

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

PROTEST OF:

UNFOLDMENT, INC.	)	
	)	
Under Contract No. 2196-AA-NS-7-FC	)	CAB No. P-358

For the Protestor: Michael W. Beasley, Esquire. For the Government: Edward J. Rich and Nancy Hapeman, Assistants Corporation Counsel. For Intervenor A. L. Nellum and Associates: Rand L. Allen, Esquire, James M. Johnstone, Esquire and Phillip H. Harrington, Esquire.

Opinion by Administrative Judge Zoe Bush, with Administrative Judges Terry Hart Lee and Jonathan D. Zischkau.

**OPINION**

On December 18, 1992, Unfoldment, Inc. (Unfoldment, Protestor) filed a "notice of appeal" with the Board challenging the "solicitation, selection and contract award" of the above-captioned contract to A. L. Nellum and Associates (Nellum). The Board docketed this matter as a protest. (See Board notice dated December 30, 1992). In its initial filing, Protestor asserted that the contract was awarded to Nellum on December 7, 1992, and that written notice of award was received by Protestor on December 14, 1992. Protestor further asserted that there had been bias in the solicitation, selection and award of the contract; utilization of improper solicitation procedures; use of inappropriate evaluation procedures; and possible violations of the D.C. Procurement Practices Act. Thereafter, on December 30, 1992, a letter of protest was timely filed. The letter alleged that the participation in the solicitation, evaluation, proposed award and award decisions by high ranking D.C. Department of Corrections (DOC) officials, with clear conflicts of interest and competitive interests, unfairly prejudiced Unfoldment, Inc., violated the procurement law and regulations and resulted in a decision that was not in the best interest of the District.

The District's agency report was filed on April 14, 1993, and supplemented on April 16, 1993.<sup>1/</sup> By motion filed on April 29, 1993, Protestor requested an order compelling the filing of supplemental agency report documents. On May 18, 1993, the District responded thereto stating that Nellum's proposal was not provided to Protestor because the proposal contained confidential and proprietary material. The District provided legible copies of other requested documents. By Order dated May 28, 1993, the Board directed the District to more specifically explain the bases for its claim of confidentiality, and the District so

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<sup>1/</sup>The District of Columbia moved to dismiss the protest on the ground that Protestor failed to set forth a clear and concise statement of the legal and factual grounds of the protest pursuant to Board Rule 302.1(c), 36 DCR 2711. Protestor responded in opposition to the motion to dismiss, and the District replied thereto. By Order dated March 22, 1993, the Board denied the motion to dismiss.

responded on June 11, 1993. On July 28, 1993, Protestor moved for an order compelling the filing of limited additional agency report documents. The District responded in opposition thereto on August 16, 1993. By Order dated August 20, 1993, Protestor's motion was denied by the Board and Protestor was directed to file its comments on the agency report. Protestor's comments on the agency report were filed on September 1, 1993.

The successful offeror, Nellum, intervened in the proceeding on January 26, 1993, and filed comments on the agency report on April 26, 1993.

### **Findings of Fact**

As set forth in the record, the following facts are relevant to this protest:

On September 14, 1992, the District of Columbia Department of Administrative Services (DAS) issued Request for Proposals (RFP) No. 2196-AA-NS-7-FC in the open market. (Exhibit 1 to Agency Report). The purpose of the RFP was to solicit proposals for a drug residential treatment and aftercare program for DOC. *Id.* at 1. The term of the RFP was five (5) years, a base year plus four (4) option years. DAS subsequently issued Amendments No. 1 and No. 2, which, among other things, ultimately extended the date for submission of the proposals to October 21, 1992. (Exhibits No. 2 and 3 to Agency Report).

The District received proposals from the following offerors: (1) Second Genesis, Inc.; (2) A. L. Nellum & Associates, Inc. (Nellum); (3) James Cobb & Associates, P.C.; (4) Unfoldment; (5) American Consultants & Management Enterprises, Inc. (ACME); (6) Administrative Child Care Services, Inc.; (7) Eagle Maintenance Services, Inc.; and (8) (RAP, Inc. (Exhibit 4 to Agency Report). The proposal of RAP, Inc., was determined to be late and was not evaluated. (Exhibit 5 to Agency Report).

On October 27, 1992, the DAS contracting officer forwarded the proposals to DOC for evaluation by the evaluation panel. (Exhibit 8 to Agency Report). The DOC evaluation panel reviewed the proposals and ranked the offerors in the following order on technical evaluation factors:

<u>Offeror</u>	<u>Mean Score</u>	<u>Total Score</u>
Second Genesis, Inc.	85	340
Nellum	80.5	322
James Cobb & Associates, P.C.	68.5	274
Unfoldment	67.75	271
ACME	65.75	263
Administrative Child Care	62.5	250
Eagle Maintenance Services, Inc.	42	172

(Exhibit 10 to Agency Report).

The panel also forwarded to the contracting officer technical questions regarding the proposals from the two highest ranked offerors. (Id. at 2-4). One of the clarification issues regarding Nellum's proposal pertained to the fact that the copies of the proposal forwarded to the evaluation panel were missing pages 7.2 through 7.5. (See Exhibit 10 to Agency Report). The contracting specialist forwarded pages 7.2 through 7.5 to the evaluation panel. (Id.) The evaluation panel reviewed the missing pages and revised Nellum's score from a total of 322 points to a total of 335 points for technical evaluation factors. (Exhibits 12 and 13 to Agency Report). The total point scores of all other offerors remained unchanged. (Exhibit 12 to Agency Report).

The panel recommended that the contracting officer award the contract to Nellum, the highest ranked offeror when both price and technical evaluation factors were considered. (Exhibit 20 to Agency Report).

The final rankings for the offerors were as follows:

<u>Offeror</u>	<u>Technical</u>	<u>Price</u>	<u>Total Score</u>
Nellum	67	11.4	78.4
James Cobb	54.8	20	74.8
Second Genesis	68	3	71
Unfoldment	54.2	11.2	65.4
ACME	52.6	2.8	55.4
Admin. Child Care	50	0	50
Eagle Maintenance	34.4	11.2	45.6

(Exhibit 22 to Agency Report).

On December 7, 1992, the contracting officer concurred with the recommendation of the evaluation panel to award a contract to Nellum, the offeror with the highest score. (Exhibit 23 to Agency Report). The District awarded the contract to Nellum on December 7, 1992. (Exhibit 24 to Agency Report). The District notified the unsuccessful offerors by letters dated December 8, 1992. (Exhibit 25 to Agency Report).

### DECISION

In its agency report the District argues that the Protestor has failed to submit prima facie evidence in support of its protest and further, has failed to meet its burden of proof in establishing the grounds of its protest. Nellum, in its comments on the agency report, concurs with the District and adds that Unfoldment is not an interested party because it is not in line for award of the contract. Nellum's arguments are well taken.

Based on the record before the Board, it is clear that Protestor, based on the final rankings of the evaluation panel, was ranked fourth among the offerors on the RFP. (Exhibit 22 to Agency Report). Therefore, even if the protest were granted, Protestor would still not be in line for award. This Board has consistently held that a protestor lacks standing

where it would not be in line for award, even if its protest were upheld. O'Donnell Construction Company, CAB No. P-340, 40 DCR 5063 (April 2, 1993); MTI Recyc. A Joint Venture, CAB No. P-287, 40 DCR 4554 (October 10, 1992).

Further with regard to any challenge to the solicitation, the protest is untimely. The Board has previously explained that in order to timely challenge the terms of a solicitation, the protest must be filed prior to the closing date for receipt of proposals or bid opening. Prince Construction Company, Inc./District Paving Corporation, J.V., CAB No. P-375-A, 5 P.D. 5353 (August 20, 1993); Koba Associates, Inc., CAB No. P-325, 40 DCR 4730 (1992). Here proposals were due on October 21, 1992 (Exhibits 2 and 3 to Agency Report), and this protest was not filed until December 18, 1992, clearly more than 10 business days after Unfoldment knew or should have known the basis of its challenge with respect to the solicitation. D.C. Code § 1-1189.8(b).

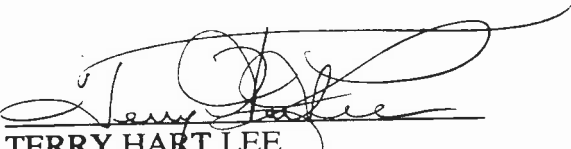
Therefore, based on the foregoing, the protest is **DISMISSED**, with prejudice.

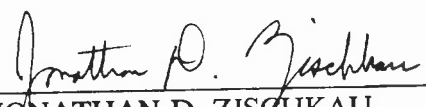
So **ORDERED**.

DATE: September 17, 1993

  
ZOE BUSH  
Chief Administrative Judge

Concur:

  
TERRY HART LEE  
Administrative Judge

  
JONATHAN D. ZISCHKAU  
Administrative Judge