

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

Re: Aroostook County Action Program	}	
And	}	
Hand of Mercy	}	
Appeal of Contract Awards of RFA #	}	Decision on Appeal
202204066 for Health Equity Infrastructure	}	
& Capacity Building Grant Funding Opportunity	}	
For Community Based Organizations	}	

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 (Department) for grant requests for Health Equity Infrastructure & Capacity Building Grant Funding Opportunity for Community Based Organizations. The award was made following a request for application (RFA) process. The request for appeal was timely filed by Aroostook County Action Program (ACAP) and Hand of Mercy under the process defined in Division of Purchases rule Chapter 120.

Representatives of the appellants, ACAP and Hand of Mercy, and the Department met with the Administrative Hearing Officer (AHO) and Procurement Services staff to discuss the process to be used to complete the hearing.

The AHO determined that the hearing would be held remotely using a video conferencing service (ZOOM). The parties agreed in advance on a joint exhibit. The parties presented witnesses over the live video conference system, where witnesses were sworn, examination and cross examination occurred, and all parties participated fully. The parties agreed to written

closing statements. These closing briefs were received by close of business on November 10, 2022, ending the hearing and allowing the Panel to begin deliberations.

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

The Department issued a competitive Request for Application (RFA), the purpose of which was to obtain applications for the disbursement of grants from the Maine Department of Health and Human Services (DHHS) and Office of Population Health Equity (OPHE) for Community Based Organizations (CBOs) to advance health equity in communities at higher risk of COVID-19. The RFA provided the allowances for the expenditures of funding, the priorities specific to CBO collaboratives, and details and instructions for submitting. In addition, the RFA generally noted the key process events and the application evaluation and selection procedures. DHHS established a question and answer process which was used by potential applicants. Applications were timely submitted by all respondents and were distributed by the Division of Procurement Services to the RFA coordinator at Department.

GOVERNING LAW AND STANDARD OF REVIEW

The issue in this case is whether ACAP and Hand of Mercy have met their burden of proof by clear and convincing evidence that Department 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).

FINDINGS OF FACT

The issues raised by Hand of Mercy on appeal are not in accordance with Chapter 120 – Rules for Appeal of Contract and Grant Awards. Rather, Hand of Mercy presented compelling testimony supporting the nature of work provided to the community, the severe financial position the organization is in, and the fulfilled requirements for the grant funding as specified within the RFA.

The issues raised by ACAP on appeal are as follows:

The Department committed an irregularity creating a fundamental unfairness in the selection process which resulted in agencies being awarded that did not provide information specifically noted in the RFA as “required”.

The RFA included the language, “Only complete applications will be considered for awards.” However, applications that did not meet this requirement were scored and awarded.

DECISION

The Panel reviewed the documentary evidence, considered the testimony of the witnesses, and read the closing briefs of all parties.

The Panel was not convinced by the argument presented by Hand of Mercy met the burden of proof necessary to invalidate the award.

The Panel was convinced that the RFA had clear instructions for submitting applications as noted on ACAP Exhibit 001. “Incomplete applications will not be accepted.” And directly following that general instruction, the RFA noted six documentation requirements that were part of submission instructions. In addition, ACAP Exhibit 142 noted that only complete applications will be considered for awards. The evaluation committee scored all applications and noted in the team consensus notes applications that did not “meet requirements,” “did not provide any documentation,” “did not provided the required documentation,” “did not provide acceptable forms of documentation.” The evaluation committee did not have the authority set forth in the RFA to choose to score applications that were incomplete and the RFA only provided the instruction that incomplete applications will not be accepted.

For the reason above, the Panel finds there was an irregularity that created a fundamental unfairness when DHHS scored all applications, noted in the evaluation documents that documents were incomplete, and therefore violated the requirement for scoring criteria within the RFA.

The appeal panel does not find an irregularity creating a fundamental unfairness occurred related to awards of applications to serve communities of the state, aside from the BIPOC community. The RFA did not require a specific dollar amount that would be set aside for applicants who address racial or ethnic disparities in rural areas of Maine. DHHS indicated that it

would consider all application funding requests, “including exceptions to the maximum funding amount, on a case-by-case basis.” ACAP Exhibit 136. ACAP failed to demonstrate by clear and convincing evidence that any irregularity occurred related to awarding funding amount in accordance with the RFA instructions.

Accordingly, the Panel invalidates the Department’s award decision.

APPEAL PANEL

Dated: 12/9/2022

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Dated: 12/9/2022

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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.