v. Commissioner of Mental Health and Mental Retardation*, 481 A.2d 139, 153 (Me. 1984) (party with burden of persuasion must “place in ultimate fact finder an abiding conviction that the truth of [his] factual contentions are ‘highly probable.’”).

II. Violation of law. Hamlin has not contended and the Panel does not find that there was a violation of law in the award of the contract to Melvin Village.

III. The evaluation was not arbitrary and capricious.

Hamlin contended at the hearing that the Polar Kraft boat it had proposed was a good quality boat that it had designed in consultation with L. L. Bean and that its experience working with the Warden Service informed its work on the design of the boat. Hamlin pointed out that it had submitted the lowest price bid and claimed that the Polar Kraft met specifications. Hamlin testified to its commitment to service the boat and highlighted its life-time warranty.

The evidence showed, however, that the material submitted by Hamlin in support of its proposal did not demonstrate that the Polar Kraft met specifications. Hamlin acknowledged that the specifications were incorrect. The evidence presented by BGS included problems the Warden Service had experienced with a Polar Kraft boat that was being serviced by another vendor. Hamlin responded that these problems were service related and that had the Warden Service accepted Hamlin’s offer to service the boat, the problems would have been satisfactorily resolved.

BGS presented the testimony of Warden McBrine, who testified to the poor performance of the Polar Kraft in heavy seas and that the Polar Kraft was a “wet” boat. He further testified that the Lund Alaskan offered a safer and more enjoyable ride.

The Panel finds that Hamlin failed to present any evidence that the evaluation and award decision was arbitrary and capricious.

IV. Fundamental Unfairness

After a thorough review of the evidence as set forth above, the Panel finds that Hamlin failed to present any evidence that there were any irregularities in the RFQ or in the evaluation and award process that created a fundamental unfairness. The review team carefully examined the proposals of all bidders, compared the proposals against the specifications set forth in the RFQ and made an award that offered the best value to the State.

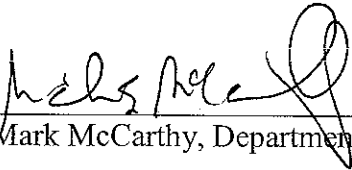
V. Conclusion.

The Appeal Panel finds that Hamlin has failed to carry its burden of establishing by clear and convincing evidence that the award to Melvin Village was in violation of law, contained irregularities that created a fundamental unfairness or was arbitrary and capricious. Accordingly, the Panel validates the contract award.

[This space intentionally left blank.]

Appeal Panel

Dated: 5/26/2009



Mark McCarthy, Department of Corrections

Dated: _____

Christopher Batson,
Maine Revenue Services

Dated: _____

Norm Marcotte,
Department of Environmental Protection

STATEMENT OF APPEAL RIGHTS

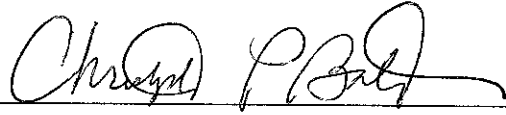
This decision constitutes final agency action. Any aggrieved party may appeal this decision by filing a petition for review in Superior Court for the county where one or more of the parties reside or have their principal place of business, where the agency has its principal office, or where activity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

Appeal Panel

Dated: _____

Mark McCarthy, Department of Corrections

Dated: May 22, 2009



Christopher Batson,
Maine Revenue Services

Dated: _____

Norm Marcotte,
Department of Environmental Protection

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 within 30 days of receipt of this decision.

Appeal Panel

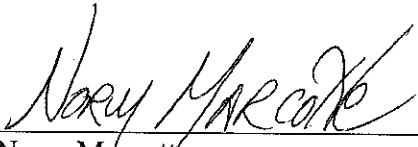
Dated: _____

Mark McCarthy, Department of Corrections

Dated: _____

Christopher Batson,
Maine Revenue Services

Dated: 5/22/09



Norm Marcotte,
Department of Environmental Protection

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 within 30 days of receipt of this decision.