

Maine Department of Administrative and Financial Services  
Bureau of General Services

**Re: Request for Appeal of Award – RFP # 202006107  
Sports Marketing Services  
Decision on Appeal**

The Appeal Panel met on Wednesday, November 18, 2020 to deliberate the evidence and testimony presented over the course of multiple hearing sessions held on October 30, November 2, November 12, and November 13, 2020. The parties involved included the appellant, TideSmart Global, the intervenor and incumbent, Alliance Sports Marketing, and the Bureau of Highway Safety (Bureau). The Panel primarily focused on five main areas of discussion while considering the validation or invalidation of the award:

1. RFP and Evaluation Planning Form
2. COVID-19
3. Evaluation Team
4. Eligibility Requirements
5. Scope of Work and Cost Proposal

**RFP Evaluation and Planning Form**

The appellant ascertained that through evidence shown on the RFP Evaluation and Planning Form, the Bureau did not adequately research the market for qualified potential bidders other than the incumbent. Much focus was directed at parts 3a. and 3b. on the form, which ask, “Describe the market research efforts that have been completed to determine potential qualified vendors,” and “List the names of at least 3 businesses that are qualified and could potentially be interested in providing the services within this RFP,” respectively. The Panel found that though there was shown to be little effort by the Bureau to research other potential bidders, the minimum requirements of the form were met and there was no evidence that the Procurement Services office found the form to be unsatisfactory.

**COVID-19**

The appellant ascertained that the current pandemic should have been included in the RFP, as the services requested could very well be impacted by the pandemic. The appellant has also shown evidence of including the COVID-19 pandemic as part of its proposal, which the intervenor did not. The Panel found that the pandemic was not part of the RFP and no response regarding the pandemic was required, therefore the appellant’s inclusion of the pandemic in its proposal was interesting, though otherwise irrelevant to the scoring of the RFP. Additionally, the Panel found that the COVID-19 pandemic was not, appropriately, considered in the consensus scoring of either proposal.

## Evaluation Team

The appellant attempted to show evidence that deemed the members of the evaluation team unfit for their role in evaluating the proposals as a result of the RFP. The Panel has found that all three members of the evaluation team were chosen by the Bureau and followed the processes described within Chapter 110 of the Division of Purchases rules. There is no requirement within the rules that would disqualify any member of the team.

## Eligibility Requirements

The appellant ascertained that the eligibility requirements within the RFP were arbitrary in nature, creating a fundamental unfairness.

The Panel reviewed the evidence, testimony, and the eligibility requirements of the RFP themselves and resolved that the requirement for bidders to have already obtained an RSP certification before the proposal due date was indeed unusual. The intervenor contacted Lauren Stewart of the Bureau on May 7, 2020 and noted that the RSP certification had been obtained by Brandon Vonderharr. It was clear to the Panel that the RSP certification is a fairly recent development within the road safety industry, there are currently no entities in Maine holding the certification, and there is a set number of application/testing opportunities to obtain the certification. It was not clear, however, what the Bureau did to research the RSP certification and its prevalence in the industry at the time of drafting the RFP, or how the Bureau would have otherwise considered the RSP certification necessary enough to include as an eligibility requirement without the email from the intervenor. The Panel noted that the Bureau attempted to amend the eligibility requirements in the Question & Answer Summary, noting that the RSP certification would only take "precedence" over other certifications. Though ultimately both proposals were considered, the intervenor scored a perfect 100 points on its proposal and met every eligibility requirement. A perfect score is highly unusual. In addition, testimony has proven that it would have been impossible for an entity not having already obtained the certification to obtain it after the RFP was released and before the proposal due date. These facts combined convinced the Panel that the requirement to have staff with an RSP certification was an arbitrary requirement, not necessary to accomplish the work. The Panel finds this an irregularity that created a fundamental unfairness.

As for the other eligibility requirements in the RFP, these were not found to be fundamentally unfair. The Panel found, though, that the inclusion of an active relationship with the MPA as a pass/fail requirement is unusual. The requirement that Bidders have experience with other states' Governor's Highway Safety Offices was also found to be irregular, as the precedence for this specific experience within an eligibility requirement created a barrier to competition. Experience working with Maine sports teams and sports team venues was not found to be of issue as an eligibility requirement.

## Scope of Work and Cost Proposal

The appellant ascertained that Part II of the RFP (Scope of Work) and associated Appendices were lacking sufficient detail to aid in the development of an accurate cost proposal. Chapter 110 states, "The request for proposal must contain at a minimum a

clear definition (scope) of the project, the evaluation criteria and relative scoring weights to be applied, the proposal opening date and time, and agency contact person." The Panel found the scope of work did not meet the requirement in Chapter 110 referenced above. The only detail pertaining to the actual work to be done was found in Appendix H, which still failed to give relevant parameters for each event in order to associate accurate cost. This level of detail, if not conveyed through the RFP, would only be the knowledge of the incumbent, and is therefore fundamentally unfair.

The Cost Proposal asked for multiple categories of expenses, which would be totaled and represent the total proposed cost for the Bidder. One category of note throughout the hearing was the "interactive event display," referred throughout the hearing as "assets." Through witness testimony and the Question & Answer Summary, the Panel found that the incumbent owns many assets that had been used previously in conjunction with the Bureau's former projects. The Panel has found that the ownership of these assets by the incumbent is not fundamentally unfair, as it is common for an incumbent to have some relative advantage due to having performed these same services in the past.

The Panel would also like to note that the \$750,000 budget was openly conveyed in the Question & Answer Summary, and the total proposed cost was the only number used to calculate the score for each cost proposal. With that, the Panel has found that there was not enough supporting information for anyone other than the incumbent to fully understand the scope of the project and accurately complete the remainder of the Cost Proposal, which would be totaled and used in the scoring equation.

Additionally, the Panel discussed the evidence presented regarding the promotion of the RFP. All statutory requirements stated in Chapter 110 were met by the Bureau to advertise the RFP, and it is in the best interest of the Bureau to notify any known potential bidders directly once the RFP is released.

In closing, the Appeal Panel invalidates the award made to Alliance Sports Marketing due to fundamental unfairness resulting from the inclusion of the RSP certification as an eligibility requirement, and from the lack of sufficient detail in the scope of work to develop an accurate and competitive cost proposal. The Appeal Panel has served its duty to either validate or invalidate the award and takes no position on the appellant's request to "redirect the award."

## Appeal Panel

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*Lindsey Kendall*

11/30/2020

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11/30/2020

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