

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

In Re: GIS WebTech)
Appeal of Contract Award of RFP #) Decision on Appeal
202103048 for Web-Based Commercial)
and Industrial Site Selection Tool)

INTRODUCTION AND BACKGROUND

The Bureau of General Services received and granted a request for hearing of appeal on a contract award decision issued by the Department of Economic & Community Development (DECD) for a Web-Based Commercial and Industrial Site Selection Tool for the State of Maine (State). The award was made following a Request for Proposals (RFP) process conducted under Division of Procurement Services (formerly Division of Purchases) rule Chapter 110. The request for appeal was timely filed by GIS WebTech under the process defined in Division of Procurement Services rule Chapter 120.

Representatives of the appellant, GIS WebTech and the DECD met with the Administrative Hearing Officer (AHO) and Division of Procurement Services staff to discuss the process to be used to complete the hearing based on the restrictions imposed by The Governor of the State and national response to the COVID 19 pandemic.

The parties agreed in advance on joint exhibits. The parties presented witnesses over a live video conference system, where witnesses were sworn, examination and cross examination occurred, and all parties participated fully.

The Appeal Panel (Panel) was comprised of three members chosen from within State service who participated in the live video conference hearing on July 8, 2021. 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

On April 3, 2021, DECD issued a competitive RFP, the purpose of which was to obtain proposals for the provision of acquiring a contractor to provide a web-based commercial and industrial self-service site locator tool. GIS Planning and GIS WebTech were the only organizations to submit a timely proposal for review under this RFP process.

An evaluation team consisting of three DECD staff reviewed and scored the proposals using a weighted evaluation criteria as detailed in the RFP: Organization Qualifications and Experience (25 points), Proposed Services (35 points), and Cost Proposal (40 points).

A consensus based scoring process was used, meaning the evaluation team reviewed, but did not score, the proposals in advance. The evaluation team met to discuss the proposals and reviewed them against the RFP requirements to arrive at the consensus scores. Scores for the cost criterion were not assigned by the group but were calculated using a standard formula that assigns the most points to the lowest cost proposal, and a proportionally few points to the higher cost proposal.

As a result of the review and scoring process, a decision was made to award a contract to GIS Planning which was determined to provide the best value to the State. Notifications of award and non-award were sent to both bidders.

GOVERNING LAW AND STANDARD OF REVIEW

The issue in this case is whether GIS WebTech has met its burden of proof by clear and convincing evidence that DECD's 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 Panel. *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 GIS WebTech on appeal are discussed below.

Exclusion of the administrative side (not accessible to the public) of the technology:

GIS WebTech claimed the DECD failed to consider the functionality of the administrative side of the technology solution and instead, only focused on the public-facing side of the technology.

Through testimony and scoring exhibits, the DECD acknowledged that its focus was to provide a user-friendly technology solution to the public and was not as focused on the administrative (non-public) side of the technology. Through the evaluation process the evaluation team visited the URLs provided by both GIS Planning and GIS WebTech's as part of their three projects and determined the technology applications provided by GIS Planning were more user-friendly than GIS WebTech.

The evaluation team evaluated the responses within each proposal in comparison to the requirements outlined in the RFP and through consensus assigned scores they determined to be appropriate for the proposal responses given. The scoring under Organization Qualifications and Experience had GIS Planning at 25 points and GIS WebTech at 22 points. For Proposed Services both GIS Planning and GIS WebTech received the maximum points allowed of 35. (See Scoring matrix below).

RFP# 202103048			
Web-Based Commercial and Industrial Site Selection Tool			
Bidder Name:		GIS Planning	GIS WebTech
Proposed Cost:		\$29,750	\$28,900
Scoring Sections	Points Available		
Section I: Preliminary Information	N/A		
Section II: Organization Qualifications and Experience	25	25	22
Section III: Proposed Services	35	35	35
Section IV: Cost Proposal	40	39	40
TOTAL	<u>100</u>	<u>99</u>	<u>97</u>

DECD Market Research Prior to RFP Drafting:

GIS WebTech asserted that, prior to issuing the RFP, the DECD performed extensive research on the technology provided by GIS Planning creating a familiarity of the technology.

DECD provided testimony of performing market research in order to obtain information on types of technology available to inform the drafting of the RFP. DECD testimony included

acknowledgement of its research including utilization of multiple public-facing applications as well as invitations to multiple developers to provide DECD with a demonstration. GIS Planning was the only entity to accept the invitation and provide a demonstration. DECD then drafted and published the RFP.

GIS WebTech claimed the DECD's failure to allow GIS WebTech an opportunity to demonstrate its technology created an unfair advantage to GIS Planning during the evaluation process.

DECD countered that the evaluation team was free to request demonstrations from the bidders if needed. DECD points to this notice to bidders from the RFP:

“The Department reserves the right to communicate and/or schedule interviews/presentations with Bidders, if needed, to obtain clarification of information contained in the proposals received...”¹

The evaluation team determined the three projects submitted by both GIS Planning and GIS WebTech's, and its ability to navigate the public side of the applications, demonstrated GIS Planning's applications to be more user friendly than GIS WebTech's, therefore additional communication, interviews or presentations were not necessary. The evaluation team highlighted areas of individual proposals, including weaknesses and strengths, to support the consensus scoring process.

DECISION

The Panel was not clearly convinced that an exclusion of the administrative side (not accessible to the public) of the technology was unfair and arbitrary in this instance. The RFP's

¹ Page 15, Part V, A. Evaluation Process – General Information (3.) first sentence.

objective was to procure a tool that is modern and provides a good user experience that is easy to navigate for persons with a varying degree of digital literacy. The evaluation team ranked all bidders against the information submitted within their proposal. It was clear from the evidence and testimony that the level of ease when navigating the public side of the applications within each of the bidder's three projects were noted and the consensus scored by the evaluation team appear, to this Panel, as reasonable.

GIS WebTech's claims that the evaluation created an unfair and arbitrary advantage to GIS Planning because GIS WebTech did not receive the opportunity to provide a demonstration of its application. And again, it was clear from the evidence and testimony that the level of ease when navigating the public side of the applications within each of the bidder's three projects were noted and the consensus scored by the evaluation team appear, to this Panel, as reasonable.

The Panel finds no evidence that the DECD acted unfairly or arbitrarily in its deliberations and final award decision.

For the reasons above, the Panel finds no evidence of a fundamental unfairness or arbitrary action by the DECD in the consideration of the proposals and scoring process. A review of the scoring documents appears consistent and the scoring process was applied reasonably.

Accordingly, the Panel validates the DECD award decision.

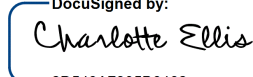
APPEAL PANEL

Dated: 7/20/2021

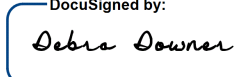
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Kent Moshier, Prison Steward
Department of Corrections

Dated: 7/20/2021

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Charlotte Ellis, Education Data Manager
Department of Education

Dated: 7/20/2021

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Debra Downer, Deputy Director
Department of Health & Human Services/DCM

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.