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DEPARTMENT OF
ADMINISTRATIVE & FINANCIAL
SERVICES

KIRSTEN LC FIGUEROA
COMMISSIONER

BUREAU OF GENERAL SERVICES

WILLIAM LONGFELLOW
DIRECTOR

June 20, 2023

Via Electronic Mail: pmaclean@spacefile.com

SUBJECT: Decision of Appeal of Award –
RFQ #29C 230327-237

Dear Mr. MacLean,

Enclosed please find 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,

DocuSigned by:

William Longfellow

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William Longfellow, Director
Bureau of General Services

Enclosure

cc: **Brandon Martin, Acting Deputy Chief Procurement Officer**
David Morris, Acting Chief Procurement Officer
Appeal Hearing Panelists

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

In Re: Spacefile International Corp.	}	
Appeal of Contract Award under RFQ #	}	
29C 230327000000000237 for	}	Decision on Appeal
Shelving Installation for Two Locations	}	

INTRODUCTION AND BACKGROUND

The Bureau of General Services received and granted a request for hearing of appeal on an award decision by the Department of Administrative and Financial Services (DAFS) through its Division of Procurement Services (DPS) for the provision of shelving and installation at two locations. A request for quotation (RFQ) was issued on behalf of the Maine State Archives (MSA), a component of the Department of Secretary of State. The award was made following the process governed by Maine Statute, Chapter 156, subsection 1825-B. The request for appeal was timely filed by Spacefile International Corporation (SIC) and an appeal hearing was granted under the process defined in Division of Purchases Rule Chapter 120.

This appeal stems from a competitive RFQ issued by DPS to acquire the equipment and installation of a high density, archival quality mobile file system for one location and a stationary archival quality file system at a second location. The process was managed by DPS through the AdvantageME/vendor self-service e-procurement system. Specifications and design drawings were provided to the bidders along with RFQ response requirements. Five bidders responded, including pricing and terms, to DPS. One bidder, SIC, proposed two options: a system with a raised aluminum track as option 1 and a system that appeared to conform to the specifications as option 2 at a higher price.

A tabulation spreadsheet was created and the bidders were ranked from the lowest cost to the highest. DPS presented to the MSA the details of the low bidder's option 1 specifications and conditions for review (SI at \$829,972.04). This proposed solution was rejected by MSA due to the design of the system, which would require staff to move heavy materials over the SIC raised track system.

The second lowest cost quote was offered by Spacesaver Storage (SS) at \$976,809. The details of the specifications and conditions were reviewed by DPS and the State Archivist and it was determined that their solutions met specifications and requirements. A notification of award was electronically communicated to the bidders. SIC timely filed a request for a hearing which was granted by the Director of the Bureau of General Services.

An appeal hearing was held on Tuesday, June 13, 2023, where the parties presented testimony through witnesses over the live video conference system, witnesses were sworn, examination and cross-examination occurred, and the parties presented allowable documentary evidence in accordance with Chapter 120¹.

The Appeal Panel (Panel) was comprised of three members chosen from within state service. All Panel members met and participated in the hearing. A Hearing Officer was appointed to lead the hearing but was not a decision maker on the Panel. After a review of the testimony and evidence presented by the parties, the Panel makes the following findings of fact and decision on appeal.

GOVERNING LAW AND STANDARD OF REVIEW

The issue, in this case, is whether SIC has met their burden of proof by clear and convincing evidence that the DPS 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

¹ 18-554 C.M.R. ch. 120, Rules for the Purchase of Services and Awards ("Chapter 120")

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

SIC claimed that the decision to reject their Option 1 proposal was arbitrary and capricious. There was no evidence or testimony presented to address any violation of law or irregularities that created a fundamental unfairness.

SIC provided the lowest pricing for furnishing the equipment and installation of the two locations requested by the MSA. The high density, archival quality mobile storage solution offered by SI required a surface mount track system to transport the shelves. The user would have to move materials over these raised tracks during their use of the file system. DPS and MSA included in their specifications this requirement:

“4) Shelving must allow for at least two concurrent aisles to be at least 36" in width. Every aisle to have handicap ramp and non-skid surface. Aisles between shelving must conveniently accommodate the movement of fully loaded carts and mobile ladders used by the Archives. This may imply ramps and/or a flat surface.”²

MSA stated in an email to the DPS that the aluminum track would not work for their purposes. It is a raised rail, which even with small ramps, is difficult to push carts loaded with boxes over.

SIC questioned the experience of the MSA in making the determination that their option 1 track rail system was not adequate. The Archivist described how she had held that position for over three years and her experience. She demonstrated knowledge of the MSA’s needs and the State’s requirements. She contributed this statement to the pricing document during the award decision process:

² Bates Stamp 002 - RFP, Location: Wellness Center, paragraph 4

“Jeff Belanger stopped by the Wellness Center this morning and drilled a hole in the gym floor to confirm what we are working with. He found the gym floor itself is almost 2 inches thick, then there is a ½ inch layer of homasote (which is a fiberboard), which is directly on concrete. With that, I would say we directly reject Spacefile’s lowest proposal, as that is for a raised aluminum track, which does not work for the Maine State Archives’ carts when loaded with heavy boxes.”³

SIC described their product as being ADA compliant. SIC concluded the half inch rise for each rail was offset by a small ramp built into the rail and was sufficient to meet the needs. The response was that MSA’s expectations were a flat or nearly flat surface. SIC further described its mobile filing system as having anti-tip design a feature that should be valuable to the State. There was no requirement for that feature in the RFP specifications.

SIC further described their proposal as best value based on a potential savings of over \$140,000. The award in this case was to the lowest bidder meeting the specifications and requirements of the RFQ and the DPS and MSA determined SIC did not.

It was noted that SIC also included an Option 2 bid that appeared to meet the RFQ requirements. It was not the lowest bid, ranking second among the bids that appeared to offer what the MSA had specified.

DECISION

The Panel reviewed the documentary evidence, considered the testimony of the witnesses, and carefully considered the closing arguments by the parties.

SIC offered the lowest cost proposal for a mobile filing solution but did not meet the expectations and requirements of the MSA. This was to be an award to the lowest cost qualifying solution and in this case their option 1 proposal was determined to be not acceptable and

³ Bates Stamp 060 – Cost Proposals All Bids

therefore not qualified. SIC claimed this act was arbitrary and capricious. The record shows that the MSA reviewed the SIC submission under its Option 1 offer and made written statements about its position on the suitability of this solution to their needs. Arbitrary and capricious acts are without reason or an abuse of discretion.

While the product proposed under SIC's option 1 had features that might demonstrate value to a user, such as anti-tip technology or ADA compliance, the RFQ did not require these features. The best value in this RFQ process was based solely on cost and suitability of the track system. There was no weighted scoring in this process.

SIC failed to clearly convince the Panel the actions by the DPS and MSA were arbitrary or capricious. The proposal was given consideration, the determinations were explained within the procurement record and the Panel is not convinced there was an abuse of DPS or MSA discretion. The Appellant, SIC, has not met the burden of proof necessary to invalidate the award. Accordingly, the Panel validates the DPS award decision.

APPEAL PANEL

Dated: 6/20/2023

DocuSigned by:
Gilbert Bilodeau
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Gilbert Bilodeau, Service Center Director
Division of Financial and Professional Services,
DAFS

Dated: 6/20/2023

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Alison Getchell, Programs Administrator HRA,
Bureau of Human Resources DAFS

Dated: 6/20/2023

DocuSigned by:
Richard Henning
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Richard Henning, Management Analyst II
Division of Contract Management, DHHS

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.