

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

Re: Integral Consulting Solutions, Inc.)
Appeal of Contract Award of) Decision on Appeal
RFP #201908139)
IT Service Management (ITSM) Solution)

INTRODUCTION AND BACKGROUND

The Bureau of General Services received and granted a request for hearing of appeal on a contract award decision by the Maine Department of Administrative and Financial Services Office of Information Technology (OIT) to Axios Assyst (Axios). The award was made following a request for proposal (RFP) process conducted under Division of Purchases rule Chapter 110. The request for appeal was timely filed by Integral Consulting Solutions, Inc. (Integral) under the process defined in Division of Purchases rule Chapter 120.

The Bureau granted a hearing, which took place on November 17, 2020 utilizing ZOOM. Witnesses were sworn in, examination and cross examination occurred, and all parties participated fully.

The Appeal Panel (“Panel”) was comprised of three members chosen from within state service. All members met and participated in the live video conference hearing. After a review of all the arguments and evidence presented by the parties, the Panel makes the following findings of fact and decision on appeal.

FACTUAL BACKGROUND

OIT issued a competitive Request for Proposal (“RFP”) for an IT Service Management (ITSM) solution. The RFP, issued in January of 2020, generally provided the scope of work to

be performed by a selected bidder and listed the detailed responsibilities of bidders regarding submission, the evaluation criteria and the procedure the OIT would take to review and score proposals to determine a winning bidder. OIT established a question and answer process during the open submission period, which was used by bidders including Integral, to clarify the OIT RFP requirements. Eighteen (18) proposals were received in response to the RFP, ten (10) receiving a final score and eight (18) disqualified. Both Integral and Axios were given opportunities for a demonstration to the evaluators.

The scoring process began with individual evaluators reading and making notes about the proposals and then meeting as a team to assign consensus scores to the qualitative criteria. The Cost score was assigned by a mathematical calculation where the lowest bidder received the highest score and a mathematically lower score was calculated for the higher cost proposals. Integral was the lowest cost proposal and received the full available score of 30 points. Axios received a score of 16.31 points for the cost proposal.

Axios was the highest overall scoring proposal (78.31 points) according to a team established by OIT and substantiated in a master score sheet and other documentation. Integral was ranked second, with a score of (77 points).

The scoring was summarized with corresponding notes and the highest scoring bidder selected. Notifications of award and non-award were sent to all respondents.

GOVERNING LAW AND STANDARD OF REVIEW

The issue in this case is whether Integral has met its burden of proof by clear and convincing evidence that the OIT award decision (1) was in violation of 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. § § 1825-D and 1825-E and in the Bureau of General Services' Rule, Chapter 120 – Rules for Appeal of Contract and Grant Awards. The clear and convincing standard requires that the Panel 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 Panel may only decide whether to validate or invalidate the contract award decision under appeal. *See*, 5 M.R.S. § 1825-E (3) and Chapter 120 (4) (1) of the rules.

FINDINGS OF FACT

The issues raised by Integral on appeal are discussed below. However, their basic premise was that there was a significant difference in cost between the selected bidder and their proposal. As such, awarding the contract to a competitor at the higher cost is unjustifiable. OIT did not dispute that Integral had the lowest cost proposal, confirmed in the scoring summary under the Cost Proposal scoring criteria. Integral received the maximum score for its lowest cost proposal. This was accurately calculated and applied. OIT summarized that it was the sum of all criteria that determined the final award, not just the cost proposal.

Point One: Data Migration Plans Were Not Required and Appellant was Inappropriately Penalized for not Including in the Response

Integral's evidence was that in the RFP and subsequent Q&A, a Data Migration Plan was not required. Because of their interpretation, Integral did not include this information in their proposal. Furthermore, Integral asserted that they received negative remarks for not including the plan.

In the Department's Exhibit page 11 (RFP Page 11), the requirements clearly state under Deliverables Phase 1 – Project Initiation and Discovery, Deliverables 1.d that a Data Migration Plan is required. Additionally, Department Exhibit page 58 (Q&A Summary, Question 58) answered a question about the Data Migration Plan being in scope. The answer referred potential bidders to Phase 1 – Project Initiation and Discovery. This is also Department Exhibit page 11 (RFP Page 11). The Department's Exhibit page 302, the Team Evaluation Notes for Integral, referenced that the Appellant was missing this information.

The Appeal Panel did not find any irregularities in OIT's handling in the evaluation of this requirement.

Point Two: Appellant was Inappropriately Penalized for Inadequate Resource Requirements

Integral's evidence was that in the RFP and subsequent Q&A, a Resource Plan/Organizational Chart was required. Integral stated that according to Department Exhibit Page 260 (Team Evaluation Notes for Integral), it did not provide a Resource Plan. Integral argues that they did, in fact, supply the necessary information on Appellant Exhibit Page 8. Additionally, the Appellant argued that Axios provided the same level of information. As such, Integral should not have been unfairly impacted.

In the Department's Exhibit page 260 (Integral Team Scoring Notes), it was noted that Integral was missing a staffing plan. Also, in the Department's Exhibit page 259 (Axios Team Scoring Notes), it was noted that Axios had deficiencies with their staffing plan. It was unclear as to whether resources were State or Vendor positions. OIT had fairly assessed the impact of

the limited organizational information from both proposals and applied consistent and fair scoring to both bidders.

The Appeal Panel did not find any irregularities in OIT's handling in the evaluation of this requirement.

Point Three: Appellant was Inappropriately Penalized for an Inadequate Interface Plan

Integral's evidence was that in the RFP and subsequent Q&A, an Interface Plan was required. Integral acknowledges that consistent with Appellant Exhibit Page 21, it did not provide an Interface Plan. Integral contended that that neither did Axios. In the Department's Exhibit Pages 265 and Page 270, there was no mention of Axios providing this information. As such, Integral should not have been unfairly impacted.

In the Department's Exhibit page 12 (RFP Page 12), it was noted in Phase 2 – Implementation, Deliverables Item 2, an Interface Plan was required. Four (4) examples were provided. In its argument, Integral was referencing the Individual Scoring Notes (Department's Exhibit Pages 265 and Page 270). While important, these are initial scorer thoughts which are superseded by the Team Scoring Notes. As such, they have no bearing on the final score, which are determined by the discussion and debate of the scoring team. The Team Scoring Notes for Axios (Department's Exhibit page 259) and for Integral (Department's Exhibit page 260), neither were noted for deficiencies with their interface plan. According to the Department, the Axios proposal, Axios showed their maturity in working with interface plans. As a result, OIT had fairly assessed the information provided in the proposals and fairly applied scoring, including credit for additional information provided to support requirements.

The Appeal Panel did not find any irregularities in OIT's handling in the evaluation of this requirement.

Point Four: Appellant was Inappropriately Penalized for an Inadequate User and System Manuals

Integral's evidence was that in the RFP and subsequent Q&A, User and System Manuals were required (Department Exhibits Page 13, Deliverables 8 and 9). Integral acknowledges that it did not provide reference to these manuals nor examples thereof. Integral contended that neither did Axios. In the Department's Exhibit Pages 265 and Page 270, there was mention of Axios creating these documents, but they did not exist. This was referenced in other sections. As such, Integral should not have been unfairly impacted.

In its argument, Integral was referencing the Individual Scoring Notes (Department's Exhibit Pages 265 and Page 270). While important, these are initial scorer thoughts which are superseded by the Team Scoring Notes. As such, they have no bearing on the final score, which are determined by the discussion and debate of the scoring team. The Team Scoring Notes for Axios (Department's Exhibit page 259) and for Integral (Department's Exhibit page 260), neither were noted for deficiencies with their ability to provide these manuals. Additionally, the Axios proposal demonstrated their commitment to develop these documents as part of the overall project plan. The appellant did not. As a result, OIT had fairly assessed the information provided in the proposals and fairly applied scoring, including credit for additional information provided to support requirements.

The Appeal Panel did not find any irregularities in OIT's handling in the evaluation of this requirement.

DECISION

The Panel reviewed the evidence, considered the testimony of the witnesses, and met to deliberate on this final decision. The Panel also looked closely at the Exhibits submitted by the Department and the Appellant.

The Panel finds no irregularity in the OIT assessment of score and indeed, Integral, as the lowest cost proposal, received the maximum point score available. There is a significant difference in cost between Integral and the other qualified bidders, but the Panel is not clearly convinced that the OIT handling of the score or the ultimate award to a higher cost bidder is an irregularity that created a fundamental unfairness.

The Panel carefully considered the issues raised by Integral around the scoring of all criteria and the small point difference (less than two (2) points) in the final total scores. Integral received the highest possible score on their Cost proposal but was scored below the Axios bid in all other categories.

It is not the responsibility of this Panel to substitute its judgement over that of the evaluators. OIT requested a proposal that matched or was similar to the way it does business today. OIT scored the proposals based on its requirements as they were written and understood by their evaluators. A consensus of evaluators was used to score the proposals. Integral highlighted several areas that might have been misunderstood or in which it disagrees with the OIT conclusions. Integral did not provide clear and convincing evidence that any of these claims rise to the level of an irregularity that created a fundamental unfairness.

Accordingly, the Panel validates the OIT award decision.

APPEAL PANEL

Dated: 11/30/2020 _____

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Jim Lopatosky, Director
Division of Contract Management, DHHS

Dated: 11/30/2020 _____

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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.