



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BUREAU OF GENERAL SERVICES  
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May 25, 2010

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Re: Appeal of Award, Maine Revenue Services (MRS), RFP #200912575  
Multi-Tax Revenue Estimating and Forecasting Model

Dear Attorneys Aromando, Witham and Bernstein:

I am forwarding the final decision of the appeal panel with regard to Maine Revenue Services' award decision on the above-mentioned RFP. 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,

Chip Gavin, Director  
Bureau of General Services

cc: William Laubenstein, AAG, Presiding Officer  
Appeal Panelists  
Michael Allen, MRS

Attachment: Decision of the Appeal Panel

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

In the Matter of	)	
Chainbridge	)	
Appeal of Award by	)	Decision of Appeal Panel
Maine Revenue Services	)	
	)	
RFP No. 200912575	)	

**INTRODUCTION AND PROCEDURAL BACKGROUND**

This is an appeal by Chainbridge Software, LLC (“Chainbridge”) from a decision of Maine Revenue Services, (“Department” or “MRS”) awarding a contract for a Multi-tax Revenue Estimating and Forecasting Model ( “MREFM”) pursuant to a Request for Proposals issued on December 31, 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 of General Services granted the request of Chainbridge for a hearing. The Bureau granted intervenor status to the successful bidder, Analytika and Quantria (“Analytika”).

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 May 17, 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 Department issued a Request for Proposals (“RFP”) on December 31, 2009. The RFP provided an opportunity for written questions to be submitted by January 12, 2010; answers were to be provided by January 19, 2010. The RFP required bidders to submit proposals by 2:00 pm, February 1, 2010. The RFP requested proposals from “qualified firms to provide updated models and data for the purposes of baseline revenue forecasts, revenue estimates of proposed changes to current tax law, distributional and incidence analysis, and data analysis.” The work requested was to be performed at the offices of MRS in Augusta, Maine. The RFP noted that the successful bidder would be required to provide “on-site support on an immediate as-needed basis...” The contract for the MREFM would be for a twelve-month period with the possibility for renewal.

Section 3 of the RFP included an overview explaining that in June of 1998 MRS contracted with Barents Group, LLC, a subsidiary of KPMG Peat Marwick, “to purchase a system of tax simulation models.” This project was completed in the fall of 1999. MRS stated in the RFP that: “[T]he data bases and models were updated in 2003.” The work in 2003 was performed by KPMG Consulting. MRS stated in the RFP that “Maine’s tax forecasting and estimating capabilities are among the best in the country.” The RFP noted that the data underlying the existing models is based on information from 2000 and that the data was quickly becoming obsolete.

The RFP stated that bids would be evaluated on three criteria: (1) Expertise and Experience--45 points; (2) Proposed System--30 points; (3) Cost—25, with 20 points award to the lowest qualified bid and the remaining 5 points for a maintenance plan and cost.

The Department received two proposals. Chainbridge, in its proposal, offered to provide its Maine PolicyLinks multi-tax revenue estimating and forecasting system and to develop databases necessary to cover analysis of relevant State taxes and programs. Chainbridge's Cost Proposal was in two parts, one for tax modules (\$449,236) and one updates (\$203,093). At the request of MRS Chainbridge made clear that the cost for the tax modules was for the work under the RFP. Analytika, in its proposal offered to deliver updated capabilities for use by the State's multi-tax modeling system by developing databases and revision of tax, economic and demographic parameters used in the modeling system. Analytika offered a firm fixed price of \$300,000.

The evaluation of the proposals was done by three employees of MRS and scored by one of the evaluators. The record contains score sheets with comments supporting the award of points. The score sheets show that Analytika received a total score of 95, with 45 points awarded for Expertise and Experience, 30 points for Proposed System, 20 points for lowest Project Cost and 0 points for maintenance contract. Chainbridge received a total score of 93, with 45 points awarded for Expertise and Experience, 30 points for Proposed System, 13 points awarded for Project Cost and 5 points for maintenance contract.

## **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 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 Chainbridge has met its burden of proving by clear and convincing evidence that the award of the contract was in violation of law, contained irregularities creating fundamental unfairness or was arbitrary or capricious.

A. **Description of required work was misleading.** In its request for an appeal hearing, and in subsequent submissions and oral argument, Chainbridge claimed that the description of the required work in the RFP was misleading and subject to more than one interpretation. In support of this argument, Chainbridge pointed to Part I, Section 1 of the RFP where MRS requested proposals for “updated models and data”; and to Part II, Scope of Work, which was verbatim from the description of work in the RFP for the development of tax simulation models in 1998. The Panel noted, too, that the description

of work in Section 1 of the RFP (“updated models and data”) is essentially the same as the description of the work in 2003: “databases and models updated in 2003.” In addition, Chainbridge argued that in its experience a governmental agency seeking only to update data would accomplish this with a sole source contract with the entity that developed the models, which would be proprietary and confidential. If an agency sought to develop new models the agency would issue an RFP, which was the case with the matter under consideration.

The Department responded that the RFP was not misleading and not subject to any interpretation other than that the Department was seeking to update the data bases. In support of its argument the Department pointed to Part I, Section 1 of the RFP and the solicitation for “updated models and data” and to Part I, Section 3 of the RFP where it noted that the data underlying the tax models was based on information “from 2000 that was quickly becoming obsolete”; that it was standard practice “to refresh the databases every five years”; that obsolete data produces unreliable revenue forecasts; and that Maine’s tax forecasting and estimating capabilities were among the best in the country. The Department made the point that bidders had an opportunity to ask questions about the work being requested but did not receive any questions from any bidder.

After careful consideration, the Panel determined that it was unclear from the RFP whether the Department was seeking to only update the databases or was seeking proposals for new models. Section 1 of the RFP stated specifically that proposals were sought for “updated models” and that the work contacted for in 2003 was described by the Department as updating the models and data bases. The evidence at hearing revealed that in 2003 the work actually performed included development of new flexible models.

The Panel noted, too, that the disparity in the proposals should have alerted MRS that bidders had a vastly different understanding of what work was being requested.

Based on these factors, the Panel determined that the RFP was fundamentally unfair and the award to Analytika arbitrary or capricious.


B. Analytika had unfair advantage. As noted above, the evidence at the hearing showed that the work performed in 2003 included development of more flexible models and not just an updating of databases. This fact was known to the Department and Mr. Uy, a principal with Analytika, who previously worked for BearingPoint Inc, f/k/a Barents Group LLC, a KPMG LLP subsidiary. Mr. Uy was a manager with Barents Group and worked on the initial modeling system development and all subsequent updates, including the work in 2003. The knowledge acquired by Mr. Uy put Analytika in an unfairly advantaged position in responding to the RFP, which did not disclose to prospective bidders that the work in 2003 included development of more flexible models.

Since Analytika knew of the development of the more flexible models in 2003 and the Department did not disclose this information other bidders, the Panel determined that the RFP was fundamentally unfair and the award to Analytika arbitrary or capricious.

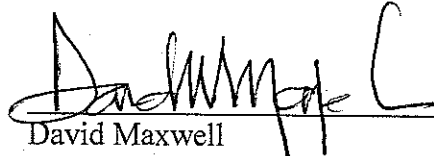
### CONCLUSION

Chainbridge has established by clear and convincing evidence that the awarding of the contract for a Multi-tax Revenue Estimating and Forecasting Model to Analytika was in violation of law, contained irregularities that created a fundamental unfairness, or was arbitrary or capricious. The Panel therefore invalidates the award made by Maine Revenue Services.

Dated: 5/25/10

  
Betty M. Lamoreau, Director  
Division of Purchases

Dated: 5/25/10

  
David Maxwell  
Office of Information Technology

Dated: \_\_\_\_\_

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Tracy Poulin  
Department of Public Safety

#### 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: \_\_\_\_\_

\_\_\_\_\_  
David Maxwell  
Office of Information Technology

Dated: May 25, 2010

\_\_\_\_\_  
*Tracy Poulin*  
Tracy Poulin  
Department of Public Safety

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