

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD**

PROTEST OF:

CAPITOL ENTERTAINMENT SERVICES, INC.	)	
	)	CAB No. P-0932
	)	
Solicitation No. DCKA-2012-R-0115	)	

For the protester, Capitol Entertainment Services, Inc.: John S. Best; *pro se*. For the District of Columbia: Alton E. Woods, Esq.; Office of the Attorney General.

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

**OPINION**

*Filing ID #52424188*

The protester, Capitol Entertainment Services, Inc., challenges the District's award of a contract to EPark-DTPC for the procurement of bus parking management services for the 2013 Presidential Inauguration, which took place in the District of Columbia in January 2013. The protester contends that the terms of the underlying solicitation were unreasonable, and also asserts that the District ultimately evaluated proposals in a manner that was inconsistent with the original solicitation requirements and procurement law. However, beyond the filing of its initial protest, the protester failed to further challenge the evidence that the District submitted in response to the protest, supporting the reasonableness of the award decision.

The Board finds that the protester's challenges to the solicitation provisions are untimely, and, accordingly, dismisses the above protest grounds. We also find that the District provided sufficient evidence, unrebutted by the protester, establishing that the protester was properly prevented from receiving the contract award based upon a reasonable evaluation and determination that its proposal was technically unacceptable.<sup>1</sup> Accordingly, the Board denies the protest on these remaining grounds.

**FACTUAL BACKGROUND**

On October 3, 2012, the District of Columbia Office of Contracting & Procurement, on behalf of the District Department of Transportation, issued Request for Proposals No. DCKA-2012-R-0115 (the "Solicitation"). The Solicitation sought offers to provide bus parking management services for the January 21, 2013, Presidential Inauguration. (Agency Report ("AR"))

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<sup>1</sup> While neither the Agency Report nor the Contracting Officer appear to have used the phrase "technically unacceptable," the Contracting Officer states in her Business Evaluation Memorandum that protester "does not have the technical expertise needed to manage a requirement of this size. Thus, their proposal was removed from further consideration." (Agency Report ("AR") Ex. 20 at 17.)

Ex. 1 ¶¶ B.1, C.1.) The Solicitation anticipated that the successful offeror would route, manage, and park approximately 2,500 buses traveling to inauguration related events. (*Id.* ¶¶ C.1, C.4.) The successful offeror would also be required to identify and secure on-street and off-street parking in the District of Columbia and surrounding jurisdictions to accommodate the anticipated 2,500 buses that would arrive in the city for these activities. (*Id.* ¶ C.5.2.) Finally, the successful offeror would be required to establish a bus parking reservation system, implement a communication plan to inform bus carriers about the parking operations, provide adequate staffing at bus parking facilities, and ensure proper operation of bus parking services for the Presidential Inauguration.<sup>2</sup> (*Id.* ¶¶ C.5.3-C.5.5.)

The Solicitation anticipated awarding a single fixed price contract based on the offer determined to be the most advantageous to the District, considering price and technical factors. (*Id.* ¶¶ B.2, L.1.1, M.1.) The evaluation criteria in the Solicitation consisted of four factors: Past Experience with large, high profile special events (30 pts.) (the “Experience” factor), Past Performance (20 pts.), Technical Approach (40 pts.), and Price (10 pts.). (*Id.* ¶ M.3.) An offeror could also receive additional preference points for its status as a Certified Business Enterprise.<sup>3</sup> (*Id.* ¶¶ M.3.3, M.5.) The technical evaluation factors (Experience, Past Performance, and Technical Approach) would be rated according to the following scale:

<b><u>Numeric Rating</u></b>	<b><u>Adjective</u></b>	<b><u>Description</u></b>
0	Unacceptable	Failed 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 requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies

(*Id.* ¶ M.2.1.) The scores would then be weighted according to the point value for each factor. (*Id.* ¶ M.2.2.) Under the Experience factor, offerors would be evaluated based on their previous involvement and parking management of large scale events. (*Id.* ¶ M.3.1.1.) Offerors would also be evaluated on the success of their previous events, including consideration of the size, duration, and magnitude of services provided, under the Past Performance factor. (*Id.* ¶ M.3.1.2.) Offerors would be further evaluated on the soundness of their technical approach and the offerors’ understanding of the Solicitation requirements. (*Id.* ¶ M.3.1.3.) Lastly, under the Price evaluation factor, the offeror with the lowest price would receive maximum price points with all other proposals receiving a proportionately lower total score. (*Id.* ¶ M.3.2.)

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<sup>2</sup> This opinion herein generally refers, collectively, to these services as the “management services” required by Section C of the Solicitation.

<sup>3</sup> A maximum of 12 points were available for various types of Certified Business Enterprises pursuant to the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. CODE § 2-218.01, *et seq.* (AR Ex. 1 ¶¶ M.5, M.5.2.)

### ***Evaluation of Proposals***

Under the Solicitation, proposals were due on October 17, 2012, by 2:00 p.m. (*Id.* at 1.) Three offerors submitted timely proposals<sup>4</sup> in response to the Solicitation: Capitol Entertainment Services, Inc. (“CES” or “protester”); EPark-DTPC (“EPark”), the awardee; and SP Plus Gameday.<sup>5</sup> (AR Ex. 20 at 6.) The Contracting Officer (“CO”), Courtney Lattimore, determined, on October 19, 2012, that SP Plus Gameday’s proposal was non-responsive because it failed to include a required subcontracting plan and failed to provide a technical approach. (AR Ex. 3.)

A technical evaluation panel (“TEP”) composed of three members evaluated the proposals of the protester and EPark in early November 2012. (*See* AR Ex. 7.) The TEP assigned scores according to the five-point rating scale in the Solicitation for each of the three technical evaluation factors.<sup>6</sup> (*Id.*) The panel members initially assigned the following scores to each offeror’s proposal:

	<b>Capitol Entertainment Services</b>			<b>EPark</b>		
Experience	3	2	2	4	3	3
Past Performance	2	3	2	4	3	4
Technical Approach	3	3	3	4	4	4

(*See generally id.*)

The CO independently reviewed both proposals, and assigned ratings and weighted point scores as follows:

	<b>Capitol Entertainment Services</b>		<b>EPark</b>	
	Rating	Score	Rating	Score
Experience	0	0	3	18
Past Performance	1	4	3	12
Technical Approach	2	16	3	24
<b>Total</b>		<b>20</b>		<b>54</b>

(AR Ex. 8 at 1.) With regard to CES’ proposal, the CO observed that while the proposal indicated a “willingness to provide the services” required by the Solicitation, the proposal provided “very few specifics” as to the protester’s technical approach. (*Id.*) The CO also noted that the protester failed to provide examples “of its successful management of large scale events.” (*Id.*) EPark’s proposal, on the other hand, highlighted existing protocols that had been implemented previously and provided detail on its methodologies. (*Id.* at 2.) The CO stated that EPark’s proposal demonstrated management experience over a “broad spectrum of events,” and the capacity to manage high volume events, though EPark provided no examples of any prior events matching the size of the Presidential Inauguration. (*Id.*)

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<sup>4</sup> A fourth offeror, AF Development, submitted an untimely proposal, which was not considered by the District. (AR Ex. 20 at 6.)

<sup>5</sup> In its protest, the protester erroneously states that EPark was “the only other offeror responding to the solicitation.” (Protest 1.)

<sup>6</sup> The panel originally assigned points to each proposal based upon the total technical points possible under the Solicitation for each technical factor instead of based upon the Solicitation’s 5-point rating scale. (Ex. 4.) On November 19, 2012, the CO instructed the panel to assign scores according to the rating scale. (Ex. 6.)

### ***BAFOs and the District's Selection Decision***

The CO determined that additional information would be required to make an award. (*Id.*) On December 3, 2012, the CO sent written discussion questions and Best and Final Offer (“BAFO”) requests to both CES and EPark. (AR Ex. 10.) The District listed several “deficiencies” (i.e., discussion questions) for CES to address, primarily seeking more specific examples of larger scale special events that CES had managed in the past pursuant to the requirements of the Solicitation. (*Id.* at 3-4.) The deficiencies also evidenced the District’s concern that the protester would be unable to secure sufficient locations to park the anticipated 2,500 buses that would arrive in the District of Columbia for the Presidential Inauguration. (*Id.* at 4.)

BAFOs were due by noon on December 6, 2012. (*Id.* at 2, 5.) Offerors were to ensure that BAFOs complied with Amendment 2 to the Solicitation which requested revised pricing. (*Id.*; *see also* AR Ex. 9.) The BAFO requests also stated that if an offeror did not submit a BAFO, the District would consider the offeror’s original proposal as its BAFO. (AR Ex. 10 at 2, 5.) Only CES submitted a BAFO. (AR Ex. 20 at 15.)

The TEP evaluated the protester’s BAFO; however, since EPark did not submit a BAFO, the District carried forward the evaluation score that it assigned to EPark’s original proposal. (*Id.*) The TEP, in several instances, assigned lower scores to CES’ two-page BAFO than to its original 30-page proposal.<sup>7</sup> (*Compare* AR Ex. 12, *with* AR Ex. 7 at 2-7.) In assigning these lower scores, the TEP noted, again, that CES had expertise in providing transportation services, but not in large scale parking management services as required by the Solicitation. (*See generally* AR Ex. 12.) The CO concurred with the concerns raised by the TEP regarding CES’ lack of proven experience handling large scale parking management contracts consistent with the requirements of the Solicitation. (AR Ex. 13.) Additionally, the CO noted that CES, in its BAFO, had not shown its ability to accommodate parking for the 2,500 buses anticipated by the Solicitation.<sup>8</sup> (*Id.*) Ultimately, the CO assigned the following ratings and scores to CES’ BAFO:

	<b>Original Rating</b>	<b>BAFO Rating</b>	<b>BAFO Score</b>
Experience	0	0	0
Past Performance	1	3	12
Technical Approach	2	1	8
<b>Total</b>			<b>20</b>

(*Id.*)

Based on her review of CES’ BAFO, the CO determined that the protester did not meet the evaluation criteria established in the Solicitation and, therefore, would not be considered

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<sup>7</sup> Curiously, the Board notes that in several instances the TEP members comments are nearly identical to each other with respect to the lack of technical merits in the protester’s proposal suggesting that certain TEP members may have been simply “cut and pasting” comments from each other’s scoring sheets even including the same misspelled words (e.g., “vehilces [sic]”). (*Compare* AR Ex. 7 at 1-2, *with* AR Ex. 12 at 1-6.) Nonetheless, as set forth herein, the Board still finds that the CO properly conducted an independent assessment in support of the ultimate award decision. (*See* AR Exs. 8, 13, 20.)

<sup>8</sup> The CO, however, recognized the positive past performance remarks which the District received on behalf of the protester and took account of them during the evaluation. (AR Ex. 13.)

further to receive the contract award. (AR Ex. 13.) The District notified the protester that it was no longer being considered for award by letter dated December 13, 2012. (AR Ex. 14.) After conducting negotiations with EPark, the District awarded the contract to EPark on December 31, 2012. (AR Ex. 19; AR Ex. 20 at 18-19.)

### ***CES' Protest***

After receiving a debriefing regarding the basis for the District's award decision,<sup>9</sup> the protester filed the instant protest with the Board. This action raises five protest grounds. First, the protester challenges the propriety of the "Past Experience" evaluation factor on the grounds that no offeror could meet the technical aspects of this criterion because the District had no documented information concerning events of the same magnitude as the Presidential Inauguration that could be used as a basis for evaluating proposals. (Protest 3.) Second, the protester claims that, without a published Solicitation amendment, it was disadvantaged by the Solicitation's change from task pricing to per hour pricing. (*Id.*) Third, the protester challenges the District's evaluation of EPark's proposal under the Experience factor because EPark's claimed experience is that "of its parent and/or affiliate company, Colonial parking." (*Id.*) Fourth, the protester challenges the assignment of points awarded to the proposals of its company and EPark, respectively, under the Technical Approach factor and, further, argues that it should have been rated higher under the Past Performance factor. (*Id.*)

The District subsequently filed its Agency Report in response to the protest whereby it asserts that proposals were evaluated properly, and consistent with the evaluation criteria in the Solicitation. (AR 13.) The District also contends that the protester was properly excluded from the competition because the protester failed to demonstrate that it had any experience with large, high-profile events and also because its proposal did not evidence that it could accommodate parking for the expected 2,500 buses for the Presidential Inauguration.<sup>10</sup> (AR 15.)

## **DISCUSSION**

The Board exercises jurisdiction over the instant protest pursuant to D.C. CODE § 2-360.03(a)(1) (2011).

### ***Untimely Protest Grounds***

As a preliminary matter, the Board finds that the two protest grounds asserted by the protester, challenging the propriety of the terms of the Solicitation's Experience evaluation factor and Amendment 2, are untimely. Pursuant to District of Columbia statutory law, a protest "based upon alleged improprieties in a solicitation which are apparent prior to...the time set for receipt of initial proposals shall be filed prior to...the time set for receipt of initial proposals." D.C. CODE §2-360.08(b)(1); D.C. MUN. REGS. tit. 27, § 302.2(a). Thus, the Board has held that

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<sup>9</sup> The protester requested a debriefing from the District on December 14, 2012. (AR Ex. 16.) The District debriefed the protester on January 14, 2013. (AR Ex. 17 at 1.) For inexplicable reasons, however, the debriefing slides seemingly reflect evaluation technical scores for the protester different than those reflected in the actual contemporaneous source selection record which are discussed extensively in this opinion. (*Compare* AR Ex. 17 at 9, *with* AR Exs. 7, 8, 12, 13.)

<sup>10</sup> The protester did not file Comments in response to the District's Agency Report to attempt to refute the matters asserted by the District.

“protests challenging solicitation provisions must be filed *prior* to the specific time set for receipt of proposals and no later.” *Enhancement Grp., Inc.*, CAB No. P-613, 48 D.C. Reg. 1533, 1535 (May 2, 2000) (emphasis in original). Further, where an alleged impropriety does not exist in the initial solicitation, but is subsequently incorporated into the solicitation, the alleged impropriety must be protested prior to the time set for receipt of proposals following incorporation of the impropriety. D.C. CODE § 2-360.08(b)(1); D.C. MUN. REGS. tit. 27, § 302.2(a).

The protester challenges the propriety of the Experience evaluation factor under the original Solicitation terms, as well as the change in contract pricing that was, in fact, initially implemented by publication to offerors of Amendment 2 to the Solicitation.<sup>11</sup> (Protest 3.) Initial proposals were due on October 17, 2012, and BAFOs were due on December 6, 2012. (AR Ex. 1 at 1; AR Ex. 10 at 2, 5.) The protester did not raise its protest grounds challenging the reasonableness of the technical evaluation criteria and the propriety of the terms of Amendment 2 until January 22, 2013, after it had already been eliminated from consideration for award. Indeed, the improprieties alleged by the protester concerning the Experience factor were clear on the face of the original Solicitation terms, and any issue related to the propriety of the terms of Amendment 2 would have also been apparent to the protester at the time that this amendment was issued and before BAFO’s were due. Accordingly, the Board dismisses these protest grounds as untimely.

#### ***District’s Evaluation of CES’ Proposal was Reasonable***

In its remaining three protest grounds, the protester argues that its proposal was superior to EPark’s, and that it should have been awarded the underlying contract. (See Protest 4.) However, as noted above, beyond filing its initial protest allegations, the protester has presented no further information or argument to the Board to substantiate these claims as required by our Board rules. See D.C. MUN. REGS. tit. 27, § 307.

Nonetheless, in reviewing the propriety of an evaluation decision, the Board reviews the record to ensure that the evaluation was reasonable and consistent with procurement law and the evaluation criteria stated in the solicitation. *FEI Constr. Co.*, CAB No. P-902, 2012 WL 6929394 at \*6 (Dec. 14, 2012); *RideCharge, Inc.*, CAB Nos. P-920, P-921, 2012 WL 8021681 at \*8 (Nov. 9, 2012). However, it is not the function of this Board to evaluate proposals *de novo*. *RideCharge, Inc.*, CAB Nos. P-920, P-921, 2012 WL 8021681 at \*9; *Busy Bee Envtl. Servs., Inc.*, CAB No. P-617, 48 D.C. Reg. 1564, 1567 (July 24, 2000). The evaluation of technical proposals is a matter of agency discretion and the Board will not substitute our judgment for that of the agency. *RideCharge, Inc.*, CAB Nos. P-920, P-921, 2012 WL 8021681 at \*9; *Grp. Ins. Admin., Inc.*, CAB No. P-309, 40 D.C. Reg. 4485, 4508 (Sept. 2, 1992); *Visual Connections, LLC*, B-407625, 2013 CPD ¶ 18 at 3-4 (Dec. 31, 2012). A protester’s mere disagreement with the agency’s judgment does not, by itself, render an agency’s evaluation unreasonable. *FEI Constr. Co.*, CAB No. P-902, 2012 WL 6929394 at \*6; *Lorenz Lawn & Landscape, Inc.*, CAB No. P-869, 2011 WL 7402964 at \*7 (Sept. 29, 2011).

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<sup>11</sup> Amendment 2 to the Solicitation, requiring offerors to provide the District with revised pricing under the Solicitation based on the distribution of hours per task, was issued on December 3, 2012. (AR Ex. 9.)

It is well established that a proposal that fails to meet a material requirement of the solicitation is technically unacceptable and may not form the basis of award. *Gen. Dynamics C4 Sys., Inc.*, B-406965, B-406965.2, 2012 CPD ¶ 285 at 6 (Oct. 9, 2012); *PricewaterhouseCoopers LLP*, B-406708, 2012 CPD ¶ 227 at 6 (Aug. 3, 2012); *Compressed Air Equip.*, B-246208, 92-1 CPD ¶ 220 at 3 (Feb. 24, 1992). An offeror has the responsibility to submit an adequately detailed proposal that demonstrates the merits of its approach and compliance with the solicitation. *LC Eng'rs, Inc.*, B-407754, 2013 CPD ¶ 46 at 5 (Jan. 31, 2013); *XtremeConcepts Sys.*, B-402438, 2010 CPD ¶ 99 at 5 (Apr. 23, 2010). In this regard, an offeror risks having its proposal rejected as technically unacceptable if it fails to demonstrate that it can meet the agency's minimum needs. *XtremeConcepts Sys.*, B-402438, 2010 CPD ¶ 99 at 5; *Compressed Air Equip.*, B-246208, 92-1 CPD ¶ 220 at 3.

Here, as an initial matter, the District determined that CES' proposal was technically unacceptable as the primary basis for its rejection from receiving the contract award. As it relates to the evaluation of CES' proposal under the Solicitation's Past Experience criteria, the CO first noted CES' lack of experience with large scale parking management and logistics contracts after reviewing its initial proposal. (AR Ex. 8 at 1.) Accordingly, in its BAFO request to CES, the District requested in various instances that CES provide examples of past projects where it had successfully managed large scale special events essentially as evidence that it could also successfully perform similar requirements under the Solicitation. (AR Ex. 10 at 3-4.) CES responded to the District's inquiries in this regard by providing examples in which it had provided "bus transportation services" and not parking management services. (AR Ex. 11 at 1.) Thus, after reviewing CES' BAFO, all three TEP members still noted that CES had experience in transportation services but that it had not identified any instances where it had provided bus parking management services and logistics for large scale events comparable to what was required by the Solicitation. (See generally AR Ex. 12.) The CO concurred, stating that CES had not "provided any indication of its experience providing management of large scale events." (AR Ex. 13 at 1.) Based upon our review of the contents of CES' initial proposal and BAFO response along with the evaluation record, the Board finds that the CO reasonably determined that CES' proposal was technically unacceptable because it failed to show that it had the requisite experience performing bus parking management services for large scale events, as required by the Solicitation criteria.

Additionally, after reviewing CES' BAFO, the CO also reasonably determined that CES failed to meet the Solicitation criteria requiring that it demonstrate the capacity to accommodate parking for the projected 2,500 buses expected to arrive in the District of Columbia for the Inauguration. While CES' initial proposal generally stated that it would secure locations required to accommodate 2,500 buses, its proposal only offered specifics on how it could actually accommodate 30 buses. (AR Ex. 2 at 4, 7.) Consequently, in its December 3, 2012, BAFO request to CES, the District requested that CES confirm its ability to secure parking locations to accommodate 2,500 buses. (AR Ex. 10 at 4.) Because in its BAFO response CES acknowledged that it would be unable to meet the Solicitation's high volume parking capacity requirement, the District, again, properly determined that CES' proposal was technically unacceptable and ineligible for contract award. (AR Ex. 11 at 2.)

The remainder of CES' initial protest allegations essentially concern its disagreement with the evaluation scoring ascribed to its proposal and the proposal of the awardee. However,

given CES' failure to even attempt to substantiate these allegations by responding to the District's evidence of its reasonable evaluation as discussed herein, the protester's mere disagreement with the District's evaluation is insufficient to render this evaluation and award decision unreasonable. *See FEI Constr. Co.*, CAB No. P-902, 2012 WL 6929394 at \*6; *Lorenz Lawn & Landscape, Inc.*, CAB No. P-869, 2011 WL 7402964 at \*7.

### CONCLUSION

As stated herein, the Board dismisses the protester's challenge to the Solicitation's original and amended terms as untimely. Additionally, the Board finds that the District reasonably rejected CES' proposal from further consideration for award because it was deemed to be technically unacceptable. CES' remaining protest allegations are, therefore, denied.

### SO ORDERED.

Date: May 22, 2013

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

### CONCURRING:

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

/s/ Maxine E. McBean  
MAXINE E. MCBEAN  
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