

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. BCD-25-63

WALDO COMMUNITY ACTION PARTNERS
Petitioner/Appellant

v.

**DEPARTMENT OF ADMINISTRATIVE AND
FINANCIAL SERVICES, et al.**
Respondent/Appellee

On Appeal from the Business and Consumer Docket

**Brief of Interested Party/Appellee Department of
Health and Human Services**

Aaron M. Frey
Attorney General

Of counsel:
Thomas A. Knowlton
Deputy Attorney General

Brendan Kreckel
Margaret Machaiek
Assistant Attorneys General
6 State House Station
Augusta, Maine 04334-0006
(207) 626-8800

**Attorneys for the Interested Party/Appellee Department of Health and
Human Services**

Table of Contents

INTRODUCTION.....	5
STATEMENT OF MATERIAL FACTS AND PROCEDURAL HISTORY.....	5
ISSUES PRESENTED FOR REVIEW	17
I. Whether the DAFS Decision’s determination that WCAP failed to meet its burden to show that the conditional contract award was arbitrary and capricious is supported by substantial evidence in the record.....	17
II. Whether it was an error of law that the DAFS Decision did not compel DHHS to award the Contract to WCAP pursuant to 5 M.R.S.A. § 1825-B(7)	17
SUMMARY OF THE ARGUMENT	17
ARGUMENT	18
I. The DAFS Decision’s determination that WCAP failed to meet its burden to show that the conditional contract award was arbitrary and capricious is supported by substantial evidence in the record.....	20
II. The DAFS Decision validating the conditional Contract award is not contrary to law	35
CONCLUSION	40

Table of Authorities

	<u>Page(s)</u>
 <u>Cases</u>	
<i>AngleZ Behav. Health Servs. v. Dep’t of Health & Hum. Servs.</i> , 2020 ME 26, 226 A.3d 762.....	21, 27
<i>Cent. Me. Power Co. v. Waterville Urb. Renewal Auth.</i> , 281 A.2d 233 (Me. 1971).....	27
<i>Doane v. Dep’t of Health & Hum. Servs.</i> , 2021 ME 28, 250 A.3d 1101	18
<i>E. Me. Conservation Initiative v. Bd. of Env’tl. Prot.</i> , 2025 ME 35, 334 A.3d 706.....	18, 19
<i>Friends of Lamoine v. Town of Lamoine</i> , 2020 ME 70, 234 A.3d 214.....	21
<i>Kelley v. Me. Pub. Emps. Ret. Sys.</i> , 2009 ME 27, 967 A.2d 676.....	21, 25, 27, 35
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024)	18
<i>Maples v. Compass Harbor Vill. Condo. Ass’n</i> , 2025 ME 19, 331 A.3d 435.....	18
<i>Passadumkeag Mtn. Friends v. Bd. of Env’tl. Prot.</i> , 2014 ME 116, 102 A.3d 1181	18, 19
<i>Pine Tree Legal Assistance, Inc. v. Dep’t of Hum. Servs.</i> , 655 A.2d 1260 (Me. 1995)	20, 32
<i>Seider v. Bd. of Exam’rs of Psychologists</i> , 2000 ME 206, 762 A.2d 551.....	26
<i>Stein v. Me. Crim. Just. Acad.</i> , 2014 ME 82, 95 A.3d 612	26

<i>Wood v. Dep’t of Inland Fisheries & Wildlife</i> , 2023 ME 61, 302 A.3d 18.....	18
---	----

Statutes

5 M.R.S.A. § 1824-B (Supp. 2025)	37
5 M.R.S.A. § 1825-B (Supp. 2025)	17, 35, 36, 38, 40
5 M.R.S.A. § 1825-C (Supp. 2025).....	31, 36
5 M.R.S.A. § 1825-D (Supp. 2025)	31, 40
5 M.R.S.A. § 1825-E (Supp. 2025)	19, 20
5 M.R.S.A. § 1825-F (Supp. 2025)	19
5 M.R.S.A. § 11007 (Supp. 2025).....	18
5 M.R.S.A. § 11008 (2013).....	17

Regulations

10-144 C.M.R. ch. 101, ch. II, Sec. 113 (2015).....	6
18-554 C.M.R. ch. 110 (2010)	31, 36, 37, 38, 39
18-554 C.M.R. ch. 120 (1996)	20

INTRODUCTION

Waldo Community Action Partners (“WCAP”) asks this Court to hold that the Department of Administrative and Financial Services (“DAFS”) was required to invalidate a conditional contract award of the Department of Health and Human Services (“DHHS”) as DHHS was required by law to award WCAP a state contract, even though WCAP did not receive the highest score during the competitive bidding process. Additionally, WCAP asserts that DAFS was compelled to find that the consensus scoring method for evaluating contract bids is arbitrary and capricious if two minds could arrive at different opinions on how the provided information should affect the scoring. These are not questions of first impression, but rather are well settled law. These arguments failed at the administrative hearing before DAFS, were rejected by the Business and Consumer Docket (“BCD”), and should be rejected by this Court as well. The Court should affirm the BCD judgment, which upheld the DAFS Decision at issue.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Summary

WCAP was one of several bidders that submitted a proposal in response to DHHS’s Request for Proposals # 202303047 (the “RFP”). (Certified Record (“CR”) 2231-21299.) Through this RFP, DHHS sought brokerage services for

Maine's non-emergency transportation ("NET") program. (Appendix ("App.") 47.) The NET program, regulated under 10-144 C.M.R. ch. 101, ch. II, Sec. 113 (2015), provides transportation services for individuals eligible for Maine's Medicaid program, known as MaineCare. (App. 53.) The NET program enables MaineCare Members to travel to and from covered, non-emergency MaineCare services, such as doctor appointments and dialysis, when Members do not have an alternate way to get to and from the appointment. (App. 53.) Brokers are the entities that coordinate the various modes of transportation and schedule individual trips for MaineCare Members. (App. 53-54.)

For purposes of NET brokerage services, the State of Maine is divided into eight geographical regions. (CR 21325.) WCAP is the current NET broker for Region 5. (App. 154.) ModivCare Solutions, LLC ("ModivCare") the entity that was awarded the conditional contract award for Region 5 is the current NET broker for Regions 1, 2, 6, 7 and 8. (App. 147.) Before the issuance of this RFP, the contracts for NET services had not been subject to competitive bidding in over ten years. (See App. 08; 138; 156.)

The RFP provided WCAP and all bidders with an identical opportunity to bid on providing NET brokerage services to Region 5. (App. 47.) WCAP submitted a bid that did not provide all the information requested by the RFP. (See App. 153-63.) A team of DHHS evaluators awarded WCAP the second

highest score for Region 5; that DHHS team awarded the highest score to the bid submitted by ModivCare. (App. 118.) As a result, DHHS conditionally awarded the Region 5 NET contract to ModivCare. This action proceeds from that conditional contract award.

The RFP

On May 15, 2023, DHHS posted the RFP seeking bids for MaineCare's NET program. The RFP described the NET program, the proposal requirements and procedures, and a timeline for RFP events. (App. 47.) The RFP informed prospective bidders that questions concerning the RFP were to be submitted to DHHS by May 31, 2023, via email. (App. 47.) As detailed in the RFP, the NET Program divided the state into eight transit regions. (CR 21325.) Upon completion of the RFP process, DHHS anticipated making one award per region. (App. 55.) Bidders were required to submit a separate proposal for each region on which they intended to bid. (App. 55.)

Pursuant to Parts IV and V of the RFP, proposals were organized and scored in the following manner:

- Section I – Preliminary Information (No Points – Eligibility Requirements)
- Section II – Organization Qualifications and Experience (25 Points)
- Section III – Proposed Services (50 Points)
- Section IV – Cost Structure Acknowledgement (25 Points)

(App. 95-99.) Sections II and III were scored using a team consensus approach. (App. 98.) Because the RFP sought services governed by state and federal Medicaid regulations, the cost of the services was fixed; proposals would score the full 25 points for Section IV if they included a completed Cost Structure Reimbursement Acknowledgement Form agreeing to be bound by state and federal Medicaid reimbursement rates. (App. 98.)

Appendix D of the RFP – which the RFP required bidders to complete (App. 95) – consisted of three pages. It provided a box for bidders to provide a “statement of qualifications” narrative and three additional boxes where bidders were required to provide specific information about three projects to demonstrate their experience and expertise, labeled “Project One,” “Project Two,” and “Project Three.” In regard to the three projects, Appendix D stated:

Provide a *description* of projects that occurred within the past five years which reflect experience and expertise needed in performing the functions described in the “Scope of Services” portion of the RFP. *For each of the project examples provided*, a contact person from the client organization involved should be listed, along with that person’s telephone number and e-mail address. Please note that contract history with the State of Maine, whether positive or negative, may be considered in rating proposals even if not provided by the Bidder.

(App. 105-07 (Emphases added).)

WCAP's Proposal

WCAP completed just the “narrative” and “Project One” portion of Appendix D. (App. 153-63.) For its Project One, WCAP identified the name of the project as “MidCoast Connector NET Brokerage.”¹ (App. 156.) It identified Roger Bondeson of the Office of MaineCare Services (“OMS”) at DHHS as the business reference for this project. (App. 156.) WCAP provided a nearly seven-page long description of this project. (App. 156-63.) The description highlighted, in WCAP’s words, “a significant history of consistent, effective, and highly efficient NET Brokerage services operations[.]” (App. 157.)

WCAP described the following aspects of the MidCoast Connector project:

- 1) How MidCoast Connector dispatched and assigned trips and its approach to serving persons with disabilities in providing NET brokerage services (App. 157-59);
- 2) The training that MidCoast Connector provided with respect to NET services (App. 159);
- 3) MidCoast Connector’s success in transporting MaineCare members across large rural areas (App. 160);
- 4) How Midcoast Connector managed a call center to facilitate the provision of NET services (App. 160-61); and
- 5) MidCoast Connector’s experience in tracking MaineCare’s NET Brokerage performance measures (App. 161-62.)

¹ WCAP’s president and CEO confirmed at hearing that MidCoast Connector provided only NET services. (CR 610.)

Additionally, WCAP's Project One description contained contractual performance measures maintained by DHHS's Office of Child and Family Services ("OCFS")² and the Federal Transit Administration and the Maine Department of Transportation ("MDOT").³ (App. 162-63.) WCAP wrote "NA" in the sections of Appendix D labeled "Project Two" and "Project Three." (App 163.)

The Competitive Bidding Process

On June 26, 2023, DHHS responded to 170 questions that bidders submitted and on June 27, 2023, provided additional clarification to three of

² In its entirety:

Maine DHHS Office of Child and Family Services contractual performance measures tracked and reported continuously since 2000:

- Ninety-nine percent (99%) of rides will arrive for a clients' appointment On Time when receiving rides from the Provider each quarter.
- Ninety-five percent (95%) of rides will be provided each quarter when the Provider is given a notice of at least one (1) business day.
- One hundred percent (100%) of rides will be transported from a client's appointment to home.
- One hundred percent (100%) of all rides will be transported unless the trip is cancelled due to an emergency or weather.
- Ninety-nine percent (99%) of all eligible riders will be Delivered without verbal or written complaint.

(App. 162-63.)

³ In its entirety:

Federal Transit Administration / Maine Department of Transportation contractual performance measures tracked and reported continuously since 1990:

- Ninety five percent of vehicle maintenance performed by licensed mechanic shop based on federal maintenance schedule and requirement, including wheelchair safety and functionality and emergency exits functionality, within 500 miles plus / minus of required mileage intervals.

(App. 163.)

those questions. (CR 21411-55.) DHHS received forty (40) total proposals, broken down as follows:

- Four proposals for Region 1
- Five proposals for Region 2
- Five proposals for Region 3
- Five proposals for Region 4
- Five proposals for Region 5
- Five proposals for Region 6
- Five proposals for Region 7
- Six proposals for Region 8

(*See* CR 2231-21299.)

DHHS convened an evaluation team of four DHHS employees to review the proposals (the “Evaluation Team”). (*See* App. 98; CR 2227-30.) The Evaluation Team consisted of Roger Bondeson, the Director of the Division of Operations for the OMS (CR 107); Melissa Simpson (Fuller),⁴ who also worked at OMS and managed the NET brokers on a day-to-day basis (CR 392); Richard Henning, an employee of DHHS’s Division of Contract Management (CR 461-62); and Stephen Turner, who oversaw OMS’s administrative contracts (CR 437). The evaluators independently reviewed each proposal and took individual evaluation notes (“IENs”). (CR 115-19; 346-47; 393-94; 438-39; 462-63.) Per the instructions in the RFP, the evaluators did not score proposals individually. (App. 98.)

⁴ After scoring the RFPs and prior to hearing, Melissa Fuller’s name changed to Melissa Simpson. (*See* CR 391.)

The Evaluation Team met on July 18, 2023 to determine whether bidders met the RFP's qualification requirements to submit a proposal. (App. 98; CR 345.) One bidder did not meet the requirements and was disqualified. (See CR 851.) The Evaluation Team scored the remaining proposals, including WCAP's Region 5 proposal, in accordance with the team consensus scoring method as described in the RFP over the course of ten to twelve Evaluation Team meetings. (App. 98; CR 119.) The Evaluation Team maintained substantive comments that supported its scoring on all proposals, these are known as Team Consensus Evaluation Notes ("TCENs"). (See App. 119-37.)

On October 5, 2023, DHHS sent award notification letters to the bidders, informing them of the conditional contract award to ModivCare for Region 5. (See *e.g.*, CR 806-07.) For Region 5, the Evaluation Team assigned points to ModivCare and WCAP as follows:

WCAP: (18 - Organization Qualifications and Experience); (48 - Proposed Services); (25 - Cost Structure Acknowledgement); (91 - Total)

ModivCare: (25 - Organization Qualifications and Experience);⁵ (45 - Proposed Services); (25 - Cost Structure Acknowledgement); (95 - Total)

⁵ WCAP argues that ModivCare's bid failed to comply with Section II of the RFP. (Blue Br. 20-21.) In section II, with respect to its current litigation and any litigation or claims that had resolved in the previous five years, each bidder was required to "list the entity bringing suit, the complaint, the accusation, amount, and outcome." (App. 96.) DHHS later released binding clarification in writing (see App. 93), that "If the specific amount [of a claim] is not available, the Bidder must indicate 'dollar amount not available at this time.'" (CR 21449-50.) ModivCare provided its list of litigation with many claims for which it stated that the "dollar amount is not available." (CR 6650-93.) On the face of ModivCare's bid it is clear that this response was either due to the litigation not yet reaching a resolution or the dollar amount was ordered confidential by a court. (CR 6650-93.) The Evaluation

(App. 118.)

On October 15, 2023, WCAP requested that DAFS stay the contract award for Region 5 and noticed its intent to appeal. (CR 21742-52.) On October 20, 2023, DAFS granted the stay request. (CR 21873.) On October 19, 2023, WCAP appealed the contract award, arguing that the score that it received with respect to Section II of its proposal was arbitrary and capricious. (CR 21773-81.) DAFS's Bureau of General Services ("BGS") approved WCAP's request for an appeal hearing, and ModivCare intervened. (CR 21873, 21878-79, 21881.)

The Administrative Appeal Hearing

After being rescheduled multiple times, the hearing began on March 20, 2024, and continued over the course of three days. (CR 62-646; 21882; 21893; 21897; 21962; 21981-84; 22507; 22515-16; 22564-65.)

The bulk of the hearing concerned the testimony of Mr. Bondeson, who supervised the NET program in his role at OMS. (CR 107, 220.) Mr. Bondeson helped draft the RFP, (CR 110.), and was primarily responsible for crafting the scope of services outlined in the RFP; however, as he explained, individuals in

Team determined that ModivCare provided the required information. (App. 120-21.) The DAFS Appeal Committee concluded that this determination was not irregular or fundamentally unfair. (App. 32, 35.)

other offices in both DHHS and DAFS reviewed the RFP prior to its publication. (CR 110-11.)

As a member of the Evaluation Team and reviewer of the proposals, Mr. Bondeson described in detail the consensus scoring process used by the Evaluation Team. (CR 117-24.) Mr. Bondeson also explained the format and requirements of the RFP, particularly as to Section II and Appendix D of the proposals, which concerned Organization Qualifications and Experience. (CR 127-131; 142; 224-30; 233-44; 249-51; 347-51; 360-63; *see also* App. 95-97; 116-37.) As he explained, when reviewing Appendix D, the Evaluation Team would initially “look to see [if] every box has been checked[.]” (CR 230.) “[W]e look for a description of qualifications and experience in the narrative, we look for the three project examples, and we look at all the other information that’s provided in that section [to] come up with a score.” (CR 230.) As he emphasized, it was important for bidders to fill out proposal submissions correctly, especially in light of the large volume of submissions that the Evaluation Team was required to review. (CR 146-48; 240-41; 357-58; 368-69; 374-75; 384-86.)

Mr. Bondeson also described the Evaluation Team’s scoring of WCAP’s Region 5 proposal. (CR 222-44; 248-61; 362-63; 386-88.) As Mr. Bondeson pointed out, “the omission of the project examples is a requirement that wasn’t

met.” (CR 235.) The Evaluation Team found that because the instructions of the RFP say, “Must provide three examples,” that an omission did not comply with the RFP requirements. (CR 240.)

Ms. Simpson explained how she recorded her IENs during her individual review of the proposals. (CR 392-427.) Ms. Simpson understood WCAP’s proposal to have included only one of the three required project examples. (CR 428.)

Mr. Turner, another evaluator, explained that the Evaluation Team’s process was to score Section II before moving on to Section III. (CR 439.) He estimated that the Evaluation Team spent about four or five hours scoring each proposal. (CR 440.) He also described his IEN process and the Evaluation Team’s scoring of the proposals by consensus. (CR 437-52; 454-57.)

The fourth member of the Evaluation Team, Mr. Henning, confirmed that he read every proposal “word for word, and tried to glean as best [he] could what the bidder was proposing.” (CR 483.) Like the other evaluators, he described the consensus scoring process and the Evaluation Team’s scoring of the Region 5 proposals. (CR 463-65; 477-80; 482-83.) He was not personally familiar with WCAP’s history as a provider of NET broker services; his review was based upon the information supplied in WCAP’s bid. (CR 477; 484.)

Donna Kelley, president and CEO of WCAP, summarized WCAP's history brokering the NET program in Region 5. (CR 599-606.) Ms. Kelley also testified about her understanding of the WCAP proposal, confirming that WCAP marked Project 2 and Project 3 as "not applicable" in the interest of keeping the application concise. (CR 605-11.)

The DAFS Decision

On April 24, 2024, the Director of BGS issued the Appeal Committee's decision (the "DAFS Decision"). (App. 25.) The DAFS Decision found that WCAP had failed to prove by clear and convincing evidence that DHHS's conditional contract award decision 1) was made in violation of law, 2) contained irregularities creating a fundamental unfairness, or 3) was arbitrary and capricious. (App. 34-36.) Accordingly, DAFS validated the conditional contract award to ModivCare for Region 5. (App. 36.)

On May 23, 2024, WCAP filed its petition for review of final agency action with the Waldo County Superior Court. (App. 13-24.) On June 6, 2024, DAFS applied to transfer this matter to the BCD. (App. 04.) On June 21, 2024, the BCD accepted the application. (App. 04.)

The BCD Decision

On November 6, 2024, the court (*McKeon, J.*) held oral argument and took the matter under advisement. (App. 06.) On January 28, 2025, the court denied

WCAP's Rule 80C appeal, ruling that WCAP failed to meet its "heavy burden" on appeal (the "BCD Decision"). (App. 12.) The BCD determined that the RFP's instructions were not ambiguous and that WCAP failed to follow the RFP's instructions. (App. 11.) Additionally, the BCD found that WCAP failed to fully explain its three relevant projects as required by the RFP. (App. 11.) WCAP filed its Notice of Appeal. 5 M.R.S.A. § 11008 (2013).

ISSUES PRESENTED FOR REVIEW

- I. Whether the DAFS Decision's determination that WCAP failed to meet its burden to show that the conditional contract award was arbitrary and capricious is supported by substantial evidence in the record.
- II. Whether it was an error of law that the DAFS Decision did not compel DHHS to award the contract to WCAP pursuant to 5 M.R.S.A. § 1825-B(7).

SUMMARY OF THE ARGUMENT

The competitive bidding process is designed to ensure a level playing field for all bidders. It does this by ensuring that all proposals are reviewed and scored pursuant to the same standards. WCAP's proposal did not receive the highest score because it failed to provide all the information required by the RFP. At the administrative hearing, WCAP failed to meet its burden of clear and convincing evidence to demonstrate that the conditional contract award to ModivCare must be invalidated. As correctly confirmed by the BCD, the DAFS

Decision was supported by substantial evidence in the record, contained no errors or law, and was not an abuse of discretion.

ARGUMENT

Upon an appeal from the Superior Court or the BCD, *see e.g., Maples v. Compass Harbor Vill. Condo. Ass'n*, 2025 ME 19, 331 A.3d 435, the Court reviews “directly the original decision of the fact-finding agency, without deference to the ruling on the intermediate appeal by the court from which the appeal is taken[,]” *Wood v. Dep’t of Inland Fisheries & Wildlife*, 2023 ME 61, ¶ 14, 302 A.3d 18 (internal quotation marks omitted). The decision is reviewed “for errors of law, factual findings unsupported by substantial record evidence, or an abuse of discretion.” *E. Me. Conservation Initiative v. Bd. of Env’tl. Prot.*, 2025 ME 35, ¶ 21, 334 A.3d 706;⁶ *see also* 5 M.R.S.A. § 11007 (Supp. 2025). Review of administrative agency’s decisions are “deferential and limited.” *Passadumkeag Mtn. Friends v. Bd. of Env’tl. Prot.*, 2014 ME 116, ¶ 12, 102 A.3d 1181 (internal quotation marks omitted). This Court reviews questions of law *de novo* and will not substitute its judgment for that of the agency on questions of fact. *Doane v. Dep’t of Health & Hum. Servs.*, 2021 ME 28, ¶ 15, 250 A.3d 1101 (internal quotation marks omitted); *see also* 5 M.R.S.A. 11007(3).

⁶ WCAP in its brief mentions the U.S. Supreme Court case *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). DHHS notes that WCAP’s brief does not actually argue that *Loper Bright* deference should be applied by the Court in this case.

The Court reviews and interprets statutes that are “both administered by [an] agency and within the agency's expertise,” using “a two-part inquiry.” *E. Me. Conservation Initiative*, 2025 ME 35, ¶ 22, 334 A.3d 706 (internal quotation marks omitted). The first part is to “determine whether the statute's language is ambiguous.” *Id.* If the statute is unambiguous, it is construed “in accordance with its plain meaning.” *Id.* “If the statute’s language is ambiguous” the Court will “defer to the interpretation of a statutory scheme by the agency charged with its implementation as long as the agency’s construction is reasonable.” *Id.* (internal quotation marks omitted.)

When reviewing an agency’s factual findings, the Court “examine[s] the record in its entirety.” *Passadumkeag Mtn. Friends*, 2014 ME 116, ¶ 12, 102 A.3d 1181. The Court “must affirm findings of fact if they are supported by substantial evidence in the record, even if the record contains inconsistent evidence.” *Id.* (internal quotation marks omitted). An agency’s factual findings may be vacated only “if the record contains no competent evidence to support them.” *Id.*

This appeal arises from a final agency decision issued by DAFS pursuant to 5 M.R.S.A. §§ 1825-E (Supp. 2025) & 1825-F (Supp. 2025). Under Maine’s contract procurement statutes, an appeal from a conditional contract award is heard by an Appeal Committee, which may either validate, or invalidate, the

contract award. 5 M.R.S.A. § 1825-E (3). In its appeal to the DAFS Appeal Committee, WCAP had the burden to show by clear and convincing evidence that the contract award to ModivCare 1) violated the law; 2) contained irregularities in the RFP evaluation process that created a fundamental unfairness; or 3) was arbitrary and capricious. (App. 44-46 (18-554 C.M.R. ch. 120 (“Appeal Rules”) §§ 3(2) & 4(1) (1996).)

“Clear and convincing” is a high standard—WCAP was required to prove that it was not just merely probable, but highly probable, that one of the three appeal criteria was satisfied. *Pine Tree Legal Assistance, Inc. v. Dep’t of Hum. Servs.*, 655 A.2d 1260, 1264 (Me. 1995). Vacating an appeal committee’s determination that an appellant failed to meet the clear and convincing burden of proof requires that “the nature of the evidence is such that the committee was compelled to find [the appellant]’s contentions highly probable.” *Id.*

I. The DAFS Decision’s determination that WCAP failed to meet its burden to show that the conditional contract award was arbitrary and capricious is supported by substantial evidence in the record.

WCAP asserts that the DAFS Decision validating the award is not supported by substantial evidence in the record. (Blue Br. 37-40.) But when “an appellant had the burden of proof before the agency, and challenges an agency finding that it failed to meet that burden of proof, [the Court] will not overturn the agency fact-finding unless the appellant demonstrates that the

administrative record compels the contrary findings that the appellant asserts should have been entered.” *Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, ¶ 20, 234 A.3d 214 (internal quotation marks omitted). In such cases the Court shall “reverse a finding of failure to meet a burden of proof only if the record compels a contrary conclusion to the exclusion of any other inference.” *Kelley v. Me. Pub. Emps. Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676 (internal quotation marks omitted).

WCAP’s argument that the DAFS Decision is not supported by the record relies on this court overturning one of the following factual findings made by the DAFS Appeal Committee: 1) that the WCAP proposal did not contain all the information required by the RFP; and/or 2) that the WCAP proposal did not follow the prescribed format required by the RFP. Next WCAP would also need to convince this Court that the DAFS Decision was compelled to find that the scoring applied by the Evaluation Team was arbitrary and capricious “to the exclusion of any other inference.” *See id.* In other words, that the DAFS Appeal Committee was compelled to find that the Evaluation Team’s scoring was “willful and unreasoning and without consideration of facts or circumstances.” *AngleZ Behav. Health Servs. v. Dep’t of Health & Hum. Servs.*, 2020 ME 26, ¶ 23, 226 A.3d 762.

As the BCD affirmed (App. 12), the record amply supports the DAFS Decision that WCAP failed to meet its burden to show that the award should be invalidated.

A. The record contains substantial evidence that supports the DAFS Decision's determination that WCAP's proposal did not contain the information required by the RFP.

The DAFS Decision found that the Evaluation Team's TCENs supported the score received by WCAP and was not clearly arbitrary and capricious, as it was consistent with the requirements of the RFP. (App. 29-30; 35-36.) When scoring WCAP's proposal, the Evaluation Team in its TCENs noted that WCAP did not provide three projects as required by the RFP but, rather, provided a description of only one project. (See App. 130.)

The record supports the DAFS Decision's factual finding that WCAP's proposal did not provide the information requested by the RFP. (See App. 34 ("The absence of the required information and with the detail requested was the sole reason for the reduced score of 18 out of the available 25 points.").) All bidders were required to submit "three examples of projects which demonstrate their experience and expertise in performing these services as well as highlighting the Bidder's stated qualifications and skills." (App. 95.). The record supports the DAFS Decision's factual finding that WCAP did not do

so anywhere in its bid. Neither in its Appendix D narrative nor in its description of Project One. (*See* Blue. Br. 13-15.)

WCAP argues that this conclusion is contrary to the RFP and is not supported by substantial evidence positing that Appendix D did not instruct bidders where to place its relevant projects. (Blue Br. 11, 18-19.) This argument disregards the express language of the RFP. The RFP expressly and unambiguously told bidders to complete Appendix D which indicated exactly what information was required and where that information needed to be recorded. (*See* App. 95; 106-07.)⁷

In the boxes labeled “Project Two” and “Project Three” WCAP wrote only “NA.” (App. 163.) Ms. Kelley confirmed at hearing that this meant “not applicable.” (CR 611.) Although Ms. Kelley also testified at hearing that the other two projects were “provided above[,]” WCAP did not write “see above” or give any other indication that it intended information contained in its Appendix D narrative or description of Project One to also serve as its descriptions of Projects Two and Three. Even if it had, the argument that it included all the

⁷ The RFP directed bidders to complete Section II, “Organization Qualifications and Experience.” (App. 95-96.) It specifically instructed that “Bidders must complete Appendix D (Qualification and Experience Form) describing their qualifications and skills to provide the requested services in the RFP.” (App. 95.) It also clarified that “Bidders must include three examples of projects which demonstrate their experience and expertise in performing these services as well as highlighting the Bidder’s stated qualifications and skills.” (App. 95.) The instructions were clear.

required information but merely placed it in the wrong place is unsupported by the record. The DAFS Appeals Committee was not compelled to make such a finding. The DAFS Decision’s factual finding that WCAP failed to follow the format prescribed by the RFP is supported by substantial evidence in the record.

i. The Appendix D narrative.

The record supports the DAFS Decision’s determination that WCAP did not provide all the required information in its proposal, including in its Appendix D narrative. (*See App. 34-36.*) There, WCAP provided a “very good” narrative response in the “statement of qualifications” box. (CR 237.) WCAP highlights specific phrases in its narrative to argue that it provided all the information required by the RFP. (Blue Br. 12-15; *but see App. 153-55.*) WCAP listed a number of clients with whom it had contracts. (App. 153-55.) But WCAP did not describe the services it provided in the context of these projects. (App. 106.) It provided no contact information for any projects; nor did it explain how the contracts it mentioned demonstrate relevant experience or expertise needed for performing the functions required by the RFP. (App. 95; 106.) The record does not compel this Court to find that WCAP has met its high burden to show that the DAFS Decision determination that this information

was missing is incorrect “to the exclusion of any other inference.” *See Kelley*, 2009 ME 27, ¶ 16, 967 A.2d 676.

ii. The description of Project One.

WCAP fully completed the “Project One” portion of Appendix D by describing in detail its “MidCoast Connector NET Brokerage.” (App. 130; 156-62.) It identified Roger Bondeson of OMS as the business reference for this project. (App. 156.) It provided a nearly seven-page long description of the project. (App. 156-62.) The description highlighted: MidCoast Connector’s history providing NET Brokerage services, (App. 157); the manner in which it dispatched and assigned trips, (App. 157-59); providing NET brokerage services to persons with disabilities, (App. 157-59); the NET services training it provided, (App. 157-59); its success in transporting MaineCare members across large rural areas, (App. 160); how it managed a NET services call center, (App. 160-61); and its experience tracking MaineCare’s NET Brokerage performance measures, (App 161-62.)

In stark contrast, WCAP provided no such detailed description of any other project in its bid, including its contracts involving OCFS or MDOT. WCAP did not list the name of any such project, nor did it identify any contact person. WCAP provided metrics, but there was no way for the Evaluation Team to assess the meaning or significance of those metrics, because WCAP provided

no context for them. Its bid did not describe the type of rides that were referenced in the metrics, or the populations that were being served. WCAP did not describe how it tracked these metrics or the frequency with which it reported them. Nothing in WCAP's bid reflected whether it had even been successful in achieving those metrics. (*See App. 162-63.*)

As Mr. Bondeson opined on cross examination, transportation projects with OCFS and state and federal departments of transportation would likely “qualif[y] as examples *had all the information [requested] been there[.]*” (CR 251 (emphasis added).) But all the requested information *was not* there.⁸

In light of this evidence, this Court is not compelled to find that WCAP provided the requested information “to the exclusion of any other inference.”

⁸ Contrary to WCAP's assertions, (Blue Br. 15-20), Mr. Bondeson's testimony does not establish that WCAP's proposal contained all the required information. WCAP points to the following exchange:

Q - ...[Y]ou indicated in your individual notes that [WCAP] did not list three projects as required by the RFP? However, [WCAP] did *reference projects* in that section of the appendix. I'm paraphrasing.

A - Yes, that – that sounds right.

Q - Yep. So the content was there in Appendix D; however, not in the boxes that you anticipated it would be in, correct?

A - Correct.

(CR 226 (Emphasis added).) This quote merely affirms the obvious – WCAP referenced a number of its other contracts in other parts of Appendix D – not in the required boxes. WCAP's passing references to other contracts did not comply with the RFP's requirement that it *describe* three relevant projects highlighting its experience, expertise, qualifications, and skill. In any event, the fact that evidence in the record may be “inconsistent or could support a different decision does not render the decision wrong.” *Stein v. Me. Crim. Just. Acad.*, 2014 ME 82, ¶ 11, 95 A.3d 612 (internal quotation marks omitted); *see also Seider v. Bd. of Exam'rs of Psychologists*, 2000 ME 206, ¶ 9, 762 A.2d 551 (“Inconsistent evidence will not render an agency decision unsupported.”).

See Kelley, 2009 ME 27, ¶ 16, 967 A.2d 676. The DAFS Decision’s finding that WCAP failed to provide all of the information required by the RFP is supported by substantial evidence in the record and should be affirmed.

B. Competent record evidence supports the DAFS Decision’s conclusion that WCAP failed to meet its burden to show that the Evaluation Team’s scoring was not consistent with the RFP or was arbitrary and capricious.

The DAFS Decision concluded that WCAP failed to meet its burden to show by clear and convincing evidence that the Evaluation Team scoring of WCAP’s qualifications and experience was arbitrary and capricious. (App. 35-36.) Even if the record contains evidence that could have supported a higher score, that is insufficient to compel a finding of arbitrary and capricious action. “Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” *Cent. Me. Power Co. v. Waterville Urb. Renewal Auth.*, 281 A.2d 233, 242 (Me. 1971) (internal citations omitted). Accordingly, this Court can only overturn the DAFS Decision if the record compels a finding that it was highly probable that the Evaluation Team scored the proposals in a manner that was unreasoning and “without consideration of facts or circumstances.” *AngleZ Behav. Health Servs.*, 2020 ME 26, ¶ 23, 226 A.3d 762.

- i. *The DAFS Decision correctly determined that WCAP failed to meet its burden to show that the Evaluation Team acted arbitrarily and capriciously by reducing WCAP's score for failure to follow the format required by the RFP.*

Following the RFP's format is vital to the efficient and uniform scoring of all proposals submitted in response to an RFP; in cases like this, where an evaluation team must review and score thousands of pages of documents, it is even more vital. (See CR 240.) WCAP, like all prospective bidders, was apprised by the RFP of the manner in which proposals would be scored. (App. 47-117.) Part I(B)(3) of the RFP itself stated:

All proposals must adhere to the instructions and format requirements outlined in the RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the "Proposal Submission Requirements" section of the RFP.

(App. 54.) This requirement is highlighted again in Part IV of the RFP, "Proposal Submission Requirements":

The Bidder's proposal must follow the outline used below, including the numbering, section, and sub-section headings. Failure to use the outline specified in PART IV, or failure to respond to all questions and instructions throughout the RFP, may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department, and its evaluation team, has sole discretion to determine whether a variance from the RFP specifications will

result either in disqualification or reduction in scoring of a proposal.

...

All information must be presented in the same order and format as described in the RFP.

(App. 95.) As such, bidders were expressly informed twice by the RFP that they were required to use the structure and format provided by the RFP and provide all requested information, and that failure to do so could result in disqualification or a reduced score.

As noted in the DAFS Decision, if WCAP did not understand what was required by the plain language of the RFP, it could have asked DHHS. (App. 35; 93.) Built into the RFP is not only an opportunity for bidders to ask these questions, but a *requirement* that they do so if they do not understand any aspect of the RFP. (App. 93 (“It is the responsibility of all Bidders and other interested parties to examine the entire RFP and to seek clarification, in writing, if they do not understand any information or instructions.”).) Of the 170 questions that DHHS received, not one concerned the appropriate placement of descriptions of relevant projects. (CR 21411-55.) Of particular significance to the BCD was the fact that, out of the forty (40) proposals

received in response to the RFP, only WCAP failed to follow the structure and requirements of Appendix D.⁹ (App. 11.)

The DAFS Decision's determination that it was not arbitrary and capricious for the Evaluation Team to deduct points for failure to follow the RFP instructions is supported by substantial evidence in the record – including the RFP. A contrary finding is not compelled.

- ii. *The DAFS Decision correctly determined that WCAP failed to meet its burden to show that the Evaluation Team's use of the consensus scoring method was arbitrary or capricious.*

WCAP argues the DAFS Decision was required to find the scoring of the Evaluation Team arbitrary and capricious because no member of the Evaluation Team provided testimony at hearing explaining precisely how each numerical score was reached. (Blue Br. 37-39.) This argument ignores the record and misapprehends the nature of the consensus scoring method. Evidence in the record supports the finding that the Evaluation Team scored the bids pursuant to consensus scoring as required by the RFP. As the DAFS Decision noted and as explained by Mr. Bondeson at hearing, the Evaluation Team would score bidder's proposals by starting "at a mid-point of the possible

⁹ (CR 2238-39; 2462-63; 2698-99; 2933-34; **3168-69**; 3404-05; 3641-42; 3876-77; 4121-23; 4350-53; 4578-81; 4811-14; **5042-45**; 5274-77; 5504-07; 5735-38; 6640-45; 7632-37; 8623-28; 9861-66; **11099-104**; 12097-102; 13089-94; 14079-84; 14388-92; 14791-95; 15187-91; 15573-77; 16369-72; 16584-87; 16799-802; 17417-19; 17904-06; 18391-33; 18878-80; **19365-67**; 19852-54; 20339-41; 20826-28.) (Citations to Region 5 proposals emphasized.)

score for meeting the basic requirements of a Section[;]" this score would then be increased or reduced by consensus as appropriate, based on a valuation of the content in the bid as compared to the requirements of the RFP. (App. 31; CR 121-22; *see also* CR 440-41.)

As the DAFS Decision found, the substantive reasons for the scores are reflected in the TCENs. (App. 29-30; 31-32; *see* App. 130-37.) WCAP scored 18 out of 25 points for Section II. This score was awarded by consensus – the same manner in which the Evaluation Team decided that WCAP’s Section III should receive 48 out of 50 points. (App. 31-34; *see* App. 132.)

WCAP attacks individual members of the Evaluation Team for being unable to articulate a formula that was used to decide how many points to award for each section. (Blue Br. 20, 23.) As noted in the DAFS Decision, no such formula exists. (App. 29-30.) The purchasing statutes, the Purchase Rules, and the RFP all require that the scoring be conducted in the manner prescribed by the RFP and that the score be supported by substantive comments. *See* 5 M.R.S.A. §§ 1825-C (Supp. 2025) (requiring DAFS to conduct rulemaking to govern the purchase of services); 1825-D(2) (Supp. 2025); (App. 40 - 18-554 C.M.R. ch. 110 (2010) (the “Purchase Rules”) § 3(A) (“The contracting agency is responsible for reviewing all RFP’s based on the criteria established in the original Request for Proposal document. The agency shall document scoring,

substantive information that supports the scoring[.]”); 98 (RFP) (“the evaluation team will use a *consensus* approach to evaluate and score Sections II & III[.]”).) Here, the RFP provided for scoring of Section II by consensus, (App. 98.), and the record shows the DAFS Decision correctly concluded that is precisely what the Evaluation Team did, (App, 29-30.) In *Pine Tree Legal Assistance Inc. v. Department of Health and Human Services*, this court found that scoring by consensus was an acceptable method to score bids and that a “strict mathematical formula” would be inconsistent with a consensus method of scoring. 655 A.2d at 1264 .

Nor was the DAFS Appeal Committee required to find it arbitrary and capricious that the Evaluation Team prioritized adherence to the RFP rather than attempting to fill in missing information, such as descriptions of the services provided or contact information for references that WCAP failed to include in its proposal. The DAFS Appeal Committee also was not required to find it arbitrary and capricious that the Evaluation Team did not reorganize WCAP’s proposal so that it complied with the requirements of the RFP (i.e. try to piece together sections from its narrative and project one description to create two other qualifying project examples). (See Blue Br. 24-26.) The Evaluation Team’s approach is consistent with a primary goal of the competitive procurement process is to “ensure that the selection process

accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications.” (App. 98.)

The RFP provided the Evaluation Team discretion to consider a bidder’s contract history with the State. (App. 106.) But there is no requirement either in law or in the RFP itself that the Evaluation Team conduct an independent investigation to uncover favorable information that was not provided as part of a bidder’s proposal. Thus, the Evaluation Team’s decision not to do so here cannot be characterized as arbitrary and capricious. Taking such an approach in an effort to ensure a favored incumbent bidder maintained its State contract would have resulted in a fundamentally unfair process antithetical to the legislature’s intent to establish a neutral playing field for the competitive bidding process. (See Blue Br. 37 n.15 (“[O]f course, OMS and DHHS have at their fingertips contact information for MDOT, OCHS, and OADS, and DHHS was very aware of WCAP’s transit services supplied to MDOT and to other offices in DHHS.”).) The DAFS Appeal Committee found that WCAP failed to provide the required information. (App. 33-35.) It was not required to determine that the Evaluation Team’s failure to supplement WCAP’s proposal with State data from other programs and agencies was arbitrary and capricious.

As the DAFS Decision found, the Evaluation Team correctly evaluated the proposals based on the information submitted by each bidder as compared to

the requirements of the RFP. (App. 30-31.) The bids were not compared against each other. (App. 30-31.) The Evaluation Team could not consider WCAP's experience in Region 5 as compared to other bidders. (App. 98 ("An evaluation team, composed of qualified reviewers, will judge the merits of the proposals received in accordance with the criteria defined in the RFP.").) Rather, the Evaluation Team had to evaluate proposals as compared to the RFP requirements. WCAP's argument that its past performance in Region 5 compelled the DAFS Appeal Committee to find the scoring arbitrary and capricious is inconsistent with the purpose of the competitive bidding process and is unsupported by the record.

Assuming *arguendo*, that it were possible to conclude that WCAP provided in its proposal the information for Projects 2 and 3 somewhere other than where the RFP required, it still would not compel a ruling that WCAP was entitled to a heightened score for Section II sufficient to render it the highest-scoring bidder. Responses that provide the bare minimum are not entitled to a perfect score. (App. 35-36; 95.) The DAFS Appeal Committee was not compelled to find by clear and convincing evidence that the Evaluation Team's

award of 72% of the available points for Section II – 18 out of 25 – for WCAP’s proposal was arbitrary and capricious.¹⁰ (App. 130.)

In summary, the RFP permitted the Evaluation Team to deduct points for WCAP’s failure to follow the instructions, follow the RFP format, and provide all the required information. (App 95.) The DAFS Appeal Committee finding that the Evaluation Team appropriately scored proposals pursuant to the requirements contained in the RFP is supported by substantial evidence in the record. (App. 34-35.) For these reasons, WCAP failed to meet its burden to show by clear and convincing evidence that the scoring of Section II was arbitrary or capricious; nor did it meet its burden before the BCD to show that the DAFS Decision was unsupported by substantial evidence. It likewise cannot meet its burden before this Court of showing that the record compels a contrary result, to the exclusion of any other possible inference. *See Kelley*, 2009 ME 27, ¶ 16, 967 A.2d 676.

II. The DAFS Decision validating the conditional contract award is not contrary to law.

WCAP argues that the DAFS committed an error of law because, under the circumstances of this case, 5 M.R.S.A. § 1825-B(7) (Supp. 2025), mandated

¹⁰ Thus, WCAP’s allegation that it “received no credit in Section II for these other examples,” (Blue Br. at 32), is contradicted by the record. WCAP did not even receive the lowest score awarded for Section II among Region 5 bidders; one bidder received a score of 13 out of 25, despite providing three project examples. (CR 980.)

that the contract for Region 5 be awarded to WCAP as the Region 5 incumbent. This argument relies on the erroneous premise that WCAP, by virtue of its past positive performance in providing services in Region 5, is *by definition* the best value bidder. (Blue Br. 33.) This assertion is contrary to Maine’s competitive contract process.

“[P]urchases of goods or services needed by the State or any department or agency of the State” must be made “through competitive bidding.” 5 M.R.S.A. § 1825-B(1). Such purchases must be made “in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services.” *Id.* “Except as otherwise provided by law, competitively awarded [contracts] must be awarded to the best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State.” *Id.* § 1825-B(7).

DAFS has implemented these general statutory requirements by promulgating the Purchase Rules, including specific regulations regarding the RFP Procedure, in section 2 of the Purchase Rules. (App. 38-41); *see* 5 M.R.S.A. § 1825-C (authorizing DAFS to implement rules “governing the purchase of service, the awarding of [] contracts and the procedure by which aggrieved persons may appeal award decisions”).

When an agency like DHHS decides to issue an RFP, “[t]he 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[.]” (App. 38 - Purchase Rules § 2(A)(i).) Before the agency can issue the RFP with a value over one million dollars to potential bidders, the RFP document must be submitted to the State Procurement Review Committee for review. (App. 39 - Purchase Rules § 2(A)(ii); CR 110-11); *see also* 5 M.R.S.A. 1824-B (Supp. 2025). This “[r]eview includes, but is not limited to[,] appropriateness of scope and clearly defined evaluation criteria[.]” (App. 39 - Purchase Rules § 2(A)(ii).) Once the RFP is approved, “[n]o alterations or changes to any requirement or specification within the original RFP can be made without notifying all bidders in writing a minimum of seven (7) calendar days before opening date.” (App. 39 – Purchase Rules § 2(A)(iv)(cc).)

The Purchase Rules prescribe the manner by which agencies like DHHS must evaluate proposals and award government contracts. (App. 40 – Purchase Rules § 3.) “The contracting agency is responsible for reviewing all RFP’s based on the criteria established within the original Request for Proposal document.” (App. 40 – Purchase Rules § 3(A).) The contract award “*must* be made to the highest rated proposal which conforms to the requirements of the state *as contained in the RFP.*” (App. 40 – Purchase Rules § 3(A)(iv) (emphases added).)

WCAP's suggestion that the DAFS Decision validating the conditional contract award to ModivCare was "completely untethered . . . from any consideration of the quality of the services to be supplied" (Blue Br. 5), mischaracterizes the record. Here, the scope of the RFP and the evaluation criteria – the appropriateness of which were affirmed by the State Procurement Review Committee before the RFP was issued (App. 39 - Purchase Rules § 2(A)(ii); CR 110-11.) – reflected the qualities that DHHS determined merited consideration to determine the "best value" to the State, taking into consideration the quality of the services and the purpose for which the services are required, *see* 5 M.R.S.A. § 1825-B(7).

Here, to determine the "best value" bidder to provide NET services, DHHS determined that an organization's qualifications and expertise were important, but not as important as the quality of the services to be provided. (*See* App. 98.) This determination is reflected in the number of points that DHHS assigned to each section of the RFP (25 points for Qualifications and Experience versus 50 points for Proposed Services). (App. 98.) The requirements of the RFP reflected the State's judgment about the relative importance of a bidder's qualifications and experience in determining the best value and best interest of the State, while also "ensur[ing] that the selection process accords equal

opportunity and appropriate consideration to all who are capable of meeting the specifications.” (App. 98.)

Thus, the DAFS Decision is not based on any error of law. DHHS did not have discretion to disregard the Purchase Rules requirement that the contract be awarded to the proposal that received the highest score when measured against the requirements of the RFP. (App. 40 - Purchase Rules § 3(A)(iv).) DHHS lacked the authority to eliminate or modify the requirement that bidders provide three complete descriptions of relevant projects in Appendix D, particularly to ensure that a preferred incumbent bidder would receive the award. (App. 39 – Purchase Rules § 2(A)(iv)(cc) (prohibiting changes to any RFP requirement after seven days before the opening of bids).) The Evaluation Team was not permitted to supplement WCAP’s proposal by filling in missing information; nor could it reorganize WCAP’s proposal to comport with the requirements of the RFP. (App. 38-40 Purchase Rules §§ 2, 3.)

A primary purpose of the competitive procurement process is to “ensure that the selection process accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications.” (App. 98.) It is in the State’s interest to utilize a consistent and well defined procedure to make state purchases. This requires the use of an efficient competitive bidding process. Permitting a practice of post-hoc revisions to the application of

scoring metrics would be contrary to this goal and undermine the legislature's intent for competitive bidding of State contracts. *See* 5 M.R.S.A. §§ 1825-B(1), (7); 1825-D.

CONCLUSION

For the reasons stated above, DHHS respectfully requests that the Court affirm the BCD judgment upholding the DAFS Decision.

Respectfully submitted,

Aaron M. Frey
Attorney General

Dated: July 18, 2025

/s/ Brendan Kreckel
Brendan Kreckel
Assistant Attorney General
Maine Bar No. 6196
Brendan.d.kreckel@maine.gov

Of Counsel:
Thomas A. Knowlton
Deputy Attorney General

/s/ Margaret Machaiek
Margaret Machaiek
Assistant Attorney General
Maine Bar No. 5304
Margaret.machaiek@maine.gov
Office of the Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800

Attorneys for the Maine
Department of Health and Human
Services