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March 28, 2019

William Katunda, CEO  
Interpretive Service Consultants  
65 Lambert St., #11  
Portland, ME 04103-2124

William H. Laubenstein, III, AAG  
6 State House Station  
Augusta, ME 04333-0006

**SUBJECT: Appeal of Award - RFP# 201808177  
In-Person Spoken Language Interpreting Services**

Dear Mr. Katunda and Attorney Laubenstein:

I am forwarding the Final Decision of the Appeal Panel for the above-referenced appeal. The Panel validates 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 thirty days after receipt of notice of the decision.

Regards,

Gilbert M. Bilodeau, Interim Director  
Bureau of General Services

cc: Jaime C. Schorr, Chief Procurement Officer, Bureau of Business Management  
Mark Randlett, Attorney General, Hearing Officer  
Appeal Hearing Panelists

Attachment: Decision of the Appeal Panel

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

In Re: Interpretive Service Consultants )  
Appeal of Award by the Department of )  
Administrative and Financial Services for )  
RFP #201808177 for In-Person Spoken )  
Language Interpreting Services )  
)

**Decision of Appeal Panel**

**INTRODUCTION AND BACKGROUND**

This is an appeal by Interpretive Service Consultants (“ISC”) from a contract award decision of the Department of Administrative and Financial Services (“DAFS”) under RFP #201808177 for In-Person Spoken Language Interpreting Services. The appeal is brought pursuant to 5 M.R.S. § 1825-E and Chapter 120 of the Rules of the Bureau of General Services of the Department of Administrative and Financial Services (“Rules”).

An Appeal Panel (“Panel”) was comprised of three members chosen from state service. An evidentiary hearing was held on March 15, 2019, at which testimony of witnesses and documentary evidence was presented. After a review of all the arguments and evidence presented by the parties, the Panel makes the following findings of fact.

**FACTUAL BACKGROUND**

On July 10, 2018, DAFS issued a competitive Request for Proposals (“RFP”), the purpose of which was to obtain proposals for the provision of in-person spoken language interpreting services. Eleven (11) proposals were received by the Division of Purchases on or before the 4:00 p.m., September 28, 2018 submission deadline.

An evaluation team consisting of three state workers reviewed and scored the proposals using a weighted evaluation criteria detailed in the RFP. The RFP established the following weighted criteria for evaluating the bids: Organization Qualifications and Experience (30 points); Proposed Services (30 points); Cost Proposal (30 points); and Maine Business and Economic Impact Considerations (10 points).

A consensus based scoring process was used, meaning the team reviewed, but did not score, the proposals in advanced. The 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 fewer points to higher cost proposals.

As a result of the review and scoring process, a decision was made to award contracts to the 5 highest scoring bidders, which were determined to provide the best value to the state. Notice of the award decision was mailed on January 14, 2019. ISC filed a timely appeal of the contract award and was granted its request for hearing.

#### **GOVERNING LAW AND STANDARD OF REVIEW**

The issue in this case is whether ISC has met its burden of proving by clear and convincing evidence that DAFS' 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 truth of the assertions of the appeal 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 judgment 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).

### DECISION

The Panel determines that ISC has not met its burden of proving that any of the statutory criteria have been met so as to invalidate the DAFS' award decision. No violation of law was alleged and there is no evidence of a violation of law in connection with DAFS' award in this RFP; and the panel finds that no such violation of law occurred. Further, under the circumstances of this case, the panel does not find the existence of any irregularity creating a fundamental unfairness or that the award decision by DAFS was arbitrary or capricious.

The issues raised by ISC on appeal are discussed below.

**1) Scheduling and Response Time:** ISC alleged that the evaluation team failed to consider scheduling and response time provisions contained in ISC proposal. In support of this claim ISC pointed to a comment on an individual evaluator's review notes that ISC "doesn't provide how to schedule or response time." ISC presented evidence that scheduling and response time information was, however, detailed on page 19 of its proposal – specifically that the scheduling process "starts with the receipt of an email/form requesting confirmation of interpretation services within a 48 hours time window."

Jamia Korth, the evaluation team member whose notes contained the comment upon which ISC relies, works for the Department of Health and Human Services (“DHHS”). Ms. Korth is the head of the department that processes the bills for the interpretive services provided to DHHS. She stated that she kept notes as a reminder of issues to discuss during the team evaluation process. She further testified that DHHS clients require immediate interpretive services and that her comment pertained to the 48 hour turn-around time that ISC proposed, rather than to a lack of information in the proposal about scheduling and response.<sup>1,2</sup>

The Panel finds that the evaluation team considered the scheduling and response information contained on page 19 of ISC’s proposal and that the consensus score assigned to ISC reflected the evaluation team’s consideration of that information in light of the state’s needs under the RFP.

**2) Organization Qualifications and Experience:** ISC complained that a bidder with fewer years of experience (Maine Language Connect) received a higher score in the Organizational Qualifications and Experience category than ISC.

The Organizational Qualifications and Experience scoring category included an assessment of all of the elements contained in Part IV, B, Section I of the RFP. Part IV, B, Section I, subsection 1 (Overview of the Organization) required bidders to complete Appendix C to the RFP (Qualifications and Experience Form) describing their qualifications and skills to

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<sup>1</sup> ISC’s appeal letter states that “the assumption of not providing a schedule or response time are here-above disclaimed and can be verified with the Maine Judicial Branch, the Law Office of George Hepner, the United States Immigration and Citizenship, the Immigrant Legal Advocacy Project.” However, the evaluation team did not err by considering the information contained in ISC’s proposal and was not required to contact outside entities for further information or verification.

<sup>2</sup> ISC’s appeal letter also states that the “RFP did not mention that the Department would physically send a messenger to meet contractors before each assignment for us not to schedule by emails or phone calls.” The Panel finds no error in that the RFP contained adequate detail and instructions to inform potential bidders in the preparation of their proposals. It was ISC’s burden to develop a proposal that was clear in its abilities to meet the State’s needs.

provide the services requested in the RFP and to include three examples of projects which demonstrated their experience and expertise in performing the RFP services and which highlighted the bidder's stated qualifications and skills. Accordingly, scoring under this category included consideration of multiple factors, not just years of experience.

The evaluation team consensus notes demonstrate that sufficient justification exist for a higher score to be awarded to Maine Language Connect (MLC) despite the fewer years of experience. The notes show that MLC "offered all languages needed," described "detailed projects" and "works in legal setting, protective services, hearing, public meetings, conferences, schools, and events" and "works in medical, mental health." In contrast, the notes for ISC, however, state simply that the bidder "works with judicial branch" and "only respond[s] by email and phone calls."

ISC also complained that one evaluator (Andre Locsin) wrote in an individual note that he was "surprised that there were no liabilities" and pointed out that a copy of a certificate of liability insurance was included in the bid. Mr. Locsin testified that his comment expressed a question concerning ISC's monthly operating expenses and that there did not appear to be enough information regarding finances. The Panel finds that the certificate of liability insurance is not relevant to Mr. Locsin's note.

**3) Cost:** ISC complained that Mr. Locsin noted that "[41 cents] is cheaper than telephone [interpretation] and argued that it "wished to support [DAFS] with a sustainable expense budget for such vital service that is the In-person Language Access in our state." Mr. Locsin testified that his comment was meant to convey "a good thing." In any event, ISC received the highest score of all bidders in the cost category (30 out of 30 available points).

**4) Disqualification for offering 6 out of 12 languages:** ISC complains that the “RFP never stated that partial offers of 6 languages for the 12 in solicitation were grounds for disqualification.” This complaint is without merit. Although ISC offered only 6 of the 12 languages specified in the RFP its proposal was not disqualified. ISC’s proposal was fully evaluated and scored on its merits.

**5) Limited Number of Awards:** Finally, although not specifically raised as an appeal issue by ISC, the Panel is not convinced that the evaluation team erred by establishing a cut-off between the successful and unsuccessful bidders. The testimony shows that the evaluation team considered the gap between the lowest scoring winning proposal (64.50) and the highest scoring unsuccessful bidder (56) to be significant and that there was a difference in the quality of the proposals in the successful and unsuccessful groups. Moreover, the RFP specifically reserved the right to limit the number of awards to the lowest amount practicable.

Accordingly, the Panel validates DAFS’ award decision.

**APPEAL PANEL ON CONTRACT AWARD**

Dated: March 28, 2019

Nancy Tan

Nancy Tan,  
Department of Health and Human Services

Dated: March 27, 2019

Tracy Poulin

Tracy Poulin,  
Department of Administrative and Financial  
Services

Dated: March 27, 2019

Thomas U. Howker

Thomas Howker,  
Department of Administrative and Financial  
Services

### **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.