

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

In Re: University of Maine	}	
Appeal of Contract Award of RFP #	}	
202210180 for Evaluation of the	}	Decision on Appeal
First 4 ME Early Care Education Program	}	
	}	

INTRODUCTION AND BACKGROUND

The Bureau of General Services received and granted a request for hearing of appeal on a contract award decision by the Department of Health and Human Services (DHHS) for Evaluation of the First 4 ME Early Care and Education Program. The award was made following a request for proposal (RFP) process governed by Division of Purchases promulgated rule, Chapter 110. The request for appeal was timely filed by the University of Maine (UMaine) and an appeal hearing was granted under the process defined in Division of Purchases rule Chapter 120.

This appeal stems from a competitive Request for Proposal (RFP) issued by the DHHS, for the purpose of contracting with a single provider to provide Evaluation of the First 4 ME Early Care and Education Program. The RFP generally noted the service requirements and key process events and the proposal evaluation and selection procedures. Proposals were timely submitted and were distributed by the Division of Procurement Services to the RFP coordinator for review and scoring by the selected review team. Proposals were offered by the seven bidders in response to the specific requirements of DHHS, including details of their cost proposal as prescribed within the RFP.

The proposal evaluations were conducted, and a single award was made as outlined in the RFP and defined in the Division of Procurement Services administrative rule.¹

An appeal hearing was held on Friday, March 17,2023 where the parties presented witnesses in person and over the live video conference system, witnesses were sworn, examination and cross examination occurred, and the parties presented allowable evidence in

¹ 18-554 C.M.R. ch. 110, Rules for the Purchase of Services and Awards

accordance with Chapter 120². The parties agreed to written closing statements, UMaine to submit by close of business on March 22, 2023, and the DHHS to submit its closing argument by March 24 at close of business. The hearing was adjourned to allow the Appeal Panel (Panel) to begin its process to reach a decision on the appeal.

The Panel was comprised of three members chosen from within state service. All Panel members met and participated in the hearing. A Hearing Officer was appointed to lead the hearing but was not a decision maker on the Panel. After a review of the testimony and evidence presented by the parties, the Panel makes the following findings of fact and decision on appeal.

GOVERNING LAW AND STANDARD OF REVIEW

The issue in this case is whether UMAINE has met their burden of proof by clear and convincing evidence that the DHHS 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.

In determining whether an award is arbitrary or capricious, the Panel 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).

² 18-554 C.M.R. ch. 120, Rules for the Purchase of Services and Awards ("Chapter 120")

FINDINGS OF FACT

UMaine originally cited violations of all three appeal criteria but at the hearing focused on its claim that the scoring of its proposal was arbitrary and capricious. There was no evidence or testimony presented to address any violation of law or irregularities that created a fundamental unfairness. UMaine believed the scoring it received was arbitrarily assigned and led to a lower score than should have been assigned.

Scoring

UMaine received the highest score of all bidders in the categories of “Organization Qualifications and Experience” and in “Proposed Services”, awarded 28 out of 30 points and 35 out of 45 points. The cost score was mathematically calculated as defined in the RFP, and as the highest bidder in cost, UMaine’s cost score was 5.34 out of 25 possible points. The highest scoring bidder received a total score of 70 points, UMaine receiving 68.34 points. The net difference was 1.66 points out of 100.³

Scoring Methodology

Testimony by evaluators described that each bidder would start with a score at the midway point of the available score and then based on a consensus review process with all evaluators a proposal’s score could be increased or decreased from that midpoint based on the quality and thoroughness of the response.

Scoring of 13 required Elements

³ Joint Exhibit Page 10 – Master Score Sheet.

UMaine claims DHHS deducted points based on false grounds that UMaine did not present material satisfying review criteria D.2, sections h through m. The RFP specifically required each bidder to address these sections and to do so in a specific manner as quoted below:

Instructions: Bidders must use this form to provide a response to part IV. Section III Proposed Services. Bidders may expand each of the response (white) spaces within this document in order to provide a full response to each requirement.

DHHS testified that the responses to this section ended abruptly and there was no explanation or directive within the UMaine proposal to find further responses in other places. This was documented in reviewer notes and led to a lower score being assigned to UMaine.

UMaine did provide evidence and elicited testimony that relevant information required by Section D.2 of the RFP was available elsewhere in other required sections of the UMaine proposal (including Attachment 7). This attachment served a different purpose within the RFP and responsive proposals. There was some overlap in the information requested by the RFP between the individual sections, the evaluators thoroughly reviewed and considered the UMaine proposal but did not supplement the required information in h, i, j, k, l, and m with information found in other parts of the RFP.

DECISION

The Panel reviewed the documentary evidence, considered the testimony of the witnesses, and carefully read the closing arguments by the parties.

UMaine offered a proposal to DHHS that received the highest score in all categories but cost, finishing a close second in total score. It was clear that the instructions for the presentation of information in a bidder's proposal were understood and specific. UMaine did not comply with the requirements of the RFP in this matter and while it can point to information provided in other

portions of its response it did so at its own risk. The Panel does not find it unreasonable or unfair that the DHHS expects its bidders to respond in the way defined in an RFP and that failure to do so would impact a bidder's score. The Panel finds no violation of law or irregularity that created an unfairness.

UMaine, through documentary evidence, the testimony and closing arguments, failed to clearly convince the Panel the actions by the evaluators was arbitrary or capricious. They chose to interpret the RFP as written and did so consistently and with reason. The Appellant, UMaine, has not met the burden of proof necessary to invalidate the award. Accordingly, the Panel validates the DHHS award decision.

APPEAL PANEL

Dated: 4/4/2023

DocuSigned by:
Chris Sturies
68E2CFE973054BD...
Christopher Sturies, Business Systems
Administrator, Division of Procurement Services,
DAFS

Dated: 4/4/2023

DocuSigned by:
Thomas Paquette
249502C7B71A49A...
Thomas Paquette, Procurement Analyst II
Division of Procurement Services, DAFS

Dated: 4/4/2023

DocuSigned by:
Victor Chakravarty
0A60F546A630477...
Victor Chakravarty, Systems Team Leader
Office of Information Technology, DAFS

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.