

Maine Center for Disease Control and Prevention WIC Nutrition Program

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Policy No. OM-3

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Disqualification of Local Agencies

Authority

7 CFR §246.5(e)

22 MRSA §255 and §1951

18-554 CMR Chapter 110, §2 (Department of Administrative and Financial Services, Division of Purchases, “Rules for the Purchase of Services and Awards”)

18-554 CMR Chapter 120 (Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases, “Rules for Appeal of Contract and Grant Awards”)

Policy

1. The State Agency may disqualify a Local Agency in the following situations:
 - 1.1 When the State Agency determines that the Local Agency has not complied with Program regulations; or
 - 1.2 When the State’s Program funds are insufficient to support the continued operation of all its existing Local Agencies at their current participation level; or
 - 1.3 When the State Agency determines through the RFP procedure outlined in Policy OM-02, Selection of Local Agencies, and in 18-554 CMR chapter 110, Section 2, that another agency can operate the program more effectively and efficiently; or
 - 1.4 When a Local Agency uses federal funds for lobbying activities.
2. The State Agency shall follow the criteria based on the RFP guidelines for disqualification of Local Agencies.

Procedures

1. The State Agency shall notify the Local Agency of any State-established criteria that form the basis for disqualification.
2. The State/Local Agency must not use federal funds for lobbying for specific federal awards and requires recipients of any federal grants, contracts, loans and cooperative agreements to disclose expenditures made with their own funds for such purpose.
3. The State Agency shall consider at a minimum:

- 3.1. The availability of other community resources to participants;
 - 3.2. The cost efficiency and cost effectiveness of the Local Agency in terms of both food and nutrition services and administrative costs;
 - 3.3. The percentages of participants in each priority level being served by the Local Agency in the public health district and the percentage of need being met in each participant category;
 - 3.4. The relative position of the area or special population served by the Local Agency in the Outreach Plan (see Policy CM-3, Community Outreach for more information)
 - 3.5. The Local Agency's rank in the Local Agency Priority System as outlined in Policy OM-02, Selection of Local Agencies;
 - 3.6. Whether another Local Agency or agencies is/are capable of serving the Local Agency's participants.
4. When disqualifying a Local Agency under the Program, the State Agency shall:
 - 4.1. Make every effort to transfer affected participants to another Local Agency without disruption of benefits;
 - 4.2. Provide the affected Local Agency with written notice not less than sixty (60) days in advance of the pending action. The notice shall include:
 - 4.2.1. An explanation of the reasons for disqualification
 - 4.2.2. The date of disqualification, and
 - 4.2.3. Except in cases of the expiration of a Local Agency's agreement, the Local Agency's right to appeal.
 - 4.3. Ensure that the action is not in conflict with any existing written agreements between the State and the Local Agency.
5. When a RFP application is disapproved, the State Agency shall advise the applicant agency of the reasons for disapproval and the right to appeal as set forth in 7 CFR Part 246.18 and 18-554 CMR Chapter 120 (Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases, "Rules for Appeal of Contract and Grant Awards").
 - 5.1. An aggrieved person or party may request a stay of contract award within ten (10) calendar days of notification of contract award by the contracting agency.
 - 5.2. Requests for stay of contract award must be written and addressed to the Director of the Bureau of General Services and must state clearly the specific nature of the grievance, demonstrate irreparable injury to the petitioner, a reasonable likelihood

of success on the merits of the appeal, and no substantial harm to adverse parties or to the general public.

- 5.3. The Director of the Bureau of General Services shall notify the petitioner in writing of the decision regarding the issuance of a stay within seven (7) days of receipt of request.
- 5.4. Failure of the petitioner to obtain a stay does not affect the petitioner's right to a hearing of appeal as provided by statute and within these rules.
- 5.5. An aggrieved person or party may request a hearing of award decision from the Director of the Bureau of General Services in writing within fifteen (15) days of notification of contract award.
- 5.6. A written request for appeal hearing must contain at a minimum the specific nature of the grievance, including the Appeal Criteria outlined below and must demonstrate the conditions that make the petitioner an aggrieved person.
- 5.7. The Director of the Bureau of General Services shall grant an appeal hearing unless it is determined that:
 - 5.7.1. The petitioner is not an aggrieved person.
 - 5.7.2. A prior request by the same petitioner relating to the same contract award has been granted.
 - 5.7.3. The request was made more than fifteen (15) days after notification of award; or
 - 5.7.4. The request is capricious, frivolous or without merit. A hearing shall not be granted if the contract award is not approved by the State Purchases Review Committee.
- 5.8. The Director of the Bureau of General Services shall notify the petitioning agency in writing of the decision regarding a request for a hearing of appeal within fifteen (15) calendar days of receipt of the request.
- 5.9. If the request for a hearing is granted, notification must be made at least ten (10) calendar days before the hearing date. The notification must include the date and location of the hearing and the names of the Appeal Committee members.
- 5.10. In the event the request for a hearing is denied, the notification shall constitute final agency action. The notification shall include an explanation of the petitioner's right to judicial review of final agency action under 5 MRSA § 11001 et. seq.
- 5.11. The burden of proof within the hearing lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following appeal criteria:
 - 5.11.1. Violation of law;

- 5.11.2. Irregularities creating fundamental unfairness; or
- 5.11.3. Arbitrary or capricious award.
- 5.12. Evidence of any type that cannot be related to these criteria may be ruled inadmissible by the presiding officer.
- 5.13. In the event multiple appeal hearing requests are granted on a single contract award, the Director of the Bureau of General Services may assign the Appeal Committee to hear all petitioners within the same hearing as a combined appeal.
- 5.14. The Appeal Committee shall consider all evidence entered into the record and shall look for clear and convincing evidence that one or more of the Appeal Criteria of these rules has been proven by the petitioner. The actions of the Committee are limited to one of the following:
 - 5.14.1. Validate the contract award decision under appeal
 - 5.14.2. Invalidate the contract award decision under appeal
- 5.15. A written decision and the reasons that support the decision must be submitted to the Director of the Bureau of General Services within fifteen (15) calendar days following the final day of the hearing of appeal.
- 5.16. The Director of the Bureau of General Services shall notify the petitioner, the contracting State Agency, and all interveners of this decision within ten (10) calendar days of receipt from the Appeal Committee. Such notification shall include the decision, an explanation of the reasons for the decision and an explanation of the petitioner's right to judicial review of final agency action.
- 5.17. This notification is considered final agency action.
- 5.18. In the event the decision of the Appeal Committee is to invalidate the contract under these rules, the contract immediately becomes void and of no legal effect.