DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:		
Urban Alliance Foundation	)	CAB Nos.: P-0886, P-0887,
Voices of Our Sisters	)	P-0890, P-0891,
Progressive Educational Experiences in Cooperative Cultures	)	P-0892
Higher Development Academy	)	(Consolidated)
Jobs for America's Graduates	)	
Solicitation No. DCCF-2011-R-3963-SDA 2	)	

For the protester Urban Alliance: James P. Gallatin, Jr., Lawrence S. Sher, Gregory S. Jacobs, Joelle E.K. Laszlo, Melissa E. Beras and Stacy C. Forbes, Reed Smith LLP. For the protester Voices of Our Sisters: Kenya Welch, *pro se*. For the protester Progressive Educational Experience in Cooperative Cultures: Sara Stone, *pro se*. For the protester Higher Development Academy: Deborah Hayman, *pro se*. For the protester Jobs for America's Graduates: Lawrence P. Block, Dennis Lane, and Thorn Pozen, Stinson Morrison Hecker LLP. For the District of Columbia Government: Talia Sassoon Cohen, Assistant Attorney General, Office of the Attorney General.

Opinion by Administrative Judge Maxine E. McBean with Chief Administrative Judge Marc D. Loud, Sr., (concurring with separate opinion) and Administrative Judge Monica C. Parchment concurring.

OPINION

Filing ID 42527096

Urban Alliance Foundation ("Urban Alliance") has filed a protest challenging its removal from the competitive range under a solicitation seeking a contractor to design and implement an in-school youth workforce development program to support between 250-500 at-risk youths. (AR at Ex.1, §B.1.) Subsequent to the District's award of the contract to Synergistic, Inc. ("Synergistic"), four other offerors, Voices of Our Sisters ("VOOS"), Progressive Educational Experience in Cooperative Cultures ("PEECC"), Higher Development Academy ("HDA"), and Jobs for America's Graduates ("JAG") filed protests with this Board raising additional protest grounds. On September 2, 2011, the Board issued an order consolidating the protests. The protesters' challenges generally concern (a) irregularities with and cancellation of a procurement process beginning in September 2010, (b) the District's failure to evaluate the proposals in accordance with the law and the terms of the solicitation, and (c) non-responsibility of the awardee, Synergistic. On September 23, 2011, the District filed a motion to dismiss all protests as either untimely or for lack of standing.

We find the protests timely and that the protesters have standing. Further, the Board finds that the District's Office of Contracting and Procurement ("OCP") failed to follow proper procedures in evaluating the proposals. This failure was pervasive and extensive so as to render the final award decision arbitrary and capricious. Following are four areas where OCP acted inconsistently in terms of the solicitation and in violation of procurement law: (A) failure to disclose mandatory minimum requirements, (B) failure to adequately document, (C) failure to evaluate reasonably, and (D) failure to conduct a blind evaluation. Taken together, these findings constitute sufficient basis for sustaining the

present protest thus the Board finds it unnecessary to address the responsibility of the awardee at this time. However the irregularities of the evaluation process are sufficiently material so as to warrant termination of the current contract effective no later than the close of the current school year in June 2012. To the extent that these services are required by the District for the summer school session of 2012 and beyond, the District shall issue a request to the twenty-three offerors for revised technical and cost proposals for the remainder of the base year and the option years. The District shall evaluate the revised proposals in accordance with the law and the terms of the RFP. These consolidated protests are sustained.

BACKGROUND

On April 1, 2011, OCP issued a Request for Proposals for Solicitation No. DCCF-2011-R-3963-SDA 2 ("RFP") for a contractor to design and implement a quality, year-round educational program to support between 250-500 at-risk youths.[1] (AR at Ex. 1.) Per the RFP, the District intended to issue a contract consisting of a base year with four additional option years. (AR at Ex 1, §§ F.1-F.2.4.) The RFP was revised six times prior to the deadline for receipt of proposals on June 8, 2011. (Mot. to Dismiss 3.) The revisions are as follows: (i) on April 14, 2011, the due date was changed from April 22, 2011, to May 4, 2011; (AR at Ex. 2) (ii) on April 26, 2011, (Amendment 0001), the due date was extended to May 13, 2011; (*id.*) (iii) on May 9, 2011 (Amendment 0002), the due date was extended to May 27, 2011; (*id.*) (iv) on May 18, 2011 (Amendment 0003), the RFP was replaced in its entirety and the due date was extended to May 31, 2011; (*id.*) (v) on May 26, 2011 (Amendment 0004), technical amendments were made to certain sections of the RFP and the due date was extended to June 6, 2011; (*id.*) and (vi) the due date was extended for the final time, via E-Sourcing message board, to June 8, 2011, (*id.*).

Terms of the Solicitation

Under the Revised RFP, the District of Columbia was divided into two Service Delivery Areas ("SDAs"):

> SDA 1: Wards 1, 2, 3, and 4
> SDA 2: Wards 5, 6, 7, and 8
>
> (AR at Ex. 1, § B.3.1.)

The RFP stated: "It is the intent of the District to award at least one contract for each of the SDAs. The District will award additional contracts based upon program needs and availability of funds."[2] (*Id.*) Potential offerors were to submit proposals to design and implement a year-round in-school youth program to provide services promoting academic achievement, successful graduation, awareness of and readiness for post-secondary education, career preparation, and connections to employment. (AR at Ex. 1, § C.1.)

The RFP further stated that the District would award a contract to the responsible offeror(s) whose offer(s) is most advantageous to the District (AR at Ex. 1, § M.1.1) based upon the following technical evaluation criteria: (1) Price Criterion, 10 points; (2) Technical Approach, 50 points, (3) Technical Expertise, 30 points, (4) Past Performance, 10 points. (AR at Ex. 1, §§ M.3.3.1 – M.3.3.4.) The evaluation criteria also allowed an additional 10 technical bonus points for in kind/cash match resources and 12 points for CBE preference, providing for a maximum 122 total points. (AR at Ex. 1, §§ M.3.4.1, M.3.4.2, M.5.)

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[1]This solicitation follows an earlier solicitation issued in September 2010 for the same services. (*See, e.g.*, Urban Alliance Protest 3, Aug. 10, 2011.)

[2]All protesters in this matter are challenging only the award for SDA 2.

Ratings were to be assigned for each factor according to the scale below:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirement; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

(AR at Ex. 1, § M.2.)

According to the Procurement Chronology prepared by Contract Specialist, Crystal Farmer-Linder, the minimum solicitation requirements were contained in Sections B.3 (B.3.1, B.3.2, B.3.3), C.5.2, and C.5.2.1. (AR at Ex. 2.) These sections provided:

§ B.3 **SERVICE DELIVERY AREAS**

§ B.3.1 For the purpose of this RFP and the ensuing contracts the District will be divided into two Service Delivery Areas (SDAs);

SDA District 1: Wards 1, 2, 3, and 4.
SDA District 2: Wards 5, 6, 7, and 8.

It is the intent of the District to award at least one contract for each of the SDAs. The District will award additional contracts based upon program needs and availability of funds.

§ B.3.2 In order for an Offeror to be awarded a contract, the Offeror must serve the entire SDA and the Offeror must operate programming at a location within the SDA. The Offeror is not limited to serving only youth who reside within that SDA and the District reserves the right to refer eligible youth to any Offeror awarded a contract who has capacity at the time.

§ B.3.3 If an Offeror submits proposals for both SDAs, and, if the Offeror is awarded a contract for each SDA, each contract shall stand alone. The awarded Offeror shall not co-mingle funds,

personnel, required activities, services or any other contract requirement between the two contracts.

§ C.5.2 **YOUTH POPULATION**
The following youth population shall be targeted:

§ C.5.2.1 The Offeror shall provide services to youth who are most likely to become disconnected. This represents youth who are low-income individuals, between the ages of 14 and 21, and who are currently in school (See Section C.3.12 for a definition of the term "In-School Youth")

(AR at Ex. 1.)

Subsequently, in the District's response to this Board's October 25th request for supplemental information, the mandatory minimum requirements were further identified as Sections B.3, C.1, C.5.2, C.5.4.2, and C.5.12.9. (District's Resp. to Order of the Board Dated Oct. 25 ¶ A [hereinafter Resp. to Bd. Order].) Notably, the District did not previously identify Sections C.1, C.5.4.2 and C.5.12.9 as mandatory requirements in either its Motion to Dismiss or in the Procurement Chronology. (*See* AR at Ex. 2; Mot. to Dismiss 3.) These sections provide:

§ C.1 **SCOPE**

The Government of the District of Columbia (District), Office of Contracting and Procurement (OCP) on behalf of the Department of Employment Services (DOES), is soliciting Offerors to design and implement quality year-round youth workforce development programs that best meet the needs of District youth and the provisions of the District of Columbia Youth Employment Services Initiative Amendment Act of 2005 and the Workforce Investment Act of (WIA) of 1998. The In-School Year Round Youth Program, supporting between 250-500 youth, will be provided to District of Columbia youth who are at-risk of becoming disconnected.

The Offeror shall design and implement a Year Round In-School Youth Program that shall provide services promoting academic achievement, successful graduation, awareness of and readiness for post-secondary education, career preparation, attainment of measurable technical or occupational skills, and connections to employment. The program must focus on drop-out prevention and intervention strategies for youth at-risk of not completing high school for a maximum of fifty (50) youth ages 14 through 21, for a minimum of ten (10) and a maximum of fifteen (15) hours per week.

During the summer, the program shall provide academic enrichment, career exploration, employment, job readiness, and leadership skills training. The summer component shall support the goal of enhancing the educational and work readiness

> competencies of youth through innovative learning activities. Youth ages 14-15 will be permitted to work for up to 20 hours per week and youth ages 16-21 will be permitted to work for up to 25 hours per week. Program activities shall conclude by 7:00PM and may include weekend activities and training sessions.
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> § C.5.4.2 All youth served must meet eligibility criteria detailed in Sections C.5.2 through C.5.2.3.
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> § C.5.12.9 For each year that a youth participates in a program, DOES will provide the youth up to $2,625 for wages and/or stipends. Youth may receive up to $50 per week for stipends. Youth may receive wages for work experience for up to 10 weeks a year, for up to 20 hours per week (for youth ages 14-15) and up to 25 hours per week (for youth ages 16-21). Youth will be paid $7.25 per hour.
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> (AR at Ex. 1, §§ C.1, C.5.4.2, C.12.9.)

The RFP detailed the evaluation procedure that was to be used to review the proposals of offerors. It stated that OCP will "review each proposal to determine its responsiveness. Proposals determined to be ineligible or nonresponsive will be discarded." (AR at Ex. 1, § M.3.6.1.) The solicitation further provided that:

> Each proposal determined to be responsive will be evaluated by a technical review team. Teams will evaluate proposals based on the Evaluation Factors for Technical Approach (Section M.3.3.2); Technical Expertise (Section M.3.3.3); Past Performance (Section M.3.3.4); and Technical Bonus Points (M.3.3.5). Team members will represent a range of expertise in youth workforce development and may include DOES staff; other DC agency staff; and professionals from national and local organizations.
>
> OCP will determine the Price Proposal score based on the evaluation formula as described in Section M.3.3.1. The Price Proposal score will be combined with the Technical Proposal score once the Technical Evaluations have been completed. OCP will also determine whether proposals qualify for Preference Points (M.3.4).
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> All proposals will be ranked accordingly.
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> (AR at Ex. 1, § M.3.6.2.)

In response to questions from potential offerors, OCP stated: "The offeror's proposal should be submitted with the offeror's identity. OCP will redact the offeror's identity from the submitted proposals to ensure a 'blind' evaluation process." (AR at Ex. 1, 30Q.)

The Evaluation of Proposals

By June 8, 2011, twenty-three offerors submitted proposals in response to the RFP. (Mot. to Dismiss 3.) As noted, OCP assured bidders in writing that it would conduct a blind evaluation whereby the names of offerors would be removed. (AR at Ex. 1, 30Q.) Between June 13 and June 24, 2011, the Technical Evaluation Panel ("Panel"), consisting of three members of DOES, performed independent reviews of the initial proposals and created a consensus panel report. (AR at Ex. 2.) According to the Procurement Chronology, each proposal was redacted so that the Panel could perform a blind evaluation. (AR at Ex. 2.)

Simultaneously, the Contracting Officer ("CO") conducted his own review and scoring of each proposal. (AR at Ex. 2.) Unlike the Panel, the CO's review was not blind. (Resp. to Bd. Order ¶ L.) And, despite the inconsistency, there is no evidence that the District informed offerors of this change in procedure. The three independent scores of the panelists, the Panel's consensus scores and the CO's scores were tabulated and are provided in the Exhibit entitled "Consolidated Twenty-three evaluations and Bid Tabulation Sheet." (AR at Ex. 3.)

The evaluation conducted by the Panel resulted in the following:

(i) twelve offerors received a higher score than the awardee, Synergistic;
(ii) seven offerors received the same score as Synergistic, including protester Urban Alliance; and
(iii) three offerors received a lower score than Synergistic. (*See generally* AR at Ex. 3.)

However, the CO's evaluation of the same proposals under the same rubric resulted in the following:

(i) Synergistic received the highest score of any offeror (the CO awarded 29.4 more points to Synergistic than did the Panel); (*see* AR at Ex. 3, at 53)
(ii) Urban Alliance received 23.8 points less from the CO than it did from the Panel; (*see* AR at Ex. 3, at 57)
(iii) Bidder J's individual evaluation sheet was marked as unresponsive and appears without scores for any of the evaluation factors, (Resp. to Bd. Order at Ex. C) yet, the CO provided scores for Bidder J in every category for the Bid Tabulation Sheet. (AR at Ex. 3, at 31-32.)

According to the District, proposals that "clearly demonstrated an inability to meet one or all of the requirements [stated in Sections B.3, C.5.2, and C.5.2.1]" were immediately removed from the competitive range by OCP. (AR at Ex. 2.) OCP determined that three offerors were outside the competitive range: (i) Marquita Anissa Vaughn Foundation, (ii) Urban Alliance, and (iii) United Planning Organization. (AR at Ex. 2.) Specifically, Urban Alliance was said to not meet the minimum requirements set forth in Section C.5.2.1. (AR at Ex. 2.)

A First Round BAFO ("1st BAFO") was conducted in writing with the remaining twenty offerors, beginning July 12th and closing July 15th. (AR at Ex. 2.) Seventeen offerors submitted responses to the 1st BAFO. (AR at Ex. 2.) The Procurement Chronology states that "[i]n most cases, offerors responded to the noted deficiencies." (AR at Ex. 2.)

Citing an inability to reconvene the Panel to review the BAFO proposals in time to meet the award deadline, the CO scored the BAFO submissions without the assistance of the Panel. (AR at Ex. 2.)

The District states that the CO reviewed the offerors' original submissions, the original findings of the Panel, and the offerors' BAFO submissions in evaluating the 1st BAFO proposals. (AR at Ex. 2.) Despite the claim that the CO took into account the ratings of the Panel, the technical scores of many offerors remained unchanged throughout the CO's evaluation process. In fact, the scores from the CO's initial review of proposals remained exactly the same for eight out of seventeen offerors. (*See* AR at Ex.3.)

Alluding to budgetary concerns in light of the proposed cost of services under the 1st BAFOs, the District decided to hold a Second Round BAFO ("2nd BAFO") with all seventeen remaining offerors. The 2nd BAFO related to pricing only. (AR at Ex. 2.) The 2nd BAFO instructions provided that the "District sought a per participant cost range between $2,500.00 and $4,500.00." (AR at Ex. 2.) The request for 2nd BAFOs was issued July 28, 2011. (AR at Ex. 2.) All seventeen remaining offerors submitted proposals in response to the District's request. (AR at Ex. 2.)

During the 2nd BAFO review, the Contract Specialist "determined that nine of seventeen BAFOs did not meet the [mandatory] requirements of the solicitation and should have been removed from the competitive range after the 1st BAFO." (AR at Ex. 2.) Evidently, the evaluators themselves were unclear as to which requirements were mandatory under the RFP.

Additionally, OCP's Cost/Price Analyst conducted a review of the 2nd BAFO responses and provided findings to the CO. (AR at Ex. 2.) Synergistic's 2nd BAFO proposed a base year cost of $225,017.31 with the cost for option years 1 through 3 at $225,019.88 each. (*See* AR at Ex. 2.) Remarkably, the cost of providing the very same services for option year 4 was offered at $8,118.25, a mere 3.61% of the cost of the other years. (*See* AR at Ex. 2.) While some of the other offerors also reduced their prices for option year 4, those that did, reduced the cost for option year 4 by an average of 45%. (*See* AR at Ex. 2.) The analysis of Synergistic's proposal concluded that its proposed budget included 72.34% overhead on labor plus fringe benefits and that the rates could not be supported. (Resp. to Bd. Order at Ex. H, at 4.)

The Board's Record

The record consists of the RFP, Procurement Chronology, Determination and Findings ("D&F") Reports, and other documents submitted by the protesters and the District, including those in the Agency Report or in response to a request from this Board. Most notably, the District provided a Bid Tabulation Spreadsheet for every offeror that shows each evaluation factor under each evaluation criterion. For each evaluation factor, the District provided the individual score of each panelist along with the consensus score of the Panel for each factor and for each offeror. The District also provided the CO's scores and the scores following the 1st BAFO. (*See* AR at Ex. 3.)

With respect to the individual evaluation sheets of offeror proposals (*see* Resp. to Bd. Order at Ex. C), there are significant gaps in the record and unexplained inconsistencies. For example,

(1) some evaluations are incomplete, with missing pages; (*see id.*)
(2) there are no evaluation sheets provided for contractors I, K and P; (*see id.*)
(3) the District provided only one evaluation sheet per bidder (*see id.*) yet the Bid Tabulation Sheets show that four individual evaluations were completed for each bid (three panelist evaluations and one CO evaluation) (*see* AR at Ex. 3);
(4) all of the evaluation sheets reflect only the CO's scores; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)

(5) there is no record of the Panel's individual evaluation sheets (with the exception of the evaluation for Offeror X)[3];
(6) the District provided two different evaluation sheets for Offeror S and, even though both evaluation sheets were completed by the CO, different scores appear on each sheet and only one evaluation sheet matches the scores on the Bid Tabulation Sheet; (*see* Resp. to Bd. at Ex. C; *see also* AR at Ex. 3)
(7) individual evaluation sheets are inconsistent with the Bid Tabulation Sheet; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)
(8) in seven instances the scores on the individual evaluation sheet do not match scores on the Bid Tabulation Sheet; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)
(9) in three instances the inconsistency is confined to a single evaluation criterion or a few technical approach factors; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)
(10) in one instance the CO's comments in the spreadsheet are consistent with the comments in the corresponding evaluation sheet; however, none of the scores match those recorded on the evaluation sheet; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)
(11) in five instances the Board was unable to locate any scores on the Bid Tabulation Sheet that reflect those on the evaluation sheet; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3)
(12) the evaluation sheet for one Offeror is completely blank except for the word "unresponsive" in the header; yet, for this particular bidder, there are scores from every evaluator for each evaluation factor; (*compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3) and
(13) lastly, the District has been unable to provide sufficient contemporaneous documentation of the evaluation process.[4]

The Protests

On July 28, 2011, Urban Alliance received notice that it was not in the competitive range. (Urban Alliance Protest 2, Aug. 10, 2011.) Urban Alliance filed its protest with this Board on August 10, 2011. (*Id.*) It asserted three grounds for protest based on: (i) alleged irregularities that permeated the procurement process from as early as September 2010 when an earlier solicitation was issued for the same services;[5] (ii) the District's cancellation and reissue of a nearly identical solicitation; and (iii) the

[3]The evaluation sheet provided for Offeror X corresponds to the set of scores assigned to Evaluator 3 on the Bid Tabulation Sheet. (*Compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3.) However, the evaluation was completed by Crystal Farmer-Linder, the Contracting Specialist. (*See* Resp. to Bd. Order at Ex. C.) It is unclear whether Ms. Farmer-Linder was part of the Panel since at times her scores appear in the CO column on the Bid Tabulation Sheets.

[4]The D&F Report was completed more than a month after the award to Synergistic. (*See* AR at Ex. 2.)

[5]On December 16, 2010, Urban Alliance was awarded a contract for similar services under the earlier solicitation; however, the award was later cancelled on January 14, 2011. (Urban Alliance Protest 3-4.) Protesters have alleged that unexplained irregularities started in the earlier procurement and continued through to the present solicitation. (*See, e.g.*, Urban Alliance Resp. to Mot. to Dismiss 2, Oct. 4, 2011.)

District's failure to evaluate the proposals in accordance with the law and the terms of the solicitation. (*Id.* at 3-8.)

On August 12, 2011, the Chief Procurement Officer signed a Determination and Finding to Proceed with Award While Protest is Pending.[6] (Letter to Board of Contract Appeals from Howard Schwartz, Senior Assistant Attorney General Attach. 1, Aug. 15, 2011.) The District awarded the contract to Synergistic on August 12, 2011. (AR at Ex. 5.)

On August 17, 2011, VOOS and PEECC received notice of award. (VOOS Protest 1, Aug 19, 2011; PEECC Protest 1, Aug. 24, 2011.) VOOS filed its protest on August 19, 2011, and asserted the same three grounds for protest as Urban Alliance.[7] (VOOS Protest 3-7.) On August 24, 2011, PEECC filed its protest. PEECC asserted fifteen different bases for protest which fall into two general categories: (i) that incomprehensible irregularities occurred during a five month procurement process; and (ii) that the District failed to comply with the legal conditions and terms of solicitation. (PEECC Protest 2-5.)

On August 18, 2011, JAG and HDA received notice of award. (JAG Protest 2, Sept. 1, 2011; HDA Protest 2, Aug. 26, 2011.) HDA filed its protest with this Board on August 24, 2011, and alleged two bases for protest: (i) that unexplained irregularities permeated the procurement; and (ii) that the District failed to evaluate the proposals in accordance with the law and the terms of the solicitation. (HDA Protest 4-7.) On September 1, 2011, JAG filed the last of these related protests and asserted the same protest grounds as Urban Alliance. (JAG Protest 3-9.)

On September 2, 2011, the Board consolidated the above-referenced protests. On September 23, 2011, the District filed its Motion to Dismiss with the Board.

DISCUSSION

I. BOARD JURISDICTION

We exercise jurisdiction over this protest and its underlying allegations pursuant to D.C. Code § 2-360.03(a)(1) (2011).

A. Timeliness

The District has argued that the protests are untimely because the protesters were aware of alleged procurement irregularities that were said to have occurred prior to June 8, 2011, the deadline for receipt of proposals. Under CAB Rule 302.2(a), "[a] protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals." These irregularities, as alleged, generally relate to the cancellation of the earlier solicitation, the cancellation and reissue of the RFP, numerous extensions of the due date, and extending the final deadline for receipt of

[6] On September 6, 2011, Urban Alliance filed a motion challenging the D&F and the Board then requested that the parties file briefs on its authority to decide such challenges. The District and Urban Alliance each filed briefs affirming the Board's authority to rule on D&Fs following the Procurement Practices Reform Act of 2010. (*See* District of Columbia Br. to the Contract Appeals Bd. 1-3, Sept. 19, 2011; Urban Alliance Br. on the Authority of the Contract Appeals Board to Rule on a Challenge to an Agency's DNF 1-2, Sept. 12, 2011.) The present Order renders moot the challenge to the August 12th D&F.

[7] On December 16, 2010, VOOS was awarded a contract for similar services under the earlier solicitation. The award was later cancelled on January 14, 2011. (VOOS Protest ¶ 3.)

proposals after some offerors had already submitted their proposals. Since these alleged improprieties, in particular, were all known to the protesters prior to June 8th, the protest grounds related to these irregularities are, in fact, untimely.

However, in addition, each of the protesters alleged that the District failed to evaluate the proposals in accordance with the law and the terms of the solicitation. Although the District has argued that the protesters have failed to meet the requirement of CAB Rule 301.1(c) which requires the protests to include a clear and concise statement of the legal and factual grounds of the protest, (Mot. to Dismiss 9) this Board's precedent has been to read Rule 301.1(c) very narrowly. We have held that "[w]here the District believes that a protest ground fails to state a violation of procurement law or regulation or is unsupported by the facts, the matter should be addressed through the Agency Report on the merits in the first instance and the absence of detailed facts concerning an alleged procurement deficiency in the initial protest filing does not necessarily dictate dismissal." *CUP Temporaries, Inc.*, CAB No. P-0474, 44 D.C. Reg. 6841, 6844 (July 3, 1997). Thus, even where a protester's allegations are mainly conclusory or barely supported by fact, where the applicable law and regulations at issue are made reasonably clear, this Board must address the allegations on the merits. *Unfoldment, Inc.*, CAB No. P-0435, 44 D.C. Reg. 6377, 6381 (Sept. 12, 1995).

In this instance, the law and regulations at issue are reasonably clear due to the protesters' allegations of improper evaluation procedures. And, by filing protests within (10) business days of their knowledge of the award to Synergistic, the protests, as they relate to the evaluation process, were timely. Under CAB Rule 302.2 (b), protests shall be filed with the Board not later than (10) business days after the basis of the protest is known or should have been known. In *Sigal Construction*, CAB Nos. P-0690, P-0693, P-0694, 52 D.C. Reg. 4243, 4254 (Nov. 24, 2004), the Board clarified that the (10) day period begins when the offeror knows the basis of the protest *and* the party has become aggrieved due to an official action adverse to that party. The Board also held that notice of award is considered an adverse official action. *Id.*

For Urban Alliance, the adverse official action occurred on July 28, 2011, when it received notice that it was not in the competitive range. (*See* Urban Alliance Protest 2.) It filed its protest with this Board on August 10, 2011, well within (10) business days of the District's adverse official action. With respect to the other protesters, notice of adverse official action occurred on either August 17th or 18th when they received notice of the award to Synergistic. (*See, e.g.,* VOOS Protest 1.) Each offeror had until August 31 or September 1 respectively to file a protest with this Board. JAG filed the last of these consolidated protests on September 1, 2011. (JAG Protest.) Accordingly, all protests were timely filed with this Board.

B. <u>Standing</u>

The District has argued that the protesters are without standing since they are not next in line and therefore do not have a reasonable chance of award. (Mot. to Dismiss 7.) This Board has long held that in order to have standing a bidder must be next in line for award in order to show that it has suffered, or will suffer, direct economic injury as a result of the adverse agency action. *Scientific Games, Inc*., CAB No. P-0294, 41 D.C. Reg. 3666, 3670 (Sept. 24, 1993). However, the Board has also held that protesters have standing when challenging the integrity of the manner in which offeror proposals are scored even if they are not next in line for award. In *CUP Temporaries, Inc*., CAB No. P-0474, 44 D.C. Reg. 6841 (July 3, 1997), the Board held that "[b]ased on the final rankings of the evaluators, it is clear that the Protester is ranked third among the offerors on the RFP. Nevertheless, since the Protester challenges the integrity of the manner in which the agency officials scored all the offerors the Protester meets the standing requirements."

In this case, the protesters have alleged irregularities in the procurement process and we have specifically noted herein a number of evaluation irregularities in the record.[8] Under the circumstances, the evaluation rankings are not dispositive and the protesters meet the *CUP* standard for standing.

II. EVALUATION PROCESS

The Board's standard of review for proposal evaluations and the related selection decision is whether the District's actions were reasonable, in accord with the evaluation and selection criteria identified in the solicitation and whether there were violations of procurement laws or regulations. *See, Trifax Corp.*, CAB No. P-0539, 45 D.C. Reg. 8842, 8847 (Sept. 25, 1998); *see also Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. 8612, 8630 (Oct. 15, 1997). In applying this standard of review to this protest, we find that the violations of procurement law are sufficiently material such that the selection decision cannot be supported based on the evidence submitted for review. Following are four general areas where the Board finds the evaluation process inconsistent in terms of the solicitation and in violation of procurement law: (A) failure to disclose mandatory minimum requirements, (B) failure to adequately document, (C) failure to evaluate reasonably, and (D) failure to conduct a blind evaluation.

A. Failure to Disclose Mandatory Minimum Requirements

Urban Alliance alleges that the District's decision to exclude it from the competitive range was based on an improper application of an undisclosed mandatory minimum requirement.[9] (Urban Alliance's Resp. to District's Mot. to Dismiss 5, Oct. 4, 2011.) Specifically, Urban Alliance points to Section C.5.2.1 as the basis for its exclusion from the competitive range. (Urban Alliance's Comments on the AR 4, Oct. 12, 2011.) But it argues that the language of C.5.2.1 is not sufficiently distinct from other requirements in the solicitation to set it apart as a mandatory minimum requirement. (*Id.* at 4-5.)

We agree. This Board finds that in establishing the competitive range, the District arbitrarily identified mandatory minimum requirements that were used to disqualify Urban Alliance and other bidders even though such mandatory requirements were never communicated to the offerors either in the language of the solicitation or in the subsequent discussions.

A mandatory minimum requirement is "pass/fail in nature and may lead to the outright rejection of a proposal that falls short of what [it] specif[ies]." *Banknote Corp. of Am., Inc. v. United States*, 56 Fed. Cl. 377, 382 (2003). Accordingly, procurement practice dictates that "[m]andatory minimum requirements must be clearly identified as such within the solicitation so as to 'put the offerors on notice' of the serious consequences of failing to meet the requirement." *Id.* Additionally, if one factor in an evaluation is predominantly more important than another, this information should be disclosed to offerors. *Isratex, Inc. v. United States*, 25 Cl. Ct. 223, 230 (1992). A procuring agency should provide "fullest possible disclosure" of the relative importance of all evaluation factors. *Id.*

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[8] See our discussion of evaluation irregularities *supra* pp 7-8.

[9] Urban Alliance's technical proposal stated that its High School Internship Program targets youths ages 16-19. (Urban Alliance Resp. to District's Mot. to Dismiss Ex. A-1, at Part I.B.) The District may have been unclear whether Urban Alliance intended to provide services to all of the ages 14-21 youth population; however, this Board has held that "if there is a close question of acceptability or if the noted deficiency is susceptible to correction through relatively limited discussion, then the inclusion of the proposal in the competitive range is in order." *Educ. In-roads, a div. of Sylvan Learning Sys., Inc.*, CAB No. P-0552, 46 D.C. Reg. 8519, 8525 (October 27, 1998).

In the Agency Report, the Contract Specialist states that "[t]he competitive range included those offerors whose proposals met the minimum requirements of the solicitation as set forth in the following Sections:" B.3.1, B.3.2, B.3.3, C.5.2, and C.5.2.1. (AR at Ex. 2.) In its response to the Board's October 25th request for supplemental information, the District put forth not only those previously-identified sections, but in addition, Sections C.1, C.5.4.2 and C.5.12.9 were newly-identified as mandatory minimum requirements of the solicitation.[10] (*See* Resp, to Bd. Order ¶ A.)

A review of Section B.3.2 shows that it clearly and plainly states that in order to be awarded a contract, the offeror must fulfill that section's proposal requirement.

> In order for an Offeror to be awarded a contract, the Offeror must serve the entire SDA and the Offeror must operate programming at a location that is within the SDA.
>
> (AR at Ex. 1, § B.3.2)

Section C.5.2.1, which has also been identified by the District as a mandatory minimum requirement, states:

> The Offeror shall provide services to youth who are most likely to become disconnected. This represents youth who are low-income individuals, between the ages of 14 and 21, and who are currently in school.
>
> (AR at Ex. 1, § C.5.2.1)

However, Section C.5.2.1 is not distinguishable as creating a mandatory minimum requirement when compared to other sections in the solicitation that are similarly phrased with the use of the word "shall" but not considered by the District to create a mandatory requirement. For example, the District does not consider Section C.5.4.1 to be a mandatory minimum requirement of the solicitation. This section states:

> The Offeror shall conduct preliminary activities to market the year-round program to eligible youth in the community . . .
>
> (AR at Ex. 1.)

Similarly, Section C.5.5.1 has not been identified as a mandatory minimum requirement yet it states:

> The Offeror shall engage in activities and services related to three components:
> 1. Education;
> 2. Work Readiness and Experience; and,
> 3. Placement and Transition Support."
>
> (AR at Ex. 1.)

[10]The Procurement Chronology does not include these three sections as a basis for establishing the competitive range or as minimum requirements of the solicitation.

Urban Alliance was removed from the competitive range prior to any BAFOs for failure to meet the mandatory minimum requirement in the above-referenced Section C.5.2.1. (AR at Ex. 2.) However, Sections C.5.4.1 and C.5.5.1 are similarly phrased and those sections are not considered by the District to be mandatory minimum requirements. We find that Section C.5.2.1 was not worded so as to put offerors on notice of the importance of that section as a mandatory minimum requirement.

After the 2nd BAFO, protesters JAG and PEECC were removed from the competitive range for failing to meet the requirement of Section B.3.1 which states:

> For the purpose of this RFP and the ensuing contracts the District will be divided into two Service Delivery Areas (SDAs);
>
> SDA District 1: Wards 1, 2, 3, and 4.
> SDA District 2: Wards 5, 6, 7, and 8.
>
> It is the intent of the District to award at least one contract for each of the SDAs. The District will award additional contracts based upon program needs and availability of funds.
>
> (AR at Ex. 2.)

It remains unclear which words within this section provide notice of a requirement, let alone a mandatory minimum requirement.

The evaluators themselves appeared to not have a clear understanding of the mandatory requirements that would result in offerors being removed from the competitive range. Two bidders[11] failed to meet the mandatory minimum requirement of Section C.5.2.1 yet, inexplicably, were asked to submit BAFOs for both the first and second rounds of discussion. (*See* AR at Ex. 2.) Urban Alliance was disqualified prior to the 1st BAFO for failure to satisfy the very same requirement. Therefore some offerors were not similarly excluded from the competitive range. (*See* AR at Ex. 2.) The unequal treatment of the offeror proposals seriously violated the District's procurement law and undermined the integrity of the process. *See* D.C. Code § 2-351.01(b)(4) (2010) (stating that a purpose of the Procurement Practices Reform Act of 2010 is to "ensure fair and equitable treatment of all persons who deal with the procurement system of the District government"); *see also Rockwell Elec. Commerce Corp.*, B-286201 *et al*, 2001 CPD ¶ 65 (Comp. Gen. Dec. 14, 2000) ("It is . . . fundamental that the contracting agency . . . treat all offerors equally, which includes . . . not disparately evaluating offerors with respect to the same requirements.").

By way of explanation, the Contracting Specialist states that "[i]t was determined by the evaluation panel and the Contracting Officer that proposals submitted by [the Marquita Anissa Vaughn Foundation, the United Planning Organization, and Urban Alliance] would require substantial revisions in order to be determined acceptable." (AR at Ex. 2.) This argument lacks credibility. Urban Alliance and the awardee, Synergistic, each received the same scores from the Panel. Ultimately, after reviewing the 2nd BAFOs, the Contracting Specialist determined that nine of seventeen bidders were mistakenly identified as being within the competitive range even though they should have been excluded after the 1st BAFO for failing to meet the mandatory minimum requirements. (*See* AR at Ex. 2.)

[11] Perry School Community Center and Priority Professional Development.

This Board finds that the protesters were prejudiced by the District's failure to follow proper procedures in evaluating the proposals. Bidders should not have been excluded from the competitive range for failing to meet mandatory minimum requirements absent clear notice that failure to address those requirements would result in disqualification. With the exception of Section B.3.2, the language of the mandatory minimum requirements, as identified by the District, is insufficient to provide appropriate notice. Even more importantly, the District did not treat offerors equally in applying mandatory minimum requirements, in clear violation of procurement law.

B. Failure to Adequately Document

The District submitted the Agency Report to the Board on October 3, 2011. Upon its review, the protesters filed a response to the Agency Report challenging OCP's failure to adequately document its source selection decision. (*See*, *e.g.*, Urban Alliance's Comments on the AR 8.) We agree that the District has failed to offer sufficient documentation of its evaluation process. There is a severe lack of contemporaneous documentation to explain or support an overall rational basis for the award decision as well as OCP's decision to exclude offerors from the competitive range.

This Board has stated that source selection "decisions must be documented in sufficient detail to show that they are not arbitrary." *Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. 8612, 8635 (Oct. 15, 1997). This in no way means that an agency is required to "retain every document or worksheet generated during its evaluation of proposals." *Id.* at 8636. However, "[w]here an agency fails to document or retain evaluation materials, it bears the risk that there is inadequate supporting rationale in the record for the source selection decision and that we will not conclude that the agency had a reasonable basis for decision." *Id.* quoting *Sw Marine, Inc.*, B-265865, 96-1 CPD ¶ 56 (Comp. Gen. Jan. 23, 1996)). Moreover, the District's regulations require certain documentation in the conduct of a procurement. Most pertinent to this protest, the regulations require that where a Technical Evaluation Panel is formed to evaluate proposals, a technical evaluation report shall be prepared by the technical official and shall contain the following:

> (a) The basis for evaluation;
> (b) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
> (c) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
> (d) A summary of findings.
>
> D.C. Mun. Regs. tit. 27 § 1618.5 (2002)

While the District was not required to keep copies of every piece of paper generated throughout the evaluation process, the documents submitted to the Board in support of this award are exceedingly inadequate. First, there is very little contemporaneous documentation as many items submitted to the record were not created until more than a month after the award decision. (*See, e.g.*, AR at Ex. 2.) *Cf. Trifax Corp.*, CAB No. P-0539, 45 D.C. Reg. 8842, 8847 (Sept. 25, 1998) ("We accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions."). The only truly contemporaneous documentation provided by the District are the individual evaluation sheets; a set of five page documents completed by a single evaluator for a particular contractor including scores for each solicitation factor and comments of the particular evaluator. (*See* Resp. to Bd. Order at Ex. C.) Where provided, the documentation submitted by the District is incomplete. There are no evaluation sheets for contractors I, K, and P, and pages are missing

from some evaluations. (*See id.*) While three offerors are completely absent from the record, the District, with one exception, provided only one evaluation sheet for each of the remaining twenty offerors. (*See id.*) It is important to note that a total of four evaluation sheets should have been provided for each individual offeror as the Bid Tabulation Spreadsheet indicates that four individual evaluations were conducted for each of the twenty-three offerors, one by the CO and one by each member of the Panel. (*See* AR at Ex. 3.) The one exception is Offeror S. The District provided two evaluation sheets for Offeror S. Both were completed by the CO but contain different sets of scores and one set of those scores appear on the Bid Tabulation Sheet. Most troubling, the evaluation sheets provided reflect only the CO's scores. (*Compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3.) There is no record of the Panel's evaluation sheets.

Second, the few contemporaneous documents that the District provided are incongruous. Specifically, the evaluation sheets at times are inconsistent with the Bid Tabulation Sheet. In seven instances the evaluation sheets do not concur with the set of scores on the Bid Tabulation Sheet. (*Compare* AR at Ex. 3, *with* Resp. to Bd. Order at Ex. C.) Some of these incongruities are minor, though still concerning. For example, there is a sub-factor score for Offeror E that does not match the score awarded on the individual evaluation sheet; and similarly, Offeror M's Technical Bonus points do not match. (*Compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3.) Some inconsistencies, on the other hand, are truly problematic. In five instances entire sets of scores on the individual evaluation sheets do not match any scores on the Bid Tabulation Sheet. (*Compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3 (Offerors A, H, J, U, & V).) The materials provided do not support a conclusion that a rational and lawful evaluation process occurred.

Whereas this Board will not substitute its judgment for that of the CO with respect to the evaluation findings, it cannot blindly accept evaluation findings and a resulting award decision that are not reasonably supported by the factual record. Although a Panel is not required to be used, when a Panel is convened as in this case, under D.C. Mun. Regs. tit. 27, § 1618.5, a technical evaluation report must be completed consisting of the basis for the evaluation, an analysis of the proposals, a quantitative ranking of each technical proposal, and a summary of findings. The District failed to provide a technical evaluation report as required. Given the inadequacy of the record, the District did not provide sufficient documentation to support a finding that the award had a rational basis. Further, in light of the inconsistency of the information provided, the Board finds that there is insufficient evidence to support the award decision.

C. Failure to Evaluate Reasonably

The protesters have alleged that the District failed to evaluate the proposals reasonably and in accordance with the terms of the solicitation. (*See, e.g.*, Urban Alliance Protest 8.) They contend that the protest should be sustained because the award decision was arbitrary. (*See, e.g.*, *id.*) The District has maintained that it scored the proposals in strict compliance with the evaluation criteria set forth in the RFP. (Mot. to Dismiss 10-11.) Upon a review of the record, the Board finds that the evaluation process violated procurement law as there is no consistent, discernable standard or approach. The Board concludes that the process was arbitrary, unreasonable and not in accordance with the terms of the solicitation or the relevant procurement statutes and regulations.

"In determining the propriety of an evaluation decision, we examine the record to determine whether the judgment was reasonable and in accord with the evaluation criteria listed in the solicitation and whether there were any violations of procurement laws or regulations." *Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. at 8635. In reviewing an evaluation decision, the Board must consider the totality of the record to determine

if the evaluations are reasonable and "bear a rational relationship to the announced criteria upon which competing offerors are to be selected." *Id.*

The terms of the solicitation clearly stated that a technical review team would be used to evaluate each responsive proposal. (AR at Ex. 1, § M.3.6.2.) According to the Procurement Chronology, the Panel consisted entirely of DOES staff. (*See* AR at Ex. 2.) The panelists and the CO each independently conducted a simultaneous review of the proposals in accordance with the evaluation criteria set forth in Section M of the RFP. (AR at Ex. 2.) The CO then reviewed the 1st BAFOs and the 2nd BAFOs without assistance of the Panel. (*See* AR at Ex. 2.)

A review of the Bid Tabulation Sheet shows that the individual scores of panelists, prior to the consensus panel discussion, were often within a comparable range of each other. (*See* AR at Ex. 3.) For example, in the case of Synergistic, the panelists' individual scores are all within a one point range of each other. (*See* AR at Ex. 3, at 51-53.) After independent review, the Panel met to assign a consensus score to each offeror's bid. (AR at Ex. 2.) The following is a brief summary of the Panel's findings:

Proposals receiving scores >Synergistic's score	12
Proposals receiving scores = Synergistic (7) + Synergistic'sscore (1)	8
Proposals receiving scores <Synergistic's score	3
Total Offerors	23

The CO's evaluation of the same proposals according to the same evaluation criteria yielded markedly different results. The CO awarded Synergistic's proposal the highest score of all proposals, in part by awarding 29.4 more points to Synergistic's proposal than did the Panel. (*See* AR at Ex. 3, at 53.) The CO's scoring also deviated significantly from the Panel's with respect to Urban Alliance. The Panel awarded Urban Alliance's proposal the same score as it awarded Synergistic's. (*See* AR at Ex. 3.) By contrast, the CO assigned 23.8 points less to Urban Alliance. (*See* AR at Ex. 3, at 57.) The result is that the two proposals, when reviewed by the three-member Panel, were found to be generally of a similar strength. Following the CO's review, the two proposals were separated by more than 50 points on a 122 point scale. (*See generally* AR at Ex. 3). No explanation was provided for the scoring differential between the CO and the Panel.

Therefore, although the District asserts that the CO considered the Panel's findings throughout, there is no evidence to support this assertion. In fact, the record supports an opposite conclusion. In eight out of seventeen instances the CO's scores remained unchanged from his initial review. (*See* AR at Ex. 3.) And while the CO was authorized to exercise his own decision-making authority and disagree with the Panel, the critical point is that the CO failed to document why he disagreed with the Panel. Under the relevant case law, it is not the score per se that determines whether the opinions of lower level evaluators were properly considered, but rather the CO's judgment concerning the difference and the relative merits of proposals. *Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. at 8636. The two evaluations of the same proposal under the same criteria diverge by more than 50 points out of a total 122 points. Given that significant disparity, certainly, a comment in the Bid Tabulation Sheet was warranted to explain the CO's decision to maintain his initial scores. Without that information, the Board has no way of understanding the CO's judgment and, as a consequence, calls into question any claim that the CO properly considered the Panel's findings.

Moreover, although the CO may have found Synergistic's pricing proposal reasonable, the Board notes that the record does not support that same conclusion specifically because the CO failed to account for Synergistic's questionable pricing for option year 4. Under the District's procurement regulations, it is the responsibility of the contracting officer to "evaluate the cost estimate or price [of a proposal], not

only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract." D.C. Mun. Regs. tit. 27, § 1618.2 (2002). Synergistic proposed a base year cost of $225,017.31 with the cost for option years 1 through 3 at $225,019.88 each. (*See* AR at Ex. 2.) The cost for option year 4, however, is priced at $8,118.25, (*see* AR at Ex. 2) which represents a mere 3.61% of the cost of services for the other years. This calls into question whether Synergistic would be able to provide the required services during option year 4 at that stated price. The CO's analysis makes no note of that fact despite this significant variance. Some other offerors also reduced their pricing for option year 4; however, those that did, reduced the price for option year 4 by an average of 45%. (*See* AR at Ex. 2.) Besides, in the analysis, the Contract Specialist reviewed Synergistic's pricing and stated that Synergistic's proposed budget included 72.34% overhead on labor plus fringe benefits and that the rates could not be supported. (*See* Resp. to Bd. Order at Ex. H.) There is no evidence that the CO properly accounted for this incongruity when scoring pricing under the solicitation.

Hence, we find that the CO failed in his duty to properly evaluate the proposals in two significant ways. First, as previously discussed, the CO did not properly consider the evaluations and comments prepared by the Panel as there is no documentation to support the – oftentimes significant – deviation from the Panel's scores. Second, the CO appears to have at times merely adopted evaluation scores and comments written by other individuals (and it is unclear whether such persons are panelists or OCP or DOES employees).[12]

The District's procurement regulations provide that a contracting officer may be assisted by others in evaluating proposals. However, where a contracting officer is in fact assisted, he must not relinquish his decision-making authority even though it is incumbent upon him to consider the opinions of those chosen to assist him. In the past this Board has held that "technical point scores and descriptive ratings of lower level evaluators must be considered by the Contracting Officer in making the final selection even though he is not bound by those evaluations or recommendations." *Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. at 8636. At the same time, the procurement regulations clearly state that it is the responsibility of the contracting officer to "evaluate each proposal in accordance with the evaluation criteria in the solicitation." D.C. Mun. Regs. tit 27, § 1618.1 (2002). Consequently, this Board has noted that "[a]lthough the contracting officer may be assisted in the evaluation by others, . . . the contracting officer always remains responsible for the evaluation of proposals." *Health Right, Inc., D.C. Health Coop., Inc., & The George Washington Univ.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C, Reg. at 8636. Ultimately, it is inappropriate for the contracting officer to merely "adopt" evaluation and scoring conducted by individuals other than himself. *See id.* at 8637.

In this case, the CO appears to have been assisted by individuals other than Panel members. In nine instances, three other individuals scored proposals and the scores provided appear as the CO's scores on the Bid Tabulation Sheet.[13] The CO personally completed only eight evaluation sheets. (*See* Resp. to Bd. Order at Ex. C.) All the evaluation sheets provided, whether completed by the CO or one of the three other individuals, reflect the scores of the CO on the Bid Tabulation Sheet. (*Compare* Resp. to Bd. Order at Ex. C, *with* AR at Ex. 3.) It is the CO's responsibility to review proposals and where scores awarded by individuals other than the CO are presented as the CO's scores, it appears that the CO abdicated his

[12] Although Stuart Keeler has been identified as the Contracting Officer (AR at Ex. 1), the names of Eloine Evans-McNeill, John Deer, and Crystal Farmer-Linder all appear along with the CO on the individual tabulation sheets. (*See* Resp. to Bd. Order at Ex. C.)

[13] Eloine Evans-McNeill, John Deer, and Crystal Farmer-Linder completed 12 of the 20 evaluation sheets. (*See* Resp. to Bd. Order at Ex. C.)

responsibility. There is no explanation in the record for this practice, which as it stands, does not constitute a valid exercise of contracting officer judgment.

The Board finds that the CO acted in an arbitrary and unreasonable manner in failing to evaluate offeror proposals in accordance with the law and the terms of the solicitation. He failed to consider the findings of the Panel as well as failed to conduct a personal evaluation of all proposals. Given the totality of the record, we cannot conclude that the evaluation process was reasonable or rationally related to the criteria set forth in the RFP.

D. Failure to Conduct a Blind Evaluation

The District has indicated that the CO's evaluation of the proposals was not blind, that is, at the time of his review, the offeror proposals were not anonymous. (AR at Ex. 2.) However, the CO's failure to conduct a blind evaluation violated the express terms of the solicitation. In protests of solicitations and awards, the Board conducts a de novo review to determine whether the solicitation or award was in accord with the applicable law, regulations and terms and conditions of the solicitation. *Recycling Solutions, Inc.*, CAB No. P-0377, 42 D.C. Reg. 4550, 4578 (April 15, 1994). Under CAB Rule 314.1, in sustaining a protest, the Board determines whether the solicitation, proposed award, or award complies with the applicable law, regulations, or terms and conditions of the solicitation.

While not addressed specifically in the RFP, in response to questions submitted by potential offerors, the District stated that "[t]he offeror's proposal should be submitted with the offeror's identity. OCP will redact the offeror's identity from the submitted proposals to ensure a 'blind' evaluation process." (AR at Ex. 1, Q.30.) The question and the District's response were incorporated into the revised RFP and became a term of the solicitation. (*See id.*) Despite affirming that the proposals would be evaluated in redacted form to ensure anonymity, the CO performed the evaluations with full knowledge of each offeror's identity. (AR at Ex. 2.) In fact, the Board has reviewed twenty-one evaluation sheets and all but seven individual evaluation sheets clearly show the name of the offeror. (*See* Resp. to Bd. Order at Ex. C.)

There is nothing in the solicitation or in procurement practice to suggest that a contracting officer's review of proposals should not be subject to the very terms of the solicitation whether such terms are contained in the RFP or incorporated in the form of the District's responses to questions submitted by potential offerors. The CO's review was not blind yet offerors were never provided notice of the change in review process. And while this violation, by itself, would not necessarily void the award decision, in this case, the violation further undermines the integrity of the procurement. A contracting officer's review is at the heart of any evaluation process and yet the District failed to follow its own solicitation guidelines in clear violation of procurement law.

Conclusion

Because the proposal evaluations were unsupported to a substantial degree, the award to Synergistic was unreasonable. The Board hereby directs the District to terminate the contract awarded under this RFP effective no later than the close of the current school year in June 2012. To the extent that these services are required by the District for the summer school session of 2012 and beyond, the District shall issue a request to the twenty-three offerors for revised technical and cost proposals for the remainder of the base year and the option years. The District shall evaluate the revised proposals in accordance with the law and the terms of the RFP. These consolidated protests are sustained.

SO ORDERED.

DATED: February 15, 2012

/s/ Maxine E. McBean
MAXINE E. MCBEAN
Administrative Judge

CONCURRING:

/s/ Monica C. Parchment
MONICA C. PARCHMENT
Administrative Judge

LOUD, Chief Administrative Judge, concurring.

I concur with my colleagues that the consolidated protests herein should be sustained. The District's award decision to Synergistic followed an unreasonable and arbitrary evaluation process that included, but was not limited to, the removal of Urban Alliance from the competitive range for deficiencies (i.e., failure to meet the requirements of Section C.5.2.1) shared by two other bidders who were asked to submit BAFOs for the first and second rounds. When coupled with the numerous additional inconsistencies in the record (missing individual evaluation sheets, separate CO evaluation sheets for the same bidder with different scores on each, an evaluation sheet for one offeror containing the word "unresponsive" as to which every evaluator provided a score for each evaluation factor, etc.), the clear picture that emerges is of an evaluation process that failed to follow the solicitation terms and provisions of law.

There should now be a growing sense of alarm among the procurement and program professionals charged with implementing this aspect of the District of Columbia Youth Employment Services Initiative Amendment Act of 2005 and the Workforce Investment Act of (WIA) of 1998 (DCYES and WIA). Our record shows that there have now been three consecutive solicitations for in-school youth services that have not been executed properly, as shown either by delayed solicitations, agency cancelled solicitations, or as here through the Board's cancellation of an award.

The trail of failed solicitations date back to at least *Appeal of Friends of Carter Barron Foundation Of The Performing Arts*, CAB No. D-1421 (unpublished) (Nov. 15, 2011), wherein the Board first learned of the December 16, 2011, award for in-school youth services in Contract No. DCCF-2011-R-1000. *Appeal of Friends of Carter Barron Foundation*, at 4-5 (the Board dismissed the appeal and protest on jurisdictional grounds). Through the consolidated cases herein, we now learn that the December 16, 2010, awards were cancelled by the District on January 14, 2011. (Urban Protest 3-4; VOOS Protest ¶3). Further, we learn that a second solicitation for these same youth in-school services was issued on March 31, 2011, and cancelled on May 18, 2011. (Urban Protest, Ex. 2 Procurement Chronology; see also Urban Protest at p¶¶8-9.) Finally, the Board has now cancelled the award made under the third consecutive District attempt to effectuate the provisions of the DCYES and WIA.

The services procured through this solicitation have the potential to positively impact life outcomes for disconnected youth in Wards 5-8 of the District. I am hopeful that the alarm bells set off by this string of troublesome solicitations will now translate into decisive action by the District's procurement professionals to lawfully conduct a solicitation that will enable program professionals to

commence the delivery of, and sustain the relationships with youth necessary to successfully effectuate the purposes of the Acts noted above.

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

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