



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF GENERAL SERVICES
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JOHN ELIAS BALDACCI
GOVERNOR

RYAN LOW
COMMISSIONER

M.F. CHIP GAVIN
DIRECTOR

January 19, 2010

Adrienne Scherzer
Rosen's Uniforms
230 Central Avenue
Albany, NY 12206

Bill Lacaillade
Safariland
P.O. Box 10326
Bedford, NH 03110

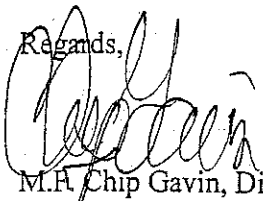
Re: Decision of Appeal Panel, Appeal of Award Decision, RFQ #0910280000000000404
for Bullet Proof Vests

Dear Ms. Scherzer and Mr. Lacaillade:

I am forwarding the final decision of the appeal panel with regard to the appeal of the State's award decision on the above-mentioned RFQ. The Panel invalidates 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. §11001, et seq, and M.R. Civ.P.80C. A party must file a petition for review within 30 days after receipt of notice of the decision.

Regards,


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

Enclosure

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

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

In the Matter of)	
Rosen's Uniforms)	
Appeal of Award by)	Decision of Appeal Panel
Department Public Safety)	
Maine State Police)	
RFQ 09102800000000000404)	

INTRODUCTION AND PROCEDURAL BACKGROUND

This is an appeal by Rosen's Uniforms ("Rosen's") from a decision of the Department of Public Safety, Maine State Police, awarding a contract for bullet proof vests pursuant to a Request for Quotations issued by the Bureau of General Services ("Bureau" or "BGS") on October 28, 2009. 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 granted the request of Rosen's for a hearing. The Bureau granted intervenor status to Safariland, LLC, an interested party.

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 January 7, 2010 at which the testimony of witnesses and documentary evidence was presented.

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

FINDINGS OF FACT

The Bureau issued a Request for Quotations ("RFQ") on October 28, 2009. The RFQ required bidders to submit quotations by 2:00 pm, November 4, 2009. The RFQ requested quotations for "Bullet Proof Vest, Point Blank Hi-Lite Performance Threat Level II Vest with Self Suspending Ballistic System." The contract for the vests would be for the period November 1, 2009 through October 31, 2010.

The Bureau stated in the Bid Terms and Conditions and in the Bullet Proof Specifications that the State intended to purchase over three-hundred (300) vests and that approximately "twenty-one (21) shall be specially designed for issue to female officers." Each unit was to be custom fit and made to measurements. The RFQ further stated that the vests be NIJ Certified to be in compliance with "NIJ 0101.06 Standard Requirements certification for both male and female models all sizes C1-C5."

The Department received eight proposals. The first two low bids—Rosen's Uniforms and Neptune Uniforms & Equipment Inc.—were disqualified because the offered female vest was not NIJ certified. The award was made to Riley's Sport Shop Inc. ("Riley's"), which offered a Safariland model XT300 Type II that was characterized as "Gender Neutral."¹

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

¹ This information was submitted by Safariland by letter dated January 6, 2010. The letter was admitted into evidence but was not submitted with Riley's Sport Shop quotation or before the Bureau when the award was made.

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 Rosen's has met its burden of proving by clear and convincing evidence that the award of the contract contained irregularities creating fundamental unfairness and was arbitrary or capricious.

In its request for an appeal hearing, and in subsequent submissions and oral argument, Rosen's alleged, essentially, that the evaluation process was fundamentally unfair and arbitrary or capricious. In support of these allegations, Rosen's pointed out that the Safariland vest did not have the SSBS suspension shoulder system specified in the RFQ and that the Safariland vest was gender neutral and not available in a female cut. Rosen's also pointed out that the limited time to submit a quotation was unreasonably short, only 8 days. At the hearing, Rosen's was given the opportunity to examine the

Safariland vest submitted by Riley's with its quotation and conceded that the vest met the suspension shoulder system specification. The Bureau responded that the RFQ stated that specifications were minimal and that approved equals may be considered and further stated: "The State also reserves the right to consider alternates and determine equivalency." The Department acknowledged that the time allotted for the submission of quotations was shorter than normal but that the State Police faced an emergency in supplying vests to officers. In response, Rosen's noted that under the current contract held by Rosen's the State could have ordered and Rosen's could have provided vests to meet the emergency.

(1) Vests not specially for females. The evidence presented showed that NIJ has not certified a vest specially designed for females and that the Safariland vest is gender neutral and therefore does not meet the specifications. The Panel is not persuaded that the option reserved by the State to consider alternates was intended to permit a waiver of the specific requirement for a vest "specially designed for issue to female officers." In this regard the Panel finds it was fundamentally unfair and arbitrary or capricious to reject Rosen's bid and accept the bid of Riley's. Furthermore, the Panel notes that all vests were to be custom fit and made to measurements, which indicates that as long as a vest met NIJ ballistic specifications, such a vest may well have met specifications and been accepted.

(2) Suspension shoulder system. Although Rosen's raised the issue of whether the Safariland vest met the suspension shoulder system specification, it conceded at the hearing that the vest did meet this specification.

(3) Time for submission of quotations. The Panel considered the issue of whether the RFQ time for submission of quotations was unreasonably short. The Panel concluded, however, that all bidders faced the same time constraints and therefore there was nothing fundamentally unfair about the RFQ.

Since Rosen's did not raise any issue that could be considered a violation of law, the Panel makes no determination on this issue.

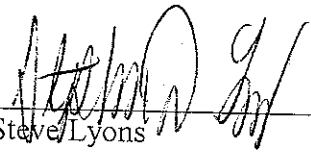
CONCLUSION

Rosen's Uniforms established by clear and convincing evidence that the awarding of the contract for bullet proof vests was fundamentally unfair, or arbitrary or capricious.

The Panel therefore invalidates the award made by the Department of Public Safety, Maine State Police.

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Dated: 1/14/2020



Steve Lyons
Department of Economic and Community
Development

Dated: _____

Alan Henry
Bureau of General Services

Dated: _____

Kathy Plante
Department of Corrections.

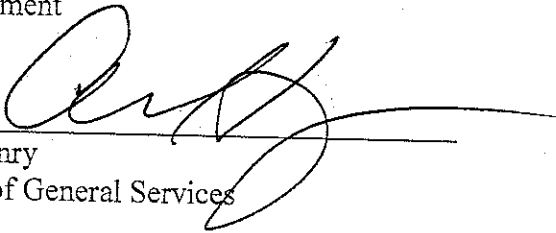
STATEMENT OF APPEAL RIGHTS

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.

Dated: _____

Steve Lyons
Department of Economic and Community
Development

Dated: 1/14/2010



Alan Henry
Bureau of General Services

Dated: _____

Kathy Plante
Department of Corrections.

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Dated: _____

Steve Lyons
Department of Economic and Community
Development

Dated: _____

Alan Henry
Bureau of General Services

Dated: 1/14/10

Kathy Plante

Kathy Plante
Department of Corrections.

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