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WILLIAM LONGFELLOW
DIRECTOR

May 21, 2024

Via Electronic Mail: rpetrie@nemhs.com

Rick Petrie
North East Mobile Health Services
9 Willey Rd
Saco, ME 04072

SUBJECT:

Notification of Decision of Appeal Committee – RFP #202309203

Dear Rick Petrie,

Enclosed please find the final decision of the appeal committee for the above-referenced appeal, per 5 M.R.S. § 1825-E(3). The appeal committee invalidates the contract award for RFP #202309203 for the reasons set forth in the attached decision.

This decision constitutes final agency action for purposes of judicial review. Any person aggrieved by this decision may appeal to Maine's Superior Court in the manner provided in 5 M.R.S. §§ 11001, *et seq.*, and M.R. Civ. P. 80C. A party must file a petition for review within thirty (30) days after receipt of notice of the decision.

Regards,
DocuSigned by:

Handwritten signature of William Longfellow in blue ink.

William Longfellow, Director
Bureau of General Services

Enclosure

cc: Brandon Martin, Acting Deputy Chief Procurement Officer

David Morris, Acting Chief Procurement Officer
Appeal Hearing Committee

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

In Re: North East Mobile Health Services }
Appeal of Contract Award under RFP # } Decision on Appeal
202309203 }

INTRODUCTION AND BACKGROUND

On February 20, 2024, the Bureau of General Services (BGS) received a timely request for an appeal hearing filed by North East Mobile Health Services (NEMHS) on a contract award decision by the Department of Administrative and Financial Services (DAFS), on behalf of the Maine Bureau of Emergency Medical Services (Maine EMS).

A request for proposal (RFP) was issued by Maine EMS, per 5 M.R.S. § 1825-B, for medical direction and support for statewide substance use disorder (SUD) response programming, including field initiation of medication for opioid use disorder (MOUD). The RFP and contract selection process was managed by Maine EMS, with assistance and oversight from DAFS. Two bidders responded to Maine EMS, submitting all documents and information required via the RFP, which was numbered 202309203.

With the competitive bidding process, bidders' proposals must be evaluated and ranked based on the scoring weights and the process enumerated within the RFP, as well as applicable laws, through the team consensus evaluation method. For this RFP, proposals were evaluated under the following sections as follows:

- Section II. Organization Qualifications and Experience (40 points)
- Section III. Proposed Services (30 points)

- Section IV. Cost Structure Acknowledgement (30 points)¹

Maine EMS awarded Mockdoc LLC a total score of 86 out of 100 points, and awarded North East Mobile Health Services a total score of 81.7 points out of 100 points.²

Based on the aforementioned results of the scoring by the RFP evaluation team, on 02/09/2024, DAFS notified the bidders via email about the MOUD contract award.³ North East Mobile Health Services timely filed a request for a hearing on February 20th, 2024, which was granted by the Director of the Bureau of General Services.⁴ Mockdoc LLC moved to intervene in the appeal, a request that DAFS granted.⁵ DAFS issued a scheduling notice on March 28, 2024. On March 29, 2024, North East Mobile Health Services requested a continuance of the appeal hearing, which was originally scheduled for April 16, 2024. Neither North East Mobile Health Services nor Mockdoc LLC were represented by counsel; instead, they each identified a single representative to speak on their behalf and present evidence during the hearing. Maine EMS was represented by AAG Samantha Morgan.

A pre-hearing conference was held via Zoom and recorded on April 2, 2024.⁶ Presiding Officer Halliday Moncure, AAG, provided the parties with an overview of the appeal hearing process, discussed scheduling and deadlines. The parties agreed to the requested continuance, and rescheduled the hearing for April 26, 2024.⁷ The deadline for the parties' submission of proposed exhibits and witness lists was set for April 16, 2024.

An appeal hearing was held via Zoom and recorded on Friday, April 26, 2024, where the parties presented sworn testimony through witnesses, and the parties presented admitted documentary evidence in accordance with 5 M.R.S. § 1825-E and 18-554 C.M.R. Chapter 120

¹ States Exhibit 0017

² States Exhibit 0180

³ States Exhibit 0230 to 0233

⁴ States Exhibit 0234 to 0236

⁵ States Exhibit 0237

⁶ The Appeal Committee did not attend this pre-hearing conference.

⁷ Presiding Officer Moncure also made a disclosure about her prior involvement in this matter and communications with AAG Samantha Morgan.

(“Chapter 120”)⁸ .

The Appeal Committee (Committee) was comprised of three state employees appointed by DAFS who were not involved in the RFP or contract award process. All Committee members attended the hearing, and met after the hearing to deliberate their decision. The Presiding Officer attended the Committee’s deliberations, but did not vote in the decision. After a review of the testimony and documentary evidence presented by the parties, the Committee makes the following findings of fact and decision on appeal.

⁸ All of the North East Mobile Health Services’ proposed exhibits (labeled by DAFS as “Appellant Exhibits 001 to 049” were admitted into evidence. All of the State’s proposed exhibits (labeled by DAFS as “State Exhibits 0001 to 0246” were admitted into evidence. Following an objection but North East Mobile Health Services, and at the end of the appeal hearing, the Presiding Officer excluded Mockdoc LLC’s proposed exhibit “Intervenor Exhibit 001 to 003.”

GOVERNING LAW AND STANDARD OF REVIEW

Pursuant to laws applicable to contract award appeals, a petitioner has the burden to show by clear and convincing evidence that the state agency's contract award decision (1) was in violation of law, (2) contained irregularities that created a fundamental unfairness, or (3) was arbitrary or capricious. 5 M.R.S. § 1825-E; Chapter 120, Sec. 3(2); Sec. 4(1). The clear and convincing standard requires that the Committee 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 Committee may only decide whether to validate or invalidate the contract award under appeal; it cannot make a new contract award, make adjustments, or assess monetary damages. *See* 5 M.R.S. § 1825-E (3); Chapter 120 (4) (1).

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

OVERVIEW OF PETITIONER'S COMPLAINT AND PARTIES' POSITIONS

North East Mobile Health Services argued that the appeal award should be invalidated because it included irregularities creating fundamental unfairness, it was arbitrary and capricious, and it violated the law. In support of these arguments, NEMHS asserted, *inter alia*, that the review team disclosures were not signed until after the bid evaluations occurred; some of the evaluation team members' notes contained inaccurate statements about NEMHS experience and geographic locations; the team notes did not explain how scoring occurred and they may not have used a consensus scoring approach; NEMHS asserted that one team member's notes included scoring and were not done ahead of time; and there were conflict of interest concerns with certain team members.⁹¹⁰¹¹

In response, Maine EMS argued that the award decision should be validated, and that NEMHS had not met its burden. Specifically, Maine EMS argued that no conflict of interest was established, and if it had been, NEMHS did not show how it impacted the decision making or created any fundamental unfairness; late signatures on the disclosures did not show a fundamental unfairness; and the individual and team notes were sufficient for purposes of scoring.¹²¹³

Additionally, MockDoc, LLC asked several questions of witnesses during the hearing and presented a written closing argument. MockDoc generally asserted that, despite some irregularities in procedure, NEMHS did not show a violation of law, nor any fundamental unfairness. Any alleged conflict of interest issues or problems with the team or individual scoring were not established to be a problem, nor sufficient to show that the decision was

⁹ States Exhibit 0234

¹⁰ 2024-05-01 Appellant Closing Argument

¹¹ GMT20240426-130153_Recording_1920x1080.mp4 & GMT20240426-173841_Recording_640x360.mp4

¹² Closing

¹³ GMT20240426-130153_Recording_1920x1080.mp4 & GMT20240426-173841_Recording_640x360.mp4

arbitrary or capricious.¹⁴¹⁵

During the appeal hearing, NEMHS presented sworn testimony from four witnesses: Robert Glaspy [EMS SUD Response Program Manager], who was the RFP coordinator; Jason Oko, [Data & Preparedness Coordinator], who was an RFP evaluation team member; Matthe Sholl, MD, [State of Maine Associate EMS Medical Director], an RFP evaluation team member; and Ashley Moody [Systems of Care Program Manager], an RFP evaluation team member. Maine EMS and MockDoc had the opportunity for cross examination and additional questioning of each witness.

FINDINGS OF FACT AND CONCLUSIONS

1. A RFP Evaluation Team Member Had a Conflict of Interest.

North East Mobile Health Services claimed that RFP evaluator Dr. Matthew Sholl's past employment with North East Mobile Health Services constituted a conflict of interest. Dr. Sholl and all other RFP evaluators are required to sign and acknowledge the "Agreement and Disclosure Statement," which explicitly states that a conflict of interest may include but is not limited to: "current or former employment with the bidder." Dr. Sholl testified that he disclosed his prior employment to Mr. Glaspy, who was the RFP administrator for Maine EMS. Maine EMS nevertheless determined to keep Dr. Sholl on the evaluation team.

Additionally, Marc Minkler was selected to be member of the RFP evaluation team. However, testimony and email correspondence reflect that due to his prior employment with North East, and following his review of the "Agreement and Disclosure Statement," Marc disclosed a conflict of interest and respectfully requested to be removed from the RFP evaluation team.¹⁶¹⁷ Mr. Glaspy thus had or should have had these conflict of interest issues at the forefront of his mind.

¹⁴ Mockdoc closing statement RFP appeal

¹⁵ GMT20240426-130153_Recording_1920x1080.mp4 & GMT20240426-173841_Recording_640x360.mp4

¹⁶ States Exhibit 0714

¹⁷ Appellant Exhibit 044-046

The Appeal Committee finds that Dr. Sholl's past employment with North East Mobile Health Services constituted a conflict of interest with his service as an RFP evaluator.¹⁸ Maine EMS's retention of Dr. Sholl on the RFP evaluation team despite knowledge of this prior relationship with North East Mobile Health Services may constitute a violation of law. The Appeal Committee holds that the self-removal of one RFP evaluation team member due to a conflict of interest due to past employment, while another member of the evaluation team member was allowed to continue with the RFP process despite their extensive employment history with the bidder, demonstrates an irregular process that may create fundamental unfairness.

2. There were Irregularities with the RFP Team and Individual Scoring.

North East Mobile Health Services asserted that the evaluation team did not use a consensus approach to evaluate and score North East's proposal. This assertion is based on admitted exhibits and testimony by the evaluation team members, including the evaluation team coordinator, Mr. Glaspy. The Appeal Committee examined the evidence presented and found that Mr. Oko's individual evaluation notes for North East's proposal did contain scores for each section of North East's proposal, despite the instructions on the individual evaluation notes stating that no numerical scores are to be given or annotated anywhere within the individual evaluation notes.¹⁹ Furthermore, the evidence shows the Mr. Oko only gave and annotated scores in the individual evaluation of North East's proposal. Mr. Oko did not give or annotate scores within his individual evaluations notes for the MockDoc proposal.²⁰ The Appeal Committee finds that although Mr. Oko's went against the evaluation instructions, this administrative mistake did not constitute an irregularity that created fundamental unfairness.

However, as shown during the appeal hearing, the overall team consensus score of North East's proposal was nearly identical to the scoring enumerated within Mr. Oko's individual

¹⁸ States Exhibit 0228

¹⁹ States Exhibit 0203-0205

²⁰ States Exhibit 0201-0202

evaluation notes. After Mr. Glaspy initially submitted the team's consensus notes and the other documentation for DAFS' review, DAFS provided guidance to MaineEMS with regard to the nearly identical scores. The proposed services section of the RFP for North East was totaled at 22 out of 30 points, which matched the scores within Mr. Oko's individual notes, and it wasn't until Lindsey Kendall [Acting Procurement Planning Manager] pointed out the dichotomy between the comments within both bidders proposed services sections which garnered each of the bidders the same score, that Mr. Glaspy was instructed to re-convene the RFP evaluation team.²¹ Following this guidance, Mr. Glaspy stated that he re-convened the RFP evaluation team to discuss further; it is unclear based on Mr. Glaspy's testimony (including cross examination by the State) how or when the evaluation team reconvened to address Lindsey's concern.²² Furthermore, once the RFP evaluation team resubmitted their team consensus score documentation, the summary page still contained the old score of 22 out of 30 points; which Lindsey identified and notified Mr. Glaspy of the correction she made.

Furthermore, Mr. Oko testified that he only did his individual notes during the RFP evaluation team meeting, contrary to instructions. This also conflicts with Mr. Glaspy's testimony that he collected all team members' individual notes prior to the team meeting. The Appeal Committee finds that because Mr. Oko's individual evaluation notes had a demonstrated effect on the team consensus scoring process, and he did not do his evaluation or notes prior to the team meeting, the Maine EMS award decision does in fact contain irregularities that created fundamental unfairness.²³²⁴

3. Findings about North East's Use of Subcontractors.

North East asserted that the RFP evaluation team did not demonstrate why the team chose to consider the experience of the subcontractors differently than the experience of the lead

²¹ States Exhibit 0238 to 0241

²² Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only

²³ States Exhibit 0188

²⁴ Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only, 2:38:08 to 2:41:39

applicant (North East). The Appeal Committee finds that testimony from Mr. Glaspy clearly indicates that the evaluation team believes that the experience of the prime or lead applicant is afforded a higher scoring weight as compared to the scoring weight afforded to the experience of the prime or lead's subcontractor(s). The testimony goes on to cite that the subcontractor(s) who are listed in the RFP response may or may not be employed by the prime contractor throughout the duration of the contract that is entered into after a successful RFP award; therefore, the experience of the subcontractor(s) is weighed less than the prime contractor, knowing that it is the prime contractor who is responsible for fulfilling the requirements of the RFP.²⁵ The Appeal Committee does not find that the weight of the score given to subcontractors by the evaluation team constitutes a violation of law, irregularities that created fundamental unfairness, or was arbitrary or capricious.

²⁵ Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only, 1:28:46 to 1:33:15

SUMMARY OF DECISION

As reflected herein, the Committee reviewed the documentary evidence, considered the testimony of the witnesses, and carefully considered the closing arguments by the parties.

North East Mobile Health Services' claim that Dr. Sholl's participation in the RFP evaluation team constituted a conflict of interest, was demonstrated through clear and convincing documentary evidence and testimony.²⁶²⁷ The Appeal Committee holds that this constitutes a violation of law. Additionally, there were irregularities throughout the evaluation of the RFP, including the annotation of scores on individual evaluators notes for some bidders and not others,²⁸²⁹ Mr. Oko did not take his individual notes ahead of time, and the nearly identical score an individual evaluator as compared to the team consensus score for one bidders proposal only.³⁰ The Appeal Committee holds that North East demonstrated by clear and convincing evidence that the contract award process included irregularities that created a fundamental unfairness.

North East Mobile Health Services, has met the burden of proof necessary to invalidate the award. Accordingly, the Appeal Committee invalidates the Maine EMS award decision.

²⁶ Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only, 3:41:12 to 3:48:12

²⁷ States Exhibit 0228

²⁸ Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only, 2:44:24 to 3:13:29

²⁹ States Exhibit 0188

³⁰ Appeal Hearing Recording, GMT20240426-130153_Recording_1920x1080 - View-only, 2:38:08 to 2:41:39

APPEAL COMMITTEE

Dated: 5/16/2024

DocuSigned by:
Jacob Tauke
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Jacob Tauke, Associate Director of ARPA
Procurements, Division of Financial and
Professional Services, DAFS

Dated: 5/16/2024

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Marsha Alexander, Project Manager, Department
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Dated: 5/16/2024

DocuSigned by:
Lauren Moumouris
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Lauren Moumouris, System Analyst, Department
of Administrative and Financial Services, 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