



District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Law 22-307, Short-Term Rental Regulation Act of 2018
- D.C. Contract Appeals Board publishes opinions issued between October 1, 2017 and September 30, 2018
- Executive Office of the Mayor establishes the Opioid Fatality Review Board (Mayor’s Order 2019-024)
- Executive Office of the Mayor re-designates the Office of the Secretary of the District of Columbia as the Office of the Secretary of State of the District of Columbia (Mayor’s Order 2019-029)
- Department of Energy and Environment announces funding availability for Middle School Watershed Education
- Department of Health Care Finance announces funding availability for improving perinatal health services for expectant mothers in Wards 7 and 8
- Department of Human Resources updates regulations for medical evaluations and the employee assistance and workplace wellness programs
- Department of Small and Local Business Development schedules a public hearing on the extension of the Georgetown Business, the Southwest Business, and the Mount Vernon Community improvement districts

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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Deadlines for Submission of Documents for Publication

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The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THURSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act*.

DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-307

“Short-Term Rental Regulation Act of 2018”

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-92 on first and second readings October 2, 2018, and November 13, 2018, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 22-563 and was published in the January 25, 2019 edition of the D.C. Register (Vol. 66, page 898). Act 22-563 was transmitted to Congress on March 14, 2019 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-563 is now D.C. Law 22-307, effective April 25, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-308

"Sexual Blackmail Elimination and Immigrant Protection Amendment Act of 2018"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-472 on first and second readings November 13, 2018, and December 4, 2018, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 22-564 and was published in the January 25, 2019 edition of the D.C. Register (Vol. 66, page 907). Act 22-564 was transmitted to Congress on January 31, 2019 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 22-564 is now D.C. Law 22-308, effective April 26, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

January	31
February	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28
March	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25

COUNCIL OF THE DISTRICT OF COLUMBIA

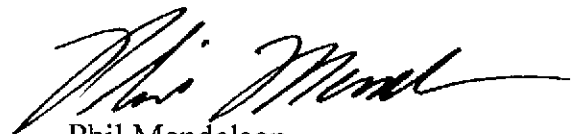
NOTICE

D.C. LAW 22-309

"Voting Rights Notification Amendment Act of 2018"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-312 on first and second readings December 4, 2018, and December 18, 2018, respectively. Following the signature of the Mayor on January 16, 2019, pursuant to Section 404(e) of the Charter, the bill became Act 22-565 and was published in the January 25, 2019 edition of the D.C. Register (Vol. 66, page 909). Act 22-565 was transmitted to Congress on January 31, 2019 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 22-565 is now D.C. Law 22-309, effective April 26, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

January	31
February	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28
March	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-310

"Fare Evasion Decriminalization Amendment Act of 2018"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-408 on first and second readings November 13, 2018, and December 4, 2018, respectively. On January 16, 2019, Bill 22-408 was vetoed by the Mayor. The Council overrode the Mayor's veto on January 22, 2019. Pursuant to Section 404(e) of the Charter, the bill became Act 22-592, and was published in the February 1, 2019 edition of the D.C. Register (Vol. 66, page 1395). Act 22-592 was transmitted to Congress on February 7, 2019 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 22-592 is now D.C. Law 22-310, effective May 3, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

February	7, 8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28
March	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30
May	1, 2

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-311

"Sexual Abuse Statute of Limitations Amendment Act of 2018"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-21 on first and second readings November 13, 2018, and December 4, 2018, respectively. Following the signature of the Mayor on January 23, 2019, pursuant to Section 404(e) of the Charter, the bill became Act 22-593 and was published in the February 1, 2019 edition of the D.C. Register (Vol. 66, page 1398). Act 22-593 was transmitted to Congress on February 7, 2019 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 22-593 is now D.C. Law 22-311, effective May 3, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

February	7, 8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28
March	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30
May	1, 2

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-312

“Sports Wagering Lottery Amendment Act of 2018”

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-944 on first and second readings December 4, 2018, and December 18, 2018, respectively. Following the signature of the Mayor on January 23, 2019, pursuant to Section 404(e) of the Charter, the bill became Act 22-594 and was published in the February 1, 2019 edition of the D.C. Register (Vol. 66, page 1402). Act 22-594 was transmitted to Congress on February 7, 2019 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the Congressional review period has ended, and Act 22-594 is now D.C. Law 22-312, effective May 3, 2019.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

February	7, 8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28
March	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
April	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30
May	1, 2

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA**PROPOSED LEGISLATION****BILLS**

- | | |
|---------|--|
| B23-270 | Designation of Official Street Names on Lots 6, 8, and 9 in Square E-1112, Formerly Part of Reservation 13, Act of 2019

Intro. 4-26-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole |
| <hr/> | |
| B23-275 | Clinics Licensing Amendment Act of 2019

Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health |
| <hr/> | |
| B23-276 | The National League of American Pen Women Real Property Tax Exemption Act of 2019

Intro. 4-30-19 by Councilmember Evans and referred to the Committee on Business and Economic Development |
| <hr/> | |
| B23-277 | Manufacturer and Pub Permit Parity Amendment Act of 2019

Intro. 5-3-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development |
| <hr/> | |

- B23-280 Safe Cannabis Sales Act of 2019
- Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred sequentially to the Committee on Business and Economic Development, sections 2, 6, 7, 8, then to the Committee of the Whole, the Committee on Finance and Revenue, section 3, then to the Committee of the Whole, the Committee on Judiciary and Public Safety, sections 4, 5, 11, then to the Committee of the Whole, and the rest of the bill, including sections 9, and 10, to the Committee of the Whole
-
- B23-281 Public Charter School Closure Amendment Act of 2019
- Intro. 5-6-19 by Chairman Mendelson at the request of the DC Public Charter School Board and referred sequentially to the Committee on Education and the Committee of the Whole
-
- B23-288 Vision Zero Enhancement Omnibus Amendment Act of 2019
- Intro. 5-7-19 by Councilmembers Allen, Bonds, R. White, McDuffie, Nadeau, Grosso, Silverman, and Todd and referred to the Committee on Transportation and the Environment with comments from the Committee of the Whole
-
- B23-289 Hannah Hawkins Way Designation Act of 2019
- Intro. 5-7-19 by Councilmembers T. White, R. White, Grosso, and Bonds and referred to the Committee of the Whole
-
- B23-290 Players Lounge Tax Exemption Act of 2019
- Intro. 5-7-19 by Councilmembers T. White and R. White and referred to the Committee on Business and Economic Development
-
- B23-291 Detained Youth Access to the Juvenile Services Program Amendment Act of 2019
- Intro. 5-7-19 by Councilmembers T. White, Bonds, McDuffie, Allen, Nadeau, Grosso, R. White, Cheh, and Todd and referred to the Committee on Recreation and Youth Affairs with comments from the Committee on Judiciary and Public Safety
-

B23-292 Curb Extensions Act of 2019
Intro. 5-7-19 by Councilmembers Grosso, Silverman, Todd, Nadeau, Bonds, Allen, and Cheh and referred to the Committee on Transportation and the Environment

B23-293 Cyclist Safety Campaign Amendment Act of 2019
Intro. 5-7-19 by Councilmembers Todd, R. White, Nadeau, Allen, Cheh, and McDuffie and referred to the Committee on Transportation and the Environment

B23-294 Reserved Parking Space for Reasonable Hardship Act of 2019
Intro. 5-7-19 by Councilmembers Todd, R. White, McDuffie, Bonds, T. White, and Nadeau and referred to the Committee on Transportation and the Environment

PROPOSED RESOLUTIONS

PR23-252 Compensation Collective Bargaining Agreement between the Government of the District of Columbia and Doctors' Council of the District of Columbia Representing Compensation Unit 19 Approval Resolution of 2019
Intro. 4-26-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

PR23-268 Violence Fatality Review Committee Mildred Sheppard Confirmation Resolution of 2019
Intro. 4-29-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-269 Violence Fatality Review Committee Clayton Rosenberg Confirmation Resolution of 2019
Intro. 4-29-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

- PR23-270 Violence Fatality Review Committee Juanita Price Confirmation Resolution of 2019
- Intro. 4-29-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- PR23-271 Violence Fatality Review Committee Kenyatta Hazlewood Confirmation Resolution of 2019
- Intro. 4-29-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- PR23-278 Compensation Agreement between the Department of Behavioral Health and the Doctors' Council of the District of Columbia Approval Resolution of 2019
- Intro. 4-30-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development
-
- PR23-279 Board of Dietetics and Nutrition DeAnna Nara Confirmation Resolution of 2019
- Intro. 4-30-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
-
- PR23-280 Board of Dietetics and Nutrition Njeri Jarvis Confirmation Resolution of 2019
- Intro. 4-30-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
-
- PR23-281 Office of Employee Appeals Dionna Lewis Confirmation Resolution of 2019
- Intro. 4-30-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development
-
- PR23-282 People's Counsel Sandra Mattavous-Frye Confirmation Resolution of 2019
- Intro. 4-30-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
-

- PR23-284 KIPP D.C. Public Charter Schools Revenue Bonds Project Approval
Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Finance and Revenue
-
- PR23-285 Zoning Commission Peter Shapiro Confirmation Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee of the Whole
-
- PR23-286 Board of Directors of the Washington Metropolitan Area Transit Authority
Principal Member Corbett Price Reappointment Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Finance and Revenue
-
- PR23-287 Advisory Committee on Street Harassment Karen Malovrh
Confirmation Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Judiciary and Public Safety
-
- PR23-288 Advisory Committee on Street Harassment Ana Flores Confirmation
Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Judiciary and Public Safety
-
- PR23-289 Advisory Committee on Street Harassment Darakshan Raja Confirmation
Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Judiciary and Public Safety
-
- PR23-290 Advisory Committee on Street Harassment Genise Chambers-Woods
Confirmation Resolution of 2019
- Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Judiciary and Public Safety
-

PR23-291 Advisory Committee on Street Harassment Dee Curry Confirmation Resolution of 2019

Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-292 Advisory Committee on Street Harassment Indira Henard Confirmation Resolution of 2019

Intro. 5-1-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-293 Advisory Committee on Street Harassment Amy Nelson Confirmation Resolution of 2019

Intro. 5-2-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-298 Maternal Mortality Review Committee Cherie Craft Confirmation Resolution of 2019

Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-299 Maternal Mortality Review Committee Monique Powell-Davis Confirmation Resolution of 2019

Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR23-300 Alcoholic Beverage Control Board Donovan W. Anderson Confirmation Resolution of 2019

Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR23-301 Alcoholic Beverage Control Board Bobby Cato, Jr. Confirmation Resolution of 2019

Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR23-302 Alcoholic Beverage Control Board Marcus C. Goodwin
Confirmation Resolution of 2019

Intro. 5-6-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 23-201, Citizen Review Panel Emily Smith Goering Reappointment Resolution of 2019

PR 23-202, Citizen Review Panel Emily M. Bloomfield Appointment Resolution of 2019

PR 23-203, Citizen Review Panel Shana N. Bartley Vice Chairperson Designation Resolution of 2019

on

Thursday, May 23, 2019

**10:00 a.m., Hearing Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of Whole on PR 23-201 through PR 23-203, for council appointments to the Citizen Review Panel ("Panel") for: Emily Smith Goering; Emily M. Bloomfield; and Shana N. Bartley. The roundtable will be held on Thursday, May 23, 2019 at 10:00 a.m. in Hearing Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 23-201 is to reappoint Ms. Goering to the Panel for another three-year term. The stated purpose of PR 23-202 is to appoint Ms. Bloomfield to the Panel for a three-year term. The stated purpose of PR 23-203 is to designate Ms. Bartley as Vice Chairperson of the Panel. The purpose of the Panel is to serve as an independent oversight body for the District's child welfare system and to evaluate the District government agencies involved in child protection as well as services provided by vendors. The purpose of this roundtable is to receive testimony from public witnesses as to the fitness of these nominees for the Panel.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Peter Johnson, Special Counsel at (202) 724-8083, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, **May 21, 2019**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 21, 2019 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>. Roundtable materials, including a draft witness list, can be accessed 24 hours in advance of the roundtable at <http://www.chairmanmendelson.com/circulation>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 3, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 23-241, Board of Industrial Trades Shawn Ellis Confirmation Resolution of 2019
PR 23-242, Board of Industrial Trades Courtney Braxton Confirmation Resolution of 2019

on

Thursday, May 23, 2019
11:00 a.m., Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of Whole on PR 23-241 and PR 23-242, appointing Shawn Ellis and Courtney Braxton to the Board of Industrial Trades. The roundtable will be held on **Thursday, May 23, 2019 at 11:00 a.m. in Room 120** of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 23-241 is to appoint Mr. Ellis to the Board for a term to end on June 26, 2021. The stated purpose of PR 23-242 is to appoint Mr. Braxton for a term to end on June 26, 2022. The purpose of the Board is to protect the public health, safety, and welfare of citizens of the District by ensuring that individuals engaged in trades such as plumbing and electrical work have the specialized skills and training required to perform such services for the public. The purpose of this roundtable is to receive testimony from public witnesses as to the fitness of these nominees for the Board.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Blaine Stum, Legislative Policy Advisor at (202) 724-8092, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, **May 21, 2019**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 21, 2019 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>. Roundtable materials, including a draft witness list, can be accessed 24 hours in advance of the roundtable at <http://www.chairmanmendelson.com/circulation>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 3, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B23-268, Florida Avenue Multimodal Project Completion Temporary Act of 2019, **B23-283**, Fair Elections Temporary Amendment Act of 2019, **B23-285**, Adams Morgan Business Improvement District Temporary Amendment Act of 2019, and **B23-287**, Firearms Safety Omnibus Clarification Temporary Amendment Act of 2019 were adopted on first reading on May 6, 2019. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on June 4, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a GBM will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 23-31: FY 2019 Grant Budget Modifications of March 1, 2019

RECEIVED: 14-day review begins May 2, 2019

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 23-12: Request to reprogram \$6,280,598 of Fiscal Year 2019 Special Purpose Revenue funds budget authority within the District of Columbia Public Charter School Board (DCPCSB) was filed in the Office of the Secretary on May 3, 2019. This reprogramming is needed to ensure that DCPCSB's budget aligns with the expenditures recorded in the District's System of Accounting and Reporting (SOAR).

RECEIVED: 14-day review begins May 20, 2019

Reprog. 23-13: Request to reprogram \$5,800,000 of Capital funds budget authority and allotment within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on May 3, 2019. This reprogramming is needed to enable the funding of the following:

Boone ES (Orr ES) Modernization - \$2,800,000 is needed to fund the removal of unforeseen contaminated soils encountered during construction, additional interior improvements to the recently completed Phase 1, and Phase 2 site enhancements.

Maury ES Modernization - \$1,000,000 is needed to replenish the owner's contingency to address any future unforeseen conditions and/or additional scope of work not initially proposed in the existing school building to ensure the project will be completed in its entirety this summer.

Houston ES Modernization - \$2,000,000 is needed to properly fund the project budget, more specifically the owner's contingency, as the guaranteed maximum price amount is being finalized after incorporating over \$3,100,000 in cost-reduction measures into the existing design as part of the agency's due diligence.

RECEIVED: 14-day review begins May 20, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019

License No.: ABRA-072734
Licensee: Red & Black, LLC
Trade Name: 12 Twelve DC/ Kyss Kyss
License Class: Retailer's Class "C" Tavern
Address: 1210 - 1212 H Street, N.E.
Contact: Michele Fletcher: (202) 731-8308

WARD 6

ANC 6A

SMD 6A01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Sidewalk Café Endorsement with 4 Seats.

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE OF THE PREMISES

Sunday through Thursday 11am – 2am, Friday and Saturday 11am – 3am

CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE OF THE PREMISES

Sunday through Tuesday 8pm – 1:30am, Wednesday and Thursday 8pm – 2am, Friday and Saturday 11am – 2am

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDEN

Sunday through Thursday 11am – 10pm, Friday and Saturday 11am – 11pm

PROPOSED HOURS OF OPERATION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Thursday 11am – 12am, Friday and Saturday 11am – 1am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Thursday 11am – 12am, Friday and Saturday 11am – 12:45am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019
Protest Hearing Date: August 14, 2019

License No.: ABRA-113499
Licensee: Cathedral Lane, LLC
Trade Name: Bourbon Adams Morgan
License Class: Retailer's Class "C" Restaurant
Address: 2321 18th Street, N.W.
Contact: Chrissie Chang: (703) 992-3994

WARD 1

ANC 1C

SMD 1C07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The Protest Hearing date is scheduled on August 14, 2019 at 4:30 p.m.

NATURE OF OPERATION

A new Retailer's Class C Restaurant with a seating capacity of 90 and a Total Occupancy Load of 170. Offering Live Entertainment.

HOURS OF OPERATION

Sunday through Thursday 8am - 2am, Friday and Saturday 8am - 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday 10am - 2am, Monday through Thursday 8am - 2am, Friday and Saturday 8am - 3am

HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday No Entertainment, Friday and Saturday 8pm - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-094825

License Class/Type: C Restaurant

Applicant: Coddi Wes 1, LLC

Trade Name: Rebellion

ANC: 2B08

Has applied for the renewal of an alcoholic beverage license at the premises:

1836 18TH ST NW, WASHINGTON, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10:30 am - 2 am	10:30 am - 2 am	-
Monday:	10:30 am - 2 am	10:30 am - 2 am	-
Tuesday:	10:30 am - 2 am	10:30 am - 2 am	-
Wednesday:	10:30 am - 2 am	10:30 am - 2 am	-
Thursday:	10:30 am - 2 am	10:30 am - 2 am	-
Friday:	10:30 am - 3 am	10:30 am - 3 am	-
Saturday:	10:30 am - 3 am	10:30 am - 3 am	-

	Hours Of Sidewalk Cafe Operation	Hours of Summer Garden Operation
Sunday:	11 am - 12 am	11 am - 12 am
Monday:	11 am - 12 am	11 am - 12 am
Tuesday:	11 am - 12 am	11 am - 12 am
Wednesday:	11 am - 12 am	11 am - 12 am
Thursday:	11 am - 12 am	11 am - 12 am
Friday:	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-083263

License Class/Type: C Restaurant

Applicant: Credo, LLC

Trade Name: Estadio

ANC: 2F02

Has applied for the renewal of an alcoholic beverage license at the premises:

1520 14TH ST NW, Washington, DC 20005

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 11 pm	11 am - 11 pm	-
Monday:	11 am - 12 am	11 am - 12 am	-
Tuesday:	11 am - 12 am	11 am - 12 am	-
Wednesday:	11 am - 12 am	11 am - 12 am	-
Thursday:	11 am - 12:30 am	11 am - 12:30 am	-
Friday:	11 am - 1 am	11 am - 1 am	-
Saturday:	11 am - 1 am	11 am - 1 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-079296

License Class/Type: C Restaurant

Applicant: Gmb food Services, LLC

Trade Name: Italian Pizza Kitchen

ANC: 3F04

Has applied for the renewal of an alcoholic beverage license at the premises:

4483 CONNECTICUT AVE NW, WASHINGTON, DC 20008

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 2 columns: Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-105885

License Class/Type: C Restaurant

Applicant: Hank's on the Wharf, LLC

Trade Name: Hank's Oyster Bar

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

701 Wharf ST SW, Washington, DC 20004

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Summer Garden

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Table with 3 columns: Day, Hours of Summer Garden Operation, Hours of Sales Summer Garden. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-017109

License Class/Type: C Multipurpose

Applicant: The Shakespeare Theatre at The Folger Library

Trade Name: The Shakespeare Theatre At The Folger Library

ANC: 2C03

Has applied for the renewal of an alcoholic beverage license at the premises:

450 7TH ST NW, STE 3, WASHINGTON, DC 20004

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	10 am - 2 am	-
Monday:	10 am - 2 am	10 am - 2 am	-
Tuesday:	10 am - 2 am	10 am - 2 am	-
Wednesday:	10 am - 2 am	10 am - 2 am	-
Thursday:	10 am - 2 am	10 am - 2 am	-
Friday:	10 am - 2 am	10 am - 2 am	-
Saturday:	10 am - 2 am	10 am - 2 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019**

Notice is hereby given that:

License Number: ABRA-060806

License Class/Type: C Restaurant

Applicant: MST Enterprises, Inc.

Trade Name: Churreria Madrid Restaurant

ANC: 1C07

Has applied for the renewal of an alcoholic beverage license at the premises:

2505 CHAMPLAIN ST NW, Washington, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am - 2 am	-
Monday:	closed - closed	closed - closed	-
Tuesday:	11 am - 2 am	11 am - 2 am	-
Wednesday:	11 am - 2 am	11 am - 2 am	-
Thursday:	11 am - 2 am	11 am - 2 am	-
Friday:	11 am - 3 am	11 am - 3 am	-
Saturday:	11 am - 3 am	11 am - 3 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-103465

License Class/Type: C Restaurant

Applicant: Washington Kellari N.W. LLC

Trade Name: Kellari

ANC: 2B06

Has applied for the renewal of an alcoholic beverage license at the premises:

1700 K ST NW, Washington, DC 20006

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am - 2 am	-
Monday:	11 am - 2 am	11 am - 2 am	-
Tuesday:	11 am - 2 am	11 am - 2 am	-
Wednesday:	11 am - 2 am	11 am - 2 am	-
Thursday:	11 am - 2 am	11 am - 2 am	-
Friday:	11 am - 3 am	11 am - 3 am	-
Saturday:	11 am - 3 am	11 am - 3 am	-

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Sunday:	11 am - 2 am	11 am - 2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-000779

License Class/Type: C Club

Applicant: The Historic Georgetown Club, Inc.

Trade Name: Georgetown Club at Suter Tavern

ANC: 2E03

Has applied for the renewal of an alcoholic beverage license at the premises:

1530 WISCONSIN AVE NW, Washington, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Monday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Tuesday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Wednesday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Thursday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Friday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-
Saturday:	11:30 am - 1:30 am	11:30 am - 1:30 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-107929

License Class/Type: C Restaurant

Applicant: Upshur Burger Concepts, LLC

Trade Name: Lucky Buns

ANC: 1C01

Has applied for the renewal of an alcoholic beverage license at the premises:

2000 18TH ST NW, WASHINGTON, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Cover Charge Entertainment Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 2 columns: Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-009480

License Class/Type: C Restaurant

Applicant: Zandamn, Inc.

Trade Name: New Heights

ANC: 3C02

Has applied for the renewal of an alcoholic beverage license at the premises:

2317 CALVERT ST NW, Washington, DC 20008

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 3 columns: Day, Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-088683

License Class/Type: C Restaurant

Applicant: Quan LLC

Trade Name: Doi Moi/2 Birds 1 Stone

ANC: 2B09

Has applied for the renewal of an alcoholic beverage license at the premises:

1800 14TH ST NW, WASHINGTON, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11am - 2am	11am - 2am	-
Monday:	11am - 2am	11am - 2am	-
Tuesday:	11am - 2am	11am - 2am	-
Wednesday:	11am - 2am	11am - 2am	-
Thursday:	11am - 2am	11am - 2am	-
Friday:	11am - 3am	11am - 3am	-
Saturday:	11am - 3am	11am - 3am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-104119

License Class/Type: C Restaurant

Applicant: Rito Loco, LLC

Trade Name: Rito Loco-El Techo

ANC: 6E02

Has applied for the renewal of an alcoholic beverage license at the premises:

606 FLORIDA AVE NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Monday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Tuesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Wednesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Thursday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Friday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am
Saturday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Sunday:	10 am - 12 am	10 am - 12 am
Monday:	10 am - 12 am	10 am - 12 am
Tuesday:	10 am - 12 am	10 am - 12 am
Wednesday:	10 am - 12 am	10 am - 12 am
Thursday:	10 am - 12 am	10 am - 12 am
Friday:	10 am - 1:30 am	10 am - 1:30 am
Saturday:	10 am - 1:30 am	10 am - 1:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-110083

License Class/Type: C Restaurant

Applicant: Hemen LLC

Trade Name: Addis Paris Cafe

ANC: 1D04

Has applied for the renewal of an alcoholic beverage license at the premises:

3103 MOUNT PLEASANT ST NW, WASHINGTON, DC 20010

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 10 pm	10 am - 10 pm	-
Monday:	9:30 am - 10 pm	9:30 am - 10 pm	-
Tuesday:	9:30 am - 10 pm	9:30 am - 10 pm	-
Wednesday:	9:30 am - 10 pm	9:30 am - 10 pm	-
Thursday:	9:30 am - 11 pm	9:30 am - 11 pm	-
Friday:	930 am - 12:30 am	930 am - 12:30 am	-
Saturday:	930 am - 12:30 am	930 am - 12:30 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-071793

License Class/Type: C Restaurant

Applicant: Partners At 723 8th St SE, LLC

Trade Name: The Ugly Mug Dining Saloon/Valor Brew Pub

ANC: 6B03

Has applied for the renewal of an alcoholic beverage license at the premises:

723 8TH ST SE, Washington, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Brewpub Cover Charge Entertainment Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows include Sunday through Saturday with corresponding time ranges.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 2 columns: Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows include Sunday through Saturday with corresponding time ranges.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-077986

License Class/Type: C Multipurpose

Applicant: The Shakespeare Theatre

Trade Name: Sidney Harman Hall

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

610 F ST NW, Washington, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	10 am - 2 am	-
Monday:	10 am - 2 am	10 am - 2 am	-
Tuesday:	10 am - 2 am	10 am - 2 am	-
Wednesday:	10 am - 2 am	10 am - 2 am	-
Thursday:	10 am - 2 am	10 am - 2 am	-
Friday:	10 am - 2 am	10 am - 2 am	-
Saturday:	10 am - 2 am	10 am - 2 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-015387

License Class/Type: C Restaurant

Applicant: Escobar Rincon Inc.

Trade Name: La Lomita Dos

ANC: 6B01

Has applied for the renewal of an alcoholic beverage license at the premises:

308 PENNSYLVANIA AVE SE, Washington, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	4 pm - 10 pm	4 pm - 10 pm	-
Monday:	11 am - 10:30 pm	11 am - 10:30 pm	-
Tuesday:	11 am - 10:30 pm	11 am - 10:30 pm	-
Wednesday:	11 am - 10:30 pm	11 am - 10:30 pm	-
Thursday:	11 am - 10:30 pm	11 am - 10:30 pm	-
Friday:	11 am - 11 pm	11 am - 11 pm	-
Saturday:	12 pm - 11 pm	12 pm - 11 pm	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019**

Notice is hereby given that:

License Number: ABRA-083696

License Class/Type: C Restaurant

Applicant: Hill Country DC, LLC

Trade Name: Hill Country

ANC: 2C03

Has applied for the renewal of an alcoholic beverage license at the premises:

410 7TH ST NW, WASHINGTON, DC 20004

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Cover Charge Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 1 am	11 am - 1am	12 pm - 11 pm
Monday:	11 am - 1 am	11 am - 1 am	12 pm - 12 am
Tuesday:	11 am - 1 am	11 am - 1 am	12 pm - 12 am
Wednesday:	11 am - 2 am	11 am - 2 am	12 pm - 12 am
Thursday:	11 am - 2 am	11 am - 2 am	12 pm - 12 am
Friday:	11 am - 2am	11 am - 2 am	12 pm - 1 am
Saturday:	11 am - 2 am	11 am - 2 am	12 pm - 1 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-088452

License Class/Type: C Restaurant

Applicant: 1606 K, LLC

Trade Name: Fuel Pizza & Wings

ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:

1606 K ST NW, WASHINGTON, DC 20006

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 3 columns: Day, Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-025832

License Class/Type: C Restaurant

Applicant: Peacock Cafe Inc.

Trade Name: Peacock Cafe

ANC: 2E03

Has applied for the renewal of an alcoholic beverage license at the premises:

3251 PROSPECT ST NW, #F, Washington, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7:30 am - 1 am	10 am - 1 am	-
Monday:	7:30 am - 1 am	8 am - 1 am	-
Tuesday:	7:30 am - 1 am	8 am - 1 am	-
Wednesday:	7:30 am - 1 am	8 am - 1 am	-
Thursday:	7:30 am - 1 am	8 am - 1 am	-
Friday:	7:30 am - 1 am	8 am - 1 am	-
Saturday:	7:30 am - 1 am	8 am - 1 am	-

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Sunday:	9 am - 12 am	9 am - 12 am
Monday:	9 am - 12 am	9 am - 12 am
Tuesday:	9 am - 12 am	9 am - 12 am
Wednesday:	9 am - 12 am	9 am - 12 am
Thursday:	9 am - 12 am	9 am - 12 am
Friday:	9 am - 12 am	9 am - 12 am
Saturday:	9 am - 12 am	9 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-088727

License Class/Type: C Restaurant

Applicant: 600 F D.C. LLC

Trade Name: Fuel Pizza & Wings

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

600 F ST NW, WASHINGTON, DC 20004

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 3 columns: Day, Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-097661

License Class/Type: D Restaurant

Applicant: CB118 LLC

Trade Name: Char Bar Restaurant and Eli's Market

ANC: 2A06

Has applied for the renewal of an alcoholic beverage license at the premises:

2142 L ST NW, WASHINGTON, DC 20037

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 10 pm	11 am - 10 pm	-
Monday:	11 am - 10 pm	11 am - 10 pm	-
Tuesday:	11 am - 10 pm	11 am - 10 pm	-
Wednesday:	11 am - 10 pm	11 am - 10 pm	-
Thursday:	11 am - 10 pm	11 am - 10 pm	-
Friday:	11 am - 4 PM	11 am - 4 PM	-
Saturday:	CLOSED - CLOSED	CLOSED - CLOSED	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-109339

License Class/Type: D Restaurant

Applicant: Oath Capital Riverfront LLC

Trade Name: Oath Pizza

ANC: 6D07

Has applied for the renewal of an alcoholic beverage license at the premises:

110 M ST SE, WASHINGTON, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Monday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Tuesday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Wednesday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Thursday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Friday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am	10 am - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-109506

License Class/Type: C Hotel

Applicant: MHF Noma Operating IV LLC and Eatstory Restaurant Concepts LLC

Trade Name: Hilton Garden Inn-DC/U.S. Capitol

ANC: 6C06

Has applied for the renewal of an alcoholic beverage license at the premises:

1225 First ST NE, WASHINGTON, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Summer Garden

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Table with 2 columns: Hours of Summer Garden Operation, Hours of Sales Summer Garden. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-060754

License Class/Type: C Restaurant

Applicant: Cafe Europa, LLC

Trade Name: LeDesales

ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:

1725 DE SALES ST NW, WASHINGTON, DC 20036

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows include Sunday through Saturday with specific time ranges.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 2 columns: Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows include Sunday through Saturday with specific time ranges.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-109908

License Class/Type: C Restaurant

Applicant: Dyllan's, LLC

Trade Name: Dyllan's Raw Bar Grill

ANC: 2E05

Has applied for the renewal of an alcoholic beverage license at the premises:

1054 31ST ST NW, WASHINGTON, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Summer Garden

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Table with 3 columns: Day, Hours of Summer Garden Operation, Hours of Sales Summer Garden. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-060635

License Class/Type: C Restaurant

Applicant: Ella's Wood-fired Pizza, LLC

Trade Name: Ella's Wood-Fired Pizza, LLC

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

901 F ST NW, #B, Washington, DC 20004

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Sidewalk Cafe

Table with 4 columns: Days, Hours of Operation, Hours of Sales/Service, Hours of Entertainment. Rows for Sunday through Saturday.

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Table with 3 columns: Day, Hours Of Sidewalk Cafe Operation, Hours Of Sales Sidewalk Cafe. Rows for Sunday through Saturday.

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-000616

License Class/Type: C Hotel

Applicant: Doyle Dupont, LLC

Trade Name: The Dupont Circle Hotel

ANC: 2B03

Has applied for the renewal of an alcoholic beverage license at the premises:

1500 NEW HAMPSHIRE AVE NW, Washington, DC 20036

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 am - 2 am	10 am - 2 am	7 pm - 2 am
Monday:	7 am - 2 am	8 am - 2 am	7 pm - 2 am
Tuesday:	7 am - 2 am	8 am - 2 am	7 pm - 2 am
Wednesday:	7 am - 2 am	8 am - 2 am	7 pm - 2 am
Thursday:	7 am - 2 am	8 am - 2 am	7 pm - 2 am
Friday:	7 am - 3 am	8 am - 3 am	7 pm - 3 am
Saturday:	7 am - 3 am	8 am - 3 am	7 pm - 3 am

Hours Of Sidewalk Cafe Operation

Hours Of Sales Sidewalk Cafe

Sunday:	11 am - 1 am	11 am - 1 am
Monday:	11 am - 1 am	11 am - 1 am
Tuesday:	11 am - 1 am	11 am - 1 am
Wednesday:	11 am - 1 am	11 am - 1 am
Thursday:	11 am - 1 am	11 am - 1 am
Friday:	11 am - 1 am	11 am - 1 am
Saturday:	11 am - 1 am	11 am - 1 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-092094

License Class/Type: C Restaurant

Applicant: Agua 301, Inc.

Trade Name: Agua 301

ANC: 6D07

Has applied for the renewal of an alcoholic beverage license at the premises:

301 WATER ST SE, WASHINGTON, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am - 2 am	6 pm - 1 am
Monday:	11 am - 2 am	11 am - 2 am	6 pm - 1 am
Tuesday:	11 am - 2 am	11 am - 2 am	6 pm - 1 am
Wednesday:	11 am - 2 am	11 am - 2 am	6 pm - 1 am
Thursday:	11 am - 2 am	11 am - 2 am	6 pm - 1 am
Friday:	11 am - 3 am	11 am - 3 am	6 pm - 2 am
Saturday:	11 am - 3 am	11 am - 3 am	6 pm - 2 am

Hours of Summer Garden Operation

Hours of Sales Summer Garden

Sunday:	11 am - 1 am	11 am - 1 am
Monday:	11 am - 1 am	11 am - 1 am
Tuesday:	11 am - 1 am	11 am - 1 am
Wednesday:	11 am - 1 am	11 am - 1 am
Thursday:	11 am - 1 am	11 am - 1 am
Friday:	11 am - 2 am	11 am - 2 am
Saturday:	11 am - 2 am	11 am - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/10/2019

Notice is hereby given that:

License Number: ABRA-089768

License Class/Type: C Restaurant

Applicant: Wine Investment Group LLC

Trade Name: Slate Wine Bar & Bistro

ANC: 3B02

Has applied for the renewal of an alcoholic beverage license at the premises:

2404 WISCONSIN AVE NW, WASHINGTON, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2019

A HEARING WILL BE HELD ON:

7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11am - 2am	11am - 2am	6:30pm - 2am
Monday:	11am - 2am	11am - 2am	6:30pm - 2am
Tuesday:	11am - 2am	11am - 2am	6:30am - 2am
Wednesday:	11am - 2am	11am - 2am	6:30 - 2am
Thursday:	11am - 2am	11am - 2am	6:30pm - 2am
Friday:	11am - thru Sat	11am - 3am	6:30pm - 3am
Saturday:	24 Hrs. -	11am - 3am	6:30pm - 3am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019

License No.: ABRA-108079
Licensee: KBA Retail, LLC
Trade Name: Kramers
License Class: Retailer's Class "C" Restaurant
Address: 1517 Connecticut Avenue, N.W.
Contact: Risa Hirao, Esq.: (202) 544-2200

WARD 2

ANC 2B

SMD 2B03

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests an increase in the Sidewalk Café Seating, from 28 seats to 89 seats.

CURRENT HOURS OF OPERATION INSIDE OF THE PREMISES

Sunday 3am – 1am, Monday through Thursday 7:30am – 1am, Friday 7:30am – 3am Saturday 3am – 3am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE OF THE PREMISES

Sunday 10am – 1am, Monday through Thursday 11am – 1am, Friday 11am – 3am, Saturday 10am – 3am

CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE OF THE PREMISES

Wednesday and Thursday 9pm – 12am, Friday and Saturday 10pm – 1am (No Entertainment Sunday through Tuesday)

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Thursday 8am – 1am, Friday and Saturday 8am – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019
Protest Hearing Date: August 14, 2019

License No.: ABRA-098753-8
Licensee: Spirit Cruises, LLC
Trade Name: Lady Josephine
License Class: Retailer's Class "DX" Common Carrier
Address: 211 N. Union Street, #250, Alexandria, VA 22314
Contact: Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 6

ANC 6D

SMD 6D01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **August 14, 2019 at 1:30 p.m.**

NATURE OF OPERATION

New Class "DX" Common Carrier providing water taxi services between The Wharf and the Georgetown Waterfront, with seasonal routes to Nationals Stadium and Audi Field. Total Occupancy Load of 126.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Saturday 8am – 2am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING**

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019

License No.: ABRA-090997
Licensee: RR4, LLC
Trade Name: RedRocks
License Class: Retailer's Class "C" Restaurant
Address: 1348 H Street, N.E.
Contact: Tavarus Flores: (202) 621-7300

WARD 6

ANC 6A

SMD 6A06

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Change of Hours of Live Entertainment for inside the premises and outside in Summer Garden.

CURRENT HOURS OF OPERATION INSIDE PREMISES

Sunday – Wednesday 11am – 12am, Thursday 11am – 2am, Friday and Saturday 11am – 3am

CURRENT HOURS OF OPERATION OUTSIDE IN SUMMER GARDEN

Sunday – Thursday 11am – 12am, Friday and Saturday 11am – 3am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday – Wednesday 11am – 11:45pm, Thursday 11am – 1:45pm, Friday and Saturday 11am – 2:45am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION OUTSIDE IN SUMMER GARDEN

Sunday through Thursday 11am – 1:45pm, Friday and Saturday 11am – 2:45am

CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES & OUTSIDE IN SUMMER GARDEN

Sunday 6pm – 11pm, Monday – Wednesday n/a, Thursday 6pm – 1:30am, Friday and Saturday 6pm – 2:30am

PROPOSED HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES & OUTSIDE IN SUMMER GARDEN

Sunday – Wednesday 10am – 11pm, Thursday 10am – 1:30am, Friday and Saturday 10am – 2:30am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: May 10, 2019
Protest Petition Deadline: June 24, 2019
Roll Call Hearing Date: July 8, 2019
Protest Hearing Date: August 14, 2019

License No.: ABRA-112898
Licensee: Union Kitchen, LLC
Trade Name: Union Kitchen Grocery
License Class: Retailer's Class "D" Restaurant
Address: 1924 8th Street, N.W.
Contact: Courtland Wilson II: (301) 256-4741

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on July 8, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The Protest Hearing date is scheduled on August 14, 2019 at 1:30 p.m.

NATURE OF OPERATION

A Retailer's Class "D" Restaurant that will serve breakfast, lunch, and dinner that includes sandwiches, pizza, empanadas, and salads. Includes a Sidewalk Café with 20 seats. Total Occupancy Load of 40 seats.

HOURS OF OPERATION FOR INSIDE PREMISES

Sunday through Saturday 7am - 10pm

HOURS OF ALCOHOLIC BEVERAGES SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday through Saturday 8am - 10pm

HOURS OF OPERATION/ ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Saturday 8am - 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON

**5/10/2019

****READVERTISEMENT**

Notice is hereby given that:

License Number: ABRA-086073

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group, Inc.

Trade Name: Whole Foods Market

ANC: 3E01

Has applied for the renewal of an alcoholic beverage license at the premises:

4530 40TH ST NW, WASHINGTON, DC 20016

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

**6/24/2019

A HEARING WILL BE HELD ON:

**7/8/2019

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 9:30 pm	10 am - 9:30 pm	-
Monday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Tuesday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Wednesday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Thursday:	8 am - 10:30 pm	9 am - 10 :30pm	-
Friday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Saturday:	8 am - 10:30 pm	9 am - 10:30 pm	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON

****4/12/2019**

****RESCIND**

Notice is hereby given that:

License Number: ABRA-086073

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group, Inc.

Trade Name: Whole Foods Market

ANC: 3E01

Has applied for the renewal of an alcoholic beverage license at the premises:

4530 40TH ST NW, WASHINGTON, DC 20016

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

****5/28/2019**

A HEARING WILL BE HELD ON:

****6/10/2019**

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 9:30 pm	10 am - 9:30 pm	-
Monday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Tuesday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Wednesday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Thursday:	8 am - 10:30 pm	9 am - 10 :30pm	-
Friday:	8 am - 10:30 pm	9 am - 10:30 pm	-
Saturday:	8 am - 10:30 pm	9 am - 10:30 pm	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

**MAYOR'S AGENT ON HISTORIC PRESERVATION
NOTICE OF PUBLIC HEARING**

Public notice is hereby given that the Mayor's Agent will hold a public hearing on an application affecting property subject to the Historic Landmark and Historic District Protection Act of 1978. Interested parties may appear and testify on behalf of, or in opposition to, the application. The hearing will be held at 1100 4th Street SW, Suite E650.

Hearing Date: **Tuesday, June 25, 2019 at 9:30 a.m.**
Case Number: H.P.A. 19-328
Square/Lot: Square 2088, Lot 0800
Applicant: D.C. Public Schools ("DCPS")
Type of Work: Demolition of 1931 wing of the John Eaton School

Affected Historic Property: 3301 Lowell Street NW
Affected ANC: 3C

The Applicant's claim is that the proposed demolition, rehabilitation, and modernization program are consistent with the purposes of the D.C. Historic Landmark and Historic District Protection Act and are necessary to construct a project of special merit.

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapters 4 and 30), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations."

Interested persons or parties are invited to participate in and offer testimony at this hearing. Any person wishing to testify in support of or opposition to the application may appear at the hearing and give evidence without filing in advance. However, any affected person who wishes to be recognized as a party to the case is required to file a request with the Mayor's Agent at least fifteen (15) days prior to the hearing. This request shall include the following information: 1) requesting party's name and address; 2) whether the party will appear as a proponent or opponent of the application; 3) if the party will appear through legal counsel, and if so, the name and address of legal counsel; and 4) a written statement setting forth the manner in which the party may be affected or aggrieved by action upon the application and the grounds upon which the party supports or opposes the application. Any requests for party status should be sent to the Mayor's Agent at historic.preservation@dc.gov or 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at historic.preservation@dc.gov or (202) 442-7600.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**NOTICE OF PUBLIC HEARING AND PRELIMINARY FINDING****ON****EXTENSION FOR GEORGETOWN BUSINESS IMPROVEMENT DISTRICT, SOUTHWEST
BUSINESS IMPROVEMENT DISTRICT AND MOUNT VERNON COMMUNITY
IMPROVEMENT DISTRICT**

Notice is hereby given that, pursuant to section 6 of the Business Improvement Districts Act of 1996 ("Act"), D.C. Official Code § 2-1215.18, the Department of Small and Local Business Development (DSLBD) will hold a public hearing on the extension of the Georgetown Business Improvement District, the Southwest Business Improvement District, and the Mount Vernon Community Improvement District.

The public hearing will be held at 2:00 pm on Wednesday, June 19, 2019 in Suite 850N, 441 4th Street NW, Washington, D.C.

DSLBD Director Kristi Whitfield has informed the Georgetown Business Improvement District, the Southwest Business Improvement District, and the Mount Vernon Community Improvement District that the filing criteria set forth in D.C. Official Code § 2-1215.18 have been met and their applications are otherwise in conformity with the Act.

The BID applications are available for review by the public online at <https://dslbd.dc.gov/service/business-improvement-districts-bids>.

DSLBD invites the public to testify at the public hearing. Witnesses should bring a copy of their written testimony to the hearing. Additional written statements may be submitted by e-mail to Jennifer.prats@dc.gov or mailed to: Jennifer Prats, DSLBD, 441 4th Street NW, Suite 850N, Washington, DC 20001.

The public hearing record will close ten business days following the conclusion of the hearing, or Wednesday, July 3, 2019 before 5:00 p.m. Persons submitting written statements for the record should observe this deadline.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JUNE 26, 2019
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD TWO

20042
ANC 2B **Application of Raymond Saba**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exception under Subtitle G § 1200 from the minimum open court requirements of Subtitle G § 202.1, and from the lot occupancy requirements of Subtitle G § 604.1, to construct a rear addition to the second through fourth stories, and a rooftop penthouse to an existing four-story mixed use commercial building in the MU-18 Zone at premises 1637-1641 R Street N.W. (Square 178, Lot 97).

WARD TWO

20045
ANC 2E **Application of Celeste Brown**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201, from the lot occupancy requirements of D § 1204.1, and from the nonconforming structure requirements of C § 202.2, to construct a one story rear addition to an existing semi-detached principal dwelling in the R-20 Zone at premises 3401 N Street N.W. (Square 1228, Lot 832).

WARD THREE

20047
ANC 3C **Application of District of Columbia Department of General Services**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1402.1 from the retaining wall height requirements under Subtitles C §§ 1401.2 through 1401.4, and under Subtitle C § 1610.2 from the floor area ratio requirements of Subtitle C § 1604.2 to replace an existing three-story public education building with a new three-story public education building, and to relocate retaining walls, on the campus of an existing public elementary school in the R-1-B Zone at premises 3301 Lowell Street N.W. (Square 2088, Lots 1 and 800).

BZA PUBLIC HEARING NOTICE

JUNE 26, 2019

PAGE NO. 2

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

ለመከተሉ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ

ካስፈለገዎት እባክዎን ከስብሰባው አጭነት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡ በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

Avez-vous besoin d’assistance pour pouvoir participer ? Si vous avez besoin d’aménagements spéciaux ou d’une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

BZA PUBLIC HEARING NOTICE

JUNE 26, 2019

PAGE NO. 3

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, June 20, 2019, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 19-09 (Kenilworth Avenue Northbridge, LLC – Voluntary Design Review @ Square 5113, Lot 806 and Parcel 185/38)

THIS CASE IS OF INTEREST TO ANC 7D

On April 24, 2019, the Office of Zoning received an application from Kenilworth Avenue Northbridge, LLC (the “Applicant”) requesting design review approval to develop the property located at Lot 806 and Parcel 185/38 in Square 5113 (“Property”). The Applicant proposes to develop the Property with a continuing care retirement community use (assisted living facility) with approximately 155 residential units and substantial open space (the “Project”).

The Property consists of approximately 122,866 square feet of land area. The Property is currently vacant. The Property is bounded by undeveloped land to the east (just beyond which is the Maryland-D.C. border), Kenilworth Avenue to the south, a large multifamily apartment complex to the west, and Kenilworth Aquatic Gardens to the north. The Property is located in the RA-1 zone.

The Project will have a floor area ratio (“FAR”) of approximately 0.97, a building height of 60 feet, and will provide approximately 49 vehicular parking spaces. The Applicant simultaneously seeks special exception relief pursuant to Subtitle U § 420.1(i) for approval of a continuing care retirement community use in the RA-1 zone, and special exception relief from parking location requirements pursuant to Subtitle C § 710.3.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

How to participate as a witness

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Avez-vous besoin d'assistance pour pouvoir participer? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

참여하시는데 도움이 필요하세요? 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

您需要有人帮助参加活动吗? 如果您需要特殊便利设施或语言协助服务(翻译或口译),请在见面之前提前五天与Zee Hill 联系·电话号码(202) 727-0312, 电子邮件Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለመተና ሰርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማተራረጥ) ካስፈለገዎት እባክዎን ከስብሰባው አግኝት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.04(a), 1-612.01, 1-614.01, and 1-616.51 (2016 Repl. & 2018 Supp.)), hereby gives notice of the adoption of the following amendments to Chapter 12 (Hours of Work, Legal Holidays, and Leave), Chapter 14 (Performance Management), and Chapter 16 (Corrective and Adverse Actions; Enforced Leave; and Grievances) of Title 6 (Personnel), Subtitle B (Government Personnel), of the District of Columbia Municipal Regulations (DCMR).

The rules amend Title 6-B, Chapter 12 of the D.C. Municipal Regulations to incorporate language to allow a personnel authority to increase the maximum hours allowable under a compressed work schedule to more readily accommodate the operational needs of an agency, such as the Office of Unified Communications. Chapter 14 is amended to (i) remove the deadline for establishing a performance improvement plan (PIP) (previously June 30th); (ii) clarify that a supervisor must make a determination as to whether an employee has met the requirements of the PIP within ten (10) business days (as opposed to calendar days) following the "end" of the PIP period (Section 1410); (iii) add language that a written determination may serve as notice of proposed reassignment, reduction in grade or removal, and be provided to the employee in accordance with Chapter 16, or that an agency may choose to issue a separate notice for these actions in accordance with the process contained in Chapter 16; (iv) add references to Chapter 36 (Legal Service), concerning performance-related rules for Legal Services employees, where applicable; and (v) add definitions for the terms "Days," "Intermittent appointment," and "Paper review" (Section 1499). Chapter 16 is amended to make clear that negotiated grievance procedures within a collective bargaining agreement supersede the grievance provisions of Chapter 16, consistent with D.C. Official Code § 1-616.52.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 16, 2018, at 65 DCR 012823. No public comments were received, and no substantive changes have been made to the text of the rules as proposed. However, section headings that were inadvertently omitted in the Notice of Proposed Rulemaking have been added to the Final Rulemaking.

These final rules were adopted on March 20, 2019 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 12, HOURS OF WORK, LEGAL HOLIDAYS, AND LEAVE, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Subsection 1210.5 of Section 1210, COMPRESSED WORK SCHEDULE, is amended to read as follows:

1210.5 Unless otherwise approved by the personnel authority, the established work

schedule of an employee under a compressed work schedule program may not exceed ten (10) hours for any workday.

Chapter 14, PERFORMANCE MANAGEMENT, is amended as follows:

Section 1400, APPLICABILITY, is amended to read as follows:

1400 APPLICABILITY

1400.1 The provisions of this chapter apply to the following:

- (a) Employees in the Career Service under the authority of Section 801 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01);
- (b) Employees in the Educational Service in the Office of the State Superintendent of Education under the authority of Section 801a of the CMPA (D.C. Official Code § 1-608.01a);
- (c) Uniformed members of the Metropolitan Police Department at the ranks of Lieutenant, Captain, Inspector, Commander, and Assistant Chief; and uniformed members of the Fire and Emergency Medical Services Department in the positions of Deputy Fire Chief, Battalion Fire Chief, Assistant Fire Chief (Operations), and Assistant Fire Chief (Services);
- (d) Employees in the Excepted Service appointed under the authority of Section 903 of the CMPA (D.C. Official Code § 1-609.03);
- (e) Employees in the Excepted Service appointed as Capital City Fellows, as specified in Section 1419; and
- (f) Employees in the Management Supervisory Service appointed under the authority of Sections 951 through 958 of the CMPA (D.C. Official Code §§ 1-609.51 through 1-609.58), except for the provisions of Section 1414.

1400.2 Performance provisions contained in Chapter 36 apply to employees in the Legal Service appointed under the authority of Sections 851 through 862 of the CMPA (D.C. Official Code §§ 1-608.51 through 1-608.62). Performance Plans for supervisors and non-supervisory attorneys, as described in Sections 3606 and 3607 of Chapter 36 of these regulations, shall be prepared in accordance with Sections 1406, 1407, 1408, and 1409 of this chapter.

Subsection 1401.1 of Section 1401, EXCLUSIONS, is amended to read as follows:

1401.1 The provisions of this chapter shall not apply to the following employees:

- (a) Uniformed members of the MPD at the ranks of Officer, Master Patrol Officer, Detective, Investigator, and Sergeant, who shall continue to be covered under the performance evaluation system in effect as of the effective date of these regulations;
- (b) Uniformed members of the FEMSD in positions other than those listed in Subsection 1400.1(c);
- (c) Intermittent appointments in the Career Service, also known as “When-Actually-Employed” (WAE) appointments, under the authority of Section 801 of the CMPA (D.C. Official Code § 1-608.01) and Chapter 8 of Title 6-B of the District of Columbia Municipal Regulations.

Section 1410, PERFORMANCE IMPROVEMENT PLAN, is amended to read as follows:

1410 PERFORMANCE IMPROVEMENT PLAN

- 1410.1 This section shall not apply to probationary employees in the Career Service.
- 1410.2 A Performance Improvement Plan (PIP) is designed to facilitate constructive discussion between an employee and his or her immediate supervisor to clarify areas of work performance that must be improved. Once the areas for improvement have been identified, the PIP provides the employee the opportunity to demonstrate improvement in those areas and his or her ability to meet the specified performance expectations.
- 1410.3 A PIP issued to an employee shall last for a period of thirty (30) to ninety (90) days and must:
- (a) Identify the specific performance areas that require improvement; and
 - (b) Provide concrete, measurable action steps the employee can take to improve in those areas.
- 1410.4 An employee’s immediate supervisor or, in the absence of the employee’s immediate supervisor, the reviewer, as the term is defined in Section 1499, shall complete a PIP when the employee’s performance has been observed by the immediate supervisor as requiring improvement.
- 1410.5 Within ten (10) business days after the end of the PIP period, the employee’s immediate supervisor or, in the absence of the employee’s immediate supervisor, the reviewer, shall issue a written decision to the employee as to whether the employee has met or failed to meet the requirements of the PIP.

- 1410.6 If the employee fails to meet the requirements of the PIP, the written decision shall state the reason(s) the employee was unsuccessful in meeting those requirements and:
- (a) Extend the PIP for an additional period, in accordance with Subsection 1410.8; or
 - (b) Reassign, reduce in grade, or remove the employee.
- 1410.7 The written decision may serve as a notice of proposed reassignment, reduction in grade, or removal and be provided to the employee when the decision complies with the provisions of Chapter 16. Alternatively, the agency may issue a written decision and subsequently issue a separate notice of proposed reassignment, reduction in grade or removal.
- 1410.8 If a PIP is extended pursuant to Subsection 1410.6(a), the additional period shall begin on the date provided in the written decision. However, no employee shall be subject to a PIP for more than ninety (90) days inclusive of any extension(s). For the purposes of this subsection, the ninety (90)-day time limit excludes:
- (a) The time between the end of a PIP period and the issuance of a written decision to extend that PIP; and
 - (b) The time period between the issuance of a written decision and the start of an extension of a PIP.
- 1410.9 Within ten (10) business days after the end of any additional period of time provided to further observe the employee's performance, the employee's immediate supervisor or, in the absence of that individual, the reviewer, shall issue a written decision to the employee as to whether the employee has met the requirements of the PIP.
- 1410.10 If the employee fails to meet the requirements of the PIP after the additional period of time provided, the written decision shall reassign, reduce in grade, or remove the employee.
- 1410.11 Whenever an immediate supervisor or, in the absence of the immediate supervisor, a reviewer, fails to issue a written decision within the specified time period as provided in Subsections 1410.5 or 1410.9, the employee shall be deemed to have met the requirements of the PIP.
- 1410.12 Whenever an employee fails to meet the requirements of a PIP and it results in a reassignment, reduction in grade, or termination action as specified in Subsections 1410.6(b) or 1410.10, the action taken against a Career Service employee or an Educational Service employee in the Office of the State Superintendent of Education shall comply with Chapter 16.

- 1410.13 Any reduction in grade or termination action as specified in Subsection 1410.6(b) taken against a Legal Service employee who is not “at-will” shall be taken pursuant to Chapter 36.
- 1410.14 The Chief of Police may elect not to use a Performance Improvement Plan for officials above the rank of Captain.

Section 1415, EMPLOYEE REQUEST FOR REVIEW, is amended to read as follows:

1415 EMPLOYEE REQUEST FOR REVIEW

- 1415.1 This section shall not apply to probationary employees in the Career Service.
- 1415.2 Employees’ requests for review of performance ratings shall be handled at the hiring agency level by the person(s) or entity designated by the agency head to handle such matters. Subordinate agencies must establish an internal Reconsideration and Resolution Committee (RRC) to formally review overall performance ratings of *Inadequate Performer* (Level 1) and *Marginal Performer* (Level 2) when an employee requests a review. The RRC shall also conduct a paper review, as defined in Section 1499 of this chapter, of overall ratings of *Valued Performer* (Level 3), and *Highly Effective Performer* (Level 4) when an employee requests a review. The paper review excludes the hearing of testimony.
- 1415.3 The D.C. Department of Human Resources (DCHR) will serve in an impartial advisory capacity in the administration and disposition of performance rating review cases in subordinate agencies.
- 1415.4 An employee may, within ten (10) business days after participating in a performance rating year-end discussion with his or her immediate supervisor and receipt of an official rating, request a review of the rating by submitting the request for review to the subordinate agency head (or designee).
- 1415.5 An employee’s request for review of an official annual performance rating shall be in writing, and shall be submitted in accordance with procedures issued by the appropriate personnel authority.
- 1415.6 Pursuant to D.C. Official Code § 1-606.03 (a), an employee may appeal a final agency decision regarding a performance rating that results in removal of the employee with the Office of Employee Appeals within thirty (30) calendar days.
- 1415.7 Upon receipt of a request for review, the subordinate agency head (or designee) shall take either of the following actions:
- (a) Dismiss the employee’s request for review on technical grounds (e.g., procedural or regulatory violation) and sustain the performance rating; or

- (b) Accept the employee's request for review, and refer the request to the agency's RRC for review and disposition.
- 1415.8 Independent personnel authorities may establish a review process for their employees.
- 1415.9 The provisions of Subsection 1415.6 of this section shall not apply to any performance rating that results in the removal of a Legal Service employee as described in section 1400.2 of this chapter. The right of appeal of such an employee shall be governed by Chapter 36 of these regulations.
- 1415.10 Rating appeal rights of Metropolitan Police Department employees shall be in accordance with procedures established by the agency.

Section 1499, DEFINITIONS, Subsection 1499.1, is amended as follows:

The following definition of the term "Days" is added after the definition of the term "Competency":

Days – calendar days for all periods of more than ten (10) days; otherwise, business days for periods of ten (10) days or less (unless explicitly stated as calendar days).

The following definition of the term "Intermittent appointment" is added after the definition of the term "Individual development plan (IDP)":

Intermittent appointment – temporary appointment under which the employee serves on an intermittent basis that is non-full-time and without a prescheduled regular tour of duty. This type of temporary appointment is also referred to as when-actually-employed (WAE) appointment.

The following definition of the term "Paper review" is added after the definition of the term "Multi-source feedback":

Paper review – a review of relevant performance-related documentation (from employee or manager) by the agency Reconsideration and Resolution Committee (RRC) for the purpose of making a decision to retain or increase an employee's performance rating. A paper review involves the review and consideration of submitted written documentation but excludes hearing testimony from witnesses.

Chapter 16, CORRECTIVE AND ADVERSE ACTIONS; ENFORCED LEAVE; AND GRIEVANCES, is amended as follows:

Section 1625, APPEAL RIGHTS, is amended to read as follows:**1625 APPEAL RIGHTS**

- 1625.1 An employee who disputes a final agency reprimand or a final agency corrective, adverse, or enforced leave action under this chapter may seek one (1) of the following remedies:
- (a) For enforced leave actions of less than ten (10) days and for corrective actions, the employee may elect to pursue a grievance within ten (10) days after the issuance date of the final agency action;
 - (b) For enforced leave actions of ten (10) or more days and adverse actions, the employee may elect to appeal the final agency action to the Office of Employee Appeals (OEA) no more than thirty (30) days after the effective date of the final agency decision; and
 - (c) For any other agency actions under this chapter, the employee may elect to pursue a grievance no more than forty-five (45) business days after the date of the alleged violation or final action, whichever is later.
- 1625.2 Notwithstanding Subsection 1625.1, a system of grievance resolution negotiated between the District and a labor organization shall take precedence over the procedures of this chapter for employees in a bargaining unit represented by the labor organization.
- 1625.3 Neither a grievance nor an appeal to OEA shall delay implementation of a final agency action under this chapter.

Section 1628, FILING A GRIEVANCE; TIME LIMITS, is amended to read as follows:**1628 FILING A GRIEVANCE; TIME LIMITS**

- 1628.1 All grievances shall be made using a grievance form provided by the Director of the District of Columbia Department of Human Resources (DCHR). DCHR shall maintain the grievance form on its internet website.
- 1628.2 Each grievance shall include the following:
- (a) The name, e-mail address, and phone number of the applicant or employee seeking the relief;
 - (b) For employees, the name, e-mail address, phone number, and agency of his or her immediate supervisor;
 - (c) The name of the agency at issue;

- (d) A concise written statement of facts, including dates, that establishes the alleged violation;
- (e) A written statement as to the applicant or employee's injury; and
- (f) The relief sought by the applicant or employee.

1628.3 For purposes of this chapter, grievance official means:

- (a) For applicants seeking employment in agencies under the authority of the Mayor, the Director of DCHR, or his or her designee;
- (b) For applicants seeking employment in a District government agency independent of the Mayor's personnel authority, the personnel authority for the independent agency, or his or her designee; and
- (c) For employees, the employee's supervisor who has the authority to resolve the grievance and for whom there is no conflict of interest (typically the immediate supervisor or the immediate supervisor's immediate superior).

1628.4 Grievances of corrective actions and of enforced leave actions of less than ten (10) days shall be filed with the appropriate grievance official within ten (10) days of the issue date of the final decision.

1628.5 All other grievances shall be filed with the appropriate grievance official no more than forty-five (45) business days from the date of the alleged violation or the final action, whichever is later.

1628.6 Grievances may be filed with the grievance official by one of the following means:

- (a) By mail to the official's principal business address;
- (b) By e-mail to the grievance official; or
- (c) By hand delivery to the grievance official's principal business address.

Subsection 1634.1 of Section 1634, GRIEVANCES UNDER COLLECTIVE BARGAINING AGREEMENTS, is amended to read as follows:

1634.1 Notwithstanding any other provision in this chapter, a negotiated grievance procedure established within a collective bargaining agreement shall supersede and replace the grievance procedures established in this chapter.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The Director of the D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, and pursuant to the authority under Mayor's Order 2008-92, dated June 26, 2008; Mayor's Order 2016-178, dated November 10, 2016; Section 1092 of the Workplace Wellness Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-541.01 (2016 Repl.)); and Sections 404(a) and 2007 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.04(a) and 1-620.07 (2016 Repl. & 2018 Supp.)), hereby gives notice of the adoption of the following amendments to Chapter 20 (Health) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR).

Chapter 20 has been amended in its entirety with changes that include a new general provisions section (2000); a new applicability section (2001) that indicates who is excluded from the chapter; a new ordering medical evaluations section (2005) that establishes when an applicant or employee may be subject to a medical evaluation; a new medical evaluation determinations section (2006) that outlines the actions that a personnel authority may take after a medical evaluation establishes that an employee is unable to perform all of his or her essential job functions; and a section that expands the regulations for the workplace wellness program (2013).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 9, 2018 at 65 DCR 012452. DCHR received no comments and made no changes to the text of the rules as proposed. The rules were adopted as final March 22, 2019 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 20, HEALTH, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended in its entirety to read as follows:

CHAPTER 20 HEALTH**2000 GENERAL PROVISIONS**

- 2000.1 The District of Columbia government is committed to providing a safe and secure workplace for its employees. To provide a safe and secure workplace, employees must be able to perform their duties in a safe, secure, productive, and effective manner.
- 2000.2 Each individual selected for an appointment in the District of Columbia government must be able to perform the essential functions of his or her job, with or without reasonable accommodation(s).
- 2000.3 Unless otherwise specified in this chapter, medical evaluations are to be made by physicians or practitioners, and determinations regarding essential functions of the

job are to be made by supervisors and managers based on the employee’s practical day-to-day responsibilities and the employee’s position description.

2000.4 Agencies shall maintain medical records in a manner that ensures the greatest degree of privacy for applicants, candidates, and employees. Medical records shall not be released to any party except as authorized by Chapter 31, federal and District of Columbia laws, regulations, or court order.

2001 APPLICABILITY

2001.1 Unless otherwise provided by law, this chapter shall apply to all District government applicants, candidates, employees, and volunteers, except for:

- (a) Uniformed members and applicants for uniformed positions in the Fire and Emergency Medical Services Department and the Metropolitan Police Department, who shall be covered by Chapter 8; and
- (b) Employees covered by the public-sector workers’ compensation provisions in D.C. Municipal Regulations, Title 7, Chapter 1.

2002–2003 [RESERVED]

2004 PHYSICAL AND MENTAL QUALIFICATIONS REQUIREMENTS

2004.1 Personnel authorities may establish physical and mental qualification requirements that are necessary to perform a specific job or class of jobs. Any physical or mental qualification requirement established by a personnel authority shall:

- (a) Be related to the essential job function(s) of the specific job or class of jobs, and is consistent with business necessity;
- (b) Be designed to ensure consideration of individuals having the minimum ability necessary to perform the essential job functions efficiently without posing a significant risk of substantial harm to his or her health or safety, or the health or safety of others; and
- (c) List disqualifying medical conditions only when specific physical or mental capabilities are required to safely and satisfactorily perform essential job functions and those functions cannot be safely or satisfactorily performed with the disqualifying medical condition.

2004.2 The personnel authority may require an individual who has applied for or occupies a position with established physical or mental requirements, including requirements for selection or retention, or established occupational or environmental standards, to undergo a medical evaluation:

- (a) After an offer of employment has been made to a job applicant and prior

to appointment (including reemployment based on full or partial recovery from a medical condition);

- (b) On a regularly recurring, periodic basis; or
- (c) Whenever there is an objectively reasonable concern about an employee’s continued capacity to meet the established physical or mental requirements of the position.

2004.3 The personnel authority may disqualify an applicant or candidate, or direct an agency to separate an employee or volunteer, if the applicant, candidate, employee, or volunteer is found to be unable to meet established physical or mental requirements of his or her position.

2004.4 The personnel authority shall adhere to the physical and medical qualification requirements contained in Subtitle B of Title 49 of the Code of Federal Regulations (CFR) for positions that require a commercial driver’s license.

2005 ORDERING MEDICAL EVALUATIONS

2005.1 Regardless of whether physical or mental health requirements have been established for a position, a personnel authority may require an employee to undergo a medical evaluation when there is a reasonable concern as to the employee’s continuing ability to physically or mentally carry out the essential functions of his or her position or when an employee’s work-related conduct or performance raises concerns relating to the health or safety of the employee or others.

2005.2 Orders to undergo a medical evaluation shall:

- (a) Be in writing;
- (b) Inform the employee of the reason(s) the agency is ordering the medical evaluation;
- (c) State what action(s) the employee must take to comply with the order, including whether to bring medical records to the evaluation; and
- (d) State the consequences for failing to comply with the order.

2005.3 Whenever the personnel authority directs an employee to undergo a medical evaluation, the personnel authority may direct that the employee:

- (a) Be examined by his or her personal physician or practitioner; or
- (b) Be examined by a physician or practitioner designated by the personnel authority.

2005.4 The personnel authority may order a psychiatric examination (including a psychological assessment) only when recommended by a physician or practitioner, or when other medical records reasonably support the need for such an examination.

2005.5 Medical evaluations conducted under this section shall be conducted to evaluate the capacity of the employee to perform the essential job functions of his or her position.

2005.6 The cost of the medical evaluation shall be the responsibility of the employing agency.

2005.7 Whenever a medical evaluation is conducted by a physician or practitioner designated by the personnel authority, the personnel authority shall consider any medical records supplied by the employee from his or her personal health care physician(s) or practitioner(s).

2005.8 The personnel authority shall provide the evaluating physician or practitioner with a copy of all approved medical evaluation protocols and any applicable medical qualifications and requirements for the position, or a detailed description of the essential job functions of the position, including physical demands and environmental factors.

2006 MEDICAL EVALUATION DETERMINATIONS

2006.1 Whenever a medical evaluation establishes that an employee is temporarily unable to perform all of his or her essential job functions, the personnel authority may:

- (a) Detail the employee to a more appropriate position;
- (b) Temporarily change the employee's tour of duty; or
- (c) In consultation with the agency Americans with Disabilities Act (ADA) Coordinators, temporarily provide the employee reasonable accommodation(s) to enable him or her to perform the essential job functions.

2006.2 Whenever a medical evaluation establishes that an employee is permanently incapable of performing one (1) or more of his or her essential job functions, the personnel authority shall:

- (a) Collaborate with the employee and the employing agency ADA

Coordinators to determine whether a reasonable accommodation can be made that will enable the employee to perform the essential job functions, involving the D.C. Office of Disability Rights for technical assistance and guidance when necessary;

- (b) If no such reasonable accommodation can be made, work with the employing agency to non-competitively reassign the employee to another position for which the employee qualifies and can perform the essential job functions with or without a reasonable accommodation;
- (c) If the employee cannot be reasonably accommodated or reassigned to a new position, the personnel authority shall advise the employee of applicable disability and retirement programs, and the program eligibility requirements; and
- (d) Separate the employee, either through a retirement program or Chapter 16.

2006.3 Whenever a medical evaluation establishes that the employee is fit to carry out the essential job functions, and the employee continues to be deficient in either conduct or performance, the personnel authority may take administrative action against the employee pursuant to Chapters 14 and 16.

2007–2009 [RESERVED]

2010 EMPLOYEE ASSISTANCE PROGRAM

2010.1 The District of Columbia government shall provide an Employee Assistance Program (EAP) designed to address many personal challenges faced by employees.

2010.2 The Director of the D.C. Department of Human Resources (DCHR Director) shall administer the EAP.

2010.3 The EAP shall provide counseling and assistance to employees who are experiencing problems that may adversely affect work performance or conduct on the job including, but not limited to, the following:

- (a) Family and marital problems;
- (b) Financial difficulties;
- (c) Emotional or mental illness;
- (d) Identity theft difficulties;
- (e) Legal difficulties;

- (f) Lactation support; and
 - (g) Substance abuse problems.
- 2010.4 The EAP shall consist of assessment, counseling, and referral services.
- 2010.5 Any employee (excluding temporary employees) shall be eligible to receive services through the EAP.
- 2010.6 Supervisors and managers should encourage an employee who is experiencing challenges that adversely affect his or her work performance or conduct on the job to voluntarily seek assistance through the EAP.
- 2010.7 If an employee refuses or fails to voluntarily seek assistance through EAP, managers and supervisors can require the employee to report to the EAP when the employee is experiencing challenges that adversely affect his or her work performance or conduct on the job.
- 2010.8 Participation in the EAP does not prevent management from taking appropriate corrective, adverse, or other administrative action in situations where such action is warranted.
- 2010.9 Involvement in the EAP shall be on the basis of self-referral or agency referral.
- 2010.10 Up to two (2) hours of administrative leave may be granted to an employee to attend his or her initial EAP appointment.
- 2010.11 The services of the EAP shall be provided through contracted health care service provider(s).
- 2010.12 The cost of the initial session with the EAP contractor, which includes assessment, counseling, and referral services shall be paid in full by the District government to the extent that the session is not covered by the employee's health insurance carrier.
- 2010.13 DCHR may enter into a written agreement with another personnel authority to provide EAP services administered by the DCHR Director to employees of the other personnel authority.
- 2010.14 Each subordinate agency and independent personnel authority that participates in the EAP administered by DCHR shall designate an EAP coordinator.
- 2010.15 DCHR may authorize the establishment of other employee assistance programs for the District of Columbia government, provided such programs are consistent with this section.

2010.16 Unless a separate program is established pursuant to the provisions of § 2010.15, agencies under the personnel authority of the Mayor must participate in the EAP administered by the DCHR Director.

2010.17 Records and information on referral to or participation in the EAP shall be maintained in confidence as provided in Chapter 31 and any other applicable federal and District of Columbia laws and regulations.

2011-2012 [RESERVED]

2013 WELLNESS PROGRAM

2013.1 The District of Columbia government shall maintain a wellness program to improve and promote the health and fitness of its employees.

2013.2 The wellness program applies to all District agencies, including independent District agencies and the Council of the District of Columbia, but excluding boards and commissions, Advisory Neighborhood Commissions, and the Courts.

2013.3 Each agency shall designate one employee as the agency’s wellness coordinator who will be responsible for implementing the wellness policy in the agency and facilitating wellness programs.

2013.4 DCHR, in collaboration with the Department of Health, will provide guidance and assistance to agencies in the development of a comprehensive wellness program. The components of the wellness program shall include:

- (a) A wellness leader at the management level who has direct access to the agency head. The individual will be responsible for creating a workplace wellness infrastructure for the agency.
- (b) A wellness committee that includes employees who represent a cross section of the agency’s population.
- (c) A chair or co-chair(s) elected by the wellness committee to conduct its meetings and lead activities.

2013.5 The wellness program shall include initiatives that:

- (a) Establish measurable goals for improving the health of the District of Columbia government employees;
- (b) Improve nutrition in the workplace, including:
 - (1) Opportunities for employees to store lunches and foods in District buildings;

- (2) Promoting the availability and consumption of water throughout the day;
- (c) Improve the physical fitness of employees and physical activity during the work day with the supervisor's approval, including:
 - (1) Providing opportunities for employees to exercise at their desks and offices; and
 - (2) Ensuring that staircases are accessible and their use is encouraged;
- (d) Promote healthy living and educating employees about physical activity, healthy eating, stress management, and disease prevention;
- (e) Provide for early detection and screening for key health indicators; and
- (f) Support changes in the work environment to encourage healthy behaviors and breastfeeding, and promote occupational safety and health.

2013.6 Upon request by DCHR, each agency must complete workplace wellness surveys and submit reports on the wellness activities provided to their employees.

2099 DEFINITIONS

2099.1 When used in this chapter, the following meanings apply:

Essential job functions — the fundamental duties of a position; the things a person holding a position must be able to do, with or without reasonable accommodation, in order to fulfill the requirements of the position.

Medical condition — any physiologic, mental, or psychological condition, disorder, disease, illness, or injury. A biological or psychological state that is within the range of normal human variation is not a medical condition.

Medical evaluation — a critical appraisal or assessment of an individual's mental or physical health; a judgement of an individual's mental or physical health; or measurement of an individual's progress with respect to a health care related treatment.

Medical record(s) — written health information, including but not limited to information that relates to an individual's genetics, history of health care services, or past, present, or future physical or mental health, and any written medical evaluations completed pursuant to this chapter.

Personnel authority — an individual or entity authorized by D.C. Official Code § 1-604.06 to implement personnel rules and regulations for employees of

an agency or group of agencies of the District of Columbia, or that individual or entity's agent who is delegated that authority.

Physician — a person authorized by law to practice medicine or osteopathy.

Practitioner — a person authorized by law to provide preventative, curative, or rehabilitative health care and who provides such care in a professional capacity. The term “practitioner” does not include physicians.

Reasonable accommodation — a change in the workplace or the way things are customarily done that permits an employee to perform the full duties and responsibilities of the given position (excludes removing essential functions of the position). A “reasonable accommodation” includes:

- (a) Changes to a job application process to permit an individual with a disability to be considered for a job;
- (b) Changes to enable a qualified individual with a disability to perform the essential functions of the job; and
- (c) Changes that enable employees with disabilities to enjoy equal benefits and privileges of employment.

Temporary appointment — an appointment with a specific time limitation of one (1) year or less.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl.), hereby gives notice of its intent to amend Chapter 7 (Admissions and Academic Standards) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed rule is to revise the student health insurance fees the University charges students.

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 7, ADMISSIONS AND ACADEMIC STANDARDS, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Paragraph (q) of Subsection 728.9 of Section 728, TUITION AND FEES: DEGREE-GRANTING PROGRAMS, is amended as follows:

(q)	Student Health Insurance	\$978.00 (Fall Enrollment)
		\$575.00 (Spring Enrollment)
		\$236.00 (Summer 1 Enrollment)
		\$124.00 (Summer 2 Enrollment)

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of General Counsel, Building 39- Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Comments may also be submitted by email to OfficeofGC@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Student Health Insurance Fees" in the subject line.

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2019-024
May 2, 2019

SUBJECT: Establishment – Opioid Fatality Review Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), it is hereby **ORDERED** that:

I. ESTABLISHMENT

There is hereby established in the Executive Branch of the Government of the District of Columbia, the Opioid Fatality Review Board (hereinafter referred to as the “**Board**”).

II. PURPOSE

The purpose of the Board is to assist the District's efforts to prevent opioid overdose deaths and inform prevention and intervention efforts by reviewing opioid deaths in the District and making recommendations to improve the activities and response of government agencies, private organizations, individuals, and the community.

III. FUNCTIONS

The major functions of the Board shall include:

- A. Examining deaths of District residents over the age of eighteen (18) years who died as a result of a confirmed opioid (illicit and prescription) overdose, not reviewed by another District fatality review body; this includes reviewing past events and circumstances by reviewing records and other pertinent documents of public and private agencies;
- B. Identifying the causes and circumstances contributing to an opioid overdose death including; socioeconomic risk factors, education, behavioral health, and public and private system contact including criminal justice and treatment; and

- C. Reviewing and evaluating services provided by public and private systems relevant to drug treatment and prevention specific to an opioid death or as part of a systemic evaluation of service providers.
- D. Advising the Mayor on findings and recommendations to reduce the number of preventable opioid overdose deaths and promote improvement of both public and private systems serving District residents with substance use disorders.

IV. DUTIES

In carrying out its purpose and functions, the duties of the Board shall include:

- A. Developing review criteria to include statistical, individual, cluster, and multidisciplinary case review processes;
- B. Issuing findings and recommendations for systemic changes to promote improved and integrated public and private systems, programs, policies and laws to address substance use disorders for District residents in an effort to prevent future overdose deaths;
- C. Recommending components for opioid overdose prevention and education programs;
- D. Recommending training to improve the identification and investigations of opioid overdose fatalities;
- E. Engaging in educational forums and producing educational material on opioid overdose prevention and intervention;
- F. Advising on approaches to promote improvement of both public and private systems serving District residents with substance use issues; and
- G. Issuing an Annual Report to the Mayor, the Council of the District of Columbia, and the public, on or about September 30 of each year that shall include: findings and recommendations to public and private entities that address gaps, barriers, or improvements to existing systems in an effort to prevent future opioid overdoses and opioid overdose deaths; steps taken by public and private entities to implement recommendations of the Board; and statistical analysis of data relevant to opioid overdose and substance use. The Annual Report shall not contain personally identifiable information, including personally identifiable information about the decedent, the decedent's family members or associates, or individuals employed by or affiliated with a public and private entity reviewed by the Board.

V. RECOMMENDATIONS

- A. Draft recommendations shall be developed by the Board based on issues raised during the reviews. Draft recommendations shall be distributed to members for review and comment. Recommendations shall be finalized based on the comments received, including discussion at meetings of the Board in accordance with section IX.A. Final recommendations shall be incorporated into the annual report and forwarded to the Mayor.
- B. Interim recommendations may be forwarded to the Mayor and affected public and private entities, with the approval of the Board.
- C. Representatives of agencies, institutions, and programs may be invited to Board meetings to present any plans for, or progress made toward, implementing a recommendation.

VI. RECORDS SHARING

- A. The Board may request records from District agencies, boards, and commissions Mayor to carry out its purpose. Any agency, board, or commission that receives such a request shall, to the extent consistent with applicable law, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), disclose the requested records. The Board shall destroy records that contain health information after completion of the decedent case review.
- B. Subject to applicable law, each agency shall cooperate with the Board and shall provide, in a timely manner, any information which the Board requests to carry out the provisions of this Order.

VII. COMPOSITION

- A. The Board shall comprise one (1) District government member appointed by the Mayor from each of the following agencies:
 - 1. Metropolitan Police Department;
 - 2. Mayor's Office of Veterans Affairs;
 - 3. Department of Health;
 - 4. Fire and Emergency Medical Services Department;
 - 5. Department of Human Services;
 - 6. Department of Forensic Sciences;

7. Department of Health Care Finance;
 8. Department of Behavioral Health;
 9. Department of Corrections; and
 10. Office of the Chief Medical Examiner.
- B. The Mayor shall appoint, or request designation of, one (1) member from each of the following federal, judicial, and private agencies:
1. Court Services and Offender Supervision Agency;
 2. Drug Enforcement Administration;
 3. District of Columbia Superior Court Drug Intervention Program;
 4. A hospital in the District; and
 5. Pretrial Services Agency.
- C. The Mayor shall appoint three (3) members from community-based service providers to District residents.
- D. The Mayor shall appoint three (3) District resident members, who are not employees of the District, who have been affected by a drug overdose death of an immediate family member or have been direct recipients of drug treatment services in the District.

VIII. TERMS

- A. Non-governmental Board members shall serve for a two (2) year term but may hold over until reappointed or replaced.
- B. A non-governmental member shall serve for no more than two (2) consecutive terms.
- C. Designees appointed by a federal, judicial, or private agency serve at the pleasure of the designating agency, or, if appointed by the Mayor, shall serve at the pleasure of the Mayor.
- E. Members appointed to represent District government agencies shall serve only while employed in their official positions and shall serve at the pleasure of the Mayor.
- F. The date that the first members are installed shall become the anniversary date for all subsequent appointments.

- G. The Chairperson may excuse a member for a meeting for an emergency reason. The Mayor may remove any member who, unexcused, fails to attend two (2) consecutive meetings.
- H. Any member who, unexcused, fails to attend three (3) consecutive meetings shall be deemed to be removed from the Board, and a vacancy created.

IX. ORGANIZATION

- A. The Mayor shall designate a Chairperson and a Vice-Chairperson from among the appointed members of the Board. The Chairperson and Vice-Chairperson shall serve in those capacities at the pleasure of the Mayor.
- B. The Board may elect such other officers as it deems appropriate.
- C. The Board may establish such policies and procedures as it deems appropriate to its proper administration.
- D. The Board shall convene at least four (4) meetings each year.
- E. The Board may establish subcommittees as needed. Subcommittees may include persons who are not members of the full Board, provided that each subcommittee is chaired by a Board member and non-members are subject to the confidentiality requirements in subsection XII and XIII.

X. COMPENSATION

Members of the Board shall serve without compensation.

XI. ADMINISTRATION

The Office of Chief Medical Examiner shall provide administrative support and legal counsel to the Board.

XII. RECORDS

All records and information, except statistical data, obtained by the Board shall be destroyed annually following the preparation and publication of the Annual Report.

XIII. CONFIDENTIALITY OF PROCEEDINGS

Proceedings of the Board shall be subject to section 742 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42), and the Open Meetings Act, approved October 21,

1968 (Pub. L. No. 90-614; D.C. Official Code § 2-571 *et seq.*), but shall be closed when the Board is discussing cases of individual opioid overdose deaths or where the identity of any person, other than a person who has consented to be identified, can be ascertained.

XIV. CONFIDENTIALITY OF INFORMATION

- A. Board members may disclose Board information and records only as necessary to carry out the Board's duties and purposes. The Board may disclose that information and records to another fatality review body if the other body is governed by confidentiality provisions that afford the same or greater protections as those contained herein.
- B. Any information presented at a Board meeting, including case review materials or documents, shall be treated as confidential. This section shall not be construed to prohibit a person from providing information to another review body specifically authorized to obtain the information in its investigation of an opioid overdose, information that the person obtained independently of the Board, or that is public information.
- C. Statistical compilations and reports of the Board that contain information that would reveal the identity of any person, other than a person who has consented to be identified, are subject to the prohibitions contained in subsection (A) and (B) of this section.
- D. Except as permitted by this section, information and records of the Board shall not be disclosed voluntarily.

XV. SUNSET

The Commission shall sunset on December 31, 2024.

XVI. EFFECTIVE DATE: This Order shall become effective immediately.



 MURIEL BOWSER
 MAYOR

ATTEST: 

 KIMBERLY A. BASSETT
 ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-025
May 2, 2019

SUBJECT: Reappointment – Developmental Disabilities State Planning Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2009-165, dated September 25, 2009, as amended by Mayor's Order 2018-039, dated April 10, 2018, it is hereby **ORDERED** that:

1. **KALI WASENKO-RAO** is reappointed as a consumer member who is a District resident who is a parent or guardian of persons with mentally impairing developmental disabilities who cannot advocate for themselves, for a term to end March 18, 2021.
2. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to March 18, 2018.



 MURIEL BOWSER
 MAYOR

ATTEST: 

 KIMBERLY BASSETT
 ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

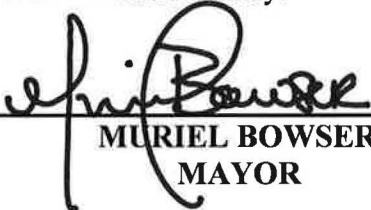
Mayor's Order 2019-026
May 2, 2019

SUBJECT: Appointment — District of Columbia Financial Literacy Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 5 of the Financial Literacy Council Establishment Act of 2008, effective August 15, 2008, D.C. Law 17-209; D.C. Official Code § 38-731.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **CHARLES RATTLEY** is appointed as a District resident with extensive knowledge of financial institutions, personal finance, and financial literacy programs member to the District of Columbia Financial Literacy Council, replacing Dameon Proctor, for a term to end April 2, 2020.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-027
May 2, 2019

SUBJECT: Appointment — Leadership Council for a Cleaner Anacostia River

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.), and pursuant to section 4(a) of Mayor's Order 2015-171, dated June 24, 2015, establishing the Leadership Council for a Cleaner Anacostia River ("**Leadership Council**"), and as amended by Mayor's Order 2015-275, dated December 31, 2015, it is hereby **ORDERED** that:

1. **DOUG SIGLIN** is appointed as a representative of a nongovernmental organization member of the Leadership Council, for a term to end September 30, 2021.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2019-028
May 2, 2019

SUBJECT: Reappointments — Concealed Pistol Licensing Review Board

ORIGINATING AGENCY: Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 908 of the Firearms Control Regulations Act of 1975, effective June 16, 2015, D.C. Law 20-279; D.C. Official Code § 7-2509.08 (2018 Repl.), it is hereby **ORDERED** that:

1. The following persons are reappointed as members of the Concealed Pistol Licensing Review Board ("**Board**"), for terms to end November 21, 2023:
 - a. **GARY L. ABRECHT** as a former sworn officer of a law enforcement agency other than the Metropolitan Police Department.
 - b. **ALICIA D. WASHINGTON** as the designee of the Attorney General for the District of Columbia.
2. The following person is reappointed as a member of the Board for a term to end November 21, 2022:
 - a. **DEBRA LONG-DOYLE** as the designee of the United States Attorney ("**USAO**") for the District of Columbia.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-029
May 6, 2019

SUBJECT: Re-designation of the Office of the Secretary of the District of Columbia as the Office of the Secretary of State of the District of Columbia

ORIGINATING AGENCY: Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22 (2016 Repl.), it is hereby **ORDERED** that:

1. The Office of the Secretary of the District of Columbia, established by Mayor's Order 97-177, dated October 9, 1997, as amended by Mayor's Order 2014-043, dated February 21, 2014, is re-designated as the "Office of the Secretary of State of the District of Columbia."
2. The position of Secretary of the District of Columbia, established by Mayor's Order 1997-177, dated October 9, 1997, as amended by Mayor's Order 2014-043, dated February 21, 2014, is re-designated as the position of Secretary of State of the District of Columbia.
3. Kimberly A. Bassett, appointed as Acting Secretary of the District of Columbia pursuant to Mayor's Order 2019-015, dated March 25, 2019, is re-designated as Acting Secretary of State of the District of Columbia.
4. All references in statutes, regulations, rules, and orders to the "Office of the Secretary of the District of Columbia" and the Secretary of the District of Columbia shall henceforth be deemed to refer to the "Office of the Secretary of State of the District of Columbia" and the Secretary of State of the District of Columbia, respectively.
5. This Order supersedes all prior Mayor's Orders to the extent of any inconsistency therein.

6. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM


Mayor's Order 2019-030
May 6, 2019

SUBJECT: Delegation — Authority to the Deputy Mayor for Planning and Economic Development to execute certain documents pursuant to the Local Jobs and Tax Incentive Amendment Act of 2018

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198; D.C. Official Code §§ 1-204.22(6) and (11) (2016 Repl.), and section 2 of the Local Jobs and Tax Incentive Amendment Act of 2018 (“Act”), effective April 11, 2019, D.C. Law 22-918; D.C. Official Code §§ 47-4665.06 and 47-4670, it is hereby **ORDERED** that:

1. The Deputy Mayor for Planning and Economic Development (“**Deputy Mayor**”) is delegated the authority to execute on behalf of the District of Columbia any and all documents related to and including the business incentive agreement with Chemonics International, Inc. and EAB Global, Inc., vested in the Mayor by Section 2 of the Act.
2. The authority delegated herein to the Deputy Mayor may be further delegated to subordinates under the Deputy Mayor.
3. This Order supersedes all previous Mayor’s Orders to the extent of any inconsistency therein.
4. **EFFECTIVE DATE:** This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST:


KIMBERLY A. BASSETT

ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**


Mayor's Order 2019-031
May 6, 2019

SUBJECT: Establishment — Youth Enrichment Travel Program within the Department of Human Services

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22 (2016 Repl.), it is hereby **ORDERED** that:

1. There is established in the Department of Human Services (“**DHS**”) a youth enrichment travel program (“**Program**”) for the purpose of providing enrichment opportunities for youth who receive services through DHS programs or activities.
2. As part of the Program, DHS staff may transport, or arrange for the transport through third-party contractors of: DHS youth clients, including minors; adult chaperones approved by DHS; DHS staff; and other District government staff and clients.
3. Transportation provided under the Program may be provided to locations and venues outside of DHS facilities and outside of the District and may include college tours.
4. The Program may also provide lodging, meals, and admission fees for DHS youth clients and adult chaperones approved by DHS.
5. Before implementing the Program, the Director of DHS shall establish a written policy that:
 - a. Specifies the types of DHS youth client travel that may be provided by the Program;
 - b. Requires DHS staff planning Program travel to determine that the specific planned travel:
 - i. Serves DHS program purposes; and
 - ii. Ensures the safety, well-being, and protection of the rights of participating DHS youth clients at all times.
6. Transportation provided by the Program shall be provided in a manner consistent with other District policies governing the transportation of individuals, including minors.

7. **EFFECTIVE DATE:** This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT
ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-032
May 7, 2019

SUBJECT: Appointment — Board of Ethics and Government Accountability

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to sections 202 and 203 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012, D.C. Law 19-124; D.C. Official Code §§ 1-1162.02, 1-1162.03 (2016 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1- 523.01(2016 Repl. and 2018 Supp.), it is hereby **ORDERED** that:

1. **CHARLES NOTTINGHAM** pursuant to the District of Columbia Board of Ethics and Government Accountability Charles Nottingham Confirmation Resolution of 2019, effective May 7, 2019, Resolution PR23-0120, is appointed as a member of the District of Columbia Board of Ethics and Government Accountability, replacing Carol Schwartz, for an unexpired term to end July 1, 2020.
2. **MELISSA TUCKER**, pursuant to the District of Columbia Board of Ethics and Government Accountability Melissa Tucker Confirmation Resolution of 2019, effective May 7, 2019, Resolution PR-23-0247, is appointed as a member of the District of Columbia Board of Ethics and Government Accountability, replacing Shomari Wade, for an unexpired term to end July 1, 2022.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-033
May 7, 2019

SUBJECT: Delegation of Authority - Employee Deferred Compensation Program

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) (2016 Repl.), it is hereby **ORDERED** that:

1. The Director of the Department of Human Resources ("**Director**") is delegated the authority vested in the Mayor by D.C. Official Code §§ 47-3601 and 47-3602, related to the establishment and implementation of the District's deferred compensation program for employees of the District government.
2. The Director may further delegate the authority delegated by this Order to subordinates under his or her jurisdiction.
3. This Order supersedes previous Mayor's Orders, including Mayor's Order 85-64, dated May 20, 1985, to the extent of any inconsistency therein.
4. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT
ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-034
May 8, 2019

SUBJECT: Delegation — Authority to the Director of the Office of Planning to Make Grants for Planning and Planning Implementation

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) (2016 Repl.), and pursuant to section 2212 of the Planning Grant-making Act of 2010 (“**Planning Grant-making Act**”), effective September 24, 2010, D.C. Law 18-223; D.C. Official Code § 1-328.02 (2016 Repl.), it is hereby **ORDERED** that:

1. The Director of the Office of Planning is delegated the authority of the Mayor under the Planning Grant-making Act to make one or more grants to organizations in furtherance of the planning functions of the District of Columbia, as delegated to the Office of Planning under Mayor's Order 83-25, dated January 3, 1983, including grants relating to engagement on census turnout and the Comprehensive Plan.
2. This Order shall not supersede any previous Mayor's Order delegating the Mayor's grantmaking authority under the Planning Grant-making Act.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST: 
KIMBERLY A. BASSETT

ACTING SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

DC MAYOR'S OFFICE ON AFRICAN AFFAIRS**COMMISSION ON AFRICAN AFFAIRS****Notice of Commissioners Meeting**

The Commission of African Affairs will be holding a meeting on Wednesday, May 1st, 2019 from 6pm to 8pm.

The meeting will be held at Franklin D. Reeves Center of Municipal Affairs, 2000 14th Street, NW, 6th floor, Washington, DC 20001.

The Location is closest to the U Street / African –American Civil war Memorial / Cardozo Metro station on the green and yellow line of the Metro.

All Commission meetings are open to the public.

Below is a draft agenda for this meeting. A final agenda will be posted on The Office of African Affairs website at oaa.dc.gov.

If you have any questions about the commission or its meetings, please contact oaa@dc.gov.
Phone: (202) 727-5634

DRAFT AGENDA

- I. Opening – Call to Order
- II. MOAA Updates and Announcements
- III. Chair Announcements
- IV. Public Comments
- V. Adjournment (8:00pm).

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 15, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Mike Silverstein,
James Short, Bobby Cato, Rema Wahabzadah

- Show Cause Hearing (Status) 9:30 AM**
Case # 18-CMP-00252; TMI International, Inc., t/a Sip, 1812 Hamlin Street NE
License #95164, Retailer CT, ANC 5C
Operating After Hours, Failed to Follow Security Plan
- Show Cause Hearing (Status) 9:30 AM**
Case # 18-CMP-00251; Red & Black, LLC t/a 12 Twelve DC/Kyss Kyss, 1210
H Street NE, License #72734, Retailer CT, ANC 6A
**Failed to Obtain a One-Day Substantial Change Permit, Violation of
Settlement Agreement**
- Show Cause Hearing (Status) 9:30 AM**
Case # 19-251-00030; Zhou Hospitality Group, LLC, t/a Umayya, 733 10th
Street NW, License #94099, Retailer CT, ANC 2C
Allowed Establishment to be Used for Unlawful or Disorderly Purposes
- Show Cause Hearing (Status) 9:30 AM**
Case # 18-CMP-00179; District Still, LLC, t/a District Still, 175 R Street NE
License #102521, Retailer A, ANC 5E
**Substantial Change in Operation Without Board Approval, Failed to
Obtain Board Approval to keep Alcohol for Sale upon Premises, Failed to
Frame and Post the License in a Conspicuous Place, Failed to Post Name,
Class and License Number on the Front Window or Front Door, Failed to
Have Warning Signs Posted, Failed to Maintain on Premises Three Years of
Adequate Books and Records Showing All Sales**

Board's Calendar

May 15, 2019

Show Cause Hearing (Status)

9:30 AM

Case # 19-AUD-00019; RR4, LLC, t/a RedRock, 1348 H Street NE, License #90997, Retailer CR, ANC 6A

Failed to File Quarterly Statement

Fact Finding Hearing*

9:30 AM

Pub Crawl;

Applicant: LaToya Danielle Kelly

Date of Event: June 8, 2019

Event: Generation Mobile, LLC, (The Color Crawl)

Neighborhood: Multiple Licensed Premises

Size of Event: 1000 to 5000

Fact Finding Hearing*

10:00 AM

Case # 19-251-00052; Twin T's, LLC, t/a DC Shenanigans, 2450 18th Street NW, License #88119, Retailer CT, ANC 1C

Chief of Police Hearing Request, Aggravated Assault

Fact Finding Hearing*

10:30 AM

Discount Drug Wisconsin, Inc., t/a Rodman's Discount Spirits, 5100 Wisconsin Ave NW, License #108215, Retailer A, ANC 3E

Request for a Hearing

Show Cause Hearing*

11:00 AM

Case # 19-CMP-00012; SST Management, LLC, t/a BIN-1301, 1301 U Street NW, License #91682, Retailer CT, ANC 1B

Substantial Change in Operation Without Board Approval, Failed to have a copy of the Settlement Agreement Available

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Protest Hearing*

1:30 PM

Case # 19-PRO-00015; Philotimo Hospitality, LLC, t/a Philotimo, 1100 15th Street NW, License #112439, Retailer CR, ANC 2B

Application for a New License

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, MAY 15, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-084925 – **Morgan’s Seafood Bar & Grill** – Retail – C – Restaurant – 3200 Georgia Avenue NW

[Licensee did not pay safekeeping fee within 30 days.]

ABRA-090297 – **The Dancing Crab** – Retail – C – Restaurant – 4615 41st Street NW

[Licensee did not pay safekeeping fee within 30 days and licensee did not renew.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA – CATERER LICENSES

WEDNESDAY, MAY 15, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-072482 – **Occasions Caterers** – Caterer – 655 Taylor Street NE
[Licensee Did Not Renew.]

ABRA-088103 – **The Doyle Hotel** – Caterer – 1500 New Hampshire Avenue NW
[Licensee Did Not Renew.]

ABRA-091720 – **Options Caterers** – Caterer – 15841 Redland Road
[Licensee Did Not Renew.]

ABRA-093580 – **Katherine's Catering** – Caterer – 5018 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-094868 – **Pinstripes** – Caterer – 3222 M Street NW
[Licensee Did Not Renew.]

ABRA-096958 – **Tonic** – Caterer – 2036 G Street NW
[Licensee Did Not Renew.]

ABRA-104926 – **Touche' Catering** – Caterer – 1123 H Street NE
[Licensee Did Not Renew.]

ABRA-107400 – **Nappie Goods** – Caterer – 1369 New York Avenue NE
[Licensee Did Not Renew.]

ABRA-107473 – **C & C Catering, Inc.** – Caterer – 575 #B Commerce Drive
[Licensee Did Not Renew.]

ABRA-108988 – **Meriwether Godsey at Beauvoir** – Caterer – 3500 Woodley Road NW
[Licensee Did Not Renew.]

ABRA-109148 – **Blind Whino SW Arts Club Catering** – Caterer – 700 Delaware Avenue SW
[Licensee Did Not Renew.]

ABRA-109659 – **American Son/Kintsugi/Wild Days/Allegory** – Caterer – 1201 K Street NW
[Licensee Did Not Renew.]

ABRA-110863 – **Rare Steakhouse & Tavern** – Caterer – 1595 I Street NW
[Licensee Did Not Renew.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA – CLASS C AND D LICENSES

WEDNESDAY, MAY 15, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-000645 – **The Sphinx Club Inc** – Retail – C – Club – 1315 K Street NW
[Licensee Did Not Renew.]

ABRA-001008 – **Foreign Service Club** – Retail – C – Club – 2101 E Street NW
[Licensee Did Not Renew.]

ABRA-001104 – **The Abbey Rathskeller** – Retail – C – Restaurant – 700 Florida Avenue NE
[Licensee Did Not Renew.]

ABRA-015015 – **701 Restaurant** – Retail – C – Restaurant – 701 Pennsylvania Avenue NW
[Licensee Did Not Renew.]

ABRA-023745 – **Lalibela Ethiopian Restaurant** – Retail – C – Restaurant – 1415 14th Street NW
[Licensee Did Not Renew.]

ABRA-024489 – **DCJCC** – Retail – C – Restaurant – 1529 16th Street NW
[Licensee Did Not Renew.]

ABRA-025796 – **Chinatown Garden Restaurant** – Retail – C – Restaurant – 618 H Street NW
[Licensee Did Not Renew.]

ABRA-060244 – **Il Tesoro** – Retail – C – Restaurant – 4400 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-060387 – **Eat First** – Retail – C – Restaurant – 609 H Street NW

[Licensee Did Not Renew.]

ABRA-060584 – **Ruth's Chris Steak House** – Retail – C – Restaurant – 724 9th Street NW
[Licensee Did Not Renew.]

ABRA-072358 – **J Paul's** – Retail – C – Restaurant – 3218 M Street NW
[Licensee Did Not Renew.]

ABRA-072783 – **Sticky Rice /Sing Sing Karaoke Palace** – Retail – C – Restaurant – 1222 H Street NE
[Licensee Did Not Renew.]

ABRA-075403 – **El Nuevo Migueleno** – Retail – C – Restaurant – 1721 Columbia Rd NW
[Licensee Did Not Renew.]

ABRA-078742 – **Sei Restaurant & Lounge** – Retail – C – Restaurant – 444 7th Street NW
[Licensee Did Not Renew.]

ABRA-079281 – **Source** – Retail – C – Multipurpose – 1835 14th Street NW
[Licensee Did Not Renew.]

ABRA-081027 – **World Bank, J Building** – Retail – C – Restaurant – 701 18th Street NW
[Licensee Did Not Renew.]

ABRA-083793 – **Bgr The Burger Joint** – Retail – C – Restaurant – 1528 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-085903 – **Cheers @ The Big Chair** – Retail – C – Restaurant – 2122 Martin Luther King Jr. Avenue SE
[Licensee Did Not Renew.]

ABRA-086961 – **Panda Gourmet** – Retail – C – Restaurant – 2700 New York Avenue NE
[Licensee Did Not Renew.]

ABRA-087236 – **New Big Wong** – Retail – C – Restaurant – 610 H Street NW
[Licensee Did Not Renew.]

ABRA-089350 – **Good Stuff Eatery** – Retail – C – Restaurant – 3291 M Street NW
[Licensee Did Not Renew.]

ABRA-089731 – **Tanad Thai Cuisine** – Retail – C – Restaurant – 4912 Wisconsin Avenue NW
[Licensee Did Not Renew.]

ABRA-092719 – **Zen Taco** – Retail – C – Restaurant – 1747 Pennsylvania Avenue NW
[Licensee Did Not Renew.]

ABRA-093399 – **Drift On 7th** – Retail – C – Restaurant – 1819 7th Street NW
[Licensee Did Not Renew.]

ABRA-093723 – **Dean & Deluca** – Retail – C – Restaurant – 3276 M Street NW
[Licensee Did Not Renew.]

ABRA-093794 – **Boss Shepherd's** – Retail – C – Restaurant – 1299 Pennsylvania Avenue NW
[Licensee Did Not Renew.]

ABRA-094362 – **Campono** – Retail – C – Restaurant – 600 New Hampshire Avenue NW
[Licensee Did Not Renew.]

ABRA-094602 – **Wapa Cafe** – Retail – C – Restaurant – 6230 Georgia Avenue NW
[Licensee Did Not Renew.]

ABRA-095574 – **Fat Pete's BBQ** – Retail – C – Restaurant – 3407 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-096024 – **Bread Furst** – Retail – C – Restaurant – 4434 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-097182 – **Flippin Pizza** – Retail – C – Restaurant – 1250 Maryland Avenue SW
[Licensee Did Not Renew.]

ABRA-098287 – **Askale Cafe** – Retail – C – Restaurant – 3629 12th Street NE
[Licensee Did Not Renew.]

ABRA-098875 – **The Grilled Oyster Company** – Retail – C – Restaurant – 3701 Newark Street
NW
[Licensee Did Not Renew.]

ABRA-098879 – **Pennsylvania 6 DC** – Retail – C – Restaurant – 1350 I Street NW
[Licensee Did Not Renew.]

ABRA-099260 – **Kyirisan** – Retail – C – Restaurant – 1924 8th Street NW
[Licensee Did Not Renew.]

ABRA-099452 – **DC Grill Express** – Retail – C – Restaurant – 1917 18th Street NW
[Licensee Did Not Renew.]

ABRA-099786 – **Bonfire** – Retail – C – Restaurant – 1132 19th Street NW
[Licensee Did Not Renew.]

ABRA-099889 – **Prospect DC** – Retail – C – Restaurant – 1214 U Street NW
[Licensee Did Not Renew.]

ABRA-099954 – **Esencias Panamenas** – Retail – C – Restaurant – 3322 Georgia Avenue NW
[Licensee Did Not Renew.]

ABRA-100161 – **Shanghai Tokyo Cafe** – Retail – C – Restaurant – 1376 Park Rd NW
[Licensee Did Not Renew.]

ABRA-100537 – **1230 DC** – Retail – C – Restaurant – 1230 9th Street NW
[Licensee Did Not Renew.]

ABRA-100675 – **Florida Avenue Grill** – Retail – C – Restaurant – 1100 Florida Avenue NW
[Licensee Did Not Renew.]

ABRA-101229 – **Taco-Ma Yucatan Chicken** – Retail – C – Restaurant – 353 Cedar Street NW
[Licensee Did Not Renew.]

ABRA-102580 – **Soapstone Market** – Retail – C – Restaurant – 4465 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-102759 – **Bareburger** – Retail – C – Restaurant – 1647 20th Street NW
[Licensee Did Not Renew.]

ABRA-102901 – **Booeymonger Restaurant** – Retail – C – Restaurant – 5252 Wisconsin
Avenue NW
[Licensee Did Not Renew.]

ABRA-103289 – **Ababa Ethiopian Restaurant** – Retail – C – Restaurant – 2106 18th Street
NW
[Licensee Did Not Renew.]

ABRA-104335 – **Dolan Uyghur Restaurant** – Retail – C – Restaurant – 3518 Connecticut
Avenue NW
[Licensee Did Not Renew.]

ABRA-104586 – **Rosario** – Retail – C – Restaurant – 2435 18th Street NW
[Licensee Did Not Renew.]

ABRA-105073 – **Kristina's Cafe And Pastries** – Retail – C – Restaurant – 4418 Macarthur
Blvd NW
[Licensee Did Not Renew.]

ABRA-105256 – **Le Pain Quotidien** – Retail – C – Restaurant – 1401 K Street NW
[Licensee Did Not Renew.]

ABRA-106051 – **Buredo** – Retail – C – Restaurant – 625 H Street NE
[Licensee Did Not Renew.]

ABRA-106088 – **Seasons & Sessions** – Retail – C – Restaurant – 2427 18th Street NW
[Licensee Did Not Renew.]

ABRA-106151 – **Arucola** – Retail – C – Restaurant – 5534 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-106942 – **Kenny's Smokehouse** – Retail – C – Restaurant – 732 Maryland Avenue NE
[Licensee Did Not Renew.]

ABRA-107059 – **Mr. Chen's** – Retail – C – Restaurant – 3419 Connecticut Avenue NW
[Licensee Did Not Renew.]

ABRA-107258 – **Gravitas** – Retail – C – Restaurant – 1401 Okie Street NE
[Licensee Did Not Renew.]

ABRA-107285 – **Shouk** – Retail – C – Restaurant – 395 Morse Street NE
[Licensee Did Not Renew.]

ABRA-107488 – **Buredo** – Retail – C – Restaurant – 4235 Wisconsin Avenue NW
[Licensee Did Not Renew.]

ABRA-107863 – **Mayahuel** – Retail – C – Restaurant – 2605 24th Street NW
[Licensee Did Not Renew.]

ABRA-108078 – **Chef Brian's Comfort Kitchen** – Retail – C – Restaurant – 1020 19th Street
NW
[Licensee Did Not Renew.]

ABRA-108548 – **Cucina Al Volo E Street** – Retail – C – Restaurant – 1299 Pennsylvania
Avenue NW
[Licensee Did Not Renew.]

ABRA-109491 – **Sidamo Coffee & Tea, Inc.** – Retail – C – Restaurant – 417 H Street NE
[Licensee Did Not Renew.]

ABRA-070916 – **Teaism** – Retail – C – Restaurant – 800 Connecticut Avenue NW, #B
[Safekeeping][Licensee Did Not Renew.]

ABRA-060060 – **Teaism** – Retail – C – Restaurant – 400 8th Street NW
[Safekeeping][Licensee Did Not Renew.]

ABRA-102077 – **Village Whiskey** – Retail – C – Restaurant – 920 RR N Street NW
[Licensee Did Not Renew.]

ABRA-107060 – **Union Square Cafe** – Retail – C – Restaurant – 200 Massachusetts Avenue
NW
[Licensee Did Not Renew.]

ABRA-107082 – **TBD** – Retail – D – Restaurant – 200 Massachusetts Avenue NW
[Licensee Did Not Renew.]

ABRA-109231 – **Ice N Slice Eatery** – Retail – D – Restaurant – 3937 Georgia Avenue NW
[Licensee Did Not Renew.]

ABRA-110402 – **Penny Whisky Bar, LLC** – Retail – C – Restaurant – 618 H Street NW, STE
200
[Licensee Did Not Renew.]

ABRA-110719 – **Petite Lou Lou** – Retail – C – Restaurant – 1309 5th Street NE
[Licensee Did Not Renew.]

ABRA-095294 – **So Mi** – Retail – C – Restaurant – 1425 Wisconsin Avenue NW
[Licensee Did Not Renew.]

ABRA-017006 – **Mr. Henry** – Retail – C – Restaurant – 1836 Columbia Road NW
[Safekeeping][Licensee Did Not Renew.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MAY 15, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 1C. SMD 1C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Columbia Station*, 2325 18th Street NW, Retailer CR, License No. 024834.

2. Review Application for Safekeeping of License – Original Request. ANC 2B. SMD 2B09. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *District Distilling Company*, 1414-1418 U Street NW, Retailer CT, License No. 098271.

3. Review request for approval to provide gifts of a jumbo tumbling tower and a cornhole game that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Breakthru Beverage*, 2800 V Street NE, Wholesaler A, License No. 060518.

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

**CHILD SUPPORT SERVICES DIVISION
DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMMISSION**

NOTICE OF A PUBLIC MEETING

The District of Columbia's Child Support Guideline Commission's meeting

Thursday, May 23, 2019, at 4:00 P.M. in Conference Room 1107
Office of the Attorney General for the District of Columbia
441 4th Street N.W.
Washington, D.C. 20001

The District of Columbia Child Support Guidelines Commission (Commission) announces meeting in which it will discuss proposed changes to the District's Child Support Guideline (Guideline). The Commission's mission is to review the Guideline annually and to provide the Mayor with recommendations for improving the efficiency and effectiveness of the Guideline. In order to achieve its objective, and to ensure the recommendations the Commission provides to the Mayor take into account the public's concerns, it invites the public to attend its meeting.

Persons wishing to review the Child Support Guideline prior to the public meeting, may access it online by visiting the District of Columbia's website at www.open-dc.gov.

Individuals who wish to attend should contact: LaShelle Williams-Franklin, Chairperson, at (202) 904-2323, or by e-mail at lashelle.williams-franklin@dcbc.dc.gov by Tuesday, May 23, 2019. E-mail submissions should include the full name, title, and affiliation, if applicable, of the person(s) wishing to attend. Persons wishing to comment should send nine (9) copies of their written commentary to the Office of the Attorney General for the District of Columbia at the address below.

Individuals who wish to submit their comments as part of the official record should send copies of written statements no later than 4:00 p.m., Thursday, May 23, 2019 to:

David E Martinez, Assistant Attorney General
Office of the Attorney General for the District of Columbia
Child Support Service Division
441 4th Street, N.W.
Suite 550 North
Washington, D.C. 20001
davide.martinez@dc.gov

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

Opinions Issued Between October 1, 2017 and September 30, 2018

COMPANY NAME	CAB No.	DATE ISSUED
Verifone, Inc.	D-1475	10-03-2017
Fort Myer Construction Corp.	P-1052	10-13-2017
Blue Lion Solutions	P-1048	10-24-2017
The Impact Group, LLC	P-1056	11-01-2017
Stockbridge Consulting, LLC	P-1053	11-14-2017
Universal Protection Service, LLC d/b/a Allied Universal Security Services	P-1046	11-15-2017
Wiles Mensch Corporation-DC/ Zimmer Gunsul Frasca Architects, LLP	P-1049/ P-1050	12-11-2017
Stockbridge Consulting, LLC	P-1054	12-13-2017
Tricore Systems, LLC	P-1058	12-13-2017
Stockbridge Consulting, LLC	P-1062	01-10-2018
Crown Solutions Group, LLC	P-1063	01-23-2018
AAA Termite & Pest Control	P-1065	02-06-2018
Portfolio Property Management- Global, LLC	D-1511	04-20-2018
Fort Myer Construction Corp.	P-1069	04-26-2018
Cleantech Partners of Washington, DC, LLC	P-1074	05-03-2018
Environmental Design & Construction, LLC	P-1078	06-05-2018
1 st Needs Medical	P-1073	06-12-2018
1 st Needs Medical	P-1075	07-05-2018
AAA Termite & Pest Control	P-1079	07-26-2018
Fort Myer Construction Corp.	P-1081	08-14-2018
First Transit, Inc.	P-1080	09-26-2018

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

VERIFONE, INC.

)

CAB No. D-1475

)

Under Contract No. DCPO-2012-C-0342

)

For the Appellant, Verifone, Inc.: Charles Davant IV, Esq., David M. Horniak, Esq., Williams & Connolly, LLP. For the District of Columbia: Sheila R. Schreiber, Esq., Office of the Attorney General.

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

OPINION

Filing ID #61195520

This appeal between the Appellant, Verifone, Incorporated ("Verifone"), and the District of Columbia ("District") regards a claim for payment of a cancellation fee pursuant to a disputed contract for the implementation of a Taxicab Smart Meter System in the District's fleet of taxicab vehicles. The claim was deemed denied by the Contracting Officer ("CO"), and Verifone filed a timely appeal to the Board. Pertinent to the contentions of the parties herein, is that the Board determined in an earlier bid protest that the District awarded the disputed contract to Verifone in violation of the Procurement Practices Reform Act (and implementing regulations), and therefore ordered, inter alia, that the disputed contract be terminated. See RideCharge Inc., CAB Nos. P-0920 et al., 62 D.C. Reg. 4370 (Nov. 9, 2012).

In the instant appeal, Verifone seeks between \$11,558,333 and \$18,452,333 under Section I.2 of the disputed contract, which Appellant contends is a cancellation fee mutually negotiated by the parties as part of their agreement. The District contends that the Board lacks jurisdiction over Appellant's claim because the Board's earlier bid protest decision finding procurement violations in the District's award to Verifone voided the subject contract, including Section I.2, as a matter of law under D.C. CODE§ 2-359.02(a). Alternatively, the District contends that it is entitled to judgment because the Appellant is seeking payment of a cancellation fee that was effectively rendered void, and thus unenforceable, by virtue of the Board's bid protest finding that the Verifone contract was improperly awarded.

Upon consideration of the record of this matter, the Board concludes that we have jurisdiction over the Appellant's claim for payment of a cancellation fee, and that we dismiss the claim on the ground that the contract is void under governing law. In particular, we construe D.C. CODE§ 2-359.02 as conferring jurisdiction to the Board to adjudicate a proceeding regarding whether a contract awarded in violation of procurement law is void. On the record before us, we hold that the contract initially awarded to Verifone for the Taxicab Smart Meter System is void because there is no showing that the violations committed in the initial award to Verifone were de minimis. Under these circumstances, we conclude that the Verifone contract is void, the cancellation fee is unenforceable, and this matter is dismissed with prejudice.

FINDINGS OF FACT

1. On August 1, 2012, Appellant, Verifone, and the District's Office of Contracting and Procurement ("OCP") on behalf of the District's Taxicab Commission ("DCTC") entered into Contract No. DCPO-2012-C-0342 (the "contract") in the amount of \$34,931,000.00. (Appellant's Hr'g Ex. 1, at 0001.) The contract, which is the subject of the present dispute, was a five-year fixed price contract with three one-year option periods that called for the development, installation, and operation of a Taxicab Smart Meter System ("TSMS") to implement in the District's fleet of approximately 6,500 taxicab vehicles. (*Id.* at 0002, 0008.)
2. By way of background, the District awarded the Verifone contract pursuant to Request for Proposals Solicitation No. DCPO-2012-R-0342 (the "Solicitation") that OCP issued on behalf of DCTC on January 25, 2012, seeking a contractor to develop, install, and operate a TSMS for the District's taxicab vehicles. (Joint Pretrial Statement ("JPS") Stipulation of Fact ("SoF") ¶ 1; Appellant's Hr'g Ex. 8, at 0177-0178.) The Solicitation required the TSMS to be installed and operational within 90 days after the District awarded the contract. (Appellant's Hr'g Ex. 8, at 0183.)
3. Interested offerors were required to submit proposed pricing for the services contemplated in the Solicitation's Price Schedule for the five-year base term and three one-year option periods. (*Id.* at 0178-0180.) The District would evaluate each offeror's proposal according to the following evaluation criteria: Relevant Experience (25%), Approach and Methodology (25%), Technical Requirements (20%), and Cost/Cost and Revenue Proposal (30%). (*Id.* at 0262-0263.) Further, a Technical Evaluation Panel ("TEP") would evaluate the offerors' technical proposals and, afterwards, would prepare and submit a written report to the CO summarizing their findings. (*Id.* at 0260.)
4. The District intended to award the contract based upon the CO's determination of the offeror's proposal that represented the best value to the District after an analysis of the difference between technical merit and price. (*Id.*)
5. By the Solicitation's March 26, 2012, deadline for receipt of proposals, the District received submissions from eight offerors, including Cab Connect, MELE Associates, TaxiPass, Telecommunications Development Corp., Wireless Edge International, Creative Mobile Technologies ("CMT"), RideCharge, Inc. ("RideCharge"), and Verifone. (*See* Protest Agency Report "AR" Ex. 8.)¹
6. Subsequently, in April 2012, seven individual members of the TEP scored and provided individual comments related to their evaluation of each offeror's proposal according to the technical evaluation factors. (*See, e.g.,* Protest Supplemental AR Exs. 18, 19, 28.) After the TEP completed their individual evaluation of the proposals, the panel collectively analyzed the strengths and weaknesses of each offeror's technical proposal and developed a consensus score for each offeror under the technical evaluation factors. (Protest AR Ex. 11.)

¹ All references to the "Protest" refer to the underlying bid protest docketed as CAB Nos. P-0920, P-0921 consolidated.

7. Based upon this evaluation of proposals, the TEP determined that Verifone, CMT and RideCharge submitted the top three technical proposals. (*Id.*) Thereafter, on May 25, 2012, the District requested Best and Final Offers (“BAFOs”) from Verifone, CMT and RideCharge. (Protest AR Ex. 1.)

8. After evaluating each offeror’s BAFO, on June 11, 2012, the District determined that Verifone was the only offeror in the competitive range based upon an assessment of the offerors’ technical and price proposals. (Protest AR Ex. 9.) The CO, ultimately, issued a second written determination on July 5, 2012, to support the District’s decision to award the contract to Verifone. (Protest AR Ex. 10.)

9. On the following day, July 6, 2012, the District submitted a Contract Summary to the Council of the District of Columbia seeking approval of the District’s proposed contract award to Verifone in the amount of \$34,931,000 to develop, install and operate the TSMS. (CMT Protest Ex. O.) The Council approved the contract award on July 10, 2012. (Appellant’s Opp’n to Mot. to Dismiss Ex. 1.)

Bid Protest Allegations

10. RideCharge and CMT filed protests with this Board, on July 18 and July 19, 2012, respectively, challenging the propriety of the District’s evaluation process and competitive range decision after the District notified them that it had excluded their proposals from the competitive range. (*See* RideCharge Protest, CAB No. P-0920; *see also* CMT Protest, CAB No. P-0921.)² In its protest, RideCharge alleged that the District’s award decision was improper because the District relied upon an unreasonable price evaluation scheme and also because the District improperly went beyond the scope of the Solicitation’s stated requirements in evaluating Verifone’s proposal. (*See* RideCharge Protest 8-11.)

11. Furthermore, the protester CMT primarily argued that the District lacked any rational basis to exclude its proposal from the competitive range and failed to conduct meaningful discussions with CMT prior to excluding its proposal, which resulted in a de facto sole source award to Verifone. (*See* CMT Protest 15-19.) CMT also asserted that the District unreasonably determined that Verifone was a responsible contractor and that the District failed to comply with statutory subcontracting requirements for the contract award. (*Id.* at 20-25.)

12. After the initiation of the protest proceedings, on August 1, 2012, OCP’s Chief Procurement Officer (“CPO”) executed a Determination & Findings (“D&F”) to Proceed with Contract Award While a Protest is Pending, which RideCharge and CMT opposed, to override the statutory contract stay arising from the filing of the protests. (*See* Protest D&F to Proceed with Contract Award.) Additionally, on the same day, the CO executed the disputed Contract No. DCPO-2012-C-0342 with Verifone to implement the TSMS for DCTC. (Appellant’s Hr’g Ex. 1.)³

² On August 3, 2012, the Board consolidated the protests because they involved common issues and parties. (*See* Protest Order, Aug. 3, 2012).

³ Thereafter, on August 3, 2012, the District authorized Verifone to proceed with performance. (Appellant’s Hr’g Ex. 5.)

13. On August 31, 2012, the Board ordered that the District reinstate the contract stay of performance.⁴ (*See* Protest Order, Aug. 31, 2012.) As a result, on this same day, the District directed the Appellant to stop all work on the TSMS project and ordered that it incur no further costs under the disputed contract. (JPS SoF ¶ 3; Appellant's Hr'g Ex. 54.)

14. Ultimately, on November 9, 2012, after its review of the underlying record in connection with RideCharge and CMT's protest allegations, the Board issued an Opinion finding that the District's technical evaluation of proposals was improper and insufficiently detailed to support upholding the District's award decision. *See RideCharge, Inc.*, CAB Nos. P-0920 *et al.*, 62 D.C. Reg. at 4370-71.

15. The Board found that the contemporaneous evaluation record failed to support the CO's competitive range determination and award decision in violation of D.C. Mun. Regs. tit. 27 § 1622.7, which required the CO to prepare documentation showing the relative differences, strengths, weaknesses and risks of each offeror's proposal. *Id.* at 4379-80.⁵ In particular, the Board determined that the only document drafted by the CO during the evaluation failed to explain how the CO determined the competitive range or describe how the CO considered the offerors' oral presentations and BAFOs as part of his award decision. *Id.* at 4379.⁶

16. The Board also determined that the CO's competitive range determination failed to establish any reasonable basis for the District to exclude CMT from the competitive range in violation of D.C. Mun. Regs. tit. 27 § 1620.1. *Id.* at 4380-82.⁷ Specifically, the Board found that the supporting documentation for the determination in the record contained substantial errors and inconsistencies that did not support CMT's exclusion from competition. *Id.* at 4381-82. In addition, the Board also found that the District relied upon erroneous information when evaluating price in CMT's BAFO. *Id.* at 4384.

17. Furthermore, the Board held that the CO unreasonably relied exclusively on the findings of the technical panel without performing an independent analysis of the strengths and weaknesses of the proposals within the competitive range prior to making an award decision in

⁴ The Board issued an Order Overruling the CPO's D&F to Proceed with Contract Award finding that the District failed to meet its required evidentiary burden of providing substantial evidence of urgent and compelling circumstances to justify proceeding with Verifone's contract prior to the Board's decision on the merits of RideCharge and CMT's protest allegations. *RideCharge, Inc.*, CAB Nos. P-0920 *et al.*, 2012 WL 11922429 (Aug. 31, 2012).

⁵ At the time the CO conducted his evaluation, D.C. Mun. Regs. tit. 27 § 1622.7 required that the CO prepare supporting documentation for the selection decision after the evaluation of BAFOs that showed the relative differences among proposals and their strengths and weaknesses, and the risks in terms of the evaluation factors. The CO's supporting documentation in this regard was required to include the basis for the selection decision. Former D.C. MUN. REGS. tit. 27 § 1622.7 (2002) (repealed Feb. 1, 2013).

⁶ Further, the Board noted that the CO refused to provide any supplemental statement to the Board to support his award decision despite the Board's request for additional information to clarify the evaluation record. *RideCharge, Inc.*, CAB Nos. P-0920 *et al.*, 62 D.C. Reg. at 4379. (*See also* Protest District Resp. to Sua Sponte Order, Oct. 10, 2012.)

⁷ In particular, D.C. Mun. Regs. tit. 27 § 1620.1 required that the competitive range be determined on the basis of cost or price and other factors in accordance with the evaluation criteria that were stated in the Solicitation. Further, the competitive range was required to include all proposals that had a reasonable chance of being selected for award. Former D.C. MUN. REGS. tit. 27 § 1620.1 (repealed Feb. 1, 2013).

violation of D.C. Mun. Regs. tit. 27 § 1618.1. *Id.* at 4382-84.⁸ In this regard, the Board determined that the CO copied verbatim the technical panel's findings for the offerors' proposals, including RideCharge's proposal weaknesses and Verifone's proposal strengths, without performing his own independent analysis of proposals. *Id.* at 4384.

18. In addition, the Board determined that the CO's flawed evaluation resulted in a lack of meaningful discussions with CMT as legally required by D.C. Mun. Regs. tit. 27 § 1621.1. *Id.* at 4386-87.⁹

19. Consequently, as a result of the foregoing improprieties discovered by the Board, the Board ordered that the District take corrective action including: (1) terminating Verifone's contract award; (2) re-issuing the Solicitation to reflect the remaining work to be performed under the Solicitation's requirements; (3) requesting revised proposals from offerors in the initial competitive range, including CMT, RideCharge and Verifone, based upon the Solicitation's requirements; (4) conducting proper meaningful discussions with offerors in the competitive range; (5) requesting BAFOs from offerors in the competitive range; and (6) re-evaluating proposals in a manner consistent with the Solicitation's requirements. *Id.* at 4387.¹⁰

District's Termination of Verifone's Contract and TSMS Procurement

20. Subsequently, on November 14, 2012, the CO terminated Verifone's TSMS contract, effective November 15, 2012, by written notice. (JPS SoF ¶ 6; Appellant's Hr'g Ex. 7.)

21. The District later issued a written determination on February 14, 2013, to cancel the TSMS Solicitation in its entirety due to technological changes, programmatic considerations and costs to the District, which eliminated the District's need to acquire the single integrated TSMS as contemplated by the Solicitation. (*See* Appellant's Hr'g Ex. 69.)

Appellant's Attempts to Collect Cancellation Fee from the District

22. Following the District's termination of its contract, Verifone began attempts to collect a cancellation fee from the District under Section I.2 of the contract (Contracts that Cross Fiscal Years) that provided as follows:

The maximum cancellation fee amount which the District shall pay to the Contractor upon negotiation shall be \$18,452,333 for Year 2, \$13,680,167 for Year 3, \$10,987,000 for Year 4, and \$8,293,833 for Year 5. Provided, however, that the minimum negotiated cancellation fee that the District shall pay for Year 2 is \$11,558,333, for Year 3 is \$9,175,000, for Year 4 is [\$]6,791,667, and for Year 5 is [\$]4,408,333. See the Government of the District of Columbia's Standard

⁸ D.C. Mun. Regs. tit. 27 § 1618.1 required the CO to evaluate each proposal in accordance with the evaluation criteria in the Solicitation. Former D.C. MUN. REGS. tit. 27 § 1618.1 (repealed Feb. 1, 2013).

⁹ According to the requirement at that time, pursuant to D.C. Mun. Regs. tit. 27 § 1621.1, the CO was required to ensure that if discussions were held with any offeror within the competitive range, discussions were held with all offerors in the competitive range. Former D.C. MUN. REGS. tit. 27 § 1621.1 (amended Feb. 1, 2013).

¹⁰ Because the Board ordered corrective action, the Board did not address the protesters' remaining protest allegations but noted, nonetheless, that the remaining allegations were without merit. *RideCharge, Inc.*, CAB Nos. P-0920 *et al.*, 62 D.C. Reg. at 4388.

Contract Provisions for use with Supplies and Services Contracts, dated March 2007, Section 26 – Multiyear Contract.

(Appellant’s Hr’g Ex. 1, at 0048.)

23. The Appellant also submitted a written Settlement Proposal to the CO by letter dated December 5, 2012, pursuant to the contract’s Termination for Convenience Clause. (Appellant’s Hr’g Ex. 63, at 0787.) In particular, the Appellant’s Settlement Proposal proposed total incurred project costs in the amount of \$5,350,782.09, which included costs for equipment, shipment, a new shop, an operations consultant, travel and relocation expenses, hardware and software engineering development, and project management. (*Id.* at 0793.) The Appellant’s Settlement Proposal also advised the District that it reserved its right to seek a cancellation fee for Year 2 of the contract in accordance with Section I.2’s cancellation fee provision. (*Id.* at 0787.)

24. The Appellant continued to attempt to communicate with the CO regarding its entitlement to payment of a contract cancellation fee between December 18 and December 20, 2012. (*See* Appellant’s Hr’g Ex. 64; *see also* Hr’g Tr. vol. 1, 138:13-140:11, June 8, 2015.)

The Appellant’s Claim and Appeal

25. Thereafter, on January 19, 2013, the Appellant submitted a claim to the CO seeking to collect payment of a cancellation fee for Year 2 of the contract. (Notice of Appeal 1; Appellant’s Hr’g Ex. 67, at 0803.) In its claim, the Appellant asserted that it was entitled to receive between a minimum amount of \$11,558,333 and up to a maximum amount of \$18,452,333 pursuant to Section I.2 of the contract because the District cancelled its contract during the base year term. (Appellant’s Hr’g Ex. 67, at 0803-0804.)

26. The CO failed to issue a written final decision on the Appellant’s claim within 120 days after the Appellant submitted its claim. Accordingly, the Appellant appealed this deemed denial of its claim to the Board on May 24, 2013.¹¹ (Notice of Appeal, May 24, 2013.) This Board docketed the appeal as CAB No. D-1475. (*Id.*)

27. In its June 20, 2013, Complaint, the Appellant again asserted entitlement to payment of a cancellation fee between \$11,558,333 and \$18,452,333 because the District cancelled its contract prior to the second year of the base period. (Compl. 6.) The Appellant argued that the District breached the contract and failed to exercise good faith by refusing to pay the Appellant a cancellation fee of a minimum amount of \$11,558,333 and up to a maximum amount of \$18,452,333 in accordance with the terms that the parties negotiated as part of the contract. (*Id.* at 6, 8-9.) The Appellant also asserted that it detrimentally relied upon the District’s agreement to pay the contract cancellation fee in its performance of the contract. (*Id.* at 7.)

¹¹ The Appellant initially submitted its appeal of the CO’s deemed denial on April 30, 2013, pursuant to the previous 90-day statutory period for a deemed denial. (Notice of Appeal 1-2.) *See* Former D.C. CODE § 2-308.05(c)-(d) (2001). The Appellant’s April 30, 2013, appeal, docketed as CAB No. D-1473, was dismissed by the Board as premature because the 90-day statutory period for our deemed denial jurisdiction was superseded by the current requirement that 120 days elapse before a claim is deemed denied. (*See* Appellant’s Hr’g Exs. 73-74.) *See also* D.C. CODE § 2-359.08 (b)-(c) (2011).

28. On August 8, 2013, the Appellant appealed the deemed denial of its Termination for Convenience Settlement Proposal that was submitted to the CO on December 5, 2012. (Notice of Appeal, Aug. 8, 2013.) The Board docketed this appeal as CAB No. D-1483. (*Id.*) Ultimately, on September 18, 2014, the Board dismissed CAB No. D-1483 with prejudice pursuant to the Appellant's Stipulation of Dismissal with Prejudice, which advised the Board that the parties agreed to the dismissal of the matter. (*See* Order Dismissing Appeal No. D-1483.)

29. The Board conducted a five-day hearing on the merits in this matter on June 8-12, 2015.

Contention of the Parties

30. The District seeks dismissal of this matter arguing that the Board lacks jurisdiction over the Appellant's claim for payment of a cancellation fee, or that alternatively it is entitled to judgment in its favor, because the Appellant's claim arises under a contract that is void by virtue of the Board's earlier bid protest decision. (District's Post Hr'g Br. 12-15, 23-25; District's Post Hr'g Sur-Reply Br. 10-11.)¹² Specifically, the District contends that we lack jurisdiction over this matter because the Board's bid protest Opinion which ordered that the contract be terminated due to illegalities in the underlying evaluation and award decision effectively terminated the contract as void under D.C. CODE § 2-359.02, Improper Contracts (the "statute"). (District's Post Hr'g Br. 13-14.) In this regard, the District contends that a "termination for convenience" was not ordered by the Board. (*Id.* at 14, 19-23.) Further, the District also maintains that the CO has no authority to adjust a claim arising under a voided contract, which also precludes the Board from asserting jurisdiction over the Appellant's claim under the same voided contract. (*Id.* at 14-15.)

31. In addition, the District argues that it is entitled to judgment in its favor because the Board's directive that the District terminate the contract due to violations of procurement law rendered it void ab initio according to the statute, which limits the Appellant's recoverable damages to actual costs incurred and not relief under the cancellation fee provision of the contract. (*Id.* at 12; District's Post Hr'g Sur-Reply Br. 10-11.) Moreover, the District also contends that the doctrines of res judicata and collateral estoppel prohibit the Appellant from re-litigating the validity of its contract because the Appellant voluntarily dismissed its initial appeal of the Board's decision, which found that the District improperly awarded the contract in the underlying protest. (District's Post Hr'g Br. 15-18, 26-27.)

32. In response, the Appellant maintains that the disputed contract is not void because the Board's bid protest decision did not declare the contract void and only ordered that the District terminate the contract. (Appellant's Post Hr'g Reply Br. 25-28.) Further, the Appellant argues that the statute permits the District to terminate an improperly awarded contract for convenience without requiring a finding that the contract is void ab initio. (*Id.* at 28-29.) The Appellant also asserts that its contract is not void ab initio because the procurement violations discovered by the Board were the fault of the District and not the Appellant and also because all parties showed good faith and the procurement violations that led to the improper award do not warrant voiding the contract. (*Id.* at 30-35.)

¹² The District initially filed a Motion to Dismiss on January 26, 2015, similarly arguing that the Board lacked jurisdiction over the Appellant's claim because the Board's bid protest findings determined that the Appellant's contract was void. (*See* Mot. to Dismiss.)

33. The Appellant also argues that the District waived its present defense that the contract is void ab initio because the District did not raise it in its initial pleadings, which would have also allowed the Appellant adequate time to seek discovery on this issue prior to trial. (*Id.* at 35-38.) Finally, the Appellant asserts that the District must be estopped from arguing that the contract is void because the Appellant detrimentally relied upon the District's previous representations that the contract was valid as demonstrated by the District's initial termination for convenience without contesting the contract's validity. (*Id.* at 38-39.)

DISCUSSION

I. Jurisdiction

As a general matter, the Board exercises dispute jurisdiction pursuant to D.C. Code § 2-360.03(a)(2), which posits exclusive de novo review with the Board to determine “[a]ny appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract.” Further, the Board's jurisdiction is invoked when a contractor files an appeal of a claim that the contracting officer has failed to issue a decision on within 120 days of receipt. D.C. CODE § 2-359.08(c). In the instant case, we conclude that the Board has jurisdiction over Verifone's instant claim, which was submitted to the CO on January 19, 2013, and timely filed with the Board on May 24, 2013, after being deemed denied by the District. (Findings of Fact “FF” 25-26.)

The above notwithstanding, the District challenges the Board's jurisdiction on the ground that our earlier decision in the underlying bid protest finding that the District awarded the subject contract to Verifone in violation of procurement laws and rules was effectively a determination by the Board that the contract was void *as a matter of law*. (FF 30.) In this regard, the District misconstrues the meaning of D.C. CODE § 2-359.02(a), which provides that “a contract entered into in violation of [the procurement statute and implementing regulations] shall be void.”

Rather than read the foregoing section in isolation, the District should review “§ 2-359.02, Improper Contracts” in its entirety. The “words of the statute are to be read in the light of the statute taken as a whole, and where possible, courts should avoid constructions at variance with the policy of the legislation as a whole.” *Rupsha 2007, LLC v. Kellum*, 32 A.3d 402, 406 (D.C. 2011) (quoting *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 171 (D.C. 2008)). Further, “each provision of the statute should be construed to give effect to all of the statute's provisions, not rendering any provision superfluous.” *Id.*

A correct reading of the Improper Contracts statute, therefore, requires review of § 2-359.02(b)(1) and (b)(2) as well:

A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall not be void if:

- (1) It is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties; and
- (2) The violation of the provisions of this chapter and the rules issued pursuant to this chapter was *de minimis*.

Therefore, properly construed, D.C. CODE“§ 2-359.02, Improper Contracts” confers authority on the Board to determine whether a contract awarded in violation of procurement law is void, and this determination is based on the Board’s application of the criteria listed in § 2-359.02(b)(1) and (b)(2) to the facts of each specific case. It is contradictory to assert that § 2-359.02(a) settles by operation of law whether a contract is void, given the placement immediately below of § 2-359.02(b)(1) and (b)(2), which provides that the ultimate determination is to be made in a subsequent Board proceeding.

Our construction of § 2-359.02(a) is further supported by two other provisions of the Procurement Practices Reform Act and rules. First, D.C. CODE§ 2-360.08(d), states that “[i]f the Board determines that a contract is void pursuant to § 2-359.02, the Board shall direct that the contract be cancelled and cause a determination to be made pursuant to § 2-359.02.” In addition, D.C. Mun. Regs. tit. 27, § 314, includes the same language.¹³ These two provisions by their express terms contemplate Board authority to determine whether a contract is void, rather than that conclusion being reached by operation of law. These provisions would be rendered meaningless if the Board construed § 2-359.02(a) in isolation as the District has done. Therefore, we conclude that § 2-359.02(a) does not render void *by operation of law*, any contract awarded by the District in violation of procurement laws and regulations. The Board has jurisdiction herein.

II. Appellant’s Timeliness and Equitable Estoppel Opposition Grounds

Initially, we address the Appellant’s contention that we are precluded from considering the District’s argument that the disputed contract is void ab initio because the District failed to raise it as an affirmative defense during the pleadings stage of this proceeding. (FF 33.) The District’s answer to the complaint is generally required to set forth its defenses to each claim asserted by an appellant in its complaint, including any affirmative defenses such as contract illegality. *See* D.C. MUN. REGS. tit. 27 § 205.3 (2002); *see also Francis v. Rehman*, 110 A.3d 615, 621 (D.C. 2015).

The purpose of including affirmative defenses in the answer to a complaint is to give the opposing party notice of the affirmative defense and an opportunity to respond. *A’Son’s Constr. Inc. v. Dep’t of Hous. and Urban Dev.*, CBCA 3491, 15-1 BCA ¶ 36089. However, tribunals are liberal in allowing the late assertion of affirmative defenses, absent prejudice to the opposing party. *See Han v. Se. Acad. of Scholastic Excellence Pub. Charter Sch.*, 32 A.3d 413, 417–18 (D.C. 2011) (affirming trial court’s consideration of affirmative defense raised in motion for summary judgment where the plaintiff had opportunity to respond to defense); *see also In re Nat’l Gypsum Co.*, ASBCA Nos. 53568 *et al.*, 03-1 BCA ¶ 32054 (Oct. 25, 2002) (affirmative defense considered although first raised in post-trial brief).

Here, we find no evidence that the Appellant has been prejudiced by the District’s failure to plead its void ab initio defense at an earlier time because the Appellant has had a full opportunity to respond to this defense in both its opposition to the District’s motion to dismiss

¹³ This rule provides that “[i]f the Board determines that a contract is void pursuant to D.C. Code § 2-302.05(d)(1), the Board shall direct the contract to be canceled and cause a determination to made pursuant to D.C. Code § 2-302.05(d)(2). Former D.C. Code § 2-302.05(d) (2001) provided that an improperly awarded contract would not be void if all parties had shown good faith and there had been substantial compliance with District procurement laws. Although the former provision has been repealed, Board Rule 314 has not.

prior to the hearing on the merits, as well as in its post-hearing briefs in this matter. (See Appellant's Opp'n to Mot. to Dismiss; see also Appellant's Post Hr'g Br. 52-54; Appellant's Post Hr'g Reply Br. 35-38.) Therefore, the District's void ab initio defense is not precluded at this time.

The Board similarly finds no merit to the Appellant's argument that the doctrine of equitable estoppel bars the District from arguing that the disputed contract is void. (FF 33.) "[T]he doctrine of equitable estoppel, if applicable against the government at all, may be invoked only where there is a showing of some type of affirmative misconduct by a government agent." *Advantage Healthplan, Inc.*, CAB No. D-1239 *et al.*, 2013 WL 6042884 (Oct. 4, 2013) (quoting *In re Second Genesis, Inc.*, CAB No. D-1100, 48 D.C. Reg. 1480, 1491 (Feb. 4, 2000)); see also *Robinson v. Smith*, 683 A.2d 481, 492-93 (D.C. 1996). In particular, "a showing of affirmative misconduct must overcome the presumption that the government has acted in good faith." *In re RGW Commc'n, Inc.*, ASBCA No. 54557, 05-1 BCA ¶ 32972 (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1240 (Fed. Cir. 2002)).

In the present matter, the only evidence that the Appellant offers in support of its equitable estoppel argument is the fact that the District initially terminated the contract for convenience without asserting that the contract was void before the present litigation ensued. (FF 33.) However, the Board finds that this alone is insufficient evidence of affirmative misconduct by the District such that we would preclude it from asserting that the contract is void under governing law in this matter.

III. Applicability of D.C. CODE§ 2-359.02 ("Improper Contracts Statute")

A. Statutory Interpretation

Having found that the District's void ab initio argument is properly before the Board, we now consider the District's argument that the Board's earlier decision in the underlying protest rendered the contract void ab initio under the Improper Contracts Statute. First, in analyzing the scope and applicability of this statute, the Board relies upon well-established principles of statutory interpretation that require the Board to look to the specific language of the statute in order to derive its meaning.

It is a primary and general rule of statutory construction that the intent of the lawmaker is to be found in the language that is used in the statute. *Tippett v. Daly*, 10 A.3d 1123, 1126 (D.C. 2010) (citations omitted). Moreover, "the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Id.* at 1127. Therefore, we begin the "process of statutory interpretation by looking at the statute on its face, and if the meaning is clear from the face of the statute, we must give effect to that plain meaning." *Rupsha 2007, LLC v. Kellum*, 32 A.3d at 406.

As we noted above, D.C. Code§ 2-359.02 (Improper Contracts) provides as follows:

(a) A contract entered into in violation of this chapter [3A] or the rules issued pursuant to this chapter shall be void.

(b) A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall not be void if:

- (1) It is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties; and
- (2) The violation of the provisions of this chapter and the rules issued pursuant to this chapter was *de minimis*.

(c) If a contract is determined to be void under subsection (a) of this subsection, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the act or rules issued pursuant to this chapter prior to the awarding of the contract, shall be compensated for costs actually incurred until the date that the contract was determined to be void.

Thus, the statute as a whole provides generally that any contract awarded by the District in violation of Chapter 3A (or rules issued pursuant to this chapter) shall be void, depending upon the Board's determination in accordance with the criteria in § 2-359.02(b)(1) and (b)(2).¹⁴ Therefore, it is clear that the plain meaning of the Improper Contracts Statute is to provide the Board with the authority to expressly void by determination any contract that is awarded in violation of the statutory provisions of Chapter 3A or the procurement regulations in Title 27. *See* D.C. MUN. REGS. tit. 27 § 1001 (expressly authorizing the Board to make determination of good faith in evaluating the validity of an improperly awarded contract). The criteria the Board reviews to determine whether a contract is void is whether all parties have shown good faith, and whether the violations of the procurement laws are *de minimis*. D.C. CODE § 2-359.02(b)(1)-(2).¹⁵

Chapter 3A referenced in the foregoing statute provides the framework that governs the District's proper acquisition of goods, services, and constructions items.¹⁶ *See* D.C. CODE § 2-351.01 *et seq.* It also applies to District procurements involving the use of competitive sealed proposals (RFPs), such as the disputed contract, and includes requirements that govern a contracting officer's process for evaluating proposals and awarding contracts. *See* D.C. CODE § 2-354.03. The rules issued in Title 27 of the District's Municipal Regulations further supplement the foregoing statutory chapter regarding the District's contracting and procurement process. To that end, these regulations also dictate the manner in which a contracting officer solicits and

¹⁴ The term "shall" denotes a mandatory (and not permissive) requirement in a statute "unless such a construction is inconsistent with the manifest intent of the legislature or repugnant to the context of the statute." *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1257 (D.C. 1990) (citations omitted); *see also Leonard v. District of Columbia*, 801 A.2d 82, 84-85 (D.C. 2002).

¹⁵ Furthermore, the Board's interpretation of this statutory provision is consistent with federal procurement law principles, which similarly find that a contract awarded in violation of statutory requirements renders the contract to be void. *See CACI, Inc. v. Stone*, 990 F.2d 1233, 1235-36 (Fed. Cir. 1993) (contract void where agency lacked procurement authority to contract); *see also United States v. Amdahl Corp.*, 786 F.2d 387, 392 (Fed. Cir. 1986) ("We start with the proposition that the failure of a contracting officer to comply with statutory requirements in making an award renders the contract a nullity.")

¹⁶ The Council of the District of Columbia enacted Chapter 3A to simplify and promote efficiency and economy in the District's procurement process, to support full and open competition and fair and equitable treatment for contractors that participate in the District's procurements, and to increase public confidence in the procedures followed by the District in public procurements. *See* D.C. CODE § 2-351.01.

evaluates proposals, determines the competitive range, and awards contracts where the District utilizes competitive sealed proposals. *See* D.C. MUN. REGS. tit. 27 § 1600 *et seq.*¹⁷

Indeed, the legislature recently amended the Improper Contracts Statute to expressly add the provision that only “*de minimis*” violations not involving bad faith can excuse an improperly awarded contract from being deemed void where there is a procurement law violation.¹⁸ This change in the language of the statute makes it clear to the Board that the legislature intended to narrow the permissible scope of procurement violations of Chapter 3A and Title 27 that would not result in an improperly awarded contract being deemed void under this statute where the infraction was minor. *See Frank Briscoe Co., Inc.*, GSBCA No. 3456, 73-2 BCA ¶ 10,162, *recons. denied*, 74-1 BCA ¶ 10529 (“[W]hen a legislature amends an existing law there is a presumption that it intended to change the original law by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights.”)

In the underlying protest in this case, the Board determined that the District improperly awarded the contract to the Appellant in violation of procurement law and, as a result, ordered the District to terminate the contract. (FF 19.) However, at the time of the protest proceedings, the Board did not issue an explicit determination that the Appellant’s contract was per se void because of the extensive procurement violations that occurred. Thus, we find no merit to the District’s present contention that our earlier protest decision was a finding that the present disputed contract was void. Whether the disputed contract is void is the subject of the present litigation.

B. The Significant Procurement Violations Rendered the Contract Void Under The Improper Contracts Statute.

It is undisputed that the Board determined in the earlier protest that the District violated procurement laws within the scope of the Improper Contracts Statute in making the original contract award to the Appellant. In particular, the Board determined that the contemporaneous source selection record failed to establish that the award to the Appellant was consistent with the Solicitation’s evaluation criteria and procurement law. (FF 15.) Moreover, the Board found that the CO’s evaluation record failed to provide any basis to exclude, the protester, CMT, from the competitive range as required by law. (FF 16.) Furthermore, the Board also determined that the CO violated procurement law by failing to conduct an independent analysis of the offerors’ proposals in the competitive range as legally required prior to awarding the contract to Verifone. (FF 17.)

¹⁷ Chapter 3A of the statute authorizes the District’s CPO to implement the District’s procurement rules. *See* D.C. CODE § 2-352.04(b). As it relates to the present matter, the CPO adopted the “Procurement by Competitive Sealed Proposals” rules located in Chapter 16 of Title 27, of the District’s Municipal Regulations. *See, e.g.*, Office of Contracting and Procurement Notice of Final Rulemaking, 60 D.C. Reg. at 1136 (Feb. 1, 2013).

¹⁸ Previously, the statute provided that an improperly awarded contract would not be void if all parties had shown good faith and there had been substantial compliance with District procurement laws. Former D.C. CODE § 2-302.05(d) (2001); Former D.C. CODE 1-1182.5(d) (1981). The current provision, effective April 8, 2011, deleted the “substantial compliance” language and replaced it with the new requirement that only “*de minimis*” violations of District procurement laws would avoid a finding that the contract was void.

In addition, the Board also concluded that because of the numerous improprieties in CMT's evaluation there was no basis to find that the CO reasonably conducted meaningful discussions with CMT as legally required. (FF 18.) Further, the Board explicitly held that these improprieties were in direct violation of the procurement regulations governing the use of competitive sealed proposals in Title 27. (FF 15-18.) Thus, it is clear that these violations in the underlying evaluation and award decision were not of a *de minimis*, or otherwise minor, nature. Accordingly, because of these substantial improprieties the Board sustained RideCharge and CMT's protests and ordered corrective action by the District, including that the District terminate the Appellant's contract. (FF 19.) In light of these factors, we disagree with the Appellant's contention that the aforementioned violations of law that occurred during the contract award process were not of a substantial or plainly illegal nature such that the contract should not be deemed void ab initio. (See Appellant's Post Hr'g Reply Br. 30, 34-35.)

Consequently, based upon our interpretation of the Improper Contracts Statute and the facts of this case, the Board hereby finds that the significant violations of procurement law that resulted in Appellant's contract award, as detailed in the Board's bid protest decision, rendered the Appellant's contract void pursuant to the requirements of the statute. These numerous violations of law were not *de minimis*. Additionally, based upon our finding that the Appellant's contract is void, the contract is rendered a nullity and its terms unenforceable. See *S.W. Imaging, Inc.*, CAB No. D-806, 39 D.C. Reg. 4393, 4396-97 (Jan. 23, 1992) (citing *John Reiner & Co. v. United States*, 325 F.2d 438, 440 (Ct. Cl. 1963), *cert. denied*, 377 U.S. 931 (1964)) (In testing the enforceability of an award the court should enforce the binding stamp of nullity when the illegality of the contract award is plain). Appellant's claim for payment of a cancellation fee pursuant to the terms of its contract is denied as the terms of its contract have no legal effect.

Having found the disputed contract to be void and not a basis for relief in this matter, the Board notes that the Improper Contracts Statute, nonetheless, provides a mechanism for a contractor to seek its actual costs incurred in performing the voided contract. D.C. CODE § 2-359.02(c).¹⁹ However, the Appellant does not presently have a claim for its actual costs, with supporting financial calculations, before the Board.²⁰ Therefore, the Board is without jurisdiction in this case to determine the issue of Appellant's entitlement to a certain amount of actual costs that it may have incurred.²¹

CONCLUSION

For the reasons set forth herein, the Board denies and dismisses with prejudice the Appellant's claim for payment of a cancellation fee, as the claim arises under a contract that the Board has determined to be void and unenforceable under governing law.

¹⁹ This provision providing relief for "actual costs," as previously interpreted by the Board under prior versions of the statute, essentially codifies "existing federal law where a contract is found to be illegal but...it would violate good conscience to impose upon a contractor all economic loss from having entered an illegal contract." See *S.W. Imaging, Inc.*, CAB No. D-806, 39 D.C. Reg. at 4398 (quoting *United States v. Amdahl Corp.*, 786 F.2d at 893).

²⁰ Although the Appellant initially appealed the deemed denial of its Termination for Convenience Settlement Proposal, which included its actual costs incurred, the Appellant subsequently voluntarily dismissed this appeal with prejudice. (FF 28.)

²¹ Given the Board's determination that the subject contract is void under the statute, the Board finds it unnecessary to rule on the District's motion for directed verdict on the merits of the case under D.C. Superior Court Rule of Civil Procedure 41(b). (District's Post Hr'g Br. 54-56.)

SO ORDERED.

DATED: October 3, 2017

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

CONCURRING:

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

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

FORT MYER CONSTRUCTION CORP.)
) CAB No. P-1052
Under Solicitation No. DCKA-2017-B-0035)

For the protester, Fort Myer Construction Corp.: Marc E. Mandel, Esq. For the intervenor, Technopref Industries Inc.: Alex P. Hontos, Esq., Jocelyn L. Knoll, Esq., Dorsey & Whitney LLP. For the District of Columbia: Virginia H. Carliner, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

ORDER DISMISSING PROTEST

Filing ID #61242883

This protest arises from a solicitation for the rehabilitation of three Anacostia Freeway bridges, issued by the District of Columbia Office of Contracting and Procurement ("OCP") on behalf of the Department of Transportation. Following the District's opening of bids, Fort Myer Construction Corp. ("Fort Myer" or the "protester") filed a protest alleging that (1) the solicitation's price schedule contains a mistake; and (2) the apparent low bid is unbalanced. In response, the District has moved to dismiss the protest, arguing that (1) the protest ground alleging a solicitation mistake is untimely; and (2) the protest ground challenging the apparent low bid is premature.

For the reasons set forth below, the Board grants the District's motion to dismiss. Specifically, we find that (1) the protest ground alleging a mistake in the solicitation's price schedule was not timely filed; and (2) the protest ground challenging the apparent low bid is premature since the District has not yet made an award or evaluated the bid.

BACKGROUND

On or around May 8, 2017, the District issued Invitation No. DCKA-2017-B-0035 (the "IFB") for a contractor to rehabilitate three Anacostia Freeway bridges. (See District's Mot. to Dismiss at 2; see also District's Mot. to Dismiss Ex. A, at 2.) The IFB contained a "Summary of Quantities" which stated, inter alia:

Table with 4 columns: ITEM, DESCRIPTION, UNIT, QUANTITY. Row 1: 605006, PCC SIDEWALK, 4 INCH, SF, 6437

(See Protest at 8 (emphasis added).)¹

As amended, the IFB's price schedule stated the following, inter alia:

¹ When referring to documents that lack consistent internal page numbering (e.g., Protest), the Board has used the page numbers assigned by Adobe Reader.

LINE NO	ITEM DESCRIPTION	APPROX. QUANTITY AND UNITS	UNIT PRICE		BID AMOUNT	
			DOLLARS	CTS	DOLLARS	CTS
0530	605006 PCC Sidewalk, 4 Inch	6437.000 SY	.....	.	.....	.

(District’s Mot. to Dismiss Ex. D, at 2, Sept. 21, 2017 (emphasis added); *see also* Protest at 6.)

Amendment No. 7 to the IFB extended the deadline for the submission of bids to July 21, 2017. (District’s Mot. to Dismiss Ex. D, at 1, Sept. 21, 2017.) Five bidders responded to the IFB, including Fort Myer and Technopref Industries Inc. (“Technopref”). (*See* District’s Mot. to Dismiss at 2.) Based on the bids as opened on July 21, 2017, Technopref is the apparent low bidder. (*Id.*; *see also* District’s Mot. to Dismiss Ex. E.) On July 31, 2017, Fort Myer filed the instant protest, alleging that (1) the IFB’s price schedule contains “a mistake” for Line Item No. 0530;² and (2) “Technopref’s bid is unbalanced.” (Protest at 2-3.) On August 21, 2017, the District moved to dismiss Fort Myer’s protest, arguing that (1) the protest ground alleging a mistake in the IFB is untimely; and (2) the protest ground challenging Technopref’s bid is premature. (*See* District’s Mot. to Dismiss at 1, 3-6.)

DISCUSSION

I. Fort Myer’s First Protest Ground Is Untimely

The Board exercises jurisdiction over “[a]ny protest of a solicitation or award of a contract . . . by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract.” D.C. CODE § 2-360.03(a)(1) (2017). The statutory requirements concerning timeliness when filing a protest provide that:

- (1) 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 prior to bid opening or the time set for receipt of initial proposals. . . .
- (2) In cases other than those covered in paragraph (1) of this subsection, protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.

Id. § 2-360.08(b).

In its motion to dismiss, the District contends that Fort Myer’s protest ground alleging that the IFB contained a mistake in its price schedule is untimely. (*See* District’s Mot. to Dismiss at 3.) We agree. In its “Summary of Quantities” section, the IFB specifies that the quantity for four-inch PCC sidewalk work is 6,437 square *feet*. (Protest at 8.) However, the IFB price schedule required bidders to price the same work based on a quantity of 6,437 square *yards*. (District’s Mot. to Dismiss Ex. D, at 2, Sept. 21, 2017.) The Board finds that the discrepancy in the IFB as to whether four-inch PCC sidewalk

² Fort Myer argued that if the “mistake” in Line Item No. 0530 was corrected, then Fort Myer’s bid would be the lowest. (Protest at 2, paras. 10-17.)

work was intended to be 6,437 square feet or 6,437 square yards was apparent prior to bid opening.³ Thus, any protest based on this alleged error in the IFB was required to be filed prior to bid opening. *See* D.C. CODE § 2-360.08(b)(1); *All. for Equity & Diversity in Educ.*, CAB No. P-0913, 62 D.C. Reg. 4351, 4352-53 (Aug. 17, 2012) (citing *Enter. Info. Sols., Inc.*, CAB No. P-0901, 62 D.C. Reg. 4277, 4279-80 (Feb. 9, 2012); *Nation Capital Builders, LLC*, CAB No. P-0761, 57 D.C. Reg. 741, 743 (Nov. 20, 2007); *Elite People Protective Servs., Inc.*, CAB No. P-0898, 2012 WL 554445 (Jan. 9, 2012)); *Fort Myer Constr. Corp.*, CAB No. P-0688, 52 D.C. Reg. 4197, 4198-99 (June 16, 2004) (citing *Md. Constr., Inc.*, CAB No. P-0650, 50 D.C. Reg. 7398, 7399 (Jan. 17, 2002)); *THL Assocs.*, CAB No. P-0643, 49 D.C. Reg. 3371, 3372-73 (Aug. 3, 2001) (citation omitted); *NetSystems Corp.*, CAB No. P-0841, 2010 WL 3947582 (Apr. 28, 2010), *recons. denied*, 62 D.C. Reg. 4126 (May 13, 2010). Since Fort Myer filed its protest after the bids were opened on July 21, 2017, this protest ground is untimely and so we dismiss it with prejudice.

II. Fort Myer's Second Protest Ground Is Premature

The District has also moved to dismiss Fort Myer's second protest ground. (*See* District's Mot. to Dismiss at 5-6.) According to the District, because the contracting officer has not yet evaluated Technopref's bid, the protester's allegation that Technopref's bid was unbalanced is premature. (*Id.*) In response, the protester argues that it "has standing as an 'aggrieved party' because [it] is 'next in line'" for award as the second-lowest bid. (Fort Myer's Opp'n to the District's Mot. to Dismiss at 3 (citation omitted).)

The Board finds that Fort Myer's second protest ground is premature. We have previously held that a protest alleging that an apparent low bidder is non-responsive or non-responsible is premature when the District has not yet conducted the relevant evaluation or determination. For instance, in *Petersen Mfg. Co.*, CAB No. P-0728, 54 D.C. Reg. 2017, 2017 (July 18, 2006), the District had neither made an award nor determined whether any of the bids were responsive. We held that "the proper action is to dismiss the protest as premature, without prejudice to [the protester] to file a new protest if it is aggrieved by subsequent actions of OCP." *Id.* at 2018 (citing *Consol. Waste Indus.*, CAB No. P-0430, 42 D.C. Reg. 4983, 4985 (June 12, 1995)). Similarly, in *Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. 1973, 1973, 1979 (Nov. 15, 2005), *petition for review dismissed*, 2005-CA-009544-B (D.C. Super. Ct. July 10, 2006) (Westlaw, D.C. Super. Ct. Dockets), *appeal dismissed*, 06-CV-0900 (D.C. Sept. 21, 2006), <http://efile.dcappeals.gov/public/caseView.do?csIID=44211>, the protester alleged that the apparent low bidder was non-responsible. In dismissing this protest ground as premature, we concluded:

The District states that this ground of protest is premature because the contracting officer has not yet made any responsibility determination. Although [the protester] alternatively requests that we stay decision on this issue pending a responsibility determination, we believe the better course is to dismiss the protest ground at this time. If [the protester] is not satisfied with any forthcoming responsibility determination, it may file a new protest.

Id. at 1979; *see also, e.g., Dixon Pest Control Inc.*, CAB No. P-0371, 41 D.C. Reg. 3428, 3428-29 (May 17, 1993) (dismissing protest as premature when the protest alleged the low bidder was non-responsible

³ The Protest itself, which includes the relevant IFB excerpts as exhibits, (*see* Protest at 5-8), confirms that the discrepancy was apparent on the face of the IFB. As Fort Myer points out, the IFB's "Summary of Quantities" section and the IFB's bid sheet each contain different units of measure for four-inch PCC sidewalk work. (*Id.* at 2, paras. 9-12.)

Fort Myer Construction Corp.
CAB No. P-1052

but the District had not yet made a determination of the low bidder's responsibility (citing *Impex Int'l Indus., Inc.*, CAB No. P-0276, 39 D.C. Reg. 4288, 4288 (Aug. 13, 1991)), *recons. denied*, 41 D.C. Reg. 3444 (June 15, 1993).⁴

In the instant protest, although the bids submitted in response to the IFB have been opened, the contracting officer has neither made a determination of award to Technopref nor made "a responsibility or price reasonableness determination in support of an award." (District's Mot. to Dismiss at 5.) Accordingly, Fort Myer's protest ground alleging that Technopref's bid is unbalanced is premature and we dismiss this protest ground without prejudice. Fort Myer may file a new protest if it is aggrieved by the District's subsequent actions in this procurement.⁵ See *Petersen Mfg. Co.*, CAB No. P-0728, 54 D.C. Reg. at 2017 (citation omitted); *Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. at 1979.

CONCLUSION

For the reasons set forth herein, the Board grants the District's motion to dismiss, finding that (1) the protest ground alleging a mistake in the IFB's price schedule was not timely filed; and (2) the protest ground challenging the apparent low bid is premature since the District has not yet made an award or evaluated the bid. Accordingly, we dismiss with prejudice Fort Myer's protest ground alleging a mistake in the solicitation, and we dismiss without prejudice Fort Myer's protest ground challenging the apparent low bid.

SO ORDERED.

Date: October 13, 2017

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

CONCURRING:

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

⁴ In a previous Board decision, we stated that a protest challenging a bid "cannot be considered premature or speculative simply because no award has been made." *Micro Comput. Co.*, CAB No. P-0226, 40 D.C. Reg. 4388, 4388 (May 12, 1992), *denying recons.* of 39 D.C. Reg. 4381 (Jan. 9, 1992), *protest denied*, 40 D.C. Reg. 4418 (May 28, 1992). However, that decision was based in part on the Board not "hav[ing] the authority to suspend or enjoin contract award or performance pending a protest," and thus "a contracting officer may proceed with the award process, i.e. determine responsibility and make award during the pendency of a protest" such that "[n]o 'chilling effect' will result." *Id.* at 4394-95 (emphasis removed) (citation omitted). Since the District's procurement statutes now include an automatic stay provision, see D.C. CODE § 2-360.08(c) (2017), the Board's underlying rationale in *Micro Computer* is not relevant to the instant protest.

⁵ The Board notes that although the protester is correct in stating that it has standing to protest since it is next in line for award, the relevant issue regarding the District's motion to dismiss this protest ground is whether or not the protest was filed prematurely.

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:

Blue Lion Solutions)	
	)	CAB No. P-1048
Digital Meter Project)	

ORDER DISMISSING APPEAL WITHOUT PREJUDICE*Filing ID #61279186*

On July 19, 2017, Blue Lion Solutions (“Blue Lion”), acting *pro se*, filed a purported “protest” in the above matter, seeking Board relief because the contracting official herein had not issued a decision on its June 12, 2017, claim for breach of a contract to maintain and enhance the District’s proprietary software for taxicab fare calculation. *See* Protest at 1, filed as “Digital_Meter_App”, July 19, 2017. In its instant filing, Blue Lion asks the Board to “take ownership” of the dispute because the contracting officer had not issued a decision within six weeks of Blue Lion’s submission thereof. (*Id.* at 1.) As noted, Appellant represents that it filed a claim with the contracting officer on June 12, 2017. (*See id.*) And as noted, the self-described protest regarding the contracting officer’s failure to issue a decision was filed on July 19, 2017.¹ (*Id.*) The District has filed a Motion to Dismiss. (*See generally* District’s Mot. to Dismiss.) Upon review of the entire record herein, we dismiss Blue Lion’s instant filing without prejudice.

Under District of Columbia procurement law, a contracting officer has 120 days to issue a final decision following receipt of a contractor claim. *See* D.C. CODE § 2-359.08(b) (2011). When a contracting officer’s decision is still pending and a contractor files an appeal prior to the expiration of the 120 days, the appeal is considered premature and the Board lacks jurisdiction over it. *Keystone Plus Constr. Corp.*, CAB No. D-1358, 62 D.C. Reg. 4262, 4265 (Jan. 27, 2012) (holding, in relevant part, that the Board lacks jurisdiction to review contractor claims where no contracting officer final decision has been issued).

In the instant case, Appellant represents that it filed a claim with the contracting officer on June 12, 2017. (*See* Notice of Appeal at 1.) Pursuant to the above applicable District procurement law, Appellant was then obligated to either wait for the contracting officer to issue a final decision before filing its appeal, or failing that, to allow the 120 day statutory period to expire before filing its Board appeal. Despite these requirements, Appellant by its own admission filed the instant appeal prematurely (i.e., *less than six weeks* after its claim was filed with the contracting officer). (*See* Notice of Appeal at 1.) Therefore, the Board dismisses the instant appeal without prejudice to Blue Lion’s right to resubmit its appeal in accordance with applicable District procurement law.

SO ORDERED.

¹ For the purposes of our analysis, the Board construes Blue Lion’s “protest” as a dispute. Although Blue Lion described its filing as a protest in an email to the Board dated July 20, 2017, the record is clear that the matter is a dispute. (Email from Claude Roeltgen to Mia House, July 20, 2017.) Nonetheless, we have retained the original docketing name of this case as P-1048.

Date: October 24, 2017

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

CONCURRING:

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

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

THE IMPACT GROUP, LLC)	
	)	CAB No. P-1056
Under Solicitation Nos. Doc326551)	
Doc332632)	

For the protester, The Impact Group, LLC: Anthony Hubbard, Sulaiman Harris, *pro se*. For the District of Columbia: Howard Schwartz, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

ORDER DISMISSING PROTEST

Filing ID #61305748

The Impact Group, LLC (the “protester”) challenges the District’s cancellation of Solicitation No. Doc326551 (“the First IFB”), and the District’s subsequent issuance of Solicitation No. Doc332632 (“the Second IFB”). In each instance, the District sought a contractor to provide Palo Alto Networks products and support. According to the protester, it submitted a responsive bid and should have been awarded a contract under the First IFB since the lowest bid was withdrawn and its bid was the next lowest bid. (Protest at 1.) The protester also argues that because the First IFB was improperly cancelled, the Second IFB “should be null and void.” (*Id.*)

In lieu of filing an Agency Report, on September 19, 2017, the District filed a motion to dismiss pursuant to Board Rule 306.1, D.C. MUN. REGS. tit. 27, § 306.1 (2002). (District’s Mot. to Dismiss at 1.) The District’s motion argues, *inter alia*, that the First IFB was properly cancelled based on “the best interest of the District and supported by compelling reasons” because “no responsive or reasonably priced bids” were received. (*Id.* at 5.) The protester failed to file an opposition to the District’s dispositive motion and has not made any additional filings with the Board since its initial protest.

Our protest rules state that when a dispositive motion is filed under Board Rule 306.1, “the protester . . . may file a reply or response” within seven business days. Board Rule 307.1, D.C. MUN. REGS. tit. 27, § 307.1 (2002). Moreover, the Board’s general rules on motions practice provide that the Board may treat as conceded any motion that is not opposed within the prescribed time. *See* Board Rule 110.5, D.C. MUN. REGS. tit. 27, § 110.5 (2002). As noted above, the protester herein did not file an opposition to the District’s instant motion, and the filing deadline (i.e., September 28, 2017) has since passed. Accordingly, we grant the District’s unopposed motion to dismiss.

Furthermore, we find that the determination to cancel the First IFB was in the best interest of the District and supported by a compelling reason.¹ In the absence of any evidence to rebut the District’s record of its evaluation of the bids submitted in response to the First IFB, the Board finds that all of the

¹ Notwithstanding our dismissal of this protest based on the protester’s failure to file an opposition to the District’s motion to dismiss as discussed above, we also address the merits of the underlying protest allegations.

bids submitted in response to the First IFB were either withdrawn, non-responsive, or unreasonably priced. (See District's Mot. to Dismiss at 2-5; District's Mot. to Dismiss Ex. 2, at 2.)

Section 1530.3 of the District procurement regulations provides, in pertinent part:

After bid opening, an IFB may be canceled and all bids rejected before being awarded if the [Office of Contracting and Procurement's ("OCP") Chief Procurement Officer] determines that cancellation is in the best interest of the District for any reason, including the following:

- ...
- (f) All otherwise acceptable bids received are at unreasonable prices, or only one (1) bid is received and the contracting officer cannot determine the reasonableness of the bid price;
 - (g) No responsive bid has been received from a responsible bidder;
-

D.C. MUN. REGS. tit. 27, § 1530.3 (2012).

We have previously stated that "[t]he standard for reviewing a cancellation determination for an IFB after bid opening is that the cancellation must be in the best interest of the District government [and] supported by a compelling reason." *RMD Nat'l Harbor GP, LLC*, CAB Nos. P-0967, P-0975, 2015 WL 1090168 (Mar. 6, 2015) (alterations in original) (quoting *Peoples Involvement Corp.*, CAB No. P-0493, 45 D.C. Reg. 8676, 8678 (Dec. 17, 1997)). Here, the District's estimated price for the products sought was \$412,000.00; however, the only responsive bid eligible for award was \$484,149.12, a price determined to be unreasonable.² (See District's Mot. to Dismiss Ex. 2, at 1-2; see also District's Mot. to Dismiss at 2-5.) The Determination and Findings in support of the First IFB's cancellation, signed by OCP's Chief Procurement Officer, stated that all of the bids received were either withdrawn, non-responsive, or unreasonably priced, and concluded that "it is in the District's best interest to cancel the solicitation, and re-solicit." (District's Mot. to Dismiss Ex. 2 at 2-3.)

In sum, we find that the determination to cancel the First IFB was in the best interest of the District and supported by a compelling reason.³ See *Systrol*, CAB No. P-0316, 40 D.C. Reg. 4716, 4717-18 (Nov. 17, 1992) (citations omitted).

For the reasons set forth herein, the Board hereby dismisses the instant protest with prejudice.

SO ORDERED.

Date: November 1, 2017

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

² The protester's bid was ineligible for award because it was determined to be non-responsive since the protester was not an authorized reseller of Palo Alto Networks products. (See District's Mot. to Dismiss Ex. 2, at 2; District's Mot. to Dismiss at 4; see also District's Mot. to Dismiss Ex. 4.)

³ Finding nothing improper in the District's determination to cancel the First IFB, we necessarily find nothing improper in the District's issuance of the Second IFB and, therefore, reject the protester's argument that the Second IFB "should be null and void," (Protest at 1).

CONCURRING:

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

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

PROTEST OF:

STOCKBRIDGE CONSULTING LLC)
)
)
Solicitation No: Doc327754)

CAB No. P-1053

OPINION

Filing ID #61361085

This protest arises from a solicitation issued by the District of Columbia Office of Contracting and Procurement seeking a contractor to provide a Jamf Pro Enterprise Mac Management software solution for the Office of the Chief Technology Officer. The protester, Stockbridge Consulting LLC (“Stockbridge”), primarily challenges the District’s decision to exempt the acquisition of this software from a competitive procurement process. The protester also contends that the District failed to comply with procurement laws that required the contract to be set aside for small or certified business enterprises and that a percentage of the contract work be subcontracted to small or certified business enterprises. The District, however, maintains that it properly used a competition-exempt procurement process for copyrighted materials to solicit the required software and that the protester’s remaining allegations should be dismissed for lack of standing and merit.

Upon consideration of the allegations raised by the protester in connection with the underlying record, we deny and dismiss Stockbridge’s protest for lack of merit for the reasons set forth herein.

FACTUAL BACKGROUND

On June 23, 2017, the District of Columbia Office of the Chief Technology Officer (“OCTO”) requested that the Office of Contracting and Procurement (“OCP”) procure: (1) EDU and COM versions of the Jamf Pro for Mac Operating System (“Jamf Pro”) inclusive of hosted subscription licenses and maintenance; and (2) standard mandatory Jumpstart training programs for the new Mac Operating System. (Agency Report “AR” Ex. 1; AR Ex. 12, at 1.) OCTO estimated that the total costs for the procurement would be \$109,500. (AR Ex. 1, at 2.)

After the District received OCTO’s acquisition request for the Jamf Pro software products, OCP evaluated the procurement methods available to acquire these items. (AR Ex. 12, at 1.) OCP determined that no District small or certified business enterprises or Supply Schedule contract holders were authorized resellers that could provide the particular Jamf Pro products that OCTO had requested. (*Id.* at 1-2; AR Ex. 11, at 2.) OCP also communicated with the

original developer of the software, Jamf Software, LLC (“Jamf”), regarding its ability to provide the requested software products. (AR Ex. 12, at 1.)

During these communications with Jamf, on July 17, 2017, Jamf’s Vice President of Operations represented to the District in a written letter that the subject Jamf Pro software and its components, including Jamf’s Jumpstart installation and training services, were the proprietary property of Jamf and were protected by its copyrights. (AR Ex. 2, at 3.)¹ Furthermore, Jamf also advised the District that as the developer of the Jamf Pro software it was the only party able to provide technical support, patches, updates and new releases for the software and its services. (*Id.*) Further, Jamf stated that no unauthorized parties may distribute its software and services. (*Id.*) Based upon these representations, the Contracting Officer determined that the Jamf Pro copyrighted software that OCTO required should be purchased from Jamf through a competition-exempt procurement process. (AR Ex. 12, at 1.)

Subsequently, on August 10, 2017, OCP, on behalf of OCTO, issued Invitation for Bids Solicitation No. Doc327754 (the “Solicitation”) seeking to purchase a Jamf Pro Enterprise Mac Management solution on a competition-exempt basis. (AR Ex. 4, at 1-2.) Accordingly, because of its copyright ownership status, Jamf was the only vendor invited by the District to submit a bid in response to the Solicitation. (AR Ex. 12, at 2.)

The Solicitation contemplated awarding a firm fixed price contract with a base period of one year and four one-year option periods for the following items: (1) 5000 units of EDU-Jamf Pro for Mac with hosted subscription license and maintenance, Product No. 112-006-1405-01; (2) 500 units of COM-Jamf Pro for Mac with hosted subscription license and maintenance, Product No. 111-006-1405-02; and (3) Jumpstart 2-day training program, Product No. 191-203-1200 for both the EDU and COM versions of the Jamf Pro software. (AR Ex. 4, at 2-4.) Furthermore, the Solicitation included a subcontracting provision, which stated that at least 35% of the dollar volume of contracts in excess of \$250,000 was required to be subcontracted to qualified small or certified business enterprises. (*Id.* at 17-18.)

On the same date that the Solicitation was issued, on August 10, 2017, Stockbridge contacted the District and requested that the District permit it to submit a bid in response to the Solicitation. (*See* AR Ex. 5, at 1.) The District responded that the Solicitation was exempt from competition based upon Jamf’s proprietary rights for the solicited Jamf Pro software products. (*Id.*) However, the protester disputed the District’s assertion in this regard and claimed that it could provide the requested Jamf products through its distribution channels. (*Id.*)

On the following day, August 11, 2017, Stockbridge again advised the District that it could supply the Jamf Pro software products as a reseller and, in support thereof, provided the District with an August 11, 2017, email from Jamf that thanked Stockbridge for its interest in

¹ When referring to documents that do not contain consistent internal page numbering, the Board has cited to the page numbers assigned by Adobe Reader.

becoming a Jamf reseller, which could resell Jamf products through a third-party company, Tech Data. (AR Ex. 7, at 1-2.) On its face, the email from Jamf advised Stockbridge that after it completed a Mutual Non-Disclosure Agreement (“NDA”), Jamf would provide Stockbridge with additional information about its reseller process. (*Id.*) Stockbridge also provided the District with a copy of the aforementioned NDA, only signed by the protester, and not Jamf, to support its claim that it was at that point legally authorized to sell the Jamf Pro products required under the Solicitation. (AR Ex. 14.) The District declined to accept this unilaterally executed NDA as evidence that the protester was authorized to sell the particular copyrighted items required under the Solicitation. (AR Ex. 7, at 1.)

Thereafter, on August 17, 2017, Stockbridge filed a protest with this Board challenging the District’s decision to exempt the Solicitation from competition. (Protest 1.)² In its protest, Stockbridge alleges that it is a registered reseller of Jamf software and that it can provide the software contemplated by the Solicitation through its distributor, Tech Data. (*Id.* at 2.) The protester also argues that the District failed to comply with D.C. CODE § 2-218.51, which requires the District to obtain a waiver from the Director of the Department of Small and Local Business Development (“DSLBD”) before eliminating the requirement that the prospective awardee subcontract 35% of the contract dollar value to small or certified business enterprises for contracts exceeding \$250,000. (*See id.*) *See also* D.C. CODE §§ 2-218.46 (2014), 2-218.51 (2015).³

In addition, Stockbridge contends that the District also failed to comply with D.C. Code § 2-218.44, which requires the District to set aside procurements of \$250,000 or less for small or certified business enterprises unless the District submits a written determination to the Director of DSLBD demonstrating that prices in the Open Market will be at least 12 percent less than the prices submitted by small or certified business enterprises. (*See* Protest 2.) *See also* D.C. CODE § 2-218.44 (2014). Stockbridge maintains that it is a certified business enterprise and that the District did not request a waiver from DSLBD to exclude certified businesses from participation. (Protest 2.)

On September 11, 2017, the District filed an Agency Report in support of its decision to engage in a competition-exempt procurement for the Jamf Pro software because this software is protected by copyrights that are owned by Jamf. (AR 1.) In that regard, the District maintains that its decision to exempt the acquisition of the Jamf Pro software from competition was proper pursuant to D.C. Code § 2-354.13(4), which authorizes the District to exempt from competition procurements of copyrighted or patented materials where the materials are purchased directly

² At the time Stockbridge filed its protest proposals were due by August 17, 2017. (*See* AR Ex. 4, at 1.) However, on the original submission deadline the District issued an amendment to extend the due date until August 28, 2017, and then subsequently amended the response deadline again until August 30, 2017. (*See* AR Exs. 8, 9.)

³ A small or certified business enterprise is a business that has been certified by DSLBD as being a small business, resident owned or operated, local or disadvantaged business enterprise. The District has implemented several programs to assist businesses that are certified by DSLBD. *See* Small and Certified Business Enterprise Development and Assistance Act of 2005, at D.C. CODE § 2-218.01 *et seq.* (2014).

from the owner of the copyright or patent. (AR 8-10.) The District also asserts that because Stockbridge is not the owner of any copyright or patent for the Jamf Pro software system it is ineligible to participate in the procurement and, thus, lacks standing to maintain its allegation concerning the District's alleged failure to comply with the small or certified business enterprise contract set-aside requirements. (AR 11-12, 14.) Furthermore, the District also contends that the subcontracting requirements protested by Stockbridge are inapplicable to the present procurement and, thus, this protest ground lacks merit. (AR 1.)⁴

Upon review of the record of this protest and, as discussed below, we find that the District's decision to exempt the Solicitation from competition was in accordance with procurement law.

DISCUSSION

The Board exercises jurisdiction over a protest of a solicitation or contract award by any actual or prospective offeror who is aggrieved in connection with the solicitation or award, pursuant to D.C. Code § 2-360.03(a)(1) (2011).

The District's Source Selection Method was in Accordance with Procurement Law.

The protester primarily challenges the District's decision to exempt the Solicitation from a competitive procurement process based upon its assertion that it is qualified to provide the Jamf Pro software products contemplated by the Solicitation as an authorized reseller.

As a general matter, District of Columbia procurement law aims to provide bidders with adequate opportunities to bid by promoting full and open competition, to the extent possible, in government procurement. *See* D.C. CODE § 2-351.01(b)(3); *see also* D.C. MUN. REGS. tit. 27, § 2500.1 (1988). However, District procurement law also authorizes the District to exempt several listed types of procurements from the competition requirements established by the Procurement Practices Reform Act of 2010 in particular circumstances. *See* D.C. CODE § 2-354.13. In this case, the District relies upon its authority in this regard to support its selection of the procurement method under D.C. Code § 2-354.13(4), which exempts from competition procurements for “[c]opyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials; provided, that the materials are purchased directly from the owner of the copyright or patent.” D.C. CODE § 2-354.13(4).

Furthermore, where the District conducts a competition-exempt procurement for copyrighted materials under the foregoing provision, the contracting officer is no longer required to prepare an advanced written determination justifying use of this procurement method to potential offerors. *See* D.C. MUN. REGS. tit. 27, §§ 1700 – 1703 (2012). Specifically, under

⁴ Jamf submitted its proposal in response to the Solicitation on August 28, 2017. (AR Ex. 10.) However, because of the present protest disputing the propriety of the underlying procurement process, the District has not made any award pursuant to the Solicitation. (AR 7.)

prior law, the District was permitted to utilize non-competitive procedures to procure copyrighted or patented items from a developer through a sole-source procurement process, which required the District to issue a written determination to justify the use of non-competitive procedures. *See* Former D.C. MUN. REGS. tit. 27, § 1702 (1988). This written determination requirement included consideration by the contracting officer as to whether the requirements could not be modified to allow a competitive procurement and whether it was in the District's best interest to acquire the items through non-competitive means. *Id.*

The most current regulation, however, was changed to allow the District to acquire copyrighted and patented materials through a new and different "competition exempt" process, which does not require the same sole-source written determination by the contracting officer. *Compare* D.C. MUN. REGS. tit. 27, § 1700, *with* D.C. MUN. REGS. tit. 27, § 1703. This revision of the regulations governing copyrighted and patented items makes it clear to the Board that the legislature explicitly intended to eliminate the previous requirement for a written determination by the District prior to issuing a solicitation as competition-exempt. *See Frank Briscoe Co., Inc.*, GSBGA No. 3456, 73-2 BCA ¶ 10,162, *recons. denied*, 74-1 BCA ¶ 10529 ("[W]hen a legislature amends an existing law there is a presumption that it intended to change the original law by creating a new right or withdrawing an existing one. Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights.")

Here, on June 23, 2017, OCTO requested that OCP procure EDU and COM versions of the Jamf Pro for Mac software system inclusive of hosted subscription licenses and maintenance in addition to procuring the Jumpstart training program to accompany both the EDU and COM software versions. After receiving this request, OCP determined that it could not procure the requested Jamf Pro products through either small or certified business enterprises or District Supply Schedule contract holders. (AR Ex. 11, at 2; AR Ex. 12, at 1-2.)

Based upon its inability to find an authorized District company to provide this software, we find that the District reasonably contacted the original developer of the software, Jamf, and relied upon Jamf's written representation that the software products, maintenance, support, updates, and Jumpstart installation and training services, which the District intended to procure, were proprietary and covered by copyrights owned by Jamf. (AR Ex. 2, at 3.) Thus, the District's determination was reasonable that this procurement involved copyrighted materials that were exempt from competition under D.C. Code § 2-354.13(4).⁵

Although the protester contends that it could provide the solicited software products as an authorized Jamf reseller, we find that it did not provide the District with conclusive evidence of its authorization to resell the specific Jamf Pro products that the District sought to procure immediately after it learned about the issuance of the Solicitation. At best, the protester only

⁵ *See Beretta U.S.A. Corp.*, CAB Nos. P-144 *et al.*, 38 D.C. Reg. 3098, 3120-21 (Aug. 23, 1990) (rejecting a protest of non-competitive award where the District reasonably determined that only a single manufacturer could meet its requirements).

provided the District with a unilaterally executed copy of the Jamf NDA, reflecting the protester's efforts to become an approved reseller with no further evidence that such status had been obtained by the protester to provide the Solicitation items through any type of formal authorization by Jamf. (AR Ex. 14)⁶ Additionally, even in its response to the District's Agency Report, the protester only provided the Board with a copy of an email from a third-party entity (Sales Force) regarding the protester's interest in becoming a recognized reseller of Jamf products and services, but which in no way evidenced that the protester is an authorized reseller of the copyrighted products covered by the Solicitation. (Protester Resp. to AR Ex. C.)

In short, the protester failed to provide the District, and this Board, with any evidence to refute the District's original determination that there were no cognizable small or certified business enterprises or District Supply Schedule contract holders authorized to provide the required copyrighted software. Consequently, in light of the foregoing factors, we find that the procurement was properly determined by the District to be competition-exempt, in accordance with law, based upon Jamf's status as the copyright holder of the solicited software products. *See MWJ Solutions, LLC*, CAB No. P-0940, 63 D.C. Reg. 12047, 12052 (Sept. 26, 2013) (denying protester's challenge to District's procurement method where District's choice of procurement was consistent with procurement law).

Remaining Protest Allegations

We also reject Stockbridge's allegation that the District failed to comply with the legal requirement that the District set aside procurements of \$250,000 or less for small or certified business enterprises such as its own company, and did not submit the appropriate written determination to DSLBD to waive this requirement. As previously discussed herein, the competition-exempt statute permitted the District to procure the subject copyrighted materials through other than the normal competitive channels and directly from the owner of the copyright based upon the nature of the products involved.⁷ Therefore, we find no violation by the District because the contract was not set aside for small or certified businesses.⁸

Lastly, we find that the protester has no standing to protest the issue of the District's compliance with DSLBD's small or certified business enterprises subcontracting requirement. The Board presumes that the protester is challenging this provision as a potential subcontractor for this work, and we have repeatedly held that prospective subcontractors lack a direct economic interest and standing to challenge a prime contract award. We, therefore,

⁶ Notably, the reseller application and NDA were both dated August 11, 2017, the same date on which the protester represented to the District that it already had reseller status. (*See* AR Exs. 6, 14.)

⁷ The District advised DSLBD of its copyright exemption determination as soon as was practicable, which the Board finds to be reasonable. (*See* AR Ex. 13.)

⁸ We find that the protester's contention that it was improperly excluded from competing in this procurement because of its competition exempt status, gives the protester standing to pursue this protest ground before the Board. *See MWJ Solutions, LLC*, CAB No. P-0940, 63 D.C. Reg. at 12051 (finding standing where protester alleged that it was denied an opportunity to compete).

dismiss this allegation for lack of standing. *See Eagle Eyes Security Co., LLC*, CAB No. P-0908, 2012 WL 4753872 (June 12, 2012) (dismissing protest for lack of standing where the protester only sought to be a potential subcontractor under the solicitation).

CONCLUSION

For the reasons discussed herein, the Board denies and dismisses the instant protest with prejudice.

SO ORDERED.

Dated: November 14, 2017

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

CONCURRING:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

UNIVERSAL PROTECTION SERVICE, LLC D/B/A)
ALLIED UNIVERSAL SECURITY SERVICES) CAB No. P-1046
Under Solicitation No. Doc298568)

For the protester, Universal Protection Service, LLC d/b/a Allied Universal Security Services: Marc J. Fink, Esq., Cozen O'Connor. For the intervenor, Security Assurance Management, Inc.: Thomas D. Bridenbaugh, Esq., Scott A. Burrell, Esq., Leftwich LLC. For the District of Columbia: Howard S. Schwartz, Esq., Sharon G. Hutchins, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION
Filing ID #61367101

This protest arises from a solicitation for school security services issued by the District of Columbia Office of Contracting and Procurement on behalf of the Metropolitan Police Department and the District of Columbia Public Schools ("DCPS"). Universal Protection Service, LLC d/b/a Allied Universal Security Services ("Allied" or the "protester") challenges the District's decision to award a contract to Security Assurance Management, Inc. ("SAM" or the "intervenor"), arguing that (1) the District of Columbia Department of Small and Local Business Development ("DSLBD") improperly certified SAM as a Certified Business Enterprise ("CBE"); (2) SAM's proposal was non-responsive; (3) SAM should not have received CBE preference points; and (4) SAM should have been found non-responsive. In response, the District (1) moves the Board to dismiss the protest for lack of jurisdiction and untimeliness; or (2) alternatively argues that exceptional circumstances do not exist such that the Board should review SAM's CBE status; therefore, the contracting officer's evaluation was reasonable.

For the reasons set forth below, the Board denies the District's motion to dismiss, finding that the Board has jurisdiction over Allied's protest and that the protest was timely filed. However, we deny Allied's protest, finding that exceptional circumstances do not exist so as to warrant our review of the validity of SAM's CBE status. Accordingly, the contracting officer properly relied on SAM's CBE status in evaluating the offerors' proposals.

BACKGROUND

On January 31, 2017, the District issued Solicitation No. Doc298568 (the "RFP") seeking a contractor to provide security services at DCPS schools. (District's Mot. to Dismiss and Agency Report ("AR") Ex. 1, at 2-3.)¹ As set forth in the RFP, the District was required to grade the offerors' proposals on a 112-point scale, with 90 points available for the technical proposal, 10 points available for the price proposal, and up to 12 preference points to be awarded based on any CBE designation that the offeror had

¹ Because certain documents in the record lack consistent internal page numbering, the Board has used the page numbers assigned by Adobe Reader when citing to all documents herein.

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obtained, pursuant to the Small and Certified Business Enterprise Development and Assistance Act of 2005, D.C. CODE §§ 2-218.01 to .82 (2013, Supp. June 2015 & Supp. June 2016) (amended Apr. 1, 2017) (“SCBED Act”). (AR Ex. 1, at 73-76 (§§ M.3, M.5).) Section M.5.4.1 of the RFP stated that an offeror must be certified at the time of its proposal in order to receive any CBE preference points, and further stated that the contracting officer “will verify the Offeror’s certification with DSLBD.” (*Id.* at 77.) Section H.9.2 of the RFP required non-CBE prime contractors – required by law to subcontract at least 35% of the dollar volume of the contract to small businesses or CBEs, *see* D.C. CODE §§ 2-218.46(a)(2)-(3) – to include a subcontracting plan as part of their proposal. (*See* AR Ex. 1, at 42; *see also* AR Ex. 1, at 41 (§§ H.9.1.1-H.9.1.3).)

The District amended the RFP four times during the course of the procurement. (AR Ex. 2.) Collectively, these amendments (1) extended the deadline for proposals; (2) revised certain specifications and contract performance provisions not at issue in this protest; (3) revised the RFP’s internal references and attached documents; (4) provided answers to the prospective offerors’ questions regarding the RFP; and (5) provided the sign-in sheet for the pre-proposal conference. (*See id.*)

Two offerors submitted proposals prior to the RFP’s March 6, 2017, deadline: (1) Allied; and (2) SAM. (*See* AR Ex. 3, at 3.) In its proposal, Allied submitted a subcontracting plan which identified SAM as its small business subcontractor. (AR Ex. 6, at 2-3.) In its proposal, SAM identified itself as a CBE and thus did not include a subcontracting plan. (*See* AR Ex. 5, at 3, para. 7.) During the evaluation of proposals, the contracting officer verified SAM’s CBE status on DSLBD’s website. (*Id.* at 3, para. 9; *see also* AR Ex. 4.) After receiving best and final offers from both Allied and SAM, the contracting officer evaluated the offerors’ proposals and assigned the following overall final scores:

Offeror	Technical Points	Price Points	CBE Points	Total Final Points	Rank
SAM	57	10	10	77	1
Allied	56	9.9	0	65.9	2

(*See* AR at 6-7; *see also* Protest at 2.)

The contracting officer recommended SAM for contract award and on June 16, 2017, notified Allied that SAM had been selected for award pending approval of the contract by the Council of the District of Columbia. (*See* AR at 6-7; Protest at 9.) On June 27, 2017, Allied received a debriefing from the District. (Protest at 2.) On June 29, 2017, Allied filed the instant protest, arguing that, because “SAM was improperly deemed to be a Certified Business Enterprise,” (1) SAM’s proposal was non-responsive; (2) SAM was “erroneously granted preference points;” and (3) SAM should not have been determined to be a responsible contractor. (*Id.* at 1, 7.) Allied alleges that SAM failed to disclose that its commercial division had been acquired on August 31, 2015, by a Cleveland-based company, United American Security, LLC (“UAS”), and that such acquisition had resulted in SAM becoming ineligible for CBE recertification in 2016. (*See id.* at 4-7.)

On July 24, 2017, the District filed the AR, arguing that (1) the protest should be dismissed because the Board is without jurisdiction to hear challenges to a contractor’s CBE status; (2) the protest was untimely; and (3) even if the Board were to find that it has jurisdiction, the protester has not shown that exceptional circumstances exist for the Board to review SAM’s CBE status. (*See* AR at 1-2, 8-18.)

DISCUSSION**I. Jurisdiction and Standard of Review**

The Board exercises jurisdiction over “[a]ny protest of a solicitation or award of a contract . . . by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract.” D.C. CODE § 2-360.03(a)(1) (2017). The District argues that the Board does not have jurisdiction over Allied’s challenge to SAM’s CBE status. (AR at 8-11.) According to the District, the Board is without jurisdiction to decide the instant protest because DSLBD issues the certificates of CBE status under D.C. CODE § 2-218.61, and D.C. CODE § 2-218.63(e)(1)(A) sets forth a process by which to “file with [DSLBD] a complaint alleging a violation of [the SCBED Act].” (AR at 8-10.) But although the District correctly states that DSLBD has authority to issue the certificates of CBE status and hear complaints of violations, neither section 2-218.61 nor 2-218.63 contain language that divests the Board of its jurisdiction over a protest of a contract award or limits the Board’s responsibility to “decide whether the solicitation or award was in accordance with the applicable law, rules, and terms and conditions of the solicitation,” D.C. CODE § 2-360.08(d) (2017). In fact, section 2-218.63 does not state that DSLBD is the exclusive forum to hear allegations pertaining to CBE certification and violations thereof, and the Board’s statutory authority and regulations do not preclude the Board from exercising jurisdiction over protest allegations involving an offeror’s CBE status. *See id.* §§ 2-360.01 to .08; D.C. MUN. REGS. tit. 27, §§ 100-499 (2002).

Furthermore, the Board has previously held that it has jurisdiction over protest allegations that challenge DSLBD’s determination of a contractor’s CBE status. *See Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. 1973, 1976 (Nov. 15, 2005), *petition for review dismissed*, 2005-CA-009544-B (D.C. Super. Ct. July 10, 2006) (Westlaw, D.C. Super. Ct. Dockets), *appeal dismissed*, 06-CV-0900 (D.C. Sept. 21, 2006), <http://efile.dcappeals.gov/public/caseView.do?csIID=44211>. In *Urban Service Systems*, the protester argued that the contracting officer should not have given bid preference points to the awardee on the basis of its CBE status – which served to reduce the awardee’s bid price – because DSLBD’s determination of the awardee’s CBE status was improper. *Id.* at 1976. The Board held that it had jurisdiction over the protest, but then found that “the circumstances do not justify reviewing the validity of” DSLBD’s determination of the awardee’s CBE status. *Id.* at 1976, 1978. We explained:

Only in exceptional circumstances will we consider such a review, such as where the certifying agency has abdicated its function and we are left with no choice but to decide on the certification so as to protect the integrity of the procurement process and fulfill our statutory obligation under D.C. Code 2-309.08(d) [current version at D.C. CODE § 2-360.08(d)] of deciding whether an award complies with applicable law, regulations, and terms and conditions of the solicitation.

Id. at 1978 (citing *C&D Tree Serv., Inc.*, CAB No. P-0440, 44 D.C. Reg. 6426, 6433-39 (Mar. 11, 1996)).

Since the Board found that DSLBD had made a determination giving the awardee temporary certification, the Board concluded that “as of bid opening, the contracting officer properly relied on that determination in granting [the awardee] the [CBE] bid preferences.” *Id.* In later protests involving that same procurement, we again declined to review the merits of DSLBD’s determination “because the facts did not show the exceptional circumstances warranting our review of the certifications.” *Urban Serv. Sys. Corp.*, CAB Nos. P-0735, P-0739, 54 D.C. Reg. 2057, 2057 (Dec. 22, 2006), *denying recons. of* 54 D.C. Reg. 2042 (Oct. 16, 2006), *remanded*, 2006-CA-008307-B (D.C. Super. Ct. Apr. 1, 2008) (Westlaw, D.C. Super. Ct. Dockets), *on remand*, 2016 WL 8230982 (Oct. 20, 2016). On review of the Board’s decision, the Superior Court of the District of Columbia did not reject the Board’s “exceptional circumstances”

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standard, despite concluding that the Board had erred in finding that the record evidence supported an affirmative belief on the part of DSLBD of the awardee's eligibility for CBE certification. *See Urban Serv. Sys. Corp.*, CAB Nos. P-0735, P-0739, 2016 WL 8230982. Rather, the Court directed the Board to further consider whether DSLBD had in fact made a determination of CBE eligibility and, if the Board determined that DSLBD had not made such a determination, then it needed to consider whether the protester had made a prima facie case that the awardee was not entitled to CBE certification. *See id.* On remand, the Board considered supplemental evidence and found that the record, as supplemented, supported a finding that DSLBD had made a CBE determination, and thus "d[id] not reach the court's second remand question (i.e., whether [the protester] made a prima facie showing that [the awardee] was not entitled to certification)." *Id.*

Similarly, in *Capitol Paving of D.C., Inc.*, CAB No. P-0736, 54 D.C. Reg. 2036, 2039-40 (Oct. 12, 2006), the Board found that it had jurisdiction to consider the protester's challenge to the awardee's CBE certification. The Board stated that it would review an agency's certification decision only in exceptional circumstances. *Id.* at 2040-41 (citations omitted). The Board concluded that because the record showed that the certifying agency had made certification of the awardee based on the statutory language, exceptional circumstances, such as when a certifying agency abdicates its function and makes no determination, did not exist. *Id.* (citations omitted). The Board pointed out that the SCBED Act provides the mechanism by which to challenge a CBE certification. *Id.* at 2041.

In sum, we find that the Board has jurisdiction over protests which allege that an offeror should not have received CBE preference points or a bid price reduction. However, the Board will not review the merits of a CBE's eligibility as determined by DSLBD. If exceptional circumstances exist, such as when DSLBD abdicates its function and makes no certification determination, then the Board will consider whether the protester has made a prima facie case that the awardee was not entitled to receive CBE certification. Here, Allied has challenged the contracting officer's evaluation of SAM as a CBE and the Board has jurisdiction over the instant protest.²

II. Timeliness

The statutory requirements concerning timeliness provide that a bid protest "shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier."³ D.C. CODE § 2-360.08(b)(2). The District has moved to dismiss Allied's protest ground challenging SAM's CBE status and argues that Allied "knew or should have known about the alleged invalidity of SAM's CBE status on March 6, 2017 when it submitted its proposal identifying SAM as its 35% subcontracting CBE." (AR at 11.) According to the District, because the protest was not filed within ten business days of March 6, 2017, the protest must be dismissed as untimely. (*See id.* at 11-12.)

Yet we find that Allied's protest was timely filed. As the Board has previously stated, "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." *Urban All. Found.*, CAB Nos. P-0886, P-0887, P-0890, P-0891, P-0892, 62 D.C. Reg. 4281, 4292 (Feb. 15, 2012) (citing *Sigal Constr. Corp.*, CAB Nos. P-0690, P-0693, P-0694, 52 D.C. Reg. 4243, 4254 (Nov. 24, 2004), *petition for review dismissed*, 2004-CA-000048-P (D.C. Super. Ct. June 1, 2005) (Westlaw, D.C. Super. Ct. Dockets)). The District's motion does not attempt to establish the nature of the adverse action which is alleged to have occurred so as to begin the

² We discuss below, *see supra* Part III, the merits of Allied's protest ground.

³ Although not at issue in this case, where based on an alleged impropriety in the solicitation which is apparent prior to bid opening or the time set for receipt of proposals, the protest must be filed prior to bid opening or the time set for receipt of proposals. D.C. CODE § 2-360.08(b)(1).

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ten-day period during which Allied needed to file its protest.⁴ (*See* AR at 11-12; District’s Mot. for Leave to File Resp. to Allied’s Comments on the AR at 5-8.) And the protester argues that “the basis of the protest was not known, and could not have been known, until the Protester received a notice of intent to award the Contract . . . to SAM,” because “[u]ntil that point there would have been no basis to file a protest before the Board, regardless of the impropriety of SAM’s CBE certification, because there was no particular case in controversy.” (Allied’s Consent Mot. for Leave to File Reply to Intervenor’s Resp. to the AR Ex. A, at 5-6.) We find that the District’s June 16, 2017, notice to Allied of its intent to award the contract to SAM marks the earliest date of an official District action that was adverse to Allied, thereby causing Allied to be aggrieved in connection with the instant solicitation. Since the protest was filed on June 29, 2017, within ten business days of June 16, 2017, this protest is timely. *See* D.C. CODE § 2-360.08(b)(2).

III. Allied’s Challenge to SAM’s CBE Status

As explained above, *see supra* Part I, the Board will only review the validity of an offeror’s CBE status under exceptional circumstances. The record shows that, pursuant to D.C. CODE § 2-218.61(c-1), SAM submitted documentation requesting a recertification of its CBE status in January 2016, (SAM’s Resp. to Allied’s Comments to the AR Ex. 1, at 2, paras. 3-5). DSLBD certified SAM as a CBE⁵ for a three-year period beginning on February 3, 2016. (*See* Protest at 11; AR Ex. 4); *see also* D.C. CODE § 2-218.61(d). The record does not contain any evidence that DSLBD failed to make a determination that SAM satisfied the requirements for recertification under section 2-218.61(c-1), or that DSLBD otherwise abdicated its function. Hence, the record does not contain any evidence of exceptional circumstances so as to warrant our review of the validity of SAM’s CBE status.⁶ *See Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. at 1978 (citing *C&D Tree Serv., Inc.*, CAB No. P-0440, 44 D.C. Reg. at 6433-39); *Capitol Paving of D.C., Inc.*, CAB No. P-0736, 54 D.C. Reg. at 2040-41. Based on this record, we find that SAM was certified as a CBE by DSLBD at the time that SAM submitted its proposal such that the contracting officer properly relied on that determination in granting SAM ten CBE preference points. *See Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. at 1978; (*see also* AR Ex. 1, at 77 (§ M.5.4.1)).

The remainder of Allied’s protest grounds are similarly disposed of. Allied argues that, because SAM is not a valid CBE, SAM’s proposal was required to include a subcontracting plan and since it did not, (1) SAM’s proposal should have been rejected as non-responsive; and (2) SAM should not have been found to be a responsible contractor. (*See* Protest at 1, 3-4, 7.) Since we have found no basis to overturn DSLBD’s determination of SAM as a CBE, we deny these protest grounds.

⁴ Both the District and the protester mainly focus their arguments on whether Allied should have known about the alleged acquisition of SAM based on public press releases, SAM’s status as a subcontractor to Allied on the incumbent contract, and Allied’s proposal which identified SAM as the CBE subcontractor in the subcontracting plan. (*See* AR at 11-12; Allied’s Comments on the AR at 4-5.) We need not decide whether Allied knew or should have known about the alleged acquisition since, as stated above, the District needed to act adversely towards Allied in order for Allied to establish a protest ground in connection with this solicitation.

⁵ SAM was certified in multiple categories: LBE (local business enterprise), SBE (small business enterprise), and LRB (longtime resident business). (*See* Protest at 11; AR Ex. 4.)

⁶ The Board further notes that the protester and the intervenor have each submitted numerous documents into the record to argue SAM’s eligibility for CBE status following its acquisition by UAS. (*See, e.g.*, Protest at 13-19; SAM’s Resp. to Allied’s Comments to the AR Exs. 2-3.) However, such a determination is properly made by DSLBD which is duly authorized to hold a hearing and investigate facts in response to challenges to a company’s CBE status, taking into account the provisions of the SCBED Act and the implementing regulations, *see* D.C. CODE § 2-218.63(e); D.C. MUN. REGS. tit. 27, § 816 (2009).

*Universal Protection Service, LLC d/b/a
Allied Universal Security Services
CAB No. P-1046*

CONCLUSION

For the reasons set forth herein, the Board denies the District’s motion to dismiss, finding that the Board has jurisdiction over Allied’s protest and that the protest was timely filed. However, we deny Allied’s protest, finding that exceptional circumstances do not exist so as to warrant our review of the validity of SAM’s CBE status and, thus, the contracting officer properly relied on SAM’s CBE status in evaluating the offerors’ proposals.

SO ORDERED.

Date: November 15, 2017

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

CONCURRING:

/s/ Marc D. Loud, Sr.
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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

WILES MENSCH CORPORATION-DC)
ZIMMER GUNSUL FRASCA ARCHITECTS, LLP)
Solicitation No: DCAM-17-AE-0104) CAB Nos. P-1049, P-1050
(consolidated)

For the protester, Wiles Mensch Corporation-DC: Joseph P. Mensch, pro se. For the protester, Zimmer Gunsul Frasca Architects, LLP: M. Otto Condon, pro se. For the District of Columbia: C. Vaughn Adams, Esq., District of Columbia Department of General Services.

Opinion By: Chief Administrative Judge Marc D. Loud, Sr., with Administrative Judge Monica C. Parchment, concurring.

ORDER CONSOLIDATING PROTESTS AND GRANTING THE DISTRICT OF COLUMBIA’S MOTION TO DISMISS

Filing ID #61454462

These consolidated protests arise from a solicitation for architectural/engineering services for the renovation of a District park issued by the District of Columbia Department of General Services (“DGS”). Following the District’s opening of proposals, Wiles Mensch Corporation (“Wiles”) and Zimmer Gunsul Frasca Architects, LLP (“Zimmer”) filed separate but nearly identical protests challenging the exclusions set forth in Solicitation Amendment No. 3. (See Re: Addendum 3, A/E Services for Franklin Park RFP (“Wiles Protest”) at 1-2; Re: DCAM-17-AE-0104 Request for Proposals (“Zimmer Protest”) at 3.)1 Solicitation Amendment No. 3 excludes from participation in the procurement “[a]ny prime contractor or subcontractor that participated in the development of the Master Plan, Concept Design, Boundary, Topographic & Utility Survey, and Geoarchieological [sic] Investigation,” (District Mot. to Dismiss Ex. 5, at 2.)2 The District has moved to dismiss each protest as untimely. (See CAB No. P-1049 District Mot. to Dismiss; CAB No. P-1050 District Mot. to Dismiss.) The Board consolidates these protests under Board Rule 118. See D.C. MUN. REGS. tit. 27, § 118 (2002).

For the reasons set forth below, the Board grants the District’s motions to dismiss. Specifically, we find untimely both protesters’ allegations that Solicitation Amendment No. 3 improperly excluded them from participation.

BACKGROUND

On June 20, 2017, DGS issued a request for proposals that sought architectural/engineering services for the renovation of Franklin Park. (See Wiles Protest at 1;

1 When citing documents that do not include page numbers (see, e.g., Wiles Protest; Zimmer Protest), or that contain inconsistent page numbers, the Board has referenced the page numbers assigned by Adobe Reader.

2 Because the exhibits attached to the District’s motions to dismiss in CAB Nos. P-1049 and P-1050 are identical, and use identical numbering, the Board has omitted the case number from its citations to the District’s exhibits.

*Wiles Mensch Corporation-DC
Zimmer Gunsul Frasca Architects, LLP
CAB Nos. P-1049 & P-1050*

Zimmer Protest at 1; Mot. to Dismiss Ex. 1, at 2.) Solicitation Amendment No. 2, dated July 13, 2017, stated the following in response to offeror questions regarding whether certain contractors would be excluded from competition:

No.³ In accordance with [D.C. Mun. Regs. tit. 27, § 2221.2 (1988) ‘Conflicting Contractor Involvement’]⁴ [i]f a contractor prepares and furnishes complete specifications covering non-developmental items to be used in a competitive procurement, that contractor shall not be allowed to furnish those items, either as a prime contractor or as a subcontractor.

(District Mot. to Dismiss Ex. 4, at 21-22, Sub-Ex. 3.) Under Solicitation Amendment No. 2, the deadline for submission of proposals was July 24, 2017. (District Mot. to Dismiss Ex. 4, at 2.) As noted, the solicitation was amended on July 20, 2017, to exclude the instant protesters from participation due to their participation in the team that developed the project plans. (See Wiles Protest at 1; Zimmer Protest at 1, 3 (citations omitted); Mot. to Dismiss Ex. 5, at 2.) The record is unclear as to how many proposals were timely submitted in response to the instant solicitation by the July 24, 2017, deadline. (See generally CAB No. P-1049 District Mot. to Dismiss; CAB No. P-1050 District Mot. to Dismiss.) In its motions to dismiss, the District states that, “[a]ll activity on the solicitation has ceased and no evaluations or awards have been made.” (CAB No. P-1049 District Mot. to Dismiss at 4, ¶ 10; CAB No. P-1050 District Mot. to Dismiss at 4, ¶ 10.)

On July 28, 2017, the protesters filed separate protests in the instant matter. (See Wiles Protest at 1; Zimmer Protest at 1.) In their protests, both Wiles and Zimmer have challenged the exclusions set forth in Solicitation Amendment No. 3, which was issued two business days before the due date for proposals. (See Wiles Protest at 1-2; Zimmer Protest at 3.) Protester Wiles contends that its exclusion is improper because its participation in the creation of the “Master Plan and Concept Design” was allegedly minor, and because its services were allegedly “never fully engaged by DGS.” (See Wiles Protest at 1-2.) Protester Zimmer contends that its exclusion is improper because the “Vision Plan” which it helped prepare was not a “complete specification,” as defined by D.C. Municipal Regulations, and because the solicitation for the earlier phase of the project allegedly never stated that the design team would be excluded from future competition. (See Zimmer Protest at 2-3.)

On August 9, 2017, the District of Columbia filed separate motions to dismiss each of the instant protests as untimely. (See CAB No. P-1049 District Mot. to Dismiss; CAB No. P-1050 District Mot. to Dismiss.) In particular, the District contends that protesters should have known of their alleged ineligibility either following the issuance of Solicitation Amendment No. 3 on July 20, 2017, “or even from the Answers to Questions in [Solicitation Amendment No. 2] on

³ The District’s response of “[n]o,” referred to seven separate, multi-part questions. (See District Mot. to Dismiss Ex. 4, at 21-22, Sub-Ex. 3.) Of the seven multi-part questions, the protesters herein appear to have submitted the following inquiries: (1) “During the Pre-Proposal meeting . . . it was stated that the previous design team, consisting of [Zimmer] and others is Precluded from submitting a proposal for this effort. Please clarify if this was an accurate statement. . . . [C]an you clarify as to which consultants from the previous design team are precluded?” and (2) “Does [the exclusion of certain contractors from competition] also apply to . . . Wiles?” (See *id.*)

⁴ Solicitation Amendment No. 2 erroneously identified this provision as “35 DCR 1541[,] 27 DCRM [sic] 2221 Contractor Conflict of Interest.” (See District Mot. to Dismiss Ex. 4, at 21, Sub-Ex. 3.)

*Wiles Mensch Corporation-DC
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CAB Nos. P-1049 & P-1050*

July 13th.” (See CAB No. P-1049 District Mot. to Dismiss at 6; CAB No. P-1050 District Mot. to Dismiss at 6.)

DISCUSSION

The Board exercises jurisdiction over “[a]ny protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract.” D.C. CODE § 2-360.03(a)(1) (2011). The applicable statutory requirement pertaining to timeliness when filing a protest based upon alleged improprieties in a solicitation provides as follows:

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 prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, shall be protested not later than the next closing time for receipt of proposals following the incorporation.

D.C. CODE § 2-360.08(b)(1).

The issue presently before the Board is whether Wiles’ and Zimmer’s protests are timely. Based upon our review of the record, we conclude that both protesters failed to meet the statutory deadline noted above for filing a protest of the instant solicitation. The protesters herein were required to file any protest alleging improprieties in Solicitation Amendment No. 3 (or any other component of the solicitation) *before* proposals were due on July 24, 2017. See D.C. MUN. REGS. tit. 27, § 302.2(a). (See also Mot. to Dismiss Ex. 4, at 2.) Here, both protesters filed protests challenging Solicitation Amendment No. 3 on July 28, 2017—four days *after* the due date for proposals. (Compare Wiles Protest at 1, and Zimmer Protest at 1, 3, with Mot. to Dismiss Ex. 4, at 2.) Therefore, the instant protests did not comply with the statutory requirement, and the Board must dismiss both protests as untimely. See D.C. CODE § 2-360.08(b)(1); D.C. MUN. REGS. tit. 27, § 302.2(a); accord *Omega Supply Servs., Inc.*, CAB No. P-0944, 2013 WL 6042889 (Aug. 20, 2013) (A protester’s challenge to a solicitation requirement limiting competition was untimely because the protest was filed after the due date for proposals).

The above notwithstanding, each protester has asserted arguments which it believes precludes application of the above statutory deadline to the instant case. We have reviewed those arguments and find them to be without merit. First, the Board rejects the arguments raised by both protesters that the instant protests are allegedly timely because they were filed within ten business days of when the basis of the protest was known or should have been known, pursuant to D.C. Code § 2-360.08(b)(2). (See Wiles Protest at 2; Zimmer Protest at 3 (citations omitted).) See also D.C. CODE § 2-360.08(b)(2); D.C. MUN. REGS. tit. 27, § 302.2(b). D.C. Code § 2-360.08(b)(2) clearly states that the ten business day requirement only applies to “[p]rotests other than those covered in [D.C. Code § 2-360.08(b)(1)].”

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Here, both of the instant protests fall within the scope of D.C. Code § 2-360.08(b)(1). Specifically, the instant protests challenge the propriety of Solicitation Amendment No. 3—a component of the solicitation. (*See* Wiles Protest at 1-2; Zimmer Protest at 2-3.) Therefore D.C. Code § 2-360.08(b)(2) does not apply.

The Board further rejects the other timeliness allegations raised by each protester. Wiles argues first that Solicitation Amendment No. 3 was not transmitted to all potential bidders when it was issued. (Re: A/E Servs. for Franklin Park RFP (“Wiles’ Opp’n”) at 1, Aug. 18, 2017.) The Board notes, however, that Wiles never alleges that it did not timely receive a copy of Solicitation Amendment No. 3—rendering this allegation irrelevant. (*See generally* Wiles’ Opp’n at 1-3; CAB No. P-1049 District of Columbia’s Reply to Protester’s Resp. to Mot. to Dismiss (“District’s Reply to Wiles”) at 5-6.) The Board believes that had Wiles received notification of Solicitation Amendment No. 3 on or after the deadline for submission of proposals, Wiles would have expressly stated so in its protest and would have provided the Board with the details of such late notification.

Next Wiles argues that its protest was not “based on an ‘alleged impropriety’ in the solicitation, but rather” on an alleged “inconsistency” between the exclusions in Solicitation Amendment Nos. 2 and 3. (*See* Wiles’ Opp’n at 2.) This argument is without merit. Whether the protest is based on an “impropriety” in the solicitation or an “inconsistency” between solicitation amendments, the gravamen of the challenge is to the terms of the solicitation. Thus, the allegation falls within the scope of D.C. Code § 2-360.08(b)(1) and is not timely since it was filed after the deadline for submission of proposals.

Finally, the Board rejects the arguments raised by Zimmer in this matter. First, Zimmer asserts conclusorily that it never received an email copy of Solicitation Amendment No. 3. (*See* Resp. of Zimmer Gunsul Frasca Architect [sic] LLP to District of Columbia’s Mot. to Dismiss (“Zimmer’s Opp’n”) at 1-2.) We reject this argument. The record indicates that an email copy of Solicitation Amendment No. 3 was transmitted to an individual with a Zimmer email address (an Elizabeth Ryan) on the date that it was issued—i.e., July 20, 2017. (*See* CAB No. P-1050 District of Columbia’s Reply to Protester’s Resp. to Mot. to Dismiss (“District’s Reply to Zimmer”) at 1-2, 5-6.) Apart from Zimmer’s generalized contention that it did not receive a copy of Solicitation Amendment No. 3 (*see* Zimmer’s Opp’n at 1-2), Zimmer has not challenged the District’s evidence showing that Ryan was sent a timely email copy of Amendment No. 3. Under these circumstances, we find the District’s evidence persuasive that Zimmer either knew, or should have known of Amendment No. 3, on the date the District’s email was sent to Ryan (i.e., July 20, 2017). (*See* District’s Reply to Zimmer at 5-6.)

Zimmer’s final argument challenging dismissal herein is that Amendment No. 3 was not published on the DGS website until July 24, 2017 (i.e., the due date for proposals). (*See* Zimmer’s Opp’n at 1-2.) While the record is unclear regarding the date on which Solicitation Amendment No. 3 was published to the District’s website,⁵ we find this argument irrelevant as to Zimmer. As we have noted above, the record in this case establishes that the District sent

⁵ The District contends that the amendment “was posted [to the DGS website] in sufficient time for Protester to have known of this amended term.” (District’s Reply to Zimmer at 2.)

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Amendment No. 3 to Zimmer (through Elizabeth Ryan) on July 20, 2017. Zimmer has neither disputed that Ryan was sent Amendment No. 3 on July 20, 2017, nor that Ryan was affiliated with Zimmer at the time that the amendment was issued. If Zimmer did not receive an email copy of Amendment No. 3 through Ryan on July 20, 2017, the Board would have expected a specific denial from Zimmer on this point. Thus, we conclude that Zimmer either knew, or should have known that Amendment No. 3 contained objectionable provisions on or around July 20, 2017. Under these circumstances, Zimmer's filing of a protest challenging terms of the solicitation in this matter on July 28, 2017, was untimely.

CONCLUSION

In conclusion, for the reasons stated herein, the Board dismisses both of these consolidated protests, CAB Nos. P-1049 and P-1050, with prejudice as untimely.

SO ORDERED.

Date: December 11, 2017

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

CONCURRING:

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

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

STOCKBRIDGE CONSULTING LLC)
) CAB No. P-1054
Under Solicitation No. Doc321612)

For the protester, Stockbridge Consulting LLC: Jess Johnson, pro se. For the District of Columbia: Sharon G. Hutchins, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID #61461875

This protest arises from a solicitation for a contractor to provide C&D batteries, issued by the District of Columbia Office of Contracting and Procurement on behalf of the Office of the Chief Technology Officer. Stockbridge Consulting LLC ("Stockbridge" or the "protester") challenges the District's rejection of Stockbridge's bid, arguing that the District improperly determined that Stockbridge was not a responsible bidder. In response, the District (1) moves the Board to dismiss the protest, alleging that Stockbridge does not have standing; or (2) in the alternative, argues that the District properly determined that Stockbridge was not a responsible bidder.

For the reasons set forth below, the Board denies the District's motion to dismiss, finding that Stockbridge has standing. However, we deny Stockbridge's protest, finding no violation of law or regulation in the District's determination that Stockbridge was not a responsible bidder.

BACKGROUND

On June 30, 2017, the District issued Solicitation No. Doc321612 (the "IFB") seeking a contractor to provide C&D batteries. (District's Mot. to Dismiss or, in the Alternative, Agency Report ("AR") Ex. 1, at 1-2.) The IFB stated that the District would "award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid." (Id. at 33 (§ L.1.2).) Section L.16.1 of the IFB stated that, to be determined responsible, a bidder must have, inter alia, "a satisfactory record of compliance with the applicable District licensing and tax laws and regulations." (Id. at 36.)

Five bidders responded to the IFB's July 14, 2017, deadline with the following bids:

Table with 2 columns: Bidder Name and Bid Amount. Rows include Dupont Computers, Ideal Electric Supply, MVS, Inc., Stockbridge, and The Impact Group, LLC.

(See AR Ex. 3, at 2-3; see also AR Ex. 2, at 1.)

The contracting officer determined that the lowest bidder, Dupont, was non-responsible because its bid was unreasonably low. (*See* AR Ex. 3, at 2; AR Ex. 8, at 2, para. 8.) Dupont was therefore eliminated from further consideration. (AR Ex. 8, at 2, paras. 7-8.) On July 21, 2017, as part of his evaluation of Stockbridge, the second-lowest bidder, the contracting officer instructed the contracting specialist to search the District's Citywide Clean Hands web application¹ in order to determine Stockbridge's compliance with the District's tax and licensing laws and regulations. (*See* AR Ex. 8, at 2, paras. 9-11.) The Citywide Clean Hands web application generated a report showing that Stockbridge was non-compliant because Stockbridge either "failed to file required District tax returns or owes more than \$100 in outstanding debt to the District." (AR Ex. 5.) The contracting officer again checked the Citywide Clean Hands web application regarding Stockbridge's compliance on July 28 and on August 14, 2017, and each time received the same report of Stockbridge's non-compliance. (AR Ex. 8, at 2, paras. 12-13; AR Exs. 6-7.) Based on these reports showing Stockbridge as non-compliant with the District's tax and licensing laws and regulations, the contracting officer determined that Stockbridge was non-responsible and eliminated Stockbridge from the procurement. (AR Ex. 8, at 2, paras. 9, 13; *see also* AR Ex. 3, at 2-3.) On August 15, 2017, the contracting officer awarded the contract to MVS.² (AR Ex. 2, at 2.) Also on August 15, 2017, the District notified Stockbridge that contract award had been made to MVS. (Protest at 5.)

On August 17, 2017, Stockbridge filed the instant protest, arguing that the District's determination of Stockbridge as non-responsible was unreasonable. (*See id.* at 2.) On September 6, 2017, the District moved to dismiss the protest, arguing that Stockbridge did not have standing because Stockbridge was ineligible for award. (AR at 4-7.) In the alternative, the District argued that the contracting officer's determination of Stockbridge as non-responsible was proper. (*Id.* at 1, 7-11.)

DISCUSSION

I. Jurisdiction and Standard of Review

The Board exercises exclusive jurisdiction over "[a]ny protest of a solicitation or award of a contract . . . by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract." D.C. CODE § 2-360.03(a)(1) (2017). Stockbridge timely filed its protest on August 17, 2017, within ten business days of its receipt of the notice of contract award. *See id.* § 2-360.08(b)(2).

A. Standing

In its motion to dismiss, the District argues that Stockbridge does not have standing because it "was not a responsible contractor, and was thus ineligible for contract award." (AR at 4.) It is well-settled that "[a] protester lacks standing where it would not be in line for award even if its protest were upheld." *AMI Risk Consultants, Inc.*, CAB No. P-0900, 2012 WL 4753867 (May 25, 2012) (quoting *C.P.F. Corp.*, CAB No. P-0521, 45 D.C. Reg. 8697, 8699 (Jan. 12, 1998)). In other words, if a protester's bid or proposal is not next in line for contract award, the protester does not have standing unless it challenges every higher-ranked bidder or offeror³ because it cannot show that it has suffered

¹ The Citywide Clean Hands web application is operated by the Office of Tax and Revenue ("OTR"), part of the Office of the Chief Financial Officer ("OCFO"). (*See* AR Ex. 4.)

² The contracting officer determined that Impact, the third-lowest bidder, was non-responsive and rejected Impact's bid. (*See* AR Ex. 3, at 2-3; AR Ex. 8, at 3, para. 14.)

³ Alternatively, a protester may also have standing if it challenges the integrity of the manner in which the agency scored all of the offerors' proposals through specific allegations that serve to invalidate the offerors' final rankings.

direct economic injury due to the allegedly adverse agency action. In this case, Stockbridge's protest challenges the District's determination that Stockbridge was non-responsible. (Protest at 2.) If this protest is successful, Stockbridge, as the next lowest bidder following the District's elimination of Dupont, would be next in line for contract award.⁴ See *Fort Myer Constr. Corp.*, CAB No. P-0641, 49 D.C. Reg. 3378, 3380 (Aug. 16, 2001). Accordingly, we find that Stockbridge has standing in this protest.

B. Standard of Review

In making a determination of a bidder's responsibility, the contracting officer is vested with wide discretion and business judgment. *Goel Servs., Inc.*, CAB No. P-0862, 62 D.C. Reg. 4225, 4228 (June 16, 2011) (citations omitted). Therefore, "the Board will not overturn a finding of responsibility or nonresponsibility unless the protestor shows bad faith on the part of the contracting agency or that the contracting officer's determination lacks any reasonable basis." *Lorenz Lawn & Landscape, Inc.*, CAB No. P-0869, 62 D.C. Reg. 4239, 4244-45 (Sept. 29, 2011) (citing *Children, Children, Children, Inc.*, CAB No. P-0858, 62 D.C. Reg. 4198, 4199 (Jan. 6, 2011)); see also *Anchor Constr. Corp.*, CAB No. P-0737, 54 D.C. Reg. 2066, 2068 (Jan. 9, 2007) (citations omitted), *recons. denied*, 2007 WL 4867566 (July 6, 2007).

II. The Contracting Officer's Determination of Stockbridge's Responsibility

The IFB stated that award would be made "to the responsive and responsible bidder who has the lowest bid." (AR Ex. 1, at 33 (§ L.1.2).) This provision was in accordance with the District's procurement laws and regulations which require that contracts be awarded only to responsible contractors. See D.C. CODE § 2-353.02(a) (2017); D.C. MUN. REGS. tit. 27, § 2200.1 (1988). Similar to the general responsibility criteria set forth in D.C. MUN. REGS. tit. 27, § 2200.4(f) (1988), the IFB required the successful bidder to have "a satisfactory record of compliance with the applicable District licensing and tax laws and regulations," (AR Ex. 1, at 36 (§ L.16.1(e)). In a section titled "Obtaining Information for Determination of Responsibility," the District's procurement regulations also require, in pertinent part:

Before making an affirmative determination of responsibility for any contract exceeding one hundred thousand dollars (\$100,000), the contracting officer shall obtain certification from the Department of Tax and Revenue that the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and that the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Office of Tax and Revenue.

D.C. MUN. REGS. tit. 27, § 2204.7 (1988).

Accordingly, as part of his evaluation of Stockbridge's responsibility, the contracting officer reviewed the District's Citywide Clean Hands web application to determine Stockbridge's compliance with the District's tax and licensing laws and regulations. (See AR Ex. 8, at 2, paras. 9-13.) On three

See *Martha's Table, Inc.*, CAB No. P-0896, 62 D.C. Reg. 4306, 4313 (May 10, 2012) (citing *CUP Temps., Inc.*, CAB No. P-0474, 44 D.C. Reg. 6841, 6844 (July 3, 1997)).

⁴ The District's elimination of Dupont, which submitted the lowest bid, as non-responsible is not at issue in this protest.

separate occasions between July 21 and August 14, 2017, the Citywide Clean Hands report stated that Stockbridge was non-compliant. (AR Exs. 5-7.)

Stockbridge argues that it was, in fact, compliant with the District's tax and licensing laws and regulations at the time it submitted its bid and continuing to the present. (*See* Protest at 2; Stockbridge's Resp. to the AR ("Protester's Comments") at 1-4.) According to Stockbridge, there is a "system glitch" in the Citywide Clean Hands web application that inaccurately identifies Stockbridge as non-compliant, (Protester's Comments at 2), and thus the contracting officer's non-responsibility determination should be overturned by the Board, (*id.* at 4).⁵ However, the Board has previously held that a contracting officer may properly rely on interagency databases, including the Citywide Clean Hands web application, when evaluating a contractor's responsibility. *Neal R. Gross & Co.*, CAB No. P-1031, 2017 WL 1968358 (Mar. 2, 2017); *C & E Servs., Inc.*, CAB No. P-0874, 62 D.C. Reg. 4216, 4219, 4222 (May 19, 2011); *see also* *AAA Termite & Pest Control*, CAB No. P-1024, 2017 WL 548833 (Jan. 6, 2017) (finding nothing improper in an agency's use of a District website that lists certified small and local businesses). For instance, in *Neal R. Gross & Co.*, the contracting officer searched the Citywide Clean Hands web application twice as part of the contracting officer's determination of the low bidder's responsibility. *See* CAB No. P-1031, 2017 WL 1968358. In holding that the contracting officer had a reasonable basis for determining that the low bidder was not responsible, we stated:

There is no evidence in the record, or that has been offered by the protester, which shows that the District did not use appropriate business judgment in searching this particular web application as part of its responsibility determination process to determine bidder compliance with this law. Thus, we find that it was reasonable for the District to rely on these search results particularly after conducting this search twice and receiving the same non-compliant results for the protester.

Id.; *see also* *C & E Servs., Inc.*, CAB No. P-0874, 62 D.C. Reg. at 4222.

Similar to the circumstances in *Neal R. Gross & Co.*, the contracting officer in this case used the Citywide Clean Hands web application multiple times in order to determine whether the protester was compliant with the District's tax and licensing laws and regulations.⁶ (AR Ex. 8, at 2, paras. 9-13; AR Exs. 5-7.) In light of the non-compliance reports on Stockbridge that were issued by the Citywide Clean Hands web application, we find that the contracting officer's determination that Stockbridge was non-responsible had a reasonable basis.⁷ Therefore, we deny the instant protest.⁸

⁵ The protester does not allege that the contracting officer acted in bad faith when making the determination of non-responsibility. (*See* Protest at 1-4; Protester's Comments at 1-4.)

⁶ The protester alleges that "[r]outinely, contract specialist[s] and contracting officers investigate this issue to see if the clean hands error is accurate," but "[t]his never happened" in the instant procurement. (Protest at 2; *see also* Protester's Comments at 2-3.) However, we reject this argument as the protester has offered no authority in support of its assertion. *See Neal R. Gross & Co.*, CAB No. P-1031, 2017 WL 1968358 ("[A]lthough the protester argues that the District was required to further investigate the veracity of the Clean Hands non-compliance reports by directly contacting OCFO's Office of Tax and Revenue, the protester offers no authority for this proposition, nor has the Board found any such authority."); *C & E Servs., Inc.*, CAB No. P-0874, 62 D.C. Reg. at 4222 ("We have never required a [contracting officer] to look behind the OTR certification regarding taxes to make his own determination that the certification is correct. . . . [W]e cannot require contracting officers to verify tax certifications that have been provided by OTR.")

⁷ Although we deny the instant protest because we find that the contracting officer's reliance on the Citywide Clean Hands web application was reasonable, the inaccuracy at times of the Citywide Clean Hands web application is concerning. The record contains an e-mail from OTR to Stockbridge on July 10, 2017, regarding a different

CONCLUSION

For the reasons set forth herein, the Board denies the District's motion to dismiss, finding that Stockbridge has standing. However, we deny Stockbridge's protest, finding that the contracting officer's determination that Stockbridge was non-responsible had a reasonable basis. Accordingly, we deny the instant protest and dismiss it with prejudice.

SO ORDERED.Date: December 13, 2017

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

CONCURRING:

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

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solicitation, whereby OTR states that Stockbridge's Clean Hands certification was denied "[d]ue to a glitch in our system." (Protester's Comments Ex. C; *see also* Protester's Comments Exs. A, E.) And prior protests before the Board have involved undisputed inaccuracies in the Citywide Clean Hands web application (or its predecessor). *See Lorenz Lawn & Landscape, Inc.*, CAB No. P-0869, 62 D.C. Reg. at 4242, 4246; *C & E Servs., Inc.*, CAB No. P-0874, 62 D.C. Reg. at 4219, 4222. We note that if protests establishing rife inaccuracies in the Citywide Clean Hands web application are brought before the Board, such inaccuracies could result in a finding by the Board that a report from the Citywide Clean Hands web application is insufficient to support a non-responsibility determination.

⁸ Having found that the determination of non-responsibility had a reasonable basis, we do not reach the District's supplemental argument that Stockbridge's bid was non-responsive.

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

PROTEST OF:

TRICORE SYSTEMS, LLC)	
	)	CAB No. P-1058
Solicitation No. DOC337366)	

ORDER OF DISMISSAL

Filing ID #61465777

This protest arises from a solicitation issued by the District of Columbia Office of Contracting and Procurement to contractors on the General Services Administration (“GSA”) Federal Supply Schedule seeking a contractor to remove existing camera hardware and install an updated Closed Circuit Television security system for the Department of Youth Rehabilitation Services. The protester, Tricore Systems, LLC (“Tricore”), contends that the solicitation fails to include a mandatory subcontracting provision requiring that a percentage of the contract dollar value be subcontracted to certified business enterprises. In response to the protest allegations, the District filed a combined Motion to Dismiss and Agency Report arguing that the protester lacks standing to maintain the present protest because the protester is not a GSA Supply Schedule contractor and thus is ineligible to participate in the procurement. Furthermore, the District asserts that the protest allegations lack merit because the requirement for mandatory certified business enterprise subcontracting is inapplicable for GSA Schedule procurements.

Upon consideration of the merits of the District’s request for dismissal, in connection with the underlying record, the Board dismisses this protest for lack of standing.

FACTUAL BACKGROUND

On September 14, 2017, the District of Columbia Office of Contracting and Procurement (“OCP”) on behalf of the Department of Youth Rehabilitation Services (“DYRS”) issued Request for Task Order Proposal Solicitation No. DOC337366 (the “Solicitation”) seeking a contractor to remove an existing analog camera hardware system and install an updated Closed Circuit Television (“CCTV”) security system with Internet Protocol cameras at two DYRS locations.¹ (Mot. to Dismiss/Agency Report “AR” Ex. 1, at 2.)² The Solicitation advised offerors that it was being issued by the District to GSA Federal Supply Schedule Contractors and, therefore, each offeror was required to submit with its proposal a copy of its GSA Schedule contract. (*Id.* at 2, 7.) Similarly, on the same day, September 14, 2017, the contracting officer issued a written determination finding that procuring the required services through a GSA Schedule contract would meet the District’s minimum requirements at a lower price and in less time than could be obtained with a new contract. (Mot. to Dismiss/AR Ex. 3, at 2-3.) The

¹ The contractor would provide services at DYRS’ New Beginnings Youth Detention Center and the Youth Service Center. (Mot. to Dismiss/Agency Report Ex. 1, at 10.)

² When referring to documents that do not contain consistent internal page numbering, the Board has cited to the page numbers assigned by Adobe Reader.

District estimated that it would cost \$636,545.64 to procure the security system removal and installation services. (*Id.* at 2.)

The District contemplated awarding a contract with a base period of one year and four one-year option periods. (Mot. to Dismiss/AR Ex. 1, at 4.) Interested offerors were required to submit a technical proposal demonstrating their qualifications, experience and ability to meet the technical requirements of the Solicitation. (*Id.* at 3.) In particular, the District required a security system that would detect, evaluate, display, and record security violations within DYRS' facilities. (*Id.* at 10.)

The District would award the contract to the responsible offeror whose offer was technically acceptable and the lowest price based upon the District's evaluation of each offeror's technical and price proposal. (*Id.* at 3.) On September 19, 2017, Tricore contacted OCP and requested an invitation to participate in the procurement, and OCP extended the Solicitation to Tricore on the following day, September 20, 2017. (Mot. to Dismiss/AR Ex. 2, at 3.) Tricore, however, did not submit a proposal in response to the Solicitation. (*Id.*)

After receiving the Solicitation, Tricore filed a protest with this Board on the same day, September 20, 2017, challenging the terms of the Solicitation.³ In particular, Tricore alleges that the Solicitation failed to include a requirement that for contracts exceeding \$250,000 the prospective awardee subcontract 35% of the contract dollar value to small or certified business enterprises and that the District did not obtain the necessary waiver from the Director of the Department of Small and Local Business Development before eliminating this subcontracting requirement. (*See* Protest 1-2.) *See also* D.C. CODE §§ 2-218.46 (2014), 2-218.51 (2015). The protester maintains that it is a qualified certified business enterprise that could participate in the underlying procurement as a certified business enterprise subcontractor if the Solicitation included the required subcontracting provision. (*Id.* at 3.)

On October 10, 2017, the District filed a combined Motion to Dismiss and Agency Report arguing that because Tricore is not a GSA Schedule contractor for the subject services and is not challenging the District's use of the GSA Schedule, Tricore does not have a direct economic interest in the procurement and, therefore, lacks standing to maintain its protest allegations. (Mot. to Dismiss/AR 4-7.) In addition, the District also contends that Tricore's allegations lack merit because the certified business enterprise subcontracting requirement does not apply to GSA Schedule procurements. (*Id.* at 8-10.)

In response to the District's request for dismissal, Tricore alleges that it has standing as a prospective offeror because the District invited it to participate in the procurement and also because, if its protest were upheld, it would be eligible to participate in the resulting contract as a participating dealer or partner to the awardee (i.e., a GSA Schedule contractor). (Protester Resp. 2-4, Oct. 18, 2017).

Upon review of the record of this protest and, as discussed below, we dismiss Tricore's protest allegations for lack of standing.

³ Proposals in response to the Solicitation were originally due on September 20, 2017, however, on the original submission due date, the District extended the proposal submission deadline to September 25, 2017. (Mot. to Dismiss/AR Ex. 2, at 3.)

DISCUSSION

As a general matter, this Board exercises jurisdiction over a protest of a solicitation or contract award by any actual or prospective offeror who is aggrieved in connection with the solicitation or award pursuant to D.C. Code § 2-360.03(a)(1) (2011). The District maintains, however, that the protester lacks standing in this matter and, therefore, the Board does not have jurisdiction to consider the merits of the underlying protest allegations.

For purposes of standing, a protester must be an actual or prospective bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract. D.C. CODE § 2-360.08(a) (2016). Our rules define an aggrieved person as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract, or who is aggrieved in connection with the solicitation for a contract. D.C. MUN. REGS. tit. 27, § 100.2(a) (2002); *Tree Servs., Inc.*, CAB No. P-0982, 62 D.C. Reg. 6619, 6621 (May 1, 2015). Accordingly, we have consistently held that in order to have standing, a protester must have a direct economic interest in the protested procurement. *See MWJ Solutions, LLC*, CAB No. P-0940, 62 D.C. Reg. 6300, 6303 (Sept. 26, 2013); *see also Barcode Tech.*, CAB No. P-524, 45 D.C. Reg. 8723, 8726 (Feb. 11, 1998). Further, a protester lacks standing if it would not be in line for award, even if its protest were upheld. *Id.*; *see also Ward & Ward*, CAB No. P-1001, 2016 WL 5887605 (Sept. 29, 2016).

In the present matter, the crux of the protester's initial allegations are that the terms of the Solicitation fail to include specific legal provisions, which would require the prospective awardee to subcontract a certain percentage of the contract dollar value to small or certified business enterprises and that the District did not obtain the necessary waiver to bypass this subcontracting requirement. (*See* Protest 1-2.) The protester essentially claims that because it is a certified business enterprise it would be able to participate in this procurement as a subcontractor if these subcontracting provisions were included in the Solicitation. (*Id.* at 3.)

However, it is well-settled that prospective subcontractors lack a direct economic interest and standing to challenge a solicitation or prime contract award. *Mustang Dynamometer*, CAB No. P-0655, 50 D.C. Reg. 7445, 7446 (July 30, 2002) (a subcontractor, vendor, or supplier of a prime contract bidder does not have standing to protest a contract award); *Remco Bus. Sys., Inc.*, CAB No. P-131, 36 D.C. Reg. 4016, 4017 (Dec. 30, 1988) (suppliers who are not actual or potential bidders lack standing to challenge bid solicitations). Notably, although potential subcontractors have some economic interest in offering services to a prime contract awardee, that interest is not the direct economic interest of an actual or prospective bidder. *Mid Atlantic Tennis Courts & Supplies*, CAB No. P-0849, 62 D.C. Reg. 4132, 4134 (Aug. 3, 2010). Thus, the protester's interest in becoming a subcontractor for the contract work does not provide it with the requisite economic interest and, thus, standing before this Board. Therefore, we dismiss the present protest for lack of standing on this basis. *See Eagle Eyes Sec. Co., LLC*, CAB No. P-0908, 2012 WL 4753872 (June 12, 2012) (dismissing protest for lack of standing where the protester only sought to be a potential subcontractor under the solicitation).

Additionally, although we dismiss this protest on other standing grounds, we still note that we agree with the District that Tricore also lacks standing in this protest because Tricore is not a GSA Schedule contractor and thus is not eligible to compete for the contract. (*See* Mot. to Dismiss/AR 4-7.) Indeed, Tricore did not even submit a proposal in response to the Solicitation

to compete for the GSA contract award and to attempt to establish a direct economic interest in the resulting contract.⁴

CONCLUSION

For the reasons discussed herein, the Board finds that the protester lacks standing to maintain its protest allegations and, therefore, dismisses this protest with prejudice.

SO ORDERED.

Dated: December 13, 2017

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

CONCURRING:

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

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⁴ Of note, in certain cases where a protester is ineligible to compete for a contract award as in the present case, we have still found standing where the protester's specific allegations challenge the overall propriety of the District's procurement process which denied the protester an opportunity to compete for the award and, were the protest upheld, the Board could grant the protester the remedy of having an opportunity to compete for the subsequent procurement. See *MWJ Solutions, LLC*, CAB No. P-0940, 62 D.C. Reg. at 6304. Here, however, by its own admission, Tricore has not challenged the propriety of the District's use of the GSA Schedule in this matter to establish standing on this basis. (See Protest 3.)

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

STOCKBRIDGE CONSULTING LLC)
Under Solicitation No. DCEB-2017-R-0003) CAB No. P-1062

For the protester, Stockbridge Consulting LLC: Jess Johnson, pro se. For the District of Columbia: Jason Soltis, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID #61551592

This protest arises from a solicitation issued by the District of Columbia Office of the Deputy Mayor for Planning and Economic Development ("DMPED") for a contractor to provide Davis-Bacon monitoring and related services. Stockbridge Consulting LLC ("Stockbridge" or the "protester") challenges the District's decision to award a contract to CHW Solutions, Inc. ("CHW" or the "awardee"), arguing that the District unreasonably evaluated Stockbridge's proposal. In response, the District argues that it properly evaluated the proposals. Finding no violation of procurement law or regulation, we conclude that the District reasonably evaluated the protester's proposal. Accordingly, we deny the instant protest.

BACKGROUND

I. The Solicitation

On March 13, 2017, DMPED issued Solicitation No. DCEB-2017-R-0003 (the "RFP") seeking a contractor to provide Davis-Bacon monitoring services for certain identified construction projects. (District's Agency Report ("AR") Ex. 1, at 2, 6.)¹ According to the RFP, the contractor would be required to monitor the construction projects on an as-needed basis to ensure compliance with the federal Davis-Bacon Act which "requires the payment of prevailing wage rates to all laborers and mechanics." (AR Ex. 1, at 6 (§§ C.1-C.4).) The RFP was set aside for contractors who had obtained certification as a small business enterprise ("SBE") pursuant to D.C. CODE §§ 2-218.01 to .82 (2013, Supp. June 2015 & Supp. June 2016) (amended Apr. 1, 2017, and Dec. 13, 2017). (AR Ex. 1, at 5 (§ B.5).) Section M of the RFP described the District's evaluation and award criteria. (Id. at 47-50.) The offerors' proposals were to be graded on a 112-point scale, consisting of 75 points for technical criteria, 25 points for price, and up to 12 preference points based on any Certified Business Enterprise ("CBE") designation that they had obtained, pursuant to D.C. CODE §§ 2-218.01 to .82. (AR Ex. 1, at 48-49 (§ M.3).)

¹ Because certain documents in the record lack consistent internal page numbering, the Board has used the page numbers assigned by Adobe Reader when citing to all documents herein.

II. The District's Evaluation of the Offerors' Proposals and Award

Eight offerors submitted proposals prior to the RFP's April 3, 2017, deadline, including Stockbridge and CHW. (AR at 2; *see also* AR Ex. 2.) On April 11, 2017, the District notified four of the offerors that their proposals had been rejected because they were not SBEs as required by the RFP.² (*See* AR at 2-3; *see also* AR Ex. 2.) On May 26, 2017, the District convened a technical evaluation panel ("TEP") to evaluate the technical proposals of the remaining four offerors, including CHW and Stockbridge. (AR Ex. 3, at 2; *see also* AR at 3.) The individual evaluations of the offerors' proposals by the TEP members resulted in the following total scores for technical criteria:

	CHW	Stockbridge	Offeror 3	Offeror 4
Evaluator 1	68	64	60	54
Evaluator 2	73	21	58	32
Evaluator 3	57	49	49	48

(*See* AR Ex. 3, at 2; *see also* Protest at 3.) Each TEP member also provided comments regarding strengths and weaknesses, if any, of each offeror's proposal. (*See* AR Ex. 12, at 4-7, 10-13, 16-19.)

Having performed individual evaluations, the TEP reached a consensus technical rating for each offeror. (AR Ex. 3, at 2-3; *see also* AR at 3.) The TEP consensus evaluation also discussed strengths and weaknesses, if any, of each offeror's proposal. (AR Ex. 3, at 3-11; *see also* Protest at 3.) The following table illustrates the TEP's consensus technical score for each offeror:

	CHW	Stockbridge	Offeror 3	Offeror 4
Total Technical Score (75 points max)	69	51	56	47

(*See* AR Ex. 3, at 3; *see also* Protest at 2-3; AR at 3.)

The TEP submitted its consensus scores to the contracting officer on July 18, 2017. (*See* AR Ex. 2.) The contracting officer then independently reviewed the offerors' proposals. (*See* AR Ex. 5, at 2, paras. 5-6; *see also* AR at 4.) On July 21, 2017, the contracting officer concurred with the TEP's consensus technical scores for each offeror and scored the offerors' price proposals. (*See* AR Ex. 4; *see also* AR Ex. 5, at 2, para. 6; AR at 4.) The final total evaluation scores for the offerors were as follows:

	Technical (75 points max)	Price (25 points max)	CBE Preferences (12 points max)	Total Evaluated Scores
CHW	69	19.73	9	97.73
Offeror 4	47	23.27	9	79.27
Offeror 3	56	14.04	12	82.04
Stockbridge	51	25	12	88

(*See* AR Ex. 4; *see also* Protest at 2-3; AR at 4.)

On August 9, 2017, the District entered into negotiations with CHW, the highest-ranked offeror. (*See* AR at 4; AR Ex. 2; AR Ex. 3, at 11; AR Ex. 6, at 2-3; *see also* AR Ex. 5, at 2, para. 4.) During the

² On April 25, 2017, one of the rejected offerors filed a protest, CAB No. P-1043, which the Board dismissed as untimely. *See Promesa Consulting Grp., Inc.*, CAB No. P-1043, 2017 WL 5905665 (July 12, 2017).

negotiations, CHW submitted a best and final offer (“BAFO”) and a revised BAFO. (See AR Ex. 6, at 4-5; AR Ex. 7, at 2-5; see also AR at 4.) On September 14, 2017, the contracting officer issued a memorandum of her independent assessment of the proposals which (1) included a list of strengths and weaknesses, if any, for each of the four offerors; and (2) concluded that award should be made to CHW. (AR Ex. 8, at 2-6; see also AR at 4.) On September 29, 2017, the District awarded the contract to CHW. (AR Ex. 9; see also AR at 5.)

III. Procedural History

On October 5, 2017, the District notified Stockbridge that the contract had been awarded to CHW. (Protest at 2; AR at 5.) On October 11, 2017, Stockbridge received a debriefing from the District. (Protest at 2; AR at 5.) During the debriefing, the District provided the following information: (1) Stockbridge had received a total technical score of 51 compared to CHW’s score of 69; (2) Stockbridge had submitted the lowest price; (3) Stockbridge had received 12 CBE preference points compared to CHW’s 9 CBE preference points; (4) the individual TEP evaluators had given Stockbridge scores of 64, 21, and 49, compared to CHW’s scores of 68, 73, and 57; and (5) the TEP consensus report’s comments relating to Stockbridge’s proposal. (See Protest at 2-3.) On October 11, 2017, Stockbridge filed the instant protest, arguing that the “[District]’s technical proposal evaluations of Stockbridge were unreasonable.” (*Id.* at 3.) On October 31, 2017, the District filed the AR, arguing that the District’s evaluation of the offerors’ proposals was reasonable and in accordance with the RFP. (AR at 5-8.) The protester did not file comments to the AR.³

DISCUSSION

The Board exercises exclusive jurisdiction over “[a]ny protest of a solicitation or award of a contract . . . by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract.” D.C. CODE § 2-360.03(a)(1) (2017). This protest is timely, having been filed within ten business days of the protester’s receipt of the notice of contract award. See *id.* § 2-360.08(b)(2).

In reviewing the propriety of an agency’s evaluation of proposals and related award decision, the Board examines whether the agency’s actions were reasonable and consistent with the evaluation criteria listed in the solicitation, whether such actions are adequately documented, and whether there exists any violations of procurement law or regulation. *Emergency Assocs. of Physician’s Assistants & Nurse Practitioners, Inc.*, CAB No. P-0500, 46 D.C. Reg. 8527, 8532 (Dec. 15, 1998) (citations omitted). In so doing, the Board does not make an independent evaluation of the offerors’ proposals or substitute its judgment for that of the agency. *Id.* And a protester’s disagreement with an agency’s technical evaluation does not by itself render the evaluation unreasonable. *Id.* (citations omitted); see also *Lorenz Lawn & Landscape, Inc.*, CAB No. P-0869, 62 D.C. Reg. 4239, 4246 (Sept. 29, 2011) (citations omitted). Rather, the Board examines the record to determine if “the decision is documented in sufficient detail to show that it is not arbitrary and appears reasonable and in accord with the evaluation criteria listed in the solicitation.” *Psychiatric Inst. of Washington, Inc.*, CAB No. P-0905, 62 D.C. Reg. 4329, 4337 (Aug. 1, 2012) (quoting *RGII Techs., Inc.*, CAB Nos. P-0664, P-0669, P-0670, 50 D.C. Reg. 7475, 7477 (Mar. 6, 2003)).

The protester has challenged the District’s evaluation of its proposal, arguing that it “should have received a max score for [the] technical proposal” because it “has vast experience providing Davis-Bacon

³ The District filed the AR under seal and also filed a redacted AR which was served upon the *pro se* protester on October 31, 2017.

services which is indicated in the technical evaluators' own summaries identified during the debriefing." (Protest at 3.) Although not a model of clarity, the protester's specific allegations appear to be that there was a "huge difference by evaluator two" in the TEP members' individual scoring of Stockbridge's technical proposal, that Stockbridge allegedly "met or exceeded every requirement of technical proposal [sic]," and that "[n]o deficiencies were documented in the evaluation." (*Id.*) Apart from noting the "huge difference" in scoring by a single evaluator, however, the protester has not identified any specific error or impropriety in the District's actual evaluation process, but merely disagrees with the District's conclusions.

In the AR, the District provided the factual background for the instant procurement and asserted that its evaluation of the offerors' proposals was reasonable and in accordance with the RFP. (*See* AR at 2-8.) In particular, the District's statement of facts note that "[a]fter reviewing the TEP report, individual evaluations, and offerors' proposals, the [contracting officer] found CHW to be most advantageous to the District based on a variety of factors."⁴ (AR at 4.) Further in the AR, the District concludes that "[t]he TEP and [the contracting officer] reasonably evaluated all proposals in accordance with the RFP's evaluation," (*id.* at 6), and that "the [contracting officer] was reasonable in awarding to CHW, and not awarding to the Protester, as in both the TEP and [the contracting officer]'s evaluation, CHW scored the highest number of points and was deemed to be most advantageous to the District," (*id.* at 7).

The protester failed to file comments in response to the AR.⁵ Our rules state that "[w]hen a protester fails to file comments on an Agency Report, factual allegations in the Agency Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Board as conceded." Board Rule 307.4, D.C. MUN. REGS. tit. 27, § 307.4 (2002). Despite being a *pro se* protester and having received a redacted AR, *see supra* note 3, the protester is not relieved from its responsibility under Board Rule 307 to respond to the District's AR. *See Seagrave Fire Apparatus, LLC*, CAB No. P-0928, 62 D.C. Reg. 4416, 4418 (Dec. 20, 2012). As such, we treat as conceded the District's statement of facts as set forth in the redacted AR regarding the District's reasonable evaluation of the offerors' proposals. Neither the Protest nor other documents in the record contradict the District's factual allegations in the AR's statement of facts.⁶ And upon the Board's review of the AR *in camera*, we find that the District's evaluation of Stockbridge's proposal was reasonable and in accordance with procurement law and the terms of the RFP.⁷ *See Emergency Assocs. of Physician's Assistants & Nurse Practitioners, Inc.*, CAB No. P-0500, 46 D.C. Reg. at 8530-31, 8536.

CONCLUSION

For the reasons set forth herein, we conclude that neither the protester nor the record evidence establishes that the District's evaluation of the protester's proposal was unreasonable or otherwise contrary to procurement law. Accordingly, we deny the instant protest and dismiss it with prejudice.

SO ORDERED.

⁴ The redacted version of the AR made available to the protester does not delineate the factors that the contracting officer considered in finding CHW's proposal most advantageous to the District. However, the Board has reviewed the AR *in camera* and is able to review the basis for the contracting officer's award determination.

⁵ The protester was required to file its response "[w]ithin seven (7) business days after receipt of the Agency Report." Board Rule 307.1, D.C. MUN. REGS. tit. 27, § 307.1 (2002).

⁶ Such conceded facts are included in Part II of the Background section above as part of the Board's factual findings.

⁷ The Board points out that although the TEP consensus report did not find any deficiencies in Stockbridge's proposal, as the protester claims, (*see* Protest at 3), it is the contracting officer's independent assessment that is the basis for award. The contracting officer's evaluation included her own list of strengths and weaknesses, if any, for each of the proposals submitted by the four offerors. (*See* AR Ex. 8, at 3-5.)

Date: January 10, 2018

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

CONCURRING:

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

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

PROTEST OF:

CROWN SOLUTIONS GROUP, LLC)
) CAB No. P-1063
)
Solicitation Nos: Doc330074, Doc342912)

For the Protester, Crown Solutions Group, LLC: Adetutu Oshinee, pro se. For the District of Columbia: Howard Schwartz, Esq., Office of the Attorney General.

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

OPINION

Filing ID #61600056

The protester, Crown Solutions Group, LLC, challenges the District of Columbia Office of Contracting and Procurement’s cancellation of Solicitation No. Doc330074, and the District’s subsequent issuance of Solicitation No. Doc342912 to certified business enterprises on the District’s Supply Schedule. Both solicitations sought a contractor to provide temporary support services for the District’s Office of Risk Management in connection with the District’s Workers’ Compensation Program. The protester argues that the District’s cancellation of the initial solicitation (No. Doc330074), under which it was the proposed awardee, was unreasonable because the subsequent solicitation (No. Doc342912) sought substantially the same requirements while unreasonably limiting competition in that procurement to certified business enterprises on the District’s Supply Schedule. Further, the protester contends that it is entitled to recoup costs it incurred in pursuit of the contract award under the initial solicitation (No. Doc330074) that was improperly cancelled by the District.

In response to the protester’s allegations, the District filed a combined Motion to Dismiss and Agency Report arguing that the Board should dismiss, as moot, any protest grounds relating to Solicitation No. Doc330074 because the District properly cancelled the procurement. The District also contends that the protester is not entitled to recover its bid preparation costs and that the District’s decision to issue Solicitation No. Doc342912 under the District’s Supply Schedule was reasonable and in accordance with procurement law.

Upon review of the allegations raised by the protester, in connection with the underlying record, we deny and dismiss the protester’s allegations for lack of merit as discussed more fully below.

FACTUAL BACKGROUND***Solicitation No. DOC330074***

On August 2, 2017, the District's Office of Contracting and Procurement ("OCP") on behalf of the Office of Risk Management ("ORM") issued Invitation for Bids Solicitation No. Doc330074 ("Solicitation No. 1") seeking a contractor to provide up to five temporary legal advisors on an as needed basis. (Mot. to Dismiss/Agency Report "AR" Ex. 1, at 1-2.) In particular, the legal advisors would assist ORM with the implementation of new regulations governing the Public Sector Workers' Compensation Program including drafting guidance documents interpreting the new regulations, researching and drafting decisions for the adjudication of administrative disputes involving appeals to the Chief Risk Officer, auditing workers' compensation claims, and other legal issues related to workers' compensation and risk management matters. (*Id.* at 3.) Thus, the legal advisors were required to possess a Juris Doctor degree and a license to practice law in the District in addition to having experience working with the District's workers' compensation program. (*Id.* at 4.)

Prior to performance of the contract, the putative awardee was required to procure and maintain insurance coverage including commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability, employment practices liability, and cyber liability insurance. (*Id.* at 23-24.) Solicitation No. 1 also included a standard subcontracting provision, which stated that at least 35% of the dollar volume of contracts in excess of \$250,000 was required to be subcontracted to qualified small or certified business enterprises. (*Id.* at 2.) *See also* D.C. CODE § 2-218.46 (2014), *amended by* D.C. Law No. 22-130 (Dec. 13, 2017). However, the District requested a waiver of this subcontracting requirement because the required legal advisors would fulfill all of the work required without any need for subcontractors. (*See* Mot. to Dismiss/AR Ex. 4.)

The District ultimately received bids from four companies including Crown Solutions Group, LLC ("Crown") in response to Solicitation No. 1 and determined that Crown was the lowest priced bidder. (Mot. to Dismiss/AR 3.) However, prior to awarding Crown the contract, the District required that Crown obtain all of the insurance coverage detailed in Solicitation No. 1. (District Reply, Ex. A, at 2, Nov. 9, 2017.) Therefore, the protester purchased the requisite insurance and provided the District with the corresponding documentation to demonstrate its compliance with Solicitation No. 1's insurance requirements. (*See* Protester Resp., Certificates of Insurance Exs., Nov. 12, 2017.)

Subsequently, on September 15, 2017, O'Riordan Bethel Law Firm, LLP ("O'Riordan"), filed a bid protest with this Board arguing that the District's requested waiver of the solicitation's subcontracting requirements was not justified and that the proposed award to Crown was improper because Crown was not owned or operated by a District licensed attorney. (Mot. to Dismiss/AR 3.) As a result of O'Riordan's protest, OCP determined that all contracts for outside legal counsel services, including the services sought under Solicitation No. 1, required prior approval from the District's Office of the Attorney General ("OAG") (formerly Office of

Corporation Counsel) before an award for the legal services could be made by the District.¹ (Mot. to Dismiss/AR Ex. 5; Mot. to Dismiss/AR Ex. 6, at 1.)

Prior to issuing Solicitation No. 1, OCP had not requested or obtained OAG's approval to seek outside legal services, and OAG subsequently declined to approve OCP's proposed contract award to Crown. (Mot. to Dismiss/AR Ex. 6, at 1.) In this regard, OAG advised OCP that it would not approve any contract for these services because OAG could provide the legal services contemplated by the solicitation. (*Id.*) Consequently, on October 4, 2017, OCP's Chief Procurement Officer issued a written determination cancelling Solicitation No. 1 based upon OAG's stated ability to perform the legal services required and advised Crown of the same. (*Id.* at 1-2; Protester Resp., Email from Contract Specialist Ex., Nov. 12, 2017.)²

Solicitation No. Doc342912

After cancelling Solicitation No. 1, OCP submitted a Request for Application to procure the workers' compensation auditing and examination support services through certified business enterprises ("CBEs") on the District of Columbia Supply Schedule ("DCSS"). (*See* Mot. to Dismiss/AR Ex. 7.) The District justified its use of the DCSS for this new procurement as a means of providing the District with greater competitive choices more expeditiously while also increasing the District's utilization of CBEs. (*Id.* at 1.) Upon approval of the Request for Application, on October 10, 2017, OCP on behalf of ORM issued a new solicitation Request for Tasks Order Bids Solicitation No. Doc342912 ("Solicitation No. 2"), seeking a contractor to provide up to five Senior Claims Examiners for essentially the same work contemplated by Solicitation No. 1. (Mot. to Dismiss/AR Ex. 3, at 1.) Participation in this procurement was restricted to companies on the DCSS, and each bidder was required to submit its bid by the solicitation's October 16, 2017, bid submission deadline. (*Id.* at 1-2.)

Similar to the cancelled Solicitation No. 1, the subsequent Solicitation No. 2 advised bidders that the required Senior Claims Examiners would be responsible for reviewing, examining, and investigating workers' compensation claims for District employees who sustain work-related injuries while also assisting ORM in assessing and auditing the Workers' Compensation Program's third-party administrator. (*Id.* at 7.) However, Solicitation No. 2 removed the prior requirement under Solicitation No. 1 that the personnel be licensed to practice law in the District of Columbia and, instead, only required that the Senior Claims Examiners have a Juris Doctor degree. (*Id.* at 8-9.)³ The District contemplated awarding the contract to the responsible and responsive bidder whose bid was determined to be most advantageous to the District based upon its proposed pricing. (*Id.* at 2.) Because Crown was not an approved vendor under the DCSS, it was unable to submit a bid in response to Solicitation No. 2.

¹ On June 27, 2003, the Mayor issued a Memorandum mandating that all District agencies receive OAG's approval prior to awarding any contract for outside legal counsel services. (*See* Mot. to Dismiss/AR Ex. 5.)

² OCP also suggested that Crown cancel its insurance policies and stated that a new solicitation could possibly be issued by the District in the future. (Protester Resp., Email from Contract Specialist Ex., Nov. 12, 2017.)

³ Interested bidders were required to propose hourly rates for the Senior Claims Examiners based upon an estimated number of hours for the base year and one-year option period. (Mot. to Dismiss/AR Ex. 3, at 11.)

Crown's Protest

Prior to Solicitation No. 2's bid submission deadline, Crown filed a bid protest with this Board challenging the District's decision to cancel Solicitation No. 1 and subsequently issue Solicitation No. 2 limited to only CBE companies that hold DCSS contracts. (*See* Protest.) In particular, Crown alleges that the cancellation of Solicitation No. 1 was unreasonable because both Solicitation No. 1 and No. 2 have nearly identical job performance requirements and the only differences between the two solicitations were the job titles and the removal of the requirement for a District law license. (Protest 2-3; *see also* Protester Resp. 2, Nov. 1, 2017.)

Crown also asserts that it incurred bid preparation expenses as a result of the District's request that it provide proof of insurance under Solicitation No. 1, which led to economic hardship, and for which it seeks reimbursement from the District. (Protest 2.) Crown also challenges the District's decision to restrict Solicitation No. 2 to CBEs that are DCSS contract holders because it is not a DCSS contract holder and thus is ineligible to participate in the procurement. (*Id.* at 2-3.) Furthermore, Crown also alleges that it should be considered for award of Solicitation No. 2 because it can provide pricing that is lower than the prices of CBEs on the DCSS. (*Id.*)

In response to Crown's protest, on October 30, 2017, the District filed a combined Motion to Dismiss and Agency Report arguing that the District appropriately cancelled Solicitation No. 1 after OAG declined to approve the contract award for licensed attorneys, which reasonably led the District to re-evaluate its procurement needs. (Mot to Dismiss/AR 7-9.) Therefore, the District maintains that Crown's protest allegations concerning Solicitation No. 1 should be dismissed as moot because the solicitation was properly cancelled by the District. (*Id.* at 8-9.) The District also contends that the protester is not entitled to recover its costs of obtaining the requisite insurance policies in response to Solicitation No. 1 because the District's actions in cancelling the solicitation were not arbitrary or capricious as required for the protester to recover its bid preparation costs. (*Id.* at 10-12.)

Moreover, the District contends that it reasonably exercised its business judgment in issuing Solicitation No. 2 for only CBEs that are DCSS contract holders. The District maintains that it reasonably determined that utilizing the DCSS program would provide the District with more competitive choices and would reduce the procurement processing time while increasing the District's utilization of CBEs. (*Id.* at 9-10.)

Upon review of the record in this matter, and as discussed below, the Board finds that the District's decision to cancel Solicitation No. 1 and issue Solicitation No. 2 to only CBEs on the DCSS was reasonable and in accordance with procurement law.

DISCUSSION

The Board exercises jurisdiction over a protest of a solicitation or contract award by any actual or prospective offeror who is aggrieved in connection with the solicitation or award, pursuant to D.C. Code § 2-360.03(a)(1) (2011). As previously stated, Crown's protest in this matter primarily concerns its contention that the District improperly cancelled Solicitation No. 1 and unreasonably restricted the subsequent procurement for similar services to CBEs on the DCSS.

A. The District's Cancellation of Solicitation No. 1 was Reasonable.

An Invitation for Bids (“IFB”), such as Solicitation No. 1, may be cancelled after bid opening where the CPO determines, for any reason, that cancellation is in the best interest of the District. D.C. MUN. REGS. tit. 27, § 1530.3 (2012). Accordingly, in reviewing the propriety of an IFB cancellation determination after bid opening, the Board evaluates whether the cancellation was in the best interest of the District and supported by a compelling reason. *RMD Nat'l Harbor GP, LLC d/b/a Metro. Gaming*, CAB No. P-0967, 2015 WL 1090168 (Mar. 6, 2015) (citing *Peoples Involvement Corp.*, CAB No. P-0493, 45 D.C. Reg. 8676, 8678 (Dec. 17, 1997)) (internal quotation marks omitted). “The requirement that there be a compelling reason for the cancellation of an IFB after bid opening is imposed because of the potentially serious adverse impact of cancellation on the integrity of the competitive sealed bidding system after prices have been exposed.” *Id.* (quoting *Peoples Involvement Corp.*, CAB No. P-0493, 45 D.C. Reg. at 8678).

In the present matter, the protester’s challenge against the District’s decision to cancel Solicitation No. 1 is essentially based upon the District’s decision to issue a new solicitation for similar services, which the protester believes to be unreasonable. We, however, first find that the protester has not presented evidence in this matter showing that the District’s initial decision to cancel Solicitation No. 1 was not in the District’s best interest. The record indicates that OAG refused to approve the District’s proposed contract award for legal services, which was required by law. (Mot. to Dismiss/AR Ex. 6, at 1.) Therefore, absent this approval, the CPO’s written determination to cancel Solicitation No. 1 complied with a legal mandate and was in the District’s best interest. Compliance with a clear legal mandate is also a compelling reason for the District to cancel Solicitation No. 1.

Moreover, the record demonstrates that following its cancellation of Solicitation No. 1, the District reasonably re-evaluated its needs and determined that it did not require the skill level of licensed attorneys to meet its need for workers’ compensation claims support services. In that regard, we have consistently held that the determination of an agency’s needs and the best method of accommodating its needs is a matter of business judgment within the agency’s discretion, and the Board will not question the agency’s determination unless it lacks a reasonable basis. *See RMD Nat'l Harbor GP, LLC d/b/a Metro. Gaming*, CAB No. P-0967, 2015 WL 1090168; *Duane A. Brown*, CAB No. P-0914, 62 D.C. Reg. 4410, 4413 (Dec. 13, 2012); *see also* D.C. CODE § 2-360.08(d-1) (2016). Here, the District determined that its performance requirements could be fulfilled by individuals that possess Juris Doctor degrees without requiring attorney bar admission. Thus, the District classified the required positions under Solicitation No. 2 as Senior Claims Examiners. Moreover, by removing this unnecessary license requirement, the contract award under Solicitation No. 2 also did not require OAG approval.

As a result of these factors, we find that the District’s cancellation of Solicitation No. 1 after bid opening was supported by a compelling reason, and the District reasonably reassessed and redefined its actual needs under Solicitation No. 2. Thus, we deny and dismiss Crown’s protest challenging the District’s cancellation of Solicitation No. 1 as without merit. *See The Impact Grp., LLC*, CAB No. P-1056, 2017 WL 5905674 (Nov. 1, 2017) (upholding cancellation of initial solicitation after bid opening and issuance of second solicitation where initial

solicitation's cancellation was supported by a compelling reason and in the best interest of the District).

B. OCP's Issuance of Solicitation No. 2 on the District Supply Schedule was in Accordance with District Law.

District of Columbia procurement law permits the District to use one of several listed methods of procurement, including the DCSS, to award government contracts. *See* D.C. CODE § 2-354.01(a)(1). These laws also explicitly authorize the District to procure goods or services from CBEs through the District's Supply Schedule. *See* D.C. CODE § 2-354.12; *see also* D.C. MUN. REGS. tit. 27, § 2104 (2015).⁴

The District reasonably justified its decision to issue Solicitation No. 2 to CBEs on the DCSS upon determining that using the DCSS would ultimately increase competition and allow a more expeditious award decision to be made. (District Reply, Ex. A, at 2-3, Nov. 9, 2017.) The District also concluded that multiple CBE firms would be eligible to compete for the award particularly after removing the prior attorney-licensure requirement that had been included under the cancelled Solicitation No. 1. (*Id.*) Moreover, the District determined that issuing the procurement on the DCSS would support the District's mandated initiative to increase participation of the CBE community and assist the District in meeting its mandatory annual subcontracting goals. (*Id.*)

Accordingly, we find the District's decision to use the DCSS in the procurement to be reasonable and in accordance with procurement law. *See MWJ Solutions, LLC*, CAB No. P-0940, 63 D.C. Reg. 12047, 12052 (Sept. 26, 2013) (denying protester's challenge to District's procurement method where District's choice of procurement was consistent with procurement law).

C. The Protester is Not Entitled to its Bid Preparation Costs

Based upon our finding that the District's cancellation of Solicitation No. 1 was in the District's best interest and for a compelling reason, we also find no basis to award Crown its costs in obtaining the required insurance policies to be eligible for award. The solicitation advised bidders that prior to contract performance, the contractor would have to provide the District with evidence demonstrating that it possessed commercial general liability, automobile liability, workers' compensation, employer's liability, professional liability, employment practices liability, and cyber liability insurance. (Mot. to Dismiss/AR Ex. 1, at 23-24.) As detailed herein, the District determined that Crown did not possess all of the insurance required by Solicitation No. 1 after it bid on the contract and therefore requested that Crown obtain and provide its proof of insurance, which it ultimately did.

Generally, under the federal procurement scheme, bid preparation costs include costs incurred in preparing, submitting and supporting bids on potential contracts. *See Lockheed*

⁴ For procurements valued at over \$250,000, the contracting officer may use a qualified CBE on the DCSS that can provide the goods or services. D.C. MUN. REGS. tit. 27, § 2104.2. Because the present procurement is valued at over \$250,000, the contracting officer is authorized to procure the services from CBEs. (*See* Mot. To Dismiss/AR Ex. 8, at 1.)

Martin Sys. Integration—Owego, B-287190.5, 2002 CPD ¶ 49 (Comp. Gen. Mar. 20, 2002) (citing 48 C.F.R. § 31.205.18 (2013)). To that extent, our bid protest procedures authorize the Board to award a protester its reasonable bid preparation costs only where we determine that the District's actions toward the protester were arbitrary and capricious. D.C. CODE § 2-360.08 (f)(2) (2016).

In the present matter, as discussed supra, the Board found that the District acted reasonably in cancelling Solicitation No. 1 and issuing Solicitation No. 2 limited to CBEs that are DCSS contract holders. Therefore, the District's conduct, in this regard, does not rise to the level of arbitrary and capricious action that is required for the award of bid preparation costs to the protester. See *Williams, Adley & Co., LLP*, CAB No. P-0666 *et al.*, 50 D.C. Reg. 7488, 7492 (Apr. 14, 2003) (denying proposal preparation costs despite agency's cancellation of solicitation).

CONCLUSION

For the reasons discussed herein, the Board denies and dismisses the instant protest with prejudice.

SO ORDERED.

Dated: January 23, 2018

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

CONCURRING:

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

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

AAA TERMITE & PEST CONTROL)
) CAB No. P-1065
)
Solicitation No: DCAM-18-NC-0011)

For the Protester, AAA Termite & Pest Control: Michael Wanamaker and Fonda Myers, pro se.
For the District of Columbia: C. Vaughn Adams, Esq., Department of General Services, Office
of General Counsel.

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

OPINION

Filing ID #61651174

This protest arises from a solicitation issued by the District of Columbia Department of
General Services seeking contractors to perform Citywide Integrated Pest Management Services
at various facilities within the District. The protester, AAA Termite & Pest Control ("AAA"),
argues that the District failed to comply with procurement law that required the solicitation to be
set aside for certified business enterprises and that the solicitation fails to include all information
necessary for the protester to prepare its proposal. Upon consideration of the allegations raised
by the protester and the underlying record, we deny and dismiss the protest allegations as without
merit as further detailed herein.

FACTUAL BACKGROUND

On October 18, 2017, the District of Columbia Department of General Services ("DGS")
issued Request for Proposals Solicitation No. DCAM-18-NC-0011 (the "Solicitation"), seeking
contractors to perform Citywide Integrated Pest Management Services at various District
facilities. (Agency Report ("AR")/Mot. to Dismiss Ex. 1, at 1, 3.) The properties to be serviced
were divided into three groups: (1) Group A: Shelters and the Office of the State Superintendent
of Education ("OSSE") and Municipals; (2) Group B: Fire & Emergency Medical Services
("FEMS") and the Department of Parks and Recreation ("DPR"); and (3) Group C: District of
Columbia Public Schools ("DCPS"). (Id. at 3.) To that extent, the District included as
attachment J.1, a List of Locations & Frequency Service Schedule for the properties that would
be serviced under each group. (Id.)

The District intended to award three contracts (one contract for each group) to the
responsible offerors whose proposals were determined to be most advantageous to the District.
(Id. at 3, 97.) Each contract would be awarded with a base term of one year and four one-year

option periods. (*Id.* at 55.) The Solicitation also advised that the awardee would provide all management, tools, supplies, equipment, vehicles and labor necessary to perform the pest control services for the award group. (*Id.* at 3.) Interested offerors were required to propose pricing for the base year and each option period based upon fully loaded monthly rates in accordance with the Solicitation's Price Schedule, included as attachment J.2. (*Id.* at 5-36.)

DGS issued a total of four addenda to the Solicitation between October 26 and November 7, 2017. Of note, Addendum No. 2, issued on November 2, 2017, replaced attachments J.1 and J.2, with a revised List of Locations & Frequency Service Schedule and Price Schedule. (*See* AR/Mot. to Dismiss Ex. 3, at 1, 4-45.)¹ Further, on November 7, 2017, DGS issued Addendum No. 4, informing offerors that although several properties listed on attachments J.1 and J.2 included the same addresses, the duplications were not in error because many DGS facilities were housed in the same building but required separate services. (*See* AR/Mot. to Dismiss Ex. 5.) Offerors were required to submit their proposals by the Solicitation's November 9, 2017, deadline for receipt of proposals. (AR/Mot. to Dismiss Ex. 1, at 1.)

On November 7, 2017, AAA filed a bid protest with this Board challenging the District's issuance of the Solicitation in the open market and arguing that the Solicitation contained errors that prevented AAA from preparing its proposal. In particular, AAA alleges that, under District procurement law, DGS was required to set aside the procurement for certified business enterprise ("CBE") companies absent a waiver of this legal requirement from the District's Department of Small and Local Business Development ("DSLBD"), which the District did not obtain. (Protest 1-2.) The protester also asserts that Contract Line Item Number ("CLIN") 083 (Wilson Aquatic Center) on the Solicitation's Price Schedule fails to include all of the information necessary for the protester to submit its pricing. (*Id.* at 2.) Further, AAA also maintains that the Price Schedule erroneously lists the same location for CLINs 008 and 011. (*Id.*)

In response to the protest allegations, on November 27, 2017, the District filed a combined Agency Report and Motion to Dismiss arguing that AAA's allegations should be dismissed for lack of merit. Specifically, the District contends that because the underlying procurement is valued at well over \$250,000 it was not required to set the procurement aside for CBE firms as the protester contends. (AR/Mot. to Dismiss 6-7.) Furthermore, the District also maintains that Addendum No. 2 corrected CLIN 083 to include the frequency of service that was missing under the original Price Schedule, which the protester also claimed was a problem. (*Id.* at 7-8.) In addition, the District argues that the protester's argument concerning the inclusion of properties with the same address should also be dismissed because Addendum No. 4 clarified that the duplicate addresses in the Solicitation were not an error because DGS required different services for multiple facilities within the same building. (*Id.* at 8.)

Upon review of the record of this protest and, as discussed below, we deny and dismiss AAA's protest for lack of merit.

¹ When referring to documents that do not contain consistent internal page numbering, the Board has cited to the page numbers assigned by Adobe Reader.

DISCUSSION

The Board exercises jurisdiction over a protest of a solicitation or contract award by any actual or prospective offeror who is aggrieved in connection with the solicitation or award, pursuant to D.C. Code § 2-360.03(a)(1) (2011).

The District Was Not Required to Set the Procurement Aside for CBE Firms.

As a general matter, District procurement law requires the District to set aside procurements of \$250,000 or less for small or certified business enterprises unless the District submits a written determination to the Director of DSLBD demonstrating that prices in the open market will be at least 12 percent less than the prices submitted by small or certified business enterprises. D.C. CODE § 2-218.44 (2014). In the present matter, AAA challenges the District's issuance of the Solicitation in the open market and contends that it should have instead been set aside for CBE firms. However, we find that the District has presented unrefuted evidence that the base year of the subject procurement is valued at well over \$250,000 and, as such, is not required to be set aside for CBE firms. (AR/Mot. to Dismiss 6-7.)² Indeed, the District notes that, by the time the incumbent contract for these same services had reached its final option year, its value exceeded \$500,000. (*Id.* at 6.) Thus, the District maintains that the value of the disputed impending contract for the continuation of these same services will similarly exceed \$250,000 in value. (*Id.* at 6-7.)³ Accordingly, we deny AAA's protest on this basis as without merit because the Solicitation was not subject to the requirement that the District set it aside for CBE firms.

The Solicitation Provided Complete Information to Offerors.

We also find AAA's allegations challenging the accuracy and completeness of the Solicitation's terms to be without merit. In its protest, AAA argues that it was unable to propose pricing for CLIN 083 (Wilson Aquatic Center) because the Price Schedule failed to include the frequency of service required for that location. We find, however, that the record is clear that, on November 2, 2017, DGS issued Addendum No. 2, which explicitly revised the original Solicitation Price Schedule challenged by the protester, and informed offerors that CLIN 083 was required to be serviced twice a month. (*See* AR/Mot. to Dismiss Ex. 3, at 1, 17.) Thus, the District provided the protester with sufficient notice of the frequency of service required for CLIN 083 as necessary for AAA to prepare its pricing for this requirement.

Similarly, we find that, prior to the proposal submission deadline, the District issued Addendum No. 4, on November 7, 2017, to clarify for offerors why the Solicitation included multiple requirements within the same service location. Specifically, this addendum advised offerors that certain CLINs listed in the Solicitation intentionally included the same address for the required services because multiple facilities would be serviced within the same building.

² *See Pittman Grp., Inc.*, CAB No. P-0939, 62 D.C. Reg. 6318, 6320 (Oct. 21, 2013) (determining the applicability of statutory requirement based upon the pricing of the base year).

³ Of note, the present procurement will include the same services as the incumbent contract, as well as additional services for Canine Rat Detection and Abatement that will further increase the contract value. (AR/Mot. to Dismiss 6-7.)

(See AR/Mot. to Dismiss Ex. 5.) Thus, the protester was provided with notice that this duplication of service locations in the Solicitation was intentional, and not an error by the District. Consequently, we find no merit to AAA’s challenges against the sufficiency of the Solicitation’s terms in the forgoing regard and we also deny this protest ground.⁴

CONCLUSION

For the reasons discussed herein, we deny and dismiss with prejudice the present protest.

SO ORDERED.

Dated: February 6, 2018

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

CONCURRING:

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

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⁴ Having denied AAA’s protest on the merits, the Board also denies, as moot, the District’s motion to dismiss the present protest for failure to state a claim.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:)
)
PORTFOLIO PROPERTY MANAGEMENT –) CAB No. D-1511
GLOBAL, LLC)
)
Under Contract No. DCAM-2010-C-0129-A04)

ORDER OF DISMISSAL

Filing ID #61940908

The Appellant, Portfolio Property Management-Global, LLC, filed the above-captioned appeal with this Board challenging the District’s denial of the Appellant’s claim for payment of outstanding invoices. After the Appellant repeatedly, and inexplicably, failed to properly respond to the District’s discovery requests in this action, make itself available for depositions related to this matter, or respond to the District’s dispositive motions seeking dismissal of this appeal, which collectively delayed the schedule in this matter by over six months, the Board ordered the Appellant to show cause as to why the Board should not sanction the Appellant for its failure to diligently prosecute its case. The Appellant failed to respond, at all, to the foregoing Order to Show Cause issued by the Board within the time prescribed by the Board or at any time leading up to the issuance of this order. Accordingly, for the reasons set forth below we dismiss this appeal without prejudice.

FACTUAL BACKGROUND

On November 2, 2016, the Appellant, represented by legal counsel, filed a Notice of Appeal and Complaint with this Board challenging the denial of its claim seeking payment of outstanding invoices in the amount of \$202,663.04 for services that it allegedly provided to the District’s Department of General Services. Very shortly thereafter, on December 16, 2016, Appellant’s counsel at that time filed a motion to withdraw as counsel in this matter and represented that the Appellant consented to the withdrawal request, which the Board ultimately granted.1 (See Mot. to Withdraw; see also Order Granting Mot. to Withdraw.) The Appellant subsequently represented to the Board, by way of email on January 8, 2017, that it had obtained new counsel after its first attorney withdrew although no new attorney had formally entered an appearance in this matter at that time as required by Board Rule 106.4. See D.C. MUN. REGS., tit. 27, § 106.4.

On the following day, the Board issued a Scheduling Order for this case, which required that the parties complete all written discovery by March 14, 2017, that the Appellant file its expert designation and report by May 15, 2017, and that the parties complete all expert and non-expert discovery by July 14, 2017. (Scheduling Order.)2 The Board also scheduled the hearing

1 At the time it filed its appeal, Appellant was represented by counsel from General Counsel, P.C.

2 The Board’s Scheduling Order was based upon the parties’ December 12, 2017, Joint Proposed Scheduling Order.

date for January 29, 2018. (*Id.*) The District propounded its first set of interrogatories, requests for admissions and requests for production of documents upon the Appellant on February 13, 2017, within the March 14, 2017, deadline, for the completion of all written discovery.³ The Appellant, on the other hand, did not similarly propound any written discovery upon the District by March 14, 2017, or request that the Board extend this written discovery deadline.

The Appellant also failed to respond to the District's February 13, 2017, discovery requests, which were due for response on March 15, 2017, under the Board's rules. *See* D.C. MUN. REGS., tit. 27, § 112.5 (2002). Additionally, by April 6, 2017, no new attorney of record had entered a formal appearance on behalf of the Appellant since its original counsel withdrew from the case on January 9, 2017. The Board's General Counsel initiated a communication with the Appellant by way of email to inquire as to whether the Appellant was represented by new counsel. In response to this inquiry, the Appellant informed the Board on the same day that it was in the process of identifying new counsel.

Between the dates of March 14, 2017, and July 14, 2017, the Appellant, continually failed to meet the Board's established discovery deadlines in this case including: 1) the deadline for it to respond to the District's discovery requests that were due on March 15, 2017; 2) the deadline for the parties to complete written discovery on March 14, 2017; 3) the deadline for Appellant to provide its expert designation and report on May 15, 2017; and 4) the deadline for the parties to complete all expert and non-expert discovery on July 14, 2017. Additionally, as of July 14, 2017, new counsel for the Appellant had still not entered an appearance in this matter.

Consequently, due to the Appellant's failure to meet the aforementioned deadlines the District filed a motion requesting that the Board compel the Appellant to respond to the District's outstanding February 13, 2017, discovery requests. (*See* Mot. to Compel Disc. and Extend Deadline for Expert and Non-Expert Disc.) The District also requested that the Board extend the discovery deadlines, including the deadline for the District to make its expert designation and the deadline for the completion of all expert and non-expert discovery in this matter based upon the Appellant's failure to respond to the District's discovery requests, which prevented the District from moving forward with its defense in this case. (*See* Mot. to Enlarge Deadline for Disclosure of Expert; Mot. to Compel Disc. and Extend Deadline for Expert and Non-Expert Disc.)

A new attorney for the Appellant, after its initial counsel withdrew, ultimately entered a formal appearance in this matter on July 19, 2017, and simultaneously filed a consent motion to extend until August 7, 2017, the deadline for the Appellant to respond to the District's outstanding discovery requests that were previously due on March 15, 2017. (*See* Consent Mot. to Extend Time.)⁴ On July 27, 2017, the Board granted this request to provide the Appellant with additional time until August 7, 2017, to respond to the District's outstanding discovery requests. (*Order Granting Extension.*) Accordingly, on August 7, 2017, the Appellant for the

³ The District electronically served its discovery requests on attorney James L. Bearden based upon the Appellant and Mr. Bearden's representations to the District in January 2017 that Mr. Bearden was the Appellant's new attorney. (*See* District's Mot. for Auth. of Service 1-2, Mar. 28, 2017.) However, Mr. Bearden did not enter his appearance on the Appellant's behalf in this matter and subsequently informed the District on February 20, 2017, that he was no longer representing the Appellant. (*Id.*)

⁴ The Appellant obtained new representation by counsel from the Law Offices of Thomas A. Hart, Jr.

first time responded in writing to the District's February 13, 2017, interrogatories, requests for admissions and requests for production of documents. (*See* Consent Mot., Aug. 10, 2017.)

Thereafter, on August 15, 2017, the Appellant's new attorney requested that the Board extend the March 14, 2017, deadline for Appellant to complete all written discovery and the July 14, 2017, deadline for the completion of all expert and non-expert discovery by 90 days from the date the Board granted its request. (Mot. to Extend Deadline for Completion of Written, Expert and Non-Expert Disc.) Thus, on September 8, 2017, the Board granted the Appellant additional time until November 7, 2017, for it to conduct its own discovery. (Order Granting Appellant's Mot. to Extend Disc.) On the same day, the Board also granted the District's request for additional time until October 6, 2017, for it to complete discovery due to the Appellant's delayed discovery responses in this case. (Order Granting District's Mot. to Extend Disc.) After the Board extended the discovery deadlines, the Appellant propounded its first set of interrogatories and request for production of documents upon the District on September 18, 2017.

On the September 12, 2017, dispositive motions deadline the District filed a motion to dismiss Count IV of the Appellant's Complaint arguing that the Board lacked jurisdiction to consider a claim based on quantum meruit. (*See* Mot. to Dismiss Count IV.) The District also further requested that the Board extend the deadline for the District to file its dispositive motions until November 14, 2017, based upon the Board's revised discovery deadlines, and also because the Appellant's delay in responding to the District's discovery requests throughout this appeal allegedly impeded the District's ability to complete its review of the Appellant's responses prior to the dispositive motions deadline. (Mot. to Extend Disp. Mot. Deadline.)

On November 21, 2017, the Board issued an amended scheduling order to extend all of the deadlines as a result of the delays caused by the Appellant throughout this appeal. (*See* Order Amending Schedule.) The Board issued this order in response to the parties' consent motion acknowledging that the delays caused by the Appellant, including its failure to comply with the Board's original discovery deadlines, prevented the parties from completing the necessary discovery in a timely fashion in order to prepare for the upcoming January 29, 2018, hearing date. (*See* Joint Mot. to Amend Scheduling Order.) The new schedule issued by the Board required the parties to complete all written discovery by December 19, 2017, complete expert and non-expert discovery by January 17, 2018, and file all dispositive motions by February 15, 2018. (*See* Order Amending Schedule.) The Board also modified the originally scheduled hearing date from January 29, 2018, to April 17, 2018. (*Id.*)

The Appellant, however, still failed to respond to the District's motion to dismiss or supplement its discovery responses that the District deemed deficient after the schedule was amended by the Board. Furthermore, in addition to its September 12, 2017, motion to dismiss the Appellant's quantum meruit claim, on December 27, 2017, the District also filed a motion to dismiss this appeal for lack of jurisdiction arguing that because the Appellant's company status was dissolved it lacked standing to bring this appeal before the Board. (*See* Mot. to Dismiss for Lack of Juris.) As of the date of this Order, the Appellant never responded to either of these dispositive motions within the deadlines established by our rules or at any time thereafter. *See* D.C. MUN. REGS., tit. 27, § 110.5.

The Appellant also did not respond to the District's January 9, 2018, motion to compel discovery, by the January 19, 2018, deadline to reply to the District's allegations that the Appellant failed to make witnesses available for depositions or produce complete discovery responses.⁵ (*See Mot. to Compel Disc.*, Jan. 9, 2018.)⁶ Instead, on January 31, 2018, Appellant's attorney filed a notice withdrawing as counsel and indicated that the Appellant consented to the withdrawal of representation in this matter. (*See Notice to Withdraw as Counsel.*)

Consequently, given the Appellant's continual failure to comply with the Board's discovery deadlines, respond to the District's dispositive motions, or otherwise actively engage in the prosecution of this appeal for over four months, on February 14, 2018, the Board issued an Order to Show Cause compelling the Appellant to provide the Board with grounds to establish why the Board should not impose sanctions for Appellant's failure to prosecute the present appeal. (*See Order to Show Cause.*) The Board advised the Appellant that the Board's sanctions could include striking the Appellant's pleadings, limiting the introduction of evidence, dismissing the appeal in its entirety or rendering judgment in favor of the District and ordered the Appellant to respond to this Order to Show Cause by March 2, 2018. (*Id.*) The Appellant never filed a response to the Board's Order to Show Cause.

DISCUSSION

Following the filing of an appeal with the Board, an Appellant has an obligation to demonstrate a meaningful effort to prosecute the appeal. *G&S Assocs.*, CAB No. D-1136, 2002 WL 1839990 (June 17, 2002). A trial court has broad discretion to dismiss an action based upon a litigant's failure to prosecute its case or comply with a court order. D.C. SUPER. CT. R. CIV. P. 41(b); *Dobbs v. Providence Hosp.*, 736 A.2d 216, 219 (D.C. 1999). Board Rule 121.3 also provides for dismissal of an appeal for failure to prosecute or comply with a Board order. *See* D.C. MUN. REGS., tit. 27, § 121.3. Among the factors to be considered by the trial court are: 1) the nature of the party's conduct, including whether it was willful; 2) the length of any delay in complying with the court's order; 3) the reason for the delay; and 4) any prejudice to the opposing party. *Dobbs v. Providence Hosp.*, 736 A.2d at 220. Further, although isolated instances of delay may not typically support dismissal of an action, where there has been evidence of a pattern of dilatory conduct, dismissal of the matter is not an abuse of the trial court's discretion. *Id.*

The record in this matter evidences a pattern of conduct where the Appellant has intentionally failed to diligently prosecute this appeal by either timely responding to motions filed by the District or complying with the Board's ordered discovery deadlines. Notably, the Appellant initiated this appeal on November 2, 2016, and almost immediately caused delay in the progression of this case by failing to provide any responses to the District's timely propounded

⁵ In particular, the District alleged that the Appellant provided documents with unexplained redactions and failed to produce requested emails, payroll and attendance records, and accounting documents relating to the Appellant's claim.

⁶ The Appellant also failed to respond at all to the District's January 17, 2018, motion to stay the deadlines in this appeal because of the Appellant's discovery deficiencies, which the District argued precluded it from adequately preparing its defense in this matter. (*See Mot. to Stay.*)

discovery requests. As previously set forth, Appellant's responses to the District's February 13, 2017, interrogatories, requests for admissions and requests for production of documents were due on March 14, 2017, and the Appellant failed to respond to the District's discovery requests by this response deadline. Some five months later, and after untimely requesting an extension of this response deadline, the Appellant ultimately responded to the District's discovery requests with incomplete information. (*See* Mot. to Compel Disc., Jan. 9, 2018.) The Board amended the schedule in this matter to extend discovery until January 17, 2018, however, three months after this deadline the Appellant's complete responses to the District's request for production of documents remain outstanding, and the Appellant has also failed to grant the District's requests to make witnesses available for depositions to provide the District with a reasonable opportunity to prepare its case in this matter. (*Id.*)

By its own admission, the Appellant has delayed the resolution of this case and necessitated the Board's involvement to address the Appellant's dilatory conduct. Specifically, over the course of six months, the District has been forced to make at least four requests for extensions of the discovery deadlines in this matter in order to provide it with additional time to obtain relevant information from the Appellant to adequately prepare its case. (*See* Mot. to Enlarge Deadline for Disclosure of Expert, June 16, 2017; Mot. to Compel Disc. and Extend Deadline for Expert and Non-Expert Disc., July 12, 2017; Consent Mot. to Extend Deadlines for Completion of Expert and Non-Expert Disc., Oct. 6, 2017; Joint Mot. to Amend Scheduling Order, Nov. 7, 2017.) The Appellant has also made two additional requests to extend the schedule in this case after an extended period of not responding to anything filed by the District in this matter and also after it failed to meet any of the Board's ordered discovery deadlines for over five months. In total, the Board has extended discovery in this matter by a total of six months and rescheduled the hearing date as a direct result of the fact that the Appellant did not respond to the District's timely submitted discovery requests. (*See* Order Amending Schedule.)⁷ In addition, the Appellant has even failed to respond to, or oppose, the District's two motions requesting that the Board dismiss the Appellant's claims for jurisdictional reasons, which were due for response over three months ago.

Moreover, further complicating and delaying the resolution of this case is the continued "turn over" of attorneys making appearances in this case and then withdrawing from this matter shortly thereafter. Appellant initially filed this case with counsel on November 2, 2016, and almost immediately thereafter, counsel for the Appellant filed a motion to withdraw its representation in this case. (*See* Mot. to Withdraw, Dec. 12, 2016.) After its initial counsel withdrew, the District was advised by the Appellant and a new attorney that the new attorney would enter an appearance on behalf of the Appellant in this case. However, the following month this attorney had yet to enter an appearance in this case and informed the District that it no longer represented the Appellant. (*See* District's Mot. for Auth. of Service 1-2, Mar. 28, 2017.) Ultimately, after its initial counsel withdrew, new counsel did not enter an appearance on behalf of the Appellant for over seven months and then subsequently withdrew from this matter six months after entering an appearance in this case. (*See* Notice to Withdraw, Jan. 31, 2018.) Thus, throughout this appeal three different attorneys have been involved in this matter and then

⁷ The Board ultimately cancelled the April 17, 2018, hearing date in this case based upon the Appellant's repeated failure to cooperate in discovery or engage in this litigation.

withdrawn representation over the course of a year while Appellant's responses to various filings remained outstanding at the time of their withdrawal.

We find that the Appellant's failure to respond to the District's discovery requests in a timely and complete manner has also prejudiced the District by impeding the District's ability to fully prepare its case for trial while potential information, documents and witnesses may be more readily available. Additionally, because of Appellant's dilatory conduct in this regard, the District has been forced to dedicate its time and resources to repeatedly requesting that the Board intervene to compel responses to discovery by the Appellant. Indeed, a party's failure to respond to discovery that impairs the opposing party's ability to prepare for trial is highly relevant in evidencing prejudice to the opposing party. *See Perry v. Sera*, 623 A.2d 1210, 1219-20 (D.C. 1993) (citing *Lyons v. Jordan*, 524 A.2d 1199, 1202 (D.C. 1987) (where evidence was important to appellees' claims and was needed for trial, and where appellees were forced to resort continually to court process for compliance with discovery requests, prejudice test satisfied); *Firestone v. Harris*, 414 A.2d 526, 527 (D.C. 1980) (where one month before trial appellant had not provided proper answers to interrogatories, "appellee's preparation for trial was obviously frustrated" and default judgment was proper)). In sum, the Appellant's conduct throughout this litigation demonstrates a pattern of willful disregard for the Board's scheduled deadlines and rules which has significantly prejudiced the District's ability to adequately and efficiently defend itself in this matter. Furthermore, the Appellant did not even respond to the Board's order requiring that it provide an explanation for its repeated delays and nonresponsive conduct throughout this case by the Board's ordered March 2, 2018, deadline, or at any time thereafter.

For these reasons, the Board finds that dismissal of this case is appropriate given the Appellant's continual failure to prosecute this appeal by engaging in discovery or, at minimum, even opposing the District's requests that this matter be dismissed on jurisdictional grounds. *See G&S Assocs.*, CAB No. D-1136, 2002 WL 1839990 (dismissing appeal for lack of prosecution where Appellant delayed progression of its case and failed to respond to Board's order to show cause).

CONCLUSION

For the reasons set forth herein, the Board dismisses this appeal without prejudice.

SO ORDERED.

Date: April 20, 2018

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

CONCURRING:

/s/ Marc D. Loud, Sr.
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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

PROTEST OF:

Fort Myer Construction Corporation)	
	)	CAB No. P-1069
)	
Solicitation No: DCKA-2017-B-0035)	

ORDER OF DISMISSAL

Filing ID #61961279

The protester, Fort Myer Construction Corporation (“Fort Myer”), challenges the District of Columbia Office of Contracting and Procurement’s award of a contract to Technoprof Industries (“Technoprof”) for the rehabilitation of three Anacostia Freeway bridges. The protester challenges the contract award on the basis that the awardee’s pricing is unbalanced and does not represent the lowest overall cost to the District. In lieu of filing an Agency Report, the District filed a motion to dismiss pursuant to Board Rule 306.1, D.C. Mun. Regs. tit. 27, § 306.1 (2002), whereby it contends that the protester lacks the requisite standing to maintain this protest before the Board because it failed to explicitly authorize an extension of its expired bid and thus was ineligible for the contract award. The District also contends that Fort Myer’s protest is untimely because it relies upon a mistake in the solicitation that was apparent prior to the bid opening deadline.

Upon consideration of the District’s request for dismissal and the entire record herein, the Board dismisses this protest with prejudice for lack of standing.

FACTUAL BACKGROUND

On May 8, 2017, the Office of Contracting and Procurement on behalf of the District’s Department of Transportation issued Invitation for Bids No. DCKA-2017-B-0035 (the “Solicitation”) seeking a contractor to rehabilitate three Anacostia Freeway bridges. (Mot. to Dismiss Ex. B, at 5; Mot. to Dismiss 2.) The Solicitation’s Summary of Quantities and Schedule of Items provisions provided item descriptions and estimated quantities for the items of work that were required for the bridge rehabilitation project. (See Protest Ex. 1.) Interested offerors were required to submit pricing for the items of work included in the Schedule of Items based upon its estimated quantities. (See Protest Ex. 1.)

The Solicitation advised offerors that the District intended to award a contract within 90 calendar days and thus the District would deem all bids submitted in response to the Solicitation as guaranteed for 90 calendar days after bid opening. (Mot. to Dismiss Ex. B, at 86 (§§ 83, 85).) However, the Solicitation also advised offerors that, in the event that the District could not make an award decision within 90 calendar days after bid opening, the District would request that offerors authorize the extension of their bids beyond the initial 90-day bid guarantee period to extend the validity of the bid. (*Id.* at 86 (§ 85).) On July 21, 2017, the District opened bids from

five bidders including Technoprof and the protester, Fort Myer. (Mot to Dismiss 2.) Upon bid opening, Technoprof was determined to be the apparent low bidder. (*Id.*)

Shortly after the July 21, 2017, bid opening date, Fort Myer filed a protest with this Board, docketed as CAB No. P-1052 (hereafter P-1052), on July 31, 2017, arguing that the Solicitation's Schedule of Items erroneously required bidders to price Item No. 605006, PCC Sidewalk, 4inch, based on a quantity of 6,437 square yards where the Solicitation's Summary of Quantities identified this same item of work as 6,437 square feet. (*See* Mot. to Dismiss Ex. D.) Fort Myer also argued that Technoprof's apparent low bid was unbalanced due to the error in the Solicitation. (*Id.*) On October 13, 2017, the Board dismissed as untimely Fort Myer's protest challenging the accuracy of the terms of the Solicitation's Schedule of Items provision. (Mot. to Dismiss Ex. A.) Further, the Board dismissed Fort Myer's allegation that Technoprof's bid was unbalanced because the District had not evaluated the offerors' bids or made an award decision at the time Fort Myer filed its protest and thus Fort Myer's protest on that basis was premature. (*Id.*)¹

All initial bids submitted in response to the Solicitation, prior to the P-1052 protest, were due to expire on October 19, 2017, which was 90 days after the District opened bids on July 21, 2017. (Mot. to Dismiss Ex. B, at 86 (§ 83).) At the time the offerors' bids were set to expire, the District had not yet awarded a contract under the disputed Solicitation. Accordingly, the District issued correspondence to all five offerors requesting that each company extend its bid beyond the 90-day bid guarantee period set forth in the Solicitation, and specifically requested bidders to affirmatively extend the bid acceptance period to December 21, 2017, in order to keep each bid active and eligible for continued consideration for award by the District. (Mot. to Dismiss 3; *See, e.g.*, Mot. to Dismiss Exs. F, G.) The District required that each offeror send this bid extension authorization to the District by October 23, 2017, to extend their bid beyond the original expiration date. (*See, e.g.*, Mot. to Dismiss Exs. F, G.)

In this regard, on October 20, 2017, the District emailed a letter addressed to Fort Myer's President, Jose Rodriguez, but sent to the electronic mailbox of Fort Myer's Senior Vice President, Thomas Mero, requesting that Fort Myer affirmatively extend its bid to December 21, 2017. (District Reply Ex. A, Mar. 2, 2018.) Mr. Mero received and read this bid extension request letter on October 23, 2017, as evidenced by the District's electronic read receipt confirmation. (*Id.*) Fort Myer, however, failed to submit a written authorization to revive its bid after its bid expired on October 19, 2017. (Mot. to Dismiss 3.) Therefore, because Fort Myer did not extend its bid acceptance period by October 23, 2017, or at any time immediately thereafter, the District removed Fort Myer's bid from the competition and from further consideration for award. (*Id.*; Mot. to Dismiss Ex. I.)

After the District's consideration of the remaining bids in the competition, it ultimately awarded Technoprof the contested bridge rehabilitation contract on December 14, 2017. (Mot. to Dismiss Ex. J.) Of further note, following the District's removal of Fort Myer's expired bid from the competition, Fort Myer filed a Petition for Review of the Board's dismissal of its earlier

¹ The Board dismissed Fort Myer's challenge against the Schedule of Items with prejudice and dismissed Fort Myer's unbalanced bid allegation without prejudice. (*See* Mot. to Dismiss Ex. A.)

P-1052 protest with the Superior Court of the District of Columbia (filed October 27, 2017). (Fort Myer Opp'n 2, Mar. 15, 2017.)²

On January 30, 2018, Fort Myer filed the present protest challenging the District's decision to award the contract to Technoprof contending that the award to Technoprof was improper primarily because Technoprof's bid price was mathematically unbalanced for Line No. 0530 (Item Description 605006, PCC Sidewalk, 4inch). (Protest 2.) Specifically, Fort Myer alleges that Technoprof's bid was erroneously based upon 6437 square yards and not 6437 square feet as indicated in the Solicitation's Summary of Quantities that, if corrected, would not result in Technoprof's bid being the lowest overall cost to the government. (*Id.*) The protester argues that Technoprof's bid should have been rejected by the District on this basis. (*Id.* at 3.)

In response to Fort Myer's protest, on February 15, 2018, the District filed a motion to dismiss the protest allegations for lack of standing and untimeliness. Specifically, the District contends that the protester lacks standing and is not eligible for award because its bid was removed from competition when Fort Myer failed to extend its bid beyond its October 19, 2017, original expiration date. (Mot. to Dismiss 4.) The District also argues that the Board should dismiss this protest because Fort Myer's allegation that the awardee's bid is unbalanced is based upon an alleged error in the Solicitation that was previously challenged by Fort Myer and dismissed by the Board as untimely in the earlier P-1052 protest. (*Id.* at 5-6.)

Fort Myer opposes the District's request for dismissal and argues that it has standing because the District improperly emailed the bid extension request letter to Fort Myer's Senior Vice President instead of Fort Myer's President, who the protester contends was responsible for the procurement and who also was the addressee on the bid extension letter. (Opp'n to Mot. to Dismiss 4.) As a result, Fort Myer contends that the District's bid extension email did not constitute sufficient notice of the bid extension request and thus its failure to respond was not a proper basis to eliminate it from the competition in this matter. (*Id.*; Fort Myer Reply, Mar. 6, 2018.) Moreover, the protester also alleges that it has standing in this protest because it challenged the integrity of the manner in which the District evaluated the offerors' bids leading to the District's acceptance of the awardee's unbalanced and overpriced bid. (Opp'n to Mot. to Dismiss 4.)

Additionally, Fort Myer argues that its intent to affirmatively revive its expired bid should have been recognized by the District based upon the fact that it filed the Petition for Review on October 27, 2017, challenging the Board's dismissal of its earlier P-1052 protest, and that this implicit revival of its bid would not have compromised the integrity of the District's procurement process. (*See* Fort Myer Reply, Mar. 6, 2018.) It further argues that its allegation challenging the awardee's bid as unbalanced is not precluded from consideration by the Board although this allegation was previously dismissed by the Board as premature in the earlier P-1052 protest. (Opp'n to Mot. to Dismiss 6.)

² Although Fort Myer's protest letter initially stated that it filed its Petition for Review of the Board's P-1052 protest decision "on or about November 1, 2017," its subsequent filings clarified that the Petition for Review was filed on October 27, 2017. (*Compare* Protest 1, *with* Fort Myer Reply, Mar. 6, 2018, *and* Fort Myer Reply, Mar. 15, 2018.)

Upon review of the record of this protest and, as discussed below, we dismiss Fort Myer's protest for lack of standing.

DISCUSSION

The issue presented herein is whether the Board has jurisdiction over Fort Myer's protest of the District's contract award to Technoprof for the rehabilitation of three Anacostia Freeway bridges. The District contends that the protester lacks standing because it failed to explicitly authorize an extension of its expired bid, and thus was ineligible for the contract award. In particular, the District contends that Fort Myer was an ineligible bidder because of its bid expiration, and therefore, was not, and could not be, next in line for the contract award. The protester, on the other hand, challenges the validity of the District's notice of the bid extension requirement, contending that notification was improperly received and read by its Vice President, instead of its President (who the protester asserts was solely responsible for the underlying procurement).

As a general matter, this Board exercises jurisdiction over a protest of a solicitation or contract award by any actual or prospective offeror who is aggrieved in connection with the solicitation or award pursuant to D.C. Code § 2-360.03(a)(1) (2017). For purposes of standing, however, a protester must be an actual or prospective bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract. D.C. CODE § 2-360.08(a) (2017). Our rules define an aggrieved person as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract, or who is aggrieved in connection with the solicitation of a contract. D.C. MUN. REGS. tit. 27, § 100.2(a) (2002).

Accordingly, we have consistently held that in order to have standing, a protester must have a direct economic interest in the protested procurement. *See MWJ Solutions, LLC*, CAB No. P-0940, 62 D.C. Reg. 6300, 6303 (Sept. 26, 2013); *see also Barcode Tech., Inc.*, CAB No. P-524, 45 D.C. Reg. 8723, 8726 (Feb. 11, 1998). Thus, a protester must demonstrate that it was "next in line" to receive the contract in question in order to have a direct economic interest and standing in a protest. *Id.*; *see also Ward & Ward*, CAB No. P-1001, 2016 WL 5887605 (Sept. 29, 2016). Here, the District contends that because Fort Myer allowed its bid to expire without reviving it for further consideration for award, Fort Myer was an ineligible bidder and was not, and could not be, next in line for the contract award.

With respect to the extension of bid prices, once an agency properly requests that an offeror extend its bid, the burden is on the offeror to ensure that the agency receives an affirmative extension of the stated bid acceptance period. *Western Star Hosp. Auth., Inc.*, B-414198.2 *et al.*, 2017 CPD ¶ 183 (Comp. Gen. June 7, 2017) (citing *Trojan Indus. Inc.*, B-220620, 86-1 CPD ¶143 at 5 (Feb. 10, 1986)).³ This requirement must be met for the offeror's bid to remain under consideration. *Id.* Once an offeror's bid expires by the stated acceptance period, the government loses its power to award a contract to that offeror because the proposed

³ Further, courts have recognized that a bidder has a duty to inquire with the contracting officer if its bid is set to expire and it has a continuing interest in being considered for award. *See Discount Machinery & Equip., Inc.*, B-244392, 91-2 CPD ¶ 334 (Comp. Gen. Oct. 15, 1991) (citing *Pegasus Alarm Assocs., Inc.*, B-225597, 87-1 CPD ¶ 417 (Comp. Gen. Apr. 16, 1987)).

prices are only valid for the specified acceptance period. *See* JOHN CIBINIC, JR., RALPH C. NASH, JR. & CHRISTOPHER R. YUKINS, FORMATION OF GOVERNMENT CONTRACTS 980 (4th Ed. 2011).

In the instant case, we hold that Fort Myer lacks standing because it was not next in line for award, having become an ineligible bidder when it failed to affirmatively extend its bid beyond the stated acceptance period. Fort Myer received notice of the District's request for bid extension when the protester's Vice President received the District's email. Actual notice to Fort Myer's President was not required when notice was otherwise received by the company. We find the protester's arguments to the contrary to be without merit, and discuss these matters further below.

The parties do not dispute that Fort Myer's bid, by the terms of the Solicitation, expired on October 19, 2017, because the District was unable to award a contract within 90 days of the bid opening date. The parties also do not dispute that the terms of the Solicitation explicitly advised offerors that if the District did not make a contract award decision within 90 days after bid opening, the District would require that each bidder affirmatively extend its bid beyond the initial bid guarantee period in order for their bid to continue to be eligible for consideration for award. The record also corroborates the fact that the District sent a letter to a senior executive at Fort Myer on October 20, 2017, which was, in fact, received and read on October 23, 2017. (District Reply Ex. A, Mar. 2, 2018.) This letter directed Fort Myer to submit an explicit authorization to the District by October 23, 2017, to extend the validity of its bid until December 21, 2017, so that it could remain in consideration for award. *Id.*

Notwithstanding these facts in the record, the protester did not submit an authorization to the District to extend its bid by the October 23, 2017, response deadline, or at any time immediately thereafter. It also did not request that the District extend this response deadline after it received the bid extension letter. Fort Myer, nonetheless, seeks to challenge the validity of the District's notice of the bid extension requirement that it received because this letter was received and read by one corporate executive (Fort Myer's Vice President) and not another (Fort Myer's President) who Fort Myer alleges was responsible for the underlying procurement. We find Fort Myer's argument in this regard to be without merit.

In this case, Fort Myer received notice of the bid extension requirement and still failed to comply by the response deadline. *See Hawker Beechcraft Defense Co.*, B-406170, 2011 CPD ¶ 285 (Comp. Gen. Dec. 22, 2011) (actual notification to a company's designated point of contact is not required to constitute notice where notice is otherwise received by the company); *See Golight Inc.*, B-401866, 2009 CPD ¶ 184 (Comp. Gen. Sept. 10, 2009) (mechanical receipt of email to protester's employee constituted notice of agency action).⁴ As these cases indicate, the fact that it was Fort Myer's Vice President, and not the company's President, that received and read the bid extension letter is not decisive.

⁴ We have, on the other hand, found that the District's notice to a protester was insufficient where the notice was sent to an individual that was not an employee of the company. *See A&A Gen. Contractors, LLC*, CAB No. P-0964, 63 D.C. Reg. 12182, 12183, 12185 (June 25, 2014) (District's e-mail did not constitute notice that the protester's bid was rejected because the e-mail was sent to a consultant who was not an employee of the protester and did not even have an e-mail address affiliated with the protester). However, this is not the case in this matter where the bid extension email was sent directly to a Fort Myer corporate executive at a company email address.

Further, having received proper notice from the District of the requirement to explicitly extend its bid to keep it valid, it was Fort Myer's responsibility to extend its bid by the October 23, 2017, response deadline to allow the District to continue to consider its bid for award. However, Fort Myer failed to affirmatively extend its bid by October 23, 2017. (*See* Mot. to Dismiss Ex. I.) As stated above, the District lost its power to award a contract to Fort Myer once the protester failed to affirmatively extend its bid prices after the initial acceptance period for its bid expired.

Notably, Fort Myer did not actually submit a bid extension authorization until March 6, 2018, over four months after its bid expired and after it filed the present protest. (*See* Fort Myer Reply, Mar. 6, 2018, Ex. 1.) Thus, the protester did not meet its burden of ensuring that the District receive an affirmative extension of its bid acceptance period in order for its bid to remain in the competition. Therefore, the District properly excluded Fort Myer's expired bid from further consideration for award. *See Lionhart Grp., Ltd.*, B-232731, 1988 WL 227985 (Comp. Gen. Oct. 12, 1988) (bidder who permits bid to expire is ineligible for award); *Data Express*, B-234468, 89-1 CPD ¶ 507 (Comp. Gen. May 25, 1989) (offer properly rejected where protester failed to revive expired offer).

We reject the protester's contention that the District should have somehow construed its October 27, 2017, Petition for Review of the Board's decision in the earlier P-1052 protest as an implicit authorization to revive its bid that expired on October 19, 2017. Indeed, the protester has provided the Board no legal authority to support its proposition that a bid may be revived, after its expiration, by virtue of the protester's institution of legal proceedings in another forum after its bid had already expired.

Furthermore, we also reject Fort Myer's argument that it has standing because it challenged the integrity of the manner in which the District evaluated the offerors' bids. *See, e.g., MWJ Solutions, LLC*, CAB No. P-0940, 62 D.C. Reg. at 6304 (finding that an ineligible offeror had standing in a protest where the protest allegation challenged the overall propriety of the District's procurement process that excluded the offeror from competition). On its face, Fort Myer's protest letter is limited to a challenge that the contract award was improper because the awardee's bid was unbalanced and did not result in the lowest cost to the government. (*See* Protest 2-3.) The protester does not challenge the overall manner in which the District conducted the procurement as required for it to assert standing on this basis. Therefore, Fort Myer remains without standing in this matter.

In summary, we find that Fort Myer lacks standing in this case because it was an ineligible bidder and thus was not next in line for the contract award after it failed to affirmatively extend its bid beyond the stated acceptance period. *See Tree Servs. Inc.*, CAB No. P-0982, 2015 WL 2091391 (May 1, 2015) (dismissing protest where protester was not next in line for award and thus lacked direct economic interest and standing in protest).⁵

⁵ Having dismissed this protest for lack of standing, the Board finds it unnecessary to address the District's request to dismiss this protest as untimely.

CONCLUSION

For the reasons discussed herein, the Board finds that the protester lacks standing and, therefore, dismisses this protest with prejudice.

SO ORDERED.

DATED: April 26, 2018

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

CONCURRING:

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

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

CLEANTECH PARTNERS OF WASHINGTON, DC, LLC)
) CAB No. P-1074
Under Request for Qualifications No. Doc318643)

ORDER DISMISSING PROTEST

Filing ID #61986420

On April 3, 2018, CleanTech Partners of Washington, DC, LLC ("CleanTech" or the "protester") filed a protest challenging the District's decision to exclude it from competition for the Smart Street Lighting Project pursuant to the above-referenced Request for Qualifications. On April 23, 2018, the District filed a motion to dismiss the instant protest based on the District's proposed corrective action plan to "reevaluate de novo the 11 offeror submissions." (District's Mot. to Dismiss Protest with Prejudice Based on Corrective Action Plan at 2.) The protester has objected to the District's motion only insofar as it "seeks to clarify" that dismissal of the instant protest with prejudice will not prohibit CleanTech from filing any new protest as a result of the District's corrective action. (Protester's Resp. to the District's Mot. to Dismiss with Prejudice at 1-2.) However, it is axiomatic that dismissal of the instant protest herein shall not restrict the right of CleanTech to file any new protest based on new protest grounds. See, e.g., Prince Constr., Inc./W.M. Schlosser Co. (Joint Venture), CAB No. P-0923, 2012 WL 6929397 (Sept. 24, 2012). Thus, finding that the proposed corrective action will render the instant protest moot, we grant the District's motion. See Motir Servs., Inc., CAB No. P-0958, 2014 WL 8628114 (Feb. 19, 2014); Presidio Networked Sols., CAB No. P-0993, 2015 WL 6608326 (Sept. 29, 2015). Accordingly, the above-captioned protest is hereby dismissed with prejudice, subject to the District's implementation of its proposed corrective action.

SO ORDERED.

Date: May 3, 2018

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

CONCURRING:

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

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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

ENVIRONMENTAL DESIGN AND CONSTRUCTION, LLC)
) CAB No. P-1078
 Under Solicitation No. DCKA-2017-B-0047)

For the protester, Environmental Design and Construction, LLC: Dennis Garbis, *pro se*. For the District of Columbia: Virginia Carliner, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

ORDER DISMISSING PROTEST

Filing ID #62098214

This protest arises from a solicitation for on-call signing and pavement marking. Following the District's opening of bids, Environmental Design and Construction, LLC ("EDC" or the "protester") filed a protest alleging that the apparent low bid "does not comply in all material respects with the [solicitation] and otherwise modifies the requirements of the [solicitation], and therefore should be rejected." (Protest at 1-2, paras. 4, 10.)

In lieu of filing an Agency Report, on May 15, 2018, the District filed a motion to dismiss pursuant to Board Rule 306.1, D.C. MUN. REGS. tit. 27, § 306.1 (2002). (District's Mot. to Dismiss at 1.) In its motion, the District argues that the protest is premature because the contracting officer has not made any determinations regarding the apparent low bid of First Choice Masonry, Inc. ("First Choice") or the award of the contract. (*Id.* at 2-4.) The protester failed to file an opposition to the District's dispositive motion and has not made any additional filings with the Board since its initial protest.

Our protest rules state that when a dispositive motion is filed under Board Rule 306.1, "the protester . . . may file a reply or response" within seven business days. Board Rule 307.1, D.C. MUN. REGS. tit. 27, § 307.1 (2002). Moreover, the Board's general rules on motions practice provide that the Board may treat as conceded any motion that is not opposed within the prescribed time. *See* Board Rule 110.5, D.C. MUN. REGS. tit. 27, § 110.5 (2002). As noted above, the protester did not file an opposition to the District's instant motion, and the filing deadline has since passed. Accordingly, we grant the District's unopposed motion to dismiss.

Furthermore, we find that the protest is premature.¹ We have previously held that a protest alleging that an apparent low bidder is non-responsive or non-responsible is premature when the District has not yet conducted the relevant evaluation or determination. For instance, in *Petersen Mfg. Co.*, CAB No. P-0728, 54 D.C. Reg. 2017, 2017 (July 18, 2006), the District had neither made an award nor determined whether any of the bids were responsive. We held that "the proper action is to dismiss the protest as premature, without prejudice to [the protester] to file a new protest if it is aggrieved by subsequent actions of [the District agency]." *Id.* at 2018 (citing *Consol. Waste Indus.*, CAB No. P-0430,

¹ Notwithstanding our dismissal of this protest based on the protester's failure to file an opposition to the District's motion to dismiss as discussed above, we also address the merits of the underlying protest allegations.

Environmental Design and Construction, LLC
CAB No. P-1078

42 D.C. Reg. 4983, 4985 (June 12, 1995)); *see also, e.g., Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. 1973, 1973, 1979 (Nov. 15, 2005) (dismissing protest as premature when the protest alleged the low bidder was non-responsible but the District had not yet made a determination of the low bidder's responsibility), *petition for review dismissed*, 2005-CA-009544-B (D.C. Super. Ct. July 10, 2006) (Westlaw, D.C. Super. Ct. Dockets), *appeal dismissed*, 06-CV-0900 (D.C. Sept. 21, 2006), <http://efile.dcappeals.gov/public/caseView.do?csIID=44211>.

In the instant protest, although the bids submitted in response to the solicitation have been opened, "the Contracting Officer is in the process of reviewing the bids and has not made a determination of award, nor has the Contracting Officer made a determination whether to accept or reject First [Choice]'s bid." (District's Mot. to Dismiss at 2.) Accordingly, the protest is premature and we dismiss it without prejudice. EDC may file a new protest if it is aggrieved by the District's subsequent actions in this procurement. *See Petersen Mfg. Co.*, CAB No. P-0728, 54 D.C. Reg. at 2017 (citation omitted); *Urban Serv. Sys. Corp.*, CAB No. P-0714, 54 D.C. Reg. at 1979.

For the reasons set forth herein, the Board hereby dismisses without prejudice the instant protest.

SO ORDERED.

Date: June 5, 2018

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

CONCURRING:

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

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

1st NEEDS MEDICAL)
) CAB No. P-1073
Under Solicitation No: Doc364185)

ORDER OF DISMISSAL

Filing ID #62128988

The present protest arises from the District of Columbia Office of Contracting & Procurement’s award of a contract to The Hamilton Group to provide emergency medical supplies. The protester, 1st Needs Medical, argues that the District failed to award the contract to the lowest-priced responsive and responsible bidder. In response, the District filed a combined Motion to Dismiss and Agency Report requesting that the Board dismiss this protest because the protester was the sixth-ranked bidder and, thus, is not next in line for the contract award as required to have standing to challenge the District’s award decision. Further, the District contends that its award decision was proper and in accordance with the solicitation and procurement law. The protester failed to file any opposition, or response, to the District’s Motion to Dismiss and Agency Report.

Upon consideration of the District’s request for dismissal and the entire record herein, the Board dismisses this protest with prejudice for lack of standing.

FACTUAL BACKGROUND

On February 2, 2018, the District of Columbia Office of Contracting & Procurement issued Request for Quotations No. Doc364185 (the “Solicitation”), utilizing the District’s small purchase procedures for procurements valued at under \$100,000, to procure emergency medical equipment and supplies on behalf of the District’s Fire and Emergency Medical Service Department. (Mot. to Dismiss/Agency Report “AR” Ex. 1; Mot. to Dismiss/AR Ex. 4, at 1.) Participation in this procurement was limited to District of Columbia Supply Schedule contractors. (Mot. to Dismiss/AR Ex. 1, at 1.)

The Solicitation set forth eleven separate line items that detailed the specific medical equipment and supplies required by the District. (*Id.* at 2-3.) Interested bidders were required to submit a quote for each of the line items specified in the Solicitation, and each bidder’s total proposed price would be the aggregate of its quotes for all eleven line items. (*Id.* at 4.) The District contemplated awarding the contract to the lowest-priced responsive and responsible bidder that was most advantageous to the District. (*Id.* at 3-4.) The District also reserved the right to award separate contracts for individual line items, or award a single contract for all eleven line items. (*Id.*)

The District invited eleven companies to submit quotes for the required medical supplies and equipment. (Mot. to Dismiss/AR 3.) By the Solicitation’s February 7, 2018, response deadline, the District received quotes from seven companies including: (1) Ink Systems, LLC; (2) The Hamilton Group; (3) Total Healthcare Solutions; (4) Medical Supply Systems, Inc.; (5)

Dupont Computers; (6) 1st Needs Medical; and (7) Emergency 911 Security. (*Id.*) The District subsequently evaluated each bidder's total quoted price and ranked the bidders as follows:

Bidder	Total Quote	Rank
Ink Systems	\$23,869.20	1
The Hamilton Group	\$47,388.80	2
Total Healthcare Solutions	\$47,613.00	3
Medical Supply Systems, Inc.	\$50,287.00	4
Dupont Computers	\$66,547.80	5
1st Needs Medical	\$72,657.00	6
Emergency 911 Security	\$95,119.20	7

(*See* Mot. to Dismiss/AR Ex. 3.)

Based upon the prices submitted, the Contracting Officer initially concluded that Ink Systems submitted the lowest total price of \$23,869.20. (Mot. to Dismiss/AR Ex. 4, at 2.) However, the Contracting Officer subsequently determined that Ink Systems' price was unreasonably low and also noted that multiple line items included in its quote appeared to be incorrectly researched and priced. (*Id.* at 2-3.) Consequently, the Contracting Officer deemed Ink Systems' quote nonresponsive and eliminated it from further consideration for award. (*Id.*)

Thereafter, the Contracting Officer reviewed the pricing of the second-ranked bidder, The Hamilton Group ("Hamilton"), and determined that its pricing was responsive to the Solicitation's requirements. (*Id.*) The District also concluded that Hamilton was a responsible contractor based upon the District's review of Hamilton's past performance, business license, Clean Hands Certificate, and the District's Excluded Parties List. (*Id.* at 3.) Accordingly, on February 8, 2018, the District awarded the subject contract to Hamilton to provide the supplies required under the Solicitation based upon the District's determination that Hamilton was the lowest-priced responsive and responsible bidder. (*Id.* at 2.) The District informed the protester on March 13, 2018, that it awarded the contract to Hamilton and that the protester was the sixth-ranked bidder. (*Id.*)

1st Needs Medical filed a bid protest with this Board on March 20, 2018, challenging the District's contract award decision based upon the protester's belief that the District failed to properly determine whether Hamilton submitted the lowest price for all eleven line items and that the District also failed to evaluate the nature of Hamilton's business prior to making a contract award decision. (Protest.) Thus, the protester contends that the District unreasonably determined that Hamilton was the lowest-priced responsible and responsive certified business enterprise bidder. (*Id.*)

On April 17, 2018, the District filed a combined Motion to Dismiss and Agency Report arguing that the Board lacks jurisdiction to consider the merits of the protester's allegations. Specifically, the District argues that the protester lacks standing to maintain its protest because, as the sixth-ranked bidder, it is not next in line for the contract award and, thus, lacks the direct economic interest required to assert standing in a protest. (Mot. to Dismiss/AR 4-6.) Furthermore, the District also contends that it reasonably evaluated Hamilton's responsiveness and responsibility prior to making its contract award decision. (*Id.* at 6.)

The protester failed to file an opposition, or any other response, to the District's motion to dismiss challenging to any extent the District's grounds for dismissal of this protest. Upon review of this protest and, as discussed below, we dismiss 1st Needs Medical's protest for lack of standing.

DISCUSSION

Generally, the Board exercises jurisdiction over a protest and its underlying allegations pursuant to D.C. Code § 2-360.03(a)(1) (2018). However, the District contends that we lack jurisdiction to consider the merits of the underlying protest allegations because the protester was the sixth-ranked bidder and, therefore, lacks standing to maintain a protest against the District's contract award decision.

For purposes of standing, a protester must be an actual or prospective bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract. D.C. CODE § 2-360.08(a) (2018). Our rules define an aggrieved person as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract, or who is aggrieved in connection with the solicitation of a contract. D.C. MUN. REGS. tit. 27, § 100.2(a) (2002). In that regard, we have consistently held that in order to have standing, a protester must have a direct economic interest in the protested procurement. *See MWJ Solutions, LLC*, CAB No. P-0940, 62 D.C. Reg. 6300, 6303 (Sept. 26, 2013); *see also Barcode Tech., Inc.*, CAB No. P-524, 45 D.C. Reg. 8723, 8726 (Feb. 11, 1998). Therefore, a protester must demonstrate that it was "next in line" to receive the contract in question in order to have a direct economic interest and standing in a protest. *Id.*; *see also Ward & Ward*, CAB No. P-1001, 65 D.C. Reg. 5396, 5399-5400 (Sept. 29, 2016).

In this case, the undisputed record demonstrates that the District evaluated each bidder's total price and ranked the bidders accordingly. The District initially determined that Ink Systems was the first-ranked bidder with an overall price of \$23,869.20, but then ultimately deemed Ink Systems' bid nonresponsive and eliminated it from the competition due to flaws and inaccuracies in its pricing. Subsequently, the District determined that the second-ranked bidder, Hamilton, was the lowest-priced responsive and responsible bidder with an overall price of \$47,880.80 in response to the Solicitation's requirements. (Mot. to Dismiss/AR Ex. 4, at 2-3.) Furthermore, three other companies' bids were ranked lower than Hamilton but higher than the protester including: (3) Total Healthcare Solutions (\$47,613.00); (4) Medical Supply Systems, Inc. (\$50,287.00); and (5) Dupont Computers (\$66,547.80). (*See* Mot. to Dismiss/AR Ex. 3.) The protester, however, was the sixth-ranked bidder based upon its total proposed price of \$72,657.00. (*Id.*)

Thus, based upon the District's price evaluation, four other companies ranked higher than the protester including Hamilton, Total Healthcare Solutions, Medical Supply Systems, and Dupont Computers. Of note, the protester has not challenged the propriety of the District's evaluation of the three bidders ranked immediately behind the awardee to overcome the protester's, otherwise, remote economic interest in the contract award as the sixth-ranked

bidder.¹ Therefore, the record clearly shows that the protester, as the sixth-ranked bidder, is not “next in line” to receive the contract award behind Hamilton given that the District ranked three other companies higher than the protester.

Consequently, for these reasons, we find that the protester, as the sixth-ranked bidder in this procurement, lacks standing to challenge the District’s decision to award the contract to Hamilton. *See Tree Servs., Inc.*, CAB No. P-0982, 2015 WL 2091391 (May 1, 2015) (dismissing protest of fourth-ranked bidder for lack of standing where the protester failed to timely challenge the evaluation of the higher ranked bidder and, thus, would not be next in line for award).² Having found that the protester lacks standing in this matter, the Board is without jurisdiction to consider the merits of the underlying protest allegations.

CONCLUSION

For the reasons discussed herein, the Board dismisses this protest with prejudice for lack of standing.

SO ORDERED.

Dated: June 12, 2018

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

CONCURRING:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
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¹ The Board may find that a protester who is not “next in line” for award has standing where the protester challenges the integrity of the manner in which the agency scored all of the higher ranked offerors. *See F&L Constr., Inc.*, CAB No. P-0985, 2016 WL 3194271 (Apr. 14, 2016); *CUP Temps., Inc.*, CAB No. P-0474, 44 D.C. Reg. 6841, 6843 (July 3, 1997). However, as stated above, the protester has not challenged the manner in which the District evaluated all the higher ranked bidders to support standing on this basis.

² In addition, pursuant to Board Rule 110.5, the Board also treats the District’s motion to dismiss as conceded by the protester based upon the protester’s failure to file a statement of opposing points and authorities within the prescribed time. D.C. MUN. REGS. tit. 27, § 110.5 (2002).

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

1st NEEDS MEDICAL)
) CAB No. P-1075
Solicitation No: Doc370851)

ORDER OF DISMISSAL
Filing ID #62203883

This protest arises from the District of Columbia Office of Contracting and Procurement’s award of Blanket Purchase Agreements to Dupont Computers, Inc. and Premier Office & Medical Supply to provide the District’s Department of Forensic Sciences with Personal Protective Equipment supplies. The protester, 1st Needs Medical, challenges the District’s awards based upon its belief that the awardees lack expertise in health, research or medical settings. In response to the protest allegations, the District filed a combined Agency Report and Motion to Dismiss whereby it contends that the protester lacks standing to challenge the District’s award decision because the protester’s bid was nonresponsive to the Solicitation’s requirements. In addition, the District maintains that the protest allegations lack merit and that its award decision was proper. The protester failed to file any opposition, or response, to the District’s Agency Report and Motion to Dismiss.

Upon consideration of the merits of the District’s Motion to Dismiss, in connection with the underlying record, the Board dismisses this protest with prejudice for lack of standing.

FACTUAL BACKGROUND

On March 19, 2018, the District of Columbia Office of Contracting and Procurement issued Request for Quotations No. Doc370851 (the “Solicitation”), under the District’s small and simplified purchase procedures, seeking one or more vendors to provide Personal Protective Equipment (“PPE”) supplies to the Department of Forensic Sciences on an ongoing as needed basis. (Agency Report “AR”/Mot. to Dismiss Ex. 1, at 1, 7; AR/Mot. to Dismiss 3.)¹ The Solicitation restricted participation in the procurement to District of Columbia Supply Schedule contractors who were able to procure the PPE supplies required by the District from various manufacturers as authorized resellers. (AR/Mot. to Dismiss Ex. 1, at 7.)

The Solicitation’s Pricing Schedule included Contract Line Item Numbers (“CLINs”) 0001-0253, which set forth the specific PPE supplies required by the District. (*Id.*; see also AR/Mot. to Dismiss Exs. 2-4.) Further, the Solicitation advised prospective bidders that each bidder was required to submit a bid for each CLIN included in the Solicitation in order to have their bid considered by the District for award. (AR/Mot. to Dismiss Ex. 1, at 5,7.) Each bidder’s total proposed price was to be the aggregate price for its individual quotes for each CLIN. (*Id.* at 5.) Ultimately, the District intended to award up to three Blanket Purchase Agreements to the lowest-priced responsible and responsive bidders. (*Id.* at 7.)

¹ For documents that do not contain consistent internal page numbering, the Board has referenced the page numbers assigned by Adobe Reader.

By the Solicitation's March 26, 2018, response deadline, the District received quotes from four companies including 1st Needs Medical, Wilsons Dependable, Premier Office & Medical Supply ("Premier"), and Dupont Computers, Inc. ("Dupont"). (*Id.* at 2; AR/Mot. to Dismiss Ex. 5.) Based upon the individual line item quotes submitted, the bidders' total proposed pricing was as follows: 1st Needs Medical (\$8,136.24); Dupont (\$26,845.31), Premier (\$39,534.07); and Wilsons Dependable (\$40,754.00). (AR/Mot. to Dismiss Ex. 5.) Although 1st Needs Medical submitted the lowest total price, it failed to submit quotes for all of the CLINs that were included in the Solicitation. In particular, 1st Needs Medical did not submit a quote for CLINs 0001, 0002, 0027, 0067, 0068, 0072, 0073, 0076, 0125, 0126, 0130, 0138, 0144, 0145, 0146, 0147, 0151, 0159, 0160, 0164, 0170, 0177, 0180, 0181, 0205, 0209, 0212, 0233, 0234, 0235, 0246, and 0250. (AR/Mot. to Dismiss Ex. 2.) Thus, because the protester did not comply with the terms of the Solicitation requiring that it submit a quote for each CLIN, the District determined that its bid was nonresponsive and not eligible for award on this basis. (Mot. to Dismiss 3-4; AR/Mot. to Dismiss Ex. 1, at 5,7.)

After eliminating the protester from further consideration for award, the District determined that Dupont (\$26,845.31) and Premier (\$39,534.07) were the two lowest-priced responsive bidders who had properly submitted quotes for all of the CLINs as required by the Solicitation's requirements. (AR/Mot. to Dismiss 4; AR/Mot. to Dismiss Exs. 3-5.) Further, the Contracting Officer evaluated Dupont and Premier's District of Columbia Supply Schedule contracts and the District's underlying contractor responsibility determinations to verify that both companies were capable of providing the supplies required by the Solicitation. (AR/Mot. to Dismiss 4-5; AR/Mot. to Dismiss Exs. 10-13.) Accordingly, on March 29, 2018, the District awarded a Blanket Purchase Agreement ("BPA") to Dupont, and on April 2, 2018, awarded an additional BPA to Premier for the solicited PPE supplies. (AR/Mot. to Dismiss Exs. 6-7.) On April 2, 2018, the District also informed the protester that it awarded the BPAs to other bidders. (AR/Mot. to Dismiss Ex. 8.)

1st Needs Medical filed a half-page protest letter with this Board on April 9, 2018, challenging the District's awards on the ground that the District awarded the BPAs to companies with no relevant expertise in health, research or medical settings. (Protest.) The protester also somewhat cryptically alleges that the awardees "present to the public" experience in computer technology and office supplies. (*Id.*) On April 30, 2018, the District filed a combined Agency Report and Motion to Dismiss arguing that the protester lacks standing to maintain its protest because the protester failed to submit a quote for all of the Solicitation's CLINs thereby making its bid nonresponsive and ineligible for award. (AR/Mot. to Dismiss 6-7.) Therefore, the District contends that the protester lacks a direct economic interest in the procurement as required to assert standing in a protest. (*Id.* at 7.) Additionally, the District argues that it properly awarded the disputed BPAs to Dupont and Premier after determining that both companies were the lowest-priced responsive and responsible bidders as required by the Solicitation. (*Id.* at 7-8.)

The protester failed to file an opposition, or any other response, to the District's motion to dismiss challenging to any extent the District's grounds for dismissal of this protest. Upon review of this protest and, as discussed below, we dismiss 1st Needs Medical's protest for lack of standing.

DISCUSSION

The Board, generally, exercises jurisdiction over protests of a solicitation or award of a contract by any actual or prospective offeror who is aggrieved in connection with the solicitation or award pursuant to D.C. CODE § 2-360.03(a)(1) (2018). Nevertheless, the District argues that we lack jurisdiction over this protest because the protester's bid was nonresponsive and, as a result, it lacks standing to maintain any protest challenging the District's award decision.

Under the requirements for standing, a protester must be an actual or prospective bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract. D.C. CODE § 2-360.08(a) (2018). In that regard, our rules define an aggrieved person as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract, or who is aggrieved in connection with the solicitation for a contract. D.C. MUN. REGS. tit. 27, § 100.2(a) (2002).

Moreover, as it relates to the District's basis for challenging the protester's standing in this matter, we have consistently held that a nonresponsive bidder has no direct economic interest in a procurement because it would not be in line for award even if its protest were sustained and, as a result, cannot be considered an aggrieved bidder. *Wayne Mid-Atl.*, CAB No. P-227, 41 D.C. Reg. 3594, 3595 (Aug. 12, 1993); *see also CNA Inc.*, CAB No. P-0875, 2011 WL 7402966 (Mar. 14, 2011) ("A nonresponsive bidder is not in line for award and therefore lacks standing to raise other challenges regarding an award.") To be responsive, a bid must be an unequivocal offer to perform, without exception, the exact thing called for in the Solicitation. *Wayne Mid-Atl.*, CAB No. P-227, 41 D.C. Reg. at 3595. Indeed, responsiveness requires that an offeror submit a bid that conforms in all material respects to the Solicitation requirements. D.C. CODE § 2-351.04(56) (2018). To this extent, the Board evaluates the materiality of a Solicitation requirement based upon the requirement's resultant effect on price, quality, quantity or delivery of the items solicited. *Wayne Mid-Atl.*, CAB No. P-227, 41 D.C. Reg. at 3595.

In the present matter, the Solicitation included an explicit requirement that bidders submit quotes for all of the individual CLINs for the items required by the District, as well as the aggregate total for all CLINs, in order for the District to consider their bid for award. (AR/Mot. to Dismiss Ex. 1, at 5, 7.) We find that the requirement to submit prices for each CLIN individually, and a total price for all CLINs collectively, is a material requirement of the Solicitation because this information allows the District to reasonably determine a bidder's overall price to provide all the items required by the District. The record reflects, however, that the protester failed to submit a quote for 32 individual CLINs and did not submit a total price for all of the CLINs, which prevented the District from determining the protester's overall proposed price to provide the items required by the District. (*See* AR/Mot. to Dismiss Ex. 2.)

Consequently, the District properly deemed the protester's bid nonresponsive and ineligible for award based upon the protester's failure to meet the Solicitation's material requirement to propose complete prices. Accordingly, as a nonresponsive bidder, the protester lacks a direct economic interest in the procurement and standing in this protest to challenge the District's contract awards. *See Stockbridge Consulting*, CAB No. P-1008, 2016 WL 5887608

(July 25, 2016) (dismissing protest for lack of standing where protester’s bid was nonresponsive).²

CONCLUSION

For the reasons discussed herein, the Board hereby dismisses this protest with prejudice for lack of standing.

SO ORDERED.

Dated: July 5, 2018

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

CONCURRING:

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

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² In addition, pursuant to Board Rule 110.5, the Board also treats the District’s motion to dismiss as conceded by the protester based upon the protester’s failure to file a statement of opposing points and authorities within the prescribed time. D.C. MUN. REGS. tit. 27, § 110.5 (2002).

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

PROTEST OF:

AAA TERMITE & PEST CONTROL)
) CAB No. P-1079
Under Solicitation No: DCAM-18-NC-0052)

For the Protester, AAA Termite & Pest Control: Fonda Myers, *pro se*. For the District of Columbia: C. Vaughn Adams, Esq., Department of General Services, Office of the General Counsel.

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

OPINION
Filing ID #62277251

This protest arises under a solicitation issued by the District of Columbia Department of General Services seeking contractors to provide pest management services at various District facilities. The protester challenges the solicitation’s terms requiring offerors to obtain a payment and performance bond arguing that this requirement discriminates against small businesses and was imposed by the District in retaliation for a previous bid protest filed by the protester. In response, the District filed a combined Agency Report and Motion to Dismiss arguing that the protest should be denied and dismissed because the bonding requirement is a reasonable requirement to ensure that the awarded contractors are able to provide the pest control services required by the District. The protester failed to file any opposition, or response, to the District’s Agency Report and Motion to Dismiss.

Upon consideration of the allegations raised by the protester and the underlying record, we deny and dismiss the protester’s challenge against the Solicitation’s payment and performance bond requirement as without merit.

FACTUAL BACKGROUND

On April 10, 2018, the District of Columbia Department of General Services issued Request for Proposals No. DCAM-18-NC-0052 (the “Solicitation”) seeking contractors to perform Citywide Integrated Pest Management services at various District facilities. (Agency Report “AR”/Mot. to Dismiss Ex. 1, at 1, 3.) The Solicitation was set-aside for companies that were certified by the District’s Department of Small and Local Business Development as Small Business Enterprises (“SBEs”). (*Id.* at 1.) The awarded contractors would provide all management, tools, supplies, equipment, vehicles and labor necessary to perform the pest management services. (*Id.* at 3.)

The properties to be serviced under the Solicitation were divided into three groups including the following areas: Group A: Shelters and the Office of the State Superintendent of Education & Municipals; Group B: Fire & Emergency Medical Services and the Department of Parks and Recreation; and Group C: DC Public Schools. (*Id.*) The District intended to award up to three contracts, one per service group, with a base term of one year and four one-year option periods, but also reserved the right to award more than one contract to a single contractor if it was in the best interests of the District. (*Id.*) Further, the contracts would be awarded to the offerors whose proposals were most advantageous to the District taking into consideration the offerors' price, technical proposal and other factors detailed within the Solicitation. (*Id.* at 98.)

Throughout the procurement, the District issued a total of three addenda to the Solicitation between April 13 and May 2, 2018. (AR/Mot. to Dismiss Exs. 2-4.) Of note, Addendum No. 3, issued on May 2, 2018, revised the Solicitation's payment and performance bond terms and required that all offerors provide the District with a payment and performance bond equal to the contract's total value within 10 days of the District's request for the bond. (AR/Mot. to Dismiss Ex. 4.) Interested offerors were required to submit their proposals by the Solicitation's May 8, 2018, proposal submission deadline. (AR/Mot. to Dismiss Ex. 1, at 1.)

On May 7, 2018, prior to the proposal submission deadline, AAA Termite & Pest Control ("AAA"), filed a bid protest challenging the Solicitation's requirement that offerors obtain a payment and performance bond. (Protest.) The protester contends that the bonding requirement is biased against small and minority owned companies, who may be unable to obtain the required payment and performance bond. (*Id.*) The protester also argues that the previous solicitation for these same pest control services did not include a bond requirement and that the District added the new bond requirement under the present Solicitation in retaliation for an earlier bid protest filed by AAA. (*Id.*)

In response, on May 11, 2018, the District filed a combined Agency Report and Motion to Dismiss arguing that it properly exercised its business judgment in including a payment and performance bond requirement within the Solicitation's terms. (AR/Mot. to Dismiss 7-8.) The District contends that requiring a bond equal to the contract's total value is a reasonable requirement in order to ensure that the awarded contractors will successfully perform the pest control services in light of the fact that the Solicitation is set aside for small business, which traditionally have less financial and equipment resources. (*Id.* at 8.) Further, the District maintains that the protester's allegation that the bonding requirement discriminates against, and is in retaliation against, AAA should be dismissed for lack of merit. (*Id.* at 6-7.)

The protester failed to file comments, or any other response, to the District's Agency Report and Motion to Dismiss challenging to any extent the District's arguments in support of the Solicitation's bonding requirement. Upon review of this protest and, as discussed below, we deny and dismiss the present protest as without merit.

DISCUSSION

This matter involves a pre-award protest against the terms of the Solicitation whereby AAA challenges the Solicitation's payment and performance bond requirement as unreasonably

restricting small and minority owned businesses from participating in the procurement, and as a retaliatory action against the protester. Therefore, the Board exercises jurisdiction over this protest of a Solicitation term by a prospective offeror who is aggrieved in connection with the Solicitation pursuant to D.C. Code § 2-360.03(a)(1) (2018).

However, this Board has consistently recognized that the determination of the agency's minimum needs and the best method of accommodating them are business judgments primarily within the agency's discretion. *RMD Nat'l Harbor GP, LLC*, CAB No. P-0967, 2015 WL 1090168 (Mar. 6, 2015); *Stockbridge Consulting LLC*, CAB No. P-0963, 62 D.C. Reg. 6480, 6482 (Aug. 28, 2014); D.C. CODE § 2-360.08(d-1) (2018). Thus, the Board will not question the agency's determination of its needs, as expressed through its Solicitation requirements, unless the protester shows by clear and convincing evidence that the District's determination of its needs lacked a reasonable basis. D.C. CODE § 2-360.08(d-1).

In the present matter, the District contends that the purpose of the Solicitation's bonding requirement that the protester is challenging is to ensure that the subject pest control services required by the District will be fully performed in the event that the awardee encounters financial or other performance challenges during the contract period. (AR/Mot. to Dismiss 8.) In this regard, the District maintains that the bonding requirement is reasonable as an additional means of ensuring that the awardee (required to be a small business enterprise often with less financial and equipment resources) is able to successfully perform the contract requirements without interruption. (*Id.*)

We find that the foregoing justification by the District for requiring a performance and payment bond under the Solicitation is reasonable given the scope of the required pest management services at several public facilities throughout the District including within the Department of Parks and Recreation, the Fire & Emergency Medical Service, and District Public Schools, and the need for continuity of these services. The District is in the best position to determine its needs to ensure the successful performance of the contract and we will not disturb this determination by the District without clear and convincing evidence that a requirement has no reasonable basis. D.C. CODE § 2-360.08(d-1). The fact that the District did not require the same bonding requirement under prior contracts for the same services is alone not evidence that this requirement in the present Solicitation is unreasonable or that it impermissibly narrows competition. *See Duane A. Brown*, CAB No. P-0914, 62 D.C. Reg. 4410, 4414 (Dec. 13, 2012) (protester has burden of showing that solicitation restrictions were not reasonably related to District's actual minimum needs).

We also find no evidence in the record to support the protester's contention that the bonding requirement was imposed by the District in retaliation for its filing of an earlier protest. In order to show that a government official has acted in bad faith, a protester must provide "well-nigh irrefragable proof—that is, clear and convincing evidence—that its allegations are true." *RMD Nat'l Harbor GP, LLC*, CAB No. P-0967, 2015 WL 1090168 (internal quotation marks omitted). Here, the protester has merely asserted that the District did not require a bond for these same services under an earlier procurement, which is not clear and convincing evidence that the

District acted in bad faith, or engaged in retaliation, by requiring such a bond. We, therefore, find the protester’s challenge to the bond requirement to be without merit.¹

CONCLUSION

For the reasons discussed above, the Board denies the instant protest and dismisses it with prejudice.

SO ORDERED.

Date: July 26, 2018

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

CONCURRING:

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

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¹ In addition, pursuant to Board Rules 110.5 and 307.4, the Board also treats the District’s Agency Report and Motion to Dismiss as conceded by the protester based upon the protester’s failure to respond to the Agency Report and Motion to Dismiss within the prescribed time. D.C. MUN. REGS. tit. 27, §§ 110.5, 307.4 (2002).

that the District should have rejected the bids submitted by Corman and Martins because they included unrealistically low prices. (Protest 2.) In response to Fort Myer's protest, on July 6, 2018, the District filed a motion to dismiss arguing that Fort Myer's protest is premature and should be dismissed because the District has not completed its evaluation of bids, including its price realism analysis, and, thus, the District has also not made a final award decision. (Mot. to Dismiss 2-4.) Fort Myer opposes the District's dismissal request contending that it is still an aggrieved party seemingly because of the possibility that the contract may be awarded to another contractor and because the District has not performed a timely price analysis of bids. (Opp'n 2-3.) Furthermore, Fort Myer contends that it would be prejudiced by the Board's dismissal of this protest as premature and that its protest should be stayed because it may subsequently be unable to file a timely protest after the District completes its evaluation and makes an award decision. (*Id.* at 4-5.)

DISCUSSION

The Board exercises jurisdiction over any protest of a solicitation or award of a contract by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract. D.C. CODE § 2-360.03(a)(1) (2018). The District requests dismissal of this matter, however, because it has not completed its evaluation or made an award decision such that it contends that Fort Myer has prematurely filed the present matter because Fort Myer has suffered no legal injury.

A protest challenging the propriety of the agency's evaluation is premature and speculative where the agency has not completed its evaluation of bids submitted or made a final contract award decision. *See Systems Products, Inc.*, CAB No. P-88, 1989 WL 508665 (Jan. 31, 1988) (mere submission of nonresponsive bid does not have an injurious impact on the protester or any other bidder where evaluation is not complete); *Centroid, Inc.*, B-217118, 84-2 CPD ¶ 625 (Comp. Gen. Dec. 4, 1984) (protest against proposal evaluation is dismissed as premature where agency is still evaluating proposals it received in response to the solicitation and no award decision has been reached). In this regard, a protester must be aggrieved by an agency action, as evidenced by a loss or injury or violation of legal rights in order to maintain a protest with the Board. *Systems Products, Inc.*, CAB No. P-88, 1989 WL 508665.

Here, Fort Myer does not dispute the District's contention that it has not completed its evaluation of the offerors' bids or made a determination to award the contract to any offeror. Thus, Fort Myer is not aggrieved by any action by the District because the District's evaluation is not complete and the District has not made a decision to award the contract to a company other than the protester. Accordingly, the Board finds that Fort Myer's protest challenging the propriety of the District's price realism analysis is premature and we dismiss the present protest without prejudice. *See Petersen Mfg. Co.*, CAB No. P-0728, 54 D.C. Reg. 2017, 2018 (July 18, 2006) (where agency had not completed evaluation or made award decision the Board dismissed protest without prejudice to the protester to file a new protest if it became aggrieved by subsequent actions of the District).

CONCLUSION

For the reasons discussed herein, we dismiss the instant protest without prejudice.

SO ORDERED.

Date: August 14, 2018

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

CONCURRING:

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
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DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

FIRST TRANSIT, INC.)
) CAB No. P-1080
Under Solicitation No. DCKA-2017-R-0052)

For the protester, First Transit, Inc.: Gregory H. Koger, Esq., Rodney M. Perry, Esq., Holland & Knight LLP. For the District of Columbia: Virginia Carliner, Esq., Sharon G. Hutchins, Esq., Portia Roundtree, Esq., Office of the Attorney General.

Opinion By: Administrative Judge Maxine E. McBean, with Chief Administrative Judge Marc D. Loud, Sr., concurring.

OPINION

Filing ID #62493475

This protest arises from a solicitation for DC Circulator bus operations and maintenance services issued by the District of Columbia Office of Contracting and Procurement ("OCP") on behalf of the Department of Transportation ("DDOT"). First Transit, Inc. ("First Transit" or the "protester") challenges the District's decision to award a contract to RATP Dev North America ("RATP"), arguing that the District (1) improperly disclosed First Transit's confidential proposal information which tainted the procurement; (2) failed to conduct a reasonable price realism analysis; and (3) unreasonably evaluated First Transit's proposal. The District contests these allegations, arguing that (1) First Transit does not have standing to protest; (2) First Transit did not timely raise the protest ground relating to the disclosure; (3) the District's disclosure of First Transit's proposal information did not taint the procurement; (4) the District's price realism analysis was reasonable; and (5) the District's evaluation of First Transit's proposal was reasonable.

After a thorough review of the record, the Board finds that (1) First Transit has standing; (2) First Transit's protest ground relating to the improper disclosure was not timely raised; (3) the District's price realism analysis was reasonable; and (4) the District's evaluation of First Transit's past performance was reasonable. Accordingly, we deny and dismiss the instant protest with prejudice.

BACKGROUND

I. The Solicitation

On September 26, 2017, the District issued Solicitation No. DCKA-2017-R-0052 (the "RFP") seeking a contractor to operate, manage, and maintain service for the DC Circulator bus routes.

1 On August 2, 2018, the above-mentioned counsel for First Transit, Inc. were replaced by Damien C. Specht, Esq., and Rachael K. Plymale, Esq., of Morrison & Foerster LLP.

2 Prior to the instant procurement, the Washington Metropolitan Area Transit Authority ("WMATA"), which is not a District agency or instrumentality, "has been responsible for operating, managing, maintaining and overseeing the DC Circulator bus system" under a memorandum of understanding between WMATA and DDOT. (District's Determination and Findings to Proceed with Contract Award While Protest Is Pending ("D&F to Proceed") at 2.)



(District’s Mot. to Dismiss or, in the Alternative, Agency Report (“AR”) Ex. 2, at 53 (§ A.5), 54 (§ B.1), 69-70 (§ C.4).)³ According to the RFP, the District contemplated the award of a requirements contract with a base period of five years and three months and up to three five-year option periods. (AR Ex. 2, at 54 (§§ B.2-B.3).)

Section M of the RFP described the District’s evaluation and award criteria. (*Id.* at 221-25.) An award was to be made to the responsible offeror whose proposal was most advantageous to the District based on the evaluation criteria. (*Id.* at 221 (§ M.1).) The offerors’ proposals were to be evaluated on a 224-point scale, with 130 points available for the technical proposal, 70 points available for the price proposal, and up to 24 preference points that could be awarded based on any Certified Business Enterprise (“CBE”) designation that the offeror had obtained, pursuant to D.C. CODE §§ 2-218.01 to .82 (2013, Supp. June 2015, Supp. June 2016 & Supp. Oct. 2017) (amended Dec. 13, 2017). (AR Ex. 2, at 222-25 (§§ M.3, M.5).) The technical criteria consisted of the following factors: (1) “Past Performance” (35 points); (2) “Key Personnel” (30 points); (3) “Oral Presentations” (30 points); (4) “Management Approach & Organization” (25 points); and (5) “Technology and Innovation” (10 points). (*Id.* at 222-23 (§ M.3.1).) Section L.22 of the RFP set forth the information that the offerors’ proposals were required to include for each of the technical factors. (*Id.* at 217-18.) In pertinent part, the offerors were required to “submit with their proposal a completed Past Performance Form . . . for their five (5) most recent (including ongoing) contracts for services that are similar in size and scope where they serve as the prime.”⁴ (AR Ex. 2, at 217 (§ L.22.1.a).) Finally, the offerors’ price proposals were to be evaluated using the following formula:

$$\frac{\text{Lowest price proposal (for the Base Period and for Option Period 1)}}{\text{Price of proposal being evaluated}} \times 70 \text{ weight} = \text{Evaluated price score}$$

(*Id.* at 223 (§ M.3.2).)

The District amended the RFP six times throughout the course of the procurement. (*See* AR Ex. 2.) Collectively, these amendments (1) provided answers to the prospective offerors’ questions regarding the RFP; (2) stated that the District would evaluate proposals for price realism; (2) revised other specifications and contract performance provisions not at issue in this protest; (3) provided information regarding the pre-submission conference; (4) decreased the small business subcontracting requirement; and (5) extended the deadline for the submission of proposals to November 28, 2017. (*See id.*)

II. The District’s Evaluation of the Offerors’ Proposals and Award

Three offerors submitted proposals prior to the RFP’s deadline: (1) [REDACTED]; (2) First Transit; and (3) RATP. (AR Ex. 8, at 2-3.) On November 29, 2017, the District’s technical evaluation panel (“TEP”) began to review and score each offeror’s proposal in the technical

The incumbent contract for the DC Circulator services at issue, which “WMATA is solely responsible for administering,” (*id.*), sets forth an agreement between WMATA and First Transit.

³ Since the District did not include the original solicitation as part of the record, all citations to the RFP reference the version re-issued as part of Amendment 4. Additionally, because certain documents in the record lack consistent internal page numbering, the Board has used the page numbers assigned by Adobe Reader when citing to all documents herein.

⁴ The RFP defined a “contract of similar size and scope” as “a multiyear bus operation and maintenance service contract with a yearly value of at least \$15,000,000.” (AR Ex. 2, at 217 (§ L.22.1.a).)



criteria factors. (*Id.* at 3.) After each offeror gave an oral presentation to the TEP, the TEP submitted a report to the contracting officer on January 5, 2018. (*Id.* at 2-3.) The TEP's report included the TEP panelists' individual scores and comments for each offeror, the TEP's consensus score and comments for each offeror, and the TEP's consensus summary for each offeror. (*Id.* at 9-370.)

On January 4, 2018, the contracting officer convened a price evaluation panel ("PEP") to evaluate the offerors' price proposals. (*See* AR Ex. 3, at 3.) The District also used a third-party consultant, Precision Systems, Inc. ("PSI") to evaluate the offerors' price proposals. (*See* AR Ex. 9, at 2; *see also* AR Ex. 3, at 4.) On January 22, 2018, PSI submitted to the contracting officer its price evaluation report. (AR Ex. 9.)

On February 1, 2018, the contracting officer sent letters to each of the offerors notifying them that the District would initiate discussions between the District and each offeror, and identifying any weaknesses, deficiencies, and areas needing clarification found in the offeror's proposal. (*See* AR Exs. 10-11; *see also* AR Ex. 3, at 4.) The discussion letters requested that the offerors respond to the issues raised by February 7, 2018. (*See, e.g.*, AR Ex. 10, at 5.) The discussion letter sent to First Transit, *inter alia*, requested an explanation as to why First Transit did not include a past performance form for its work on the incumbent WMATA contract, *see supra* note 2. (AR Ex. 10, at 5.)

Later on February 1, 2018, the contracting officer sent an additional e-mail to two of RATP's representatives which included the discussion letter sent to First Transit. (AR Ex. 22, at 8-9; *see also* AR Ex. 22, at 4, para. 17.) Soon after, the contracting officer notified RATP by telephone of her error and RATP's representatives stated that they had deleted the erroneous e-mail. (AR Ex. 22, at 3, para. 18; *see also* AR Suppl. Exs. 1-2.) The next day, February 2, 2018, RATP's representatives confirmed in writing that they had deleted the e-mail from their inboxes. (AR Ex. 22, at 15, 18.) Later that same day, the contracting officer sent First Transit an e-mail which (1) attached First Transit's discussion letter as a Microsoft Word file, as requested earlier by First Transit; and (2) notified First Transit that she had inadvertently and erroneously sent another contractor First Transit's discussion letter. (*Id.* at 22-24.) The contracting officer requested that First Transit "not hesitate to reach out with questions or feedback." (*Id.* at 22.) On February 6, 2018, First Transit replied to the contracting officer's e-mail, thanking her for sending the letter as a Microsoft Word file and asking if First Transit was required to respond to the letter's clarification requests in the same file's table or if they could respond in paragraph form. (*Id.* at 26.)

On February 9, 2018, the contracting officer sent supplemental discussion letters to each of the offerors, and highlighted additional areas that each offeror needed to address. (*See* AR Exs. 12-13; *see also* AR Ex. 3, at 4.) On February 16, 2018, the contracting officer sent each of the offerors a letter requesting that the offeror submit a best and final offer ("BAFO") in which the offeror was required to address all issues that the District had raised in discussions. (*See* AR Exs. 14-15; *see also* AR Ex. 3, at 4.) The BAFO request sent to First Transit stated, *inter alia*, that because First Transit's February 7, 2018, response to the first discussion letter referenced an audit and past performance information regarding First Transit's performance on the incumbent DC Circulator contract, the District had requested and received past performance information from WMATA regarding that contract. (AR Ex. 14, at 2-3; *see also* AR Ex. 16, at 23-24.) The BAFO request provided First Transit with the past performance information that the District had received from WMATA so that First Transit would have the opportunity to address it. (*See* AR Ex. 14, at 3.)

After each of the offerors submitted its BAFO, the TEP began to review the BAFOs. (*See* AR Ex. 18, at 2.) Following the offerors' oral BAFO presentations, the TEP completed its evaluation of the offerors' BAFOs and submitted a report to the contracting officer on March 27, 2018. (*Id.* at 2-3.) The

TEP’s BAFO report included the TEP panelists’ individual scores and comments for each offeror, the TEP’s consensus score and comments for each offeror, and the TEP’s consensus summary for each offeror. (*Id.* at 3-474.)

The TEP’s consensus scores for the offerors’ BAFOs in the technical criteria were as follows:

	<u>Key Personnel</u>	<u>Management Approach and Organization</u>	<u>Technology and Innovation</u>	<u>Past Performance</u>	<u>Oral Presentations</u>	<u>Total</u>
█	18	10	6	28	20.8	82.8
First Transit	24	20	6	14	23.2	87.2
RATP	6	15	10	28	24	83

(*Id.* at 9.)

On April 5, 2018, the PEP completed its evaluation of the offerors’ BAFO prices and submitted its “Price Reasonableness Report” to the contracting officer. (AR Ex. 19, at 2.) In this report, the PEP stated that bus operator direct costs were a large portion, more than one-third, of the projected cost for the contract based on an independent cost estimate (“ICE”). (*Id.*) The PEP also stated that “[t]he ICE assumed 134 operators are necessary to provide the level of service in the RFP,” which was a baseline, and that the offerors had provided for more than 134 operators (RATP proposed 147 and First Transit proposed █). (*Id.*) The PEP analyzed RATP’s proposed operator wages, noting that they were based on the current collective bargaining agreement which was under the minimum wage required by the federal Service Contract Act (“SCA”). (*Id.* at 3.) After adjusting RATP’s proposed operator wages, with “the same operator seniority,” to meet the minimum SCA wage, the PEP “conclu[ded] that RATP Dev would be able to reasonably perform within the price proposed in the BAFO.” (*Id.* at 3-4.) The PEP also adjusted RATP’s proposed operator wages “to meet the Bureau of Labor Statistics [(“BLS”)] prevailing wages” and concluded that “RATP Dev would reasonably be able to perform within the price proposed in the BAFO” since those adjusted labor costs would only exceed RATP’s BAFO price by “less than one percent of the overall cost of the contract per revenue hour.” (*Id.* at 4.) The PEP also analyzed the offerors’ overall staffing levels, again stating that the ICE assumption of 163 operations staff (of which 134 were the operators discussed above) was a baseline. (*Id.* at 5.) The PEP concluded that the overall staffing levels of RATP and █, which were 8% and 21% higher than the ICE levels, respectively, were reasonable. (*Id.*) However, the PEP only concluded that First Transit’s overall staffing levels, which were 68% higher than the ICE, included █ operations staff (of which █ were operators), and were “contributing to [First Transit’s] higher proposed prices,” “*may* be a reasonable approach to meeting the contract requirements,” because “[f]rom the price proposal alone it is difficult to determine whether the staffing approach represents a reasonable approach to meeting the contract requirements.” (*Id.* at 5-6 (emphasis added).)

After receiving the BAFO reports from the TEP and PEP, the contracting officer independently reviewed the offerors’ proposals and BAFOs. (AR Ex. 20, at 4.) The contracting officer scored each offeror’s proposal in each of the technical criteria factors and scored each offeror’s price using the formula set forth in the RFP.⁵ (AR Ex. 20, at 5-39.) The contracting officer included comments for each

⁵ None of the offerors received CBE preference points. (*See* AR Ex. 20, at 41.)



offeror, including any evaluated weaknesses, in each of the technical criteria factors. (*Id.* at 5-37.) The contracting officer’s evaluation resulted in the following final scores and ranking:

	<u>Past Performance</u>	<u>Key Personnel</u>	<u>Oral Presentations</u>	<u>Management Approach and Organization</u>	<u>Technology and Innovation</u>	<u>Total Technical</u>	<u>Price</u>	<u>Total</u>	<u>Rank</u>
RATP	28	12	21.75	15	10	86.75	70	156.75	1st
█	28	18	19.5	10	6	81.5	56.9	138.4	2nd
First Transit	14	24	21.75	20	6	85.75	52.3	138.05	3rd

(*Id.* at 41.)

The contracting officer also prepared a Determination and Findings for Price Reasonableness (“D&F for Price Reasonableness”). (AR Ex. 21.) In this document, the contracting officer, *inter alia*, “compared the price proposal of each Offeror to: the Independent Cost Estimate (ICE); each other Offeror’s price proposal; and comparable industry cost and pricing data including the Bureau of Labor Statistics (BLS) industry averages and the Department of Labor’s Service Contract Act (SCA) applicable labor rates.” (*Id.* at 3 (§ 4.E).) The contracting officer concluded that “RATP Dev’s price proposal rates were found acceptable by the District based on the prices being established through a competitive procurement” and “[a]fter a price realism analysis of the highest cost driver categories the [contracting officer] determined the rates fair and reasonable.” (*Id.* at 6 (§ 4.O).)

On April 12, 2018, the contracting officer issued her final independent assessment, recommending that award be made to RATP as the most highly rated responsive and responsible offeror. (AR Ex. 20, at 2, 41.) The contracting officer relied on her technical and price review for this finding, and referred to, *inter alia*, her D&F for Price Reasonableness and the PEP chair findings. (*Id.* at 41.) On May 29, 2018, the contracting officer notified First Transit that RATP had been selected for award and provided First Transit with a summary of her evaluation of First Transit’s proposal. (Protest Ex. 2, at 2-5.) On May 30, 2018, OCP introduced the proposed contract award to RATP to the Council of the District of Columbia (the “Council”). (AR Ex. 3, at 4.) The Council approved the contract award on June 26, 2018. (*Id.*)

III. Post-Award Procedural History

On June 6, 2018, First Transit received a debriefing from the District.⁶ (Protest at 9.) On June 12, 2018, First Transit filed the instant protest of the contract award, alleging that (1) the District’s improper disclosure of First Transit’s proposal information irreparably tainted the procurement; (2) the District failed to conduct a meaningful price realism analysis; and (3) the District misevaluated First Transit’s past performance. (*Id.* at 10-15.) On July 15, 2018, the District issued the D&F to Proceed, which stated that proceeding with contract award was justified in order to provide uninterrupted DC Circulator services since DDOT required a minimum sixty-day period to transition from the incumbent WMATA contract which is to expire on September 30, 2018. (*See* D&F to Proceed at 3-5.) According to the D&F to Proceed, if the DC Circulator bus service were to be disrupted, thousands of daily bus riders

⁶ In the debriefing, the District informed First Transit of the identity of the offeror (RATP) to whom the contracting officer had erroneously sent First Transit’s discussion letter. (Protest at 9; *see also* AR at 13.)



would be severely impacted, including, for example, riders from a predominantly low-income population who use a DC Circulator route that links to areas for which no other public transit options exist. (*Id.* at 3-4.) On August 14, 2018, the Board held a telephone conference with the parties during which it denied the protester's challenge to the D&F to Proceed. The Board found that the need to ensure the continuous provision of transportation services to District residents constituted urgent and compelling circumstances requiring the District to proceed with contract performance during the pendency of the protest, in accordance with D.C. CODE § 2-360.08(c)(2) (2018).

The District submitted the AR on July 2, 2018, arguing that (1) First Transit lacks standing to protest; (2) the protest ground relating to the disclosure of First Transit's discussion letter is untimely; (3) the District's disclosure of the discussion letter did not taint the procurement; (4) the District performed a meaningful and reasonable price realism analysis; and (5) the District's evaluation of First Transit's past performance was reasonable. (AR at 9-30.)

DISCUSSION

I. Jurisdiction and Standard of Review

The Board exercises exclusive jurisdiction over “[a]ny protest of a solicitation or award of a contract . . . by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract.” D.C. CODE § 2-360.03(a)(1) (2018).

A. *Standing*

The District argues that the protest should be dismissed because First Transit does not have standing. (AR at 9.) According to the District, because First Transit was the third-ranked offeror and did not challenge the evaluation of the second-ranked offeror, First Transit “is not next in line for contract award and therefore has no direct economic interest in the resulting contract.” (*Id.* at 11.) For the belowstated reasons, we disagree with the District and find that First Transit does have standing.

It is well-settled that a protester has standing when “it would be next in line for award if its protest were sustained.” *C.P.F. Corp.*, CAB No. P-0521, 45 D.C. Reg. 8697, 8699 (Jan. 12, 1998). Conversely, “[a] protester lacks standing where it would not be in line for award even if its protest were upheld.” *AMI Risk Consultants, Inc.*, CAB No. P-0900, 2012 WL 4753867 (May 25, 2012) (quoting *C.P.F. Corp.*, CAB No. P-0521, 45 D.C. Reg. at 8699).

In the instant case, we conclude that First Transit's allegations are sufficient to find that it has standing, as an actual offeror who is aggrieved in connection with the award of a contract pursuant to D.C. CODE § 2-360.08(a) (2018). Specifically, we hold that First Transit's timely protest allegations – that the District unreasonably evaluated RATP's price and First Transit's past performance⁷ – are sufficient to find that First Transit would be next in line for award if these protest grounds were sustained.⁸ We conclude as such because, if First Transit's protest grounds were sustained, the re-

⁷ See *infra* Part I.B.

⁸ Likewise, the Government Accountability Office (“GAO”), to whom the Board often looks to for guidance, *see, e.g., Phoenix Capital Partners, LLC*, CAB No. P-0938, 63 D.C. Reg. 12041, 12044 (Sept. 4, 2013), has found that a protester is an interested party (and thus has standing to protest) when the protester alleges that its proposal was improperly evaluated and that a proper evaluation would have put it in line for award. JOHN CIBINIC, JR., RALPH C.

evaluation of RATP’s price as unrealistic would result in RATP not receiving the contract award while First Transit’s past performance and price scores would be increased, thereby resulting in First Transit becoming the highest-ranked offeror.⁹ Irrespective of whether the Board ultimately finds that First Transit has proven its allegations, the allegations are sufficient to find that First Transit has standing. See *Brekford Corp.*, CAB Nos. P-1038, P-1040, 2017 WL 5905662 (July 19, 2017) (citing *F & L Constr., Inc.*, CAB No. P-0985, 2016 WL 3194271 (Apr. 14, 2016)).

B. Timeliness

The statutory requirements concerning timeliness provide that a bid protest “shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.”¹⁰ D.C. CODE § 2-360.08(b)(2) (2018). In its protest, First Transit states that “on February 2, 2018, the [contracting officer] informed First Transit that she inadvertently sent the Discussions Letter intended for First Transit to another offeror.” (Protest at 8.) According to First Transit’s protest, this improper disclosure violated D.C. MUN. REGS. tit. 27, § 1629 (2013)¹¹ and “irreparably tainted” the procurement because RATP, the offeror to whom First Transit’s discussion letter had been sent, received confidential and proprietary information regarding First Transit’s proposal. (Protest at 10-11.)

The District argues that First Transit knew or should have known the basis of this protest on February 2, 2018, and thus this protest ground was untimely filed since the protest was filed on June 12, 2018, more than ten business days later. (AR at 11-15.) We agree. On February 1, 2018, First Transit received the discussion letter from the District which pointed out numerous specific areas that First Transit needed to clarify in addition to one deficiency. (See AR Ex. 10; see also Protest Ex. 3.) The next day, First Transit received notification via e-mail from the contracting officer that First Transit’s

NASH, JR. & CHRISTOPHER R. YUKINS, FORMATION OF GOVERNMENT CONTRACTS 1697 (4th Ed. 2011) (citing *Int’l Data Prods., Corp.*, B-274654 et al., 97-1 CPD ¶ 34 (Comp. Gen. Dec. 26, 1996)).

⁹ First Transit’s past performance was rated as “Minimally Acceptable,” which equated to 14 points. (AR Ex. 20, at 6.) If First Transit were to succeed in proving that this evaluation was not reasonable, then First Transit would receive a past performance rating of at least “Acceptable,” and a corresponding score of 21 points. (See *id.* at 4-6.) Also, based on the Board’s calculation using the RFP’s formula for the price factor, excluding RATP’s price would result in [REDACTED] receiving all 70 points for being the lowest-priced offeror and First Transit receiving 64.4 points. (See AR Ex. 2, at 223 (§ M.3.2); AR Ex. 20, at 39.) These adjustments would increase First Transit’s total score from 138.05 to 157.15, placing it above [REDACTED]’s adjusted score of 151.5. (See AR Ex. 20, at 41.)

¹⁰ Although not at issue in this case, where based on an alleged impropriety in the solicitation which is apparent prior to bid opening or the time set for receipt of proposals, the protest must be filed prior to bid opening or the time set for receipt of proposals. D.C. CODE § 2-360.08(b)(1) (2018).

¹¹ That regulation states, in relevant part:

1629.1 After receipt of proposals, the information contained in them and the number or identity of offerors shall not be made available to the public or to anyone in the District not required to have access to the information in the performance of his or her duties. . . .

1629.3 No District employee or agent shall furnish information to a prospective contractor if, alone or together with other information, it might give the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

D.C. MUN. REGS. tit. 27, § 1629.



discussion letter was inadvertently sent to another offeror. (AR Ex. 22, at 22-24; Protest at 8.) Accordingly, on February 2, 2018, First Transit knew the basis of its protest ground: that another offeror “receiv[ed] confidential and proprietary information about First Transit’s technical approach and price,” (Protest at 8). We reject First Transit’s argument that this protest ground is timely because it was filed within ten days of when “First Transit first learned that the [District] disclosed its sensitive procurement information to RATP via its June 6, 2018 debriefing,” (*id.* at 3). First Transit did not need to know the specific identity of the offeror in order to know the basis of its protest ground. Rather, as soon as First Transit knew that another offeror had received First Transit’s confidential and proprietary information, First Transit knew the basis of its protest ground alleging that the District had violated D.C. MUN. REGS. tit. 27, § 1629 or had otherwise compromised the procurement process. *See CUP Temps., Inc.*, CAB No. P-0263, 41 D.C. Reg. 3615, 3616 (Aug. 31, 1993) (dismissing protest as untimely because the protester “knew the basis for its protest when notified by the [agency] on October 25, 1990 that the contract had been awarded to [the awardee]” and “[the protester]’s completion of a debriefing with the [agency] was not necessary for it to formulate the basis of its protest and to file a timely protest with the Board”); *Our Future, Inc.*, CAB No. P-0860, 62 D.C. Reg. 4202, 4203 (Jan. 14, 2011) (rejecting the protester’s argument that the protest was timely because it was filed within ten business days of “notification of the details of the bid rejection” and dismissing the protest as untimely because it was not filed within ten business days of when the protester was notified of the bid rejection); *Heroes Supply LLC*, CAB No. P1041, 2017 WL 5905664 (June 23, 2017) (dismissing protest as untimely because it was not filed within ten business days of the protester being notified that the contract at issue would be awarded on a noncompetitive basis and rejecting the protester’s argument that the protest was timely because it was filed within ten business days of when the protester first learned that the awardee received a contract since “the information forming the basis of its protest allegations was available to the protester well in advance of its protest filing date” (citing *Progressive Educ. Experiences in Coop. Cultures*, CAB No. P-0889, 62 D.C. Reg. 4248, 4250 (Nov. 3, 2011))); *Sea Corp.*, B-244380, 91-2 CPD ¶ 51 at *1-2 (Comp. Gen. July 12, 1991) (dismissing as untimely a protest ground which alleged that the agency’s inadvertent disclosure of proprietary information to the eventual awardee gave the awardee an unfair competitive, since the protester knew of the inadvertent disclosure months earlier but chose to continue participating in the procurement and only filed its protest after learning that it did not receive the award).

Moreover, even if we were to find that First Transit did not know the basis of this protest ground on February 2, 2018, the record shows that First Transit did not diligently pursue the basis of this protest ground.¹² As we have previously stated, “[p]rotesters have a duty to pursue diligently any information that reasonably would be expected to disclose whether a basis for a protest exists, and where a protester has not done so, we will not view the protest as having been timely filed.” *Unfoldment, Inc.*, CAB No. P-

¹² In its comments to the AR, First Transit argues that its protest ground is the contracting officer’s improper disclosure and acceptance of RATP’s BAFO after the improper disclosure. (Protester’s Resp. to the District’s Mot. to Dismiss and Comments on the AR (“Protester’s Comments”) at 6.) But even if we were to find that the basis of First Transit’s protest ground necessarily required knowing that the offeror to whom the improper disclosure was made was subsequently being given a chance to submit a BAFO, we would still find that First Transit failed to diligently pursue this protest ground for the reasons stated herein. In other words, once First Transit knew on February 2, 2018, that another offeror had received First Transit’s confidential and proprietary proposal information, and also knew that the District was continuing discussions and requesting BAFOs, First Transit should have requested more information regarding the improper disclosure and how the contracting officer intended to go forward with the procurement, which would have revealed this alleged protest ground. (*See* Protest at 8 (“Following . . . discussions, the [District] allowed the responsive offerors to revise their respective proposals and submit their [BAFO]. The offeror in receipt of First Transit’s Discussions Letter was therefore given the opportunity to revise its proposal after receiving confidential and proprietary information about First Transit’s technical approach and price.”).)

0843, 62 D.C. Reg. 4146, 4149 (Nov. 2, 2010) (citation omitted), *recons. denied*, 2011 WL 7428967 (July 28, 2011).

First Transit was told on February 2, 2018, that another offeror had inadvertently been sent First Transit's discussion letter and despite the contracting officer stating that First Transit should "not hesitate to reach out with questions or feedback," (AR Ex. 22, at 22), First Transit did not pursue any further information regarding the improper disclosure. *See Dominion Aviation, Inc.*, B-275419 *et al.*, 98-1 CPD ¶ 62 at *3 (Comp. Gen. Feb. 24, 1998) (stating that "timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process" and holding that the protester "cannot at this late date raise protest grounds based on the information it essentially opted not to receive earlier" since that "would be inconsistent with our goal of resolving protests expeditiously, without unduly disrupting or delaying the agency's procurement process" (citations omitted)); *cf. Potomac Capital Inv. Corp.*, CAB No. P-0383, 41 D.C. Reg. 3885, 3891 n.13 (Jan. 4, 1994) (protester diligently pursued information for the basis of its protest when it filed a Freedom of Information Act request and was "frustrated in [its] attempts to obtain the information from . . . the appropriate agency"), *recons. on other grounds denied*, 41 D.C. Reg. 3944 (Feb. 23, 1994).

In sum, by February 2, 2018, First Transit knew the basis of its protest ground regarding the improper disclosure of its proposal information or at least should have known the basis by pursuing information which would have disclosed this protest ground. Instead, First Transit allowed the allegedly improper procurement to continue until an award was made before filing its protest. Since First Transit waited until over four months later to file its protest, we find that the protest ground alleging that "the procurement process was irreparably tainted by the [District]'s illegal disclosure of First Transit's sensitive procurement information," (Protest at 10), is untimely and we dismiss this protest ground.¹³ *See Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC*, B-406897.3, 2014 CPD ¶ 166 at *4-5 (Comp. Gen. May 28, 2014) (stating that "an offeror is obligated to protest [an] issue, which concerns the fundamental ground rules of the procurement, within 10 days after knowing of the reason for protest" in order to, *inter alia*, "prevent[] an offeror from taking advantage of the government as well as other offerors[] by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process" (citations omitted)). First Transit's remaining protest grounds, regarding the District's evaluation of proposals, were timely filed within ten business days of both the May 29, 2018, notice of award and the June 6, 2018, debriefing.

¹³ Even if this protest ground were timely filed, the Board finds that the contracting officer's inadvertent disclosure of First Transit's discussion letter to RATP did not result in any competitive prejudice to First Transit and thus we deny this protest ground. *See C & E Servs., Inc.*, CAB No. P-0874, 62 D.C. Reg. 4216, 4222 (May 19, 2011) (District's violation of procurement regulations did not prejudice the protester); *see also B&B Sec. Consultants, Inc.*, CAB No. P-0708, 54 D.C. Reg. 1948, 1952 (July 18, 2005) ("[W]e 'will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions.'" (quoting *McDonald-Bradley*, B-270126, 96-1 CPD ¶ 54 at *2 (Comp. Gen. Feb. 8, 1996))). The record contains declarations from the contracting officer and the two RATP representatives who were e-mailed the document at issue, signed under penalty of perjury, which state that the e-mail attachment of the First Transit discussion letter was not opened and the e-mail was permanently deleted. (*See* AR Ex. 22, at 4-5, paras. 18-19; AR Suppl. Ex. 1, at 2, paras. 4-6; AR Suppl. Ex. 2, at 2, paras. 4-6; *see also* AR Ex. 22, at 11-18.) First Transit, whose comments to the AR pointed out that the District did not provide sworn declarations from RATP's representatives regarding the circumstances at issue, (*see* Protester's Comments at 12), did not challenge the subsequent submission of the two declarations from the RATP representatives. Accordingly, based on the record before us, the Board finds that First Transit's discussion letter, though sent to RATP, was not viewed by RATP and thus the contracting officer's error did not "taint the procurement" or result in any competitive prejudice to First Transit.

C. Standard of Review

In reviewing the propriety of an agency's evaluation of proposals and related award decision, the Board examines whether the agency's actions were reasonable and consistent with the evaluation criteria listed in the solicitation, whether such actions are adequately documented, and whether there exists any violations of procurement law or regulation. *Emergency Assocs. of Physician's Assistants & Nurse Practitioners, Inc.*, CAB No. P-0500, 46 D.C. Reg. 8527, 8532 (Dec. 15, 1998) (citing *Health Right, Inc.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. 8612, 8635 (Oct. 15, 1997), *petitions for review denied sub nom. Advantage Healthplan, Inc. v. Fite*, 1997 CA 008351 B (D.C. Super. Ct. July 7, 1998), <https://eaccess.dccourts.gov>; *Biochemical Genetics-Newborn Screening Lab.*, CAB No. P-0470, 44 D.C. Reg. 6795, 6800 (Feb. 25, 1997)). In so doing, the Board does not make an independent evaluation of the offerors' proposals or substitute its judgment for that of the agency. *Id.* And a protester's disagreement with an agency's evaluation does not by itself render the evaluation unreasonable. *Id.* (citations omitted); *see also Lorenz Lawn & Landscape, Inc.*, CAB No. P-0869, 62 D.C. Reg. 4239, 4246 (Sept. 29, 2011) (citations omitted). Rather, the Board examines the record to determine if "the decision is documented in sufficient detail to show that it is not arbitrary and appears reasonable and in accord with the evaluation criteria listed in the solicitation."¹⁴ *Psychiatric Inst. of Washington, Inc.*, CAB No. P-0905, 62 D.C. Reg. 4329, 4337 (Aug. 1, 2012) (quoting *RGII Techs., Inc.*, CAB Nos. P-0664, P-0669, P-0670, 50 D.C. Reg. 7475, 7477 (Mar. 6, 2003)).

II. The Evaluation of the Offerors' Proposals

A. The District's Price Realism Analysis Was Reasonable

In its protest and comments to the AR, First Transit argues that the District's evaluation of RATP's price for price realism was unreasonable. (*See* Protest at 11-13; Protester's Comments at 7-11.) According to First Transit, the District's price realism analysis was improper because First Transit used its incumbent knowledge to arrive at its price, and since RATP's price was over \$ [REDACTED] less than First Transit's price, the District should have found that "RATP cannot possibly meet the Solicitation requirements at its low proposed price." (Protest at 12; *see also* Protester's Comments at 7.) In response, the District argues that the contracting officer "reasonably determined RATP's price to be realistic." (AR at 26.) We find that the contracting officer's price realism analysis was reasonable.

The RFP, as amended, stated that "[t]he District will evaluate proposals for price realism," and that "Offerors are encouraged to provide detailed information of the cost requirements of the contract." (AR Ex. 2, at 12, 37.) A price realism analysis is "used in order (1) to determine 'whether a proposed estimated cost or a proposed fixed price is high enough to cover the costs of performance[;]' and (2) to analyze whether an offeror understands the work." *M.C. Dean, Inc.*, CAB No. P-0955, 62 D.C. Reg. 6199, 6215 n.32 (June 2, 2014) (alteration in original) (quoting Vernon J. Edwards, *Price Realism: A Primer*, 28 NASH & CIBINIC REP. ¶ 1 (2014)), *recons. on other grounds denied*, 62 D.C. Reg. 6228 (Oct. 9, 2014), *petition for review dismissed per consent motion sub nom. Citelum DC, LLC v. Contract Appeals Bd.*, 2014-CA-004172-P(MPA) (D.C. Super. Ct. Apr. 27, 2015) (Westlaw, D.C. Super. Ct. Dockets). Although the District's procurement regulations no longer require a price realism analysis for solicitations using sealed proposals, *see Brekford Corp.*, CAB Nos. P-1038, P-1040, 2017 WL 5905662 (citations omitted), where, as here, the RFP states that prices will be evaluated for realism and the District

¹⁴ While we review the entire written record in each protest, we accord greater weight to contemporaneous documents rather than those prepared in the heat of litigation. *See Health Right, Inc.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. at 8636 (citations omitted).

conducts a price realism evaluation, we will review that evaluation for reasonableness, *see Health Right, Inc.*, CAB Nos. P-0507, P-0510, P-0511, 45 D.C. Reg. at 8635 (“[W]e examine the record to determine whether the judgment was reasonable and in accord with the evaluation criteria listed in the solicitation.” (citations omitted)); *Solers Inc.*, B-409079 et al., 2014 CPD ¶ 74 at *4 (Comp. Gen. Jan. 27, 2014) (“[W]here an agency elects to conduct a price realism evaluation, we will review that evaluation for reasonableness.” (citation omitted)).

The contracting officer’s price realism analysis is contained in the D&F for Price Reasonableness. As the contracting officer explained in the April 12, 2018, final independent assessment, she used, *inter alia*, the PEP reports when performing her price analysis. (AR Ex. 20, at 41; *see also* AR Ex. 22, at 5, para. 22.) In the D&F for Price Reasonableness,¹⁵ the contracting officer stated the following, in pertinent part:

E. In analyzing price reasonableness, the District compared the price proposal of each Offeror to: the Independent Cost Estimate (ICE); each other Offeror’s price proposal; and comparable industry cost and pricing data including the Bureau of Labor Statistics (BLS) industry averages and the Department of Labor’s Service Contract Act (SCA) applicable labor rates.

I. The largest contract cost driver is operator direct costs. The RFP pricing approach allowed for Offeror flexibility in determining, among other categories, the number of overall staff their proposed solution would require to successfully perform the services.

(AR Ex. 21, at 3.)

The contracting officer analyzed RATP’s proposed bus operator wage rates by comparing them to rates “with SCA Floor applied,” using a table and data that was identical to the one used in the PEP’s April 5, 2018, report on the BAFO prices.¹⁶ (AR Ex. 21, at 4 (§ 4.K); *see* AR Ex. 19, at 4.) Similar to the PEP, the contracting officer determined that “within the price proposed in its BAFO, RATP Dev would be able to reasonably perform in compliance with the required SCA hourly wage rate of \$20.85.” (AR Ex. 21, at 4 (§ 4.K); *see also* AR Ex. 19, at 3-4.) She also determined that RATP “would also be able to reasonably perform at the higher BLS prevailing operator hourly wage rate of \$22.39.” (AR Ex. 21, at 4 (§ 4.L); *see also* AR Ex. 19, at 4.) The contracting officer stated that “[t]his realism analysis was conducted to understand whether RATP Dev could reasonably perform in the highly competitive wage market environment represented by the District of Columbia.” (AR Ex. 21, at 4 (§ 4.L).) The contracting

¹⁵ Although the document title only mentions “price reasonableness,” and sometimes uses the term “reasonable” or “reasonably” within the context of price *realism*, the analysis evaluated price realism (as is discussed below) along with price reasonableness. (*See* AR Ex. 22, at 5, para. 23.)

¹⁶ First Transit’s argument that the contracting officer’s price realism analysis could not be based on PSI’s January 22, 2018, price evaluation report and the ICE because these documents “predate BAFO submission,” (Protester’s Comments at 10), is misplaced. There were other documents, particularly the April 5, 2018, PEP report analyzing BAFO prices, which were used by the contracting officer in determining price realism. (*See* AR Ex. 20, at 41; AR Ex. 21, at 3 (§ 4.E); *see also* AR Ex. 22, at 5, para. 22.) First Transit does not address the validity of using these other documents. (*See* Protester’s Comments at 7-11.) And the Board finds nothing unreasonable, or even unordinary, about the District’s use of an internal price estimate that was prepared around the time the solicitation was issued. Finally, the Board points out that First Transit’s claim that “[t]he September 5, 2017 Independent Cost Estimate is not included within the record,” (Protester’s Comments at 10 n.3), is incorrect, (*see* AR Ex. 23, at 2-3).

officer concluded that “RATP Dev’s price proposal rates were found acceptable by the District based on the prices being established through a competitive procurement” and “[a]fter a price realism analysis of the highest cost driver categories the [contracting officer] determined the rates fair and reasonable.” (*Id.* at 6 (§ 4.O).)

First Transit argues that the contracting officer’s price realism analysis is unreasonable because it only compares RATP’s proposed rates to BLS rates and “not whether the intended scope of work could be completed within the parameters of the proposed pricing.” (Protester’s Comments at 9 (citing *GiaCare & MedTrust JV, LLC*, B-407966.4, 2016 CPD ¶ 321 (Comp. Gen. Nov. 2, 2016)).) We reject this argument.

Contrary to First Transit’s claim that the contracting officer’s price analysis “does not discuss a single aspect of RATP’s technical proposal and contains only conclusory references to RATP’s technical approach,” (*id.*), the record shows that the contracting officer adequately considered RATP’s technical approach in determining price realism. In her price analysis, the contracting officer expressly states that “[t]he largest contract cost driver is operator direct costs” and the RFP “allowed for Offeror flexibility in determining . . . the number of overall staff their proposed solution would require to successfully perform the services.” (AR Ex. 21, at 3 (§ 4.I).) The contracting officer then determined that, with its technical approach of using 147 bus operators at an annual cost of \$8,676,759, which was more than the government’s estimate of 134 bus operators at an annual cost of roughly \$7,539,376, RATP’s proposed operator wage rates would allow it to perform in compliance with both the mandatory minimum hourly wage rate and the prevailing operator hourly wage rate. (*See id.* at 3-4 (§§ 4.J-L).)

We find that the contracting officer’s price realism analysis was adequate and reasonable, as she compared RATP’s proposed price for the largest cost driver of the contract with the government estimate (which was lower), the minimum required wages, and the prevailing market wages, and concluded that RATP “could reasonably perform” at its proposed staffing level and price.¹⁷ (AR Ex. 21, at 3-4, (§§ 4.I-L)); *see Arcanum Grp., Inc.*, B-413682.2 *et al.*, 2017 CPD ¶ 270 at *4 (Comp. Gen. Mar. 29, 2017). In a procurement which seeks bus operations and maintenance services (in which the buses are provided by the District, (AR Ex. 2, at 64 (§ C.1))), we find that analyzing an offeror’s proposed number of bus operators and wages, as the largest cost driver, is sufficient to evaluate whether the offeror’s proposed price is realistic to perform the technical requirements of the contract. This is particularly so where the RFP did not specify how the offerors’ prices would be evaluated for realism. (*Id.* at 12, 37); *see* STEVEN W. FELDMAN, GOVERNMENT CONTRACT GUIDEBOOK § 6:24, at 205 (4th ed. 2014-15) (“[T]he contracting agency has especially broad discretion on its approach to price realism when solicitation [sic] states the analysis will take place but is silent as to the specifics.” (citing *DMS All-Star Joint Venture v. United States*, 90 Fed. Cl. 653, 663 (2010))); *Arcanum Grp., Inc.*, B-413682.2 *et al.*, 2017 CPD ¶ 270 at *4 (“The nature of the analysis required to assess whether an offeror’s proposed price is so low as to reflect a lack of competence or understanding is generally a matter within the agency’s discretion.” (citations omitted)). In *Arcanum*, the source selection authority’s price realism analysis evaluated the offerors’ proposed labor rates for a sample of the positions required by the solicitation. 2017 CPD ¶ 270 at *3. The source selection authority compared the offerors’ rates amongst each other, the market rates, and the federal pay scale rates, and found the awardee’s labor rates to be realistic because they were consistent with the market and federal pay scale rates. *Id.* at *3-4. The GAO denied the protest ground

¹⁷ First Transit’s reliance on *GiaCare & MedTrust JV and Valor Healthcare, Inc.*, B-412960 *et al.*, 2016 CPD ¶ 206 (Comp. Gen. July 15, 2016) is thus misplaced, since in those cases the agencies did not analyze how the awardees’ proposed staffing approach could be achieved with the awardees’ proposed labor rates. *See GiaCare & MedTrust JV, LLC*, B-407966.4, 2016 CPD ¶ 321 at *6-7; *Valor Healthcare, Inc.*, B-412960 *et al.*, 2016 CPD ¶ 206 at *5-6.

challenging the price realism analysis, finding that the analysis was reasonable since the source selection authority compared the awardee's offered rates to the market and federal pay scale rates and found them consistent. *Id.* at *4; *see also Kidd Int'l Home Care, Inc.*, CAB No. P-0760, 57 D.C. Reg. 735, 737-38 (Oct. 5, 2007) (denying the protest ground that the contracting officer failed to properly evaluate price realism, since the agency had cost and pricing analyses prepared, which were considered by the contracting officer, and the contracting officer compared the awardee's price components with both the incumbent contract and the protester's pricing).

First Transit's protest also challenges the realism of RATP's price since its own price is based on its incumbent knowledge and "extensive history," so RATP's lower price cannot be realistic.¹⁸ (Protest at 12; *see also* Protester's Comments at 7.) However, "there is no general requirement that an agency base its [price realism] analysis on a comparison to the incumbent contractor's prices." *Arcanum Grp., Inc.*, B413682.2 et al., 2017 CPD ¶ 270 at *4 (citation omitted). Further, the PEP's BAFO report called into question First Transit's proposed staffing levels, which contributed to First Transit's higher price, (*see* AR Ex. 19, at 5-6), thereby negating First Transit's claim that its price should be the standard against which the other offerors are measured. As we found immediately above, the contracting officer's price realism analysis was reasonable.¹⁹

B. The District's Evaluation of First Transit's Past Performance Was Reasonable

First Transit argues that the District's evaluation of its past performance was improper because "the Contracting Officer made only passing references to First Transit's 'Excellent' and 'Good' ratings on five of the six proposed contracts, instead devoting the bulk of her analysis to First Transit's incumbent D.C. Circulator work." (Protester's Comments at 16.) In its initial proposal, First Transit submitted past performance reference forms for five contracts it considered to be its most recent contracts of similar scope and size, which did not include First Transit's incumbent contract. (AR Ex. 4, pt. 1, at 41-44, 12029.) As mentioned above, during discussions the District requested and received past performance information regarding First Transit's incumbent contract performance, (*see* AR Ex. 14, at 2-3; AR Ex. 16, at 23-24), information that First Transit "was not opposed to" the District considering when evaluating past performance, (Protest at 9 n.2). As part of its BAFO, First Transit responded to the issues raised in the District's BAFO request and attempted to explain its performance on all six of the past performance contracts. (AR Ex. 16, at 2-14.) First Transit argues that its incumbent contract past performance "is the sole reason that First Transit received a past performance score of 'Minimally Acceptable' instead of 'Good' or 'Excellent' in line with its ratings on the remaining five contracts." (Protester's Comments at 16.)

¹⁸ The Board notes the apparent contradiction between First Transit's position that its incumbent history and experience should be a baseline standard in terms of analyzing price but should not be emphasized (or otherwise deemed more relevant) in terms of evaluating past performance, *see infra* Part II.B.

¹⁹ On August 31, 2018, more than five weeks after the District had filed its reply to the protester's comments to the AR, the protester filed a motion to supplement the record, alleging that the AR did not include documentation of the price realism analysis. (Protester's Mot. for Supplementation of the R. at 1.) We hereby deny this motion, since, in the preceding discussion, we have found that the record contains the contracting officer's price realism analysis (and that the price realism analysis was reasonable). Moreover, the protester's purported "motion to supplement" appears to be an attempt to make additional arguments challenging the propriety of the District's price realism analysis. (*See id.* at 1-4; *see also supra* note 16.) To the extent that the protester is attempting to raise new protest grounds, these grounds were not timely filed, since the protester received the AR on July 2, 2018, and the motion was filed more than ten business days after the basis of the protest grounds should have been known to the protester, *see* D.C. CODE § 2-360.08(b)(2).

We find that the contracting officer's evaluation of First Transit's past performance was reasonable and deny this protest ground. The RFP defined "Minimally Acceptable" as "[m]arginally meets minimum requirements; minor deficiencies which may be correctable." (AR Ex. 2, at 221 (§ M.2.1).) And the RFP stated that past performance would be evaluated based on "similarity of the size and scope of the past performance contracts," "quality of work, timeliness of performance, cost control, and business relationships." (*Id.* at 222 (§ M.3.1.1).) In her evaluation of First Transit's past performance, the contracting officer found "weaknesses" for First Transit in this factor based on its past performance on the incumbent contract. (AR Ex. 20, at 7.) These weaknesses included the contracting officer's finding that audit reports of First Transit's performance on the incumbent contract "give[] rise to major concerns regarding the company's ability to perform satisfactorily on key performance metrics including maintenance and safety." (*Id.*) The contracting officer quoted the past performance form regarding First Transit's performance on the incumbent contract, which was rated as "poor" in quality of work, timeliness of performance, and business relations, including the statement from WMATA that "the contractor has generally been unable to perform to the standards of the contract." (*Id.*)

The contracting officer also considered the "good" and "excellent" ratings that First Transit had received across all areas in the past performance forms for the other (non-incumbent) contracts, as well as a strong point of "flexibility" identified in the WMATA incumbent contract past performance form. (*Id.* at 6.) The contracting officer agreed with the TEP's rating of "Minimally Acceptable," concluding:

Although the Offeror was rated good to excellent on most of their past performance questionnaires, the Questionnaire from WMATA rated [First Transit] as poor in three past performance elements: quality of work, timeliness of performance, and business relations. The most relevant indicator of future performance for operation and maintenance of the DC Circulator is past performance on the current system.

(*Id.* at 7.)

We find that the contracting officer's rating of First Transit as "Minimally Acceptable" in the past performance factor was reasonable. Although First Transit argues that the contracting officer did not identify any specific deficiencies, failures to meet requirements, or unacceptable risks of unsuccessful contract performance, (Protester's Comments at 16-17), the contracting officer did just that. The contracting officer, *inter alia*, (1) stated that the audit reports "give[] rise to major concerns regarding [First Transit]'s ability to perform satisfactorily on key performance metrics including maintenance and safety;" (2) quoted WMATA's statement that First Transit "has generally been unable to perform to the standards of the contract;" and (3) concluded that First Transit's BAFO "did not identify any areas . . . that would mitigate some or any of the poor performance findings."²⁰ (AR Ex. 20, at 7.)

Based on her consideration of both the positive past performance evaluations²¹ as well as the negative past performance evaluation regarding the incumbent contract,²² the contracting officer rated

²⁰ The Board also notes that the contracting officer's discussion letters and BAFO request to First Transit identified the audit report findings as a "Deficiency," (AR Ex. 10, at 5; AR Ex. 12, at 4-5; AR Ex. 14, at 2), and First Transit's responses also acknowledged that the District had identified "deficiencies," (AR Ex. 16, at 2, 18, 23).

²¹ In addition to identifying one strong point from the WMATA incumbent contract past performance form, as mentioned above, the contracting officer also took into account "the mitigating factors [First Transit] listed in its BAFO" and "the WMATA program manager's conditional statement that they would work with [First Transit] again," (AR Ex. 20, at 8).

First Transit, Inc.
CAB No. P-1080

First Transit as “Minimally Acceptable” since “[t]he most relevant indicator of future performance for operation and maintenance of the DC Circulator is past performance on the current system.” (AR Ex. 20, at 7.) There was nothing unreasonable or otherwise objectionable in her decision to place more emphasis on First Transit’s performance of the incumbent contract than the other contracts. *See UnitedHealth Military & Veterans Servs., LLC*, B-411837.2 *et al.*, 2016 CPD ¶ 329 at *9 (Comp. Gen. Nov. 9, 2016) (“[I]t is not unreasonable for an agency to place particular emphasis on a firm’s performance as an incumbent contractor, since such performance may be reasonably viewed as a more accurate indication of likely future performance than performance on other contracts.” (citing *Cortez, Inc.*, B-292178 *et al.*, 2003 CPD ¶ 184 at *7; *Gonzalez Consulting Servs., Inc.*, B-291642.2, 2003 CPD ¶ 128 at *5 (Comp. Gen. July 16, 2003))). In sum, we find that the contracting officer’s evaluation of First Transit in the past performance factor was reasonable and in accordance with the RFP and thus we deny this protest ground.

CONCLUSION

For the reasons set forth herein, the Board finds that (1) First Transit has standing; (2) First Transit did not timely file its protest ground alleging improper disclosure; (3) the District’s price realism analysis was reasonable; and (4) the District’s evaluation of First Transit’s past performance was reasonable. Accordingly, we deny and dismiss the instant protest with prejudice.²³

SO ORDERED.

Date: September 26, 2018

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

CONCURRING:

I concur in the Opinion, and offer only this brief comment as to standing. As the Opinion correctly notes, the rule on standing in protest cases requires a protester to be “next in line for award” should the protest be sustained. *AMI Risk Consultants, Inc.*, CAB No. P-0900, 2012 WL 4753867 (citing *C.P.F. Corp.*, CAB No. P-0521, 45 D.C. Reg. at 8699). This case presents the rare scenario where the third-ranked of three offerors would actually be next in line were its protest allegations to be sustained. *See supra* note 9. That notwithstanding, a prudent protester would not be unwise to challenge all intervening offerors that receive a higher ranking than its own, when challenging a contract award.

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

²² In its BAFO, First Transit stated that it [REDACTED]

[REDACTED] (AR Ex. 16, at 8, 10); *see Cortez, Inc.*, B-292178 *et al.*, 2003 CPD ¶ 184 at *8 (Comp. Gen. July 17, 2003) (“In view of [the protester]’s concession that it was responsible for a continuation of the performance problems [on the incumbent contract] we think the agency reasonably could view this as a significant weakness in [the protester]’s performance, notwithstanding any progress [the protester] may have made in addressing the problems.”)

²³ The parties shall confer to determine agreed-upon redactions of protected information, if any, and file a joint proposed redacted version of this opinion with the Board no later than October 3, 2018

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D.C. CRIMINAL CODE REFORM COMMISSION**NOTICE OF PUBLIC MEETING**

WEDNESDAY, JUNE 5, 2019 AT 10:00 AM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001

D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, June 5, 2019 at 10am. The meeting will be held in Room 1112 of the Citywide Conference Center on the 11th Floor of 441 Fourth St., N.W., Washington, DC. The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Comments on the recommendations for Section 214 and Chapter 3 in the First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*.
- III. Discussion of Draft Reports and Memoranda Currently Under Advisory Group Review:
 - (A) First Draft of Report #36, *Cumulative Update to Chapters 3, 7 and the Special Part of the Revised Criminal Code*.
 - (B) Advisory Group Memo #22 Supplemental Materials to the First Draft of Report # 36.
- IV. Adjournment.

D.C. PREPARATORY ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

D.C. Preparatory Academy, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide:

- Accounting services
- Advertising and marketing services
- Advisory and consulting services
- Architectural and engineering services
- Assessment and instructional data support and services
- Business insurance
- Classroom furniture, fixtures, and equipment
- Computer hardware and software
- Construction/general contractor services
- Copy machine services
- Curriculum materials
- Employee medical benefits
- Facility management services
- Financial audit services
- Food services
- Instructional support services
- IT management services
- Janitorial services and supplies
- Legal services
- Mechanical services (boiler, HVAC, etc.)
- Office furniture, fixtures, and equipment
- Office supplies
- Payroll and HR information systems
- Playground furniture, fixtures, and equipment, and installation services
- Professional development and consulting services
- Project management and consulting services
- Security services
- Special education services
- Student data management systems
- Student transportation services
- Talent recruitment and development services
- Temporary staffing services
- Waste management services

Please email bids@dcprep.org for more details about requirements.

Bids are DUE BY MAY 20, 2019.

DC INTERNATIONAL PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Special Education Service Providers**

RFP for Special Education Service Providers: DC International School is seeking competitive bids for Special Education Services, including but not limited to Behavioral Support Services, Occupational Therapy, Physical Therapy, and Speech Therapy as well as Special Education evaluations (bilingualism preferred in all areas). Special Education Service Providers will be required to attend IEP meetings, assist in writing IEPs, and meet statewide compliance timelines for evaluations. These services are to be offered at DC International School during school hours to students who require specialized services. Bids must include evidence of experience in field, qualifications and estimated fees. Please send proposals to RFP@dcinternationalschool.org. Proposals must be received no later than the close of business on Friday, May 24, 2019.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT
ANNOUNCES MAY 16, 2019 PUBLIC MEETING
FOR THE DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL CREDIT
ENHANCEMENT COMMITTEE

The Office of the State Superintendent of Education (OSSE) hereby announces that it will hold a public meeting for the District of Columbia Public Charter School Credit Enhancement Committee as follows:

12:30 p.m. – 2:00 p.m.
Thursday May 16, 2019
1050 First St. NE, Washington, DC 20002
Conference Room 540 (Brookland)

For additional information, please contact:

Debra Roane
Financial Program Specialist
Office of Public Charter School Financing and Support
Office of the State Superintendent of Education
1050 First St. NE, Fifth Floor
Washington, DC 20002
(202) 478-5940
Debra.Roane@dc.gov

The draft agenda for the above-referenced meeting will be:

- I. Call to Order
- II. Approval of agenda for the May 16, 2019, committee meeting
- III. Approval of minutes from January 17, 2019, committee meeting
- IV. Review Conflict of Interest – Transaction Disclosure Checklist
- V. St. Paul on Fourth St., Inc. - \$2,000,000 direct loan
- VI. Charter School Incubator Initiative - \$1,637,494 funded credit enhancement

Any changes made to the agenda that are unable to be submitted to the DC Register in time for publication prior to the meeting will be posted on the [public meetings calendar](#) no later than two (2) business days prior to the meeting.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF SPECIAL BOARD MEETING

The Board of Elections hereby provides notice that a special meeting will be held for the purpose of hearing testimony and receiving evidence concerning a challenge to the eligibility of Adam Eidinger to properly propose a recall measure of Jack Evans, Ward 2 Member of the Council of the District of Columbia.

Should the Board determine the eligibility of Adam Eidinger as a registered qualified elector of Ward 2, the Board of Elections hereby provides notice that the special meeting will also be held for the purpose of issuing a petition to Adam Eidinger for the proposed recall of Councilmember Jack Evans.

The meeting will convene on **Monday, May 20, 2019 at 11:30** at:

**1015 Half Street SE, Suite 750
Washington, DC 20003**

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington DC, intends to issue a permit (No. 6618-R1) to George Washington University (GW) to operate a cogeneration facility. This is a renewal of a permit issued on April 10, 2018, and is intended to allow continued operation of the cogeneration facility at Ross Hall. The cogeneration facility consists of combined heat and power emission units and ancillary support equipment to be located in the Central Utility Plant within Ross Hall, Foggy Bottom Campus, 2300 I Street NW, Washington, DC. The contact person for the facility is Janine Helwig, Interim Director, Utilities & Engineering, phone number: (202) 994-5141.

The equipment includes a combustion gas turbine (CT) and heat recovery steam generator (HRSG)/Duct Burner in the Ross Hall utility plant. The natural gas fired combustion turbine has the capacity to produce 4.6 megawatts (MW) of electrical power. The HRSG/Duct Burner which is also natural gas fired, will produce steam for process use and additional power supply via an existing steam turbine. The HRSG Duct Burner has a rated capacity of 15.2 million Btu/hr, lower heating value (LHV) basis.

The proposed facility will use natural gas to operate a highly efficient cogeneration heat and power system, thereby reducing GW's carbon footprint.

The facility's components are described below:

- **Combined Heat and Power (CHP) Emission Units:**
 - One (1) Solar Centaur 50-T6200S Combustion Gas Turbine (CT) rated at 52.9 MMBtu/hr heat input firing natural gas (NG) only; and
 - One (1) Cleaver Brooks Slant Series S4-2816 Heat Recovery Steam Generator (HRSG) equipped with supplemental firing by COEN Duct Burner rated at 15.2 MMBtu/hr heat input on a net lower heating value (LHV) basis (16.8 MMBTU/hr higher heating value (HHV) basis), firing NG;
- **CHP Ancillary Equipment and Appurtenances:**
 - One (1) 4,600 kW Centaur 50 Gas Turbine Generator;
 - One (1) 24,500 lb/hr Water Tube Steam Boiler for the HRSG;
 - One (1) 2,974 lbm/hr Deaerator;
 - One (1) Water Treatment System;
 - One (1) Heat Exchanger for Condensate Return; and
 - One (1) Existing Steam – Receiving Turbine Generator.

Facility-Wide Emission Limits Applicable to the Cogeneration System

The following emission limits apply to the facility as a whole, and the equipment covered by this permit in particular:

1. Visible emissions shall not be emitted into the outdoor atmosphere from the emission units and control equipment, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, if any, or malfunction of the equipment [20 DCMR 606.1].
2. Violation of standards set forth in Condition II(b)(1), as a result of unavoidable malfunction, despite the conscientious employment of control practices, shall constitute an affirmative defense on which the discharger shall bear the burden of proof. Periods of malfunction shall cease to be unavoidable malfunctions if reasonable steps are not taken to eliminate the malfunction within a reasonable time. [20 DCMR 606.4]
3. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements of Condition II(b)(1), Condition II(b)(1) shall not be applicable. [20 DCMR 606.6]
4. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1] *Note: This condition is District enforceable only.*

Emission Limitations Specific to the Emission Units Covered by This Permit

Emission limits for the combustion gas turbine and heat recovery steam generator/duct burner are listed below:

The Permittee shall not exceed the emission limits in the following tables as applicable: [20 DCMR 201]

Table 1: Total 12-Month Rolling Emission Limits from Permitted Equipment¹

Pollutant	12-Month Rolling Emissions Limit (tons/12 mo. rolling period)
Particulate Matter (PM) (Total) ^{2,3}	5.0
Oxides of Sulfur (SO _x)	1.1
Oxides of Nitrogen (NO _x)	21.3
Volatile Organic Compounds (VOC)	2.3
Carbon Monoxide (CO)	21.5

1. The equipment covered consists of one Solar Centaur 50 gas turbine, and one HRSG/duct burner.

2. PM (Total) is the sum of the filterable PM and condensable PM.

3. All PM is expected to be smaller than 2.5 microns, so PM (Total) equals PM2.5

Table 2- Maximum Hourly Emissions (lbs/hr) when Operating Between 50% and 100 % Load, Inclusive

Pollutants	Solar Centaur 50 Gas Turbine (CT) and HRSG/Duct Burner (HDB)
PM (Total)	1.1
SOx	0.3
NOx	4.9
VOC	0.5
CO	4.9

a. Combustion Gas Turbine CT: One (1) Solar Centaur 50 combustion gas turbine (CT) rated at a heat input capacity of 52.9 MMBtu/hr, natural gas (NG).

1. Emission Limitations:

A. The gas combustion turbine shall not emit pollutants in excess of those specified in Tables 1 and 2. [20 DCMR 201]

B. Particulate emissions (total filterable only) from the gas combustion turbine shall not exceed 0.069 pound per million Btu. [20 DCMR 600.1]

C. Sulfur dioxide (SO₂) emissions from the gas turbine shall not exceed 0.060 lb SO₂/MMBtu heat input for each calendar month when natural gas is burned. [40 CFR 60.4330]:

D. NOx emissions from the turbine without supplemental firing shall not exceed 15 ppmvd at 15% O₂. [40 CFR 60.4320 and 60.4325, 20 DCMR 201, and 20 DCMR 805.4 (a)(1)(A)(i)] *Note that this is a streamlined emission rate limit, and is more stringent than the limits found in 40 CFR 60, Subpart KKKK and 20 DCMR 805.4 for NOx emissions cited above. Compliance with this condition will ensure compliance with all three requirements.*

E. NOx emissions from the turbine when fired with supplemental duct burner firing shall not exceed 18 ppmvd at 15% O₂. [40 CFR 60.4320 and 60.4325, 20 DCMR 201, and 20 DCMR 805.4 (a)(1)(A)(i)] *Note that this is a streamlined emission rate limit, and is more stringent than the limits found in 40 CFR 60, Subpart KKKK and 20 DCMR 805.4 for NOx emissions cited above. Compliance with this condition will ensure compliance with all three requirements.*

b. HRSG/Duct Burner HDB: One (1) Cleaver Brooks Slant Series S4-2816 Heat Recovery Steam Generator (HRSG) equipped with supplemental firing by COEN Duct Burner rated at 15.2 MMBtu/hr heat input on a net lower heating value (LHV) basis (16.8 MMBTU/hr higher heating value (HHV) basis), firing NG;

1. Emission Limitations:

- A. The HRSG/Duct Burner (HDB), shall not emit pollutants in excess of 0.1 lb NO_x/MMBtu and those in Condition III, Table 2. [20 DCMR 201]
- B. Particulate emissions (total filterable only) from the HDB shall not exceed 0.087 pounds per million Btu. [20 DCMR 600.1]
- C. Sulfur dioxide emissions shall not exceed 0.060 lb SO₂/MMBtu heat input. [40 CFR 60.4305 and 40 CFR 60.4330(a)(2)]
- D. NO_x emissions from the Combustion Turbine/HDB (CT/HDB) train exhaust (while supplemental firing with duct burner) shall not exceed 18 ppmvd at 15% O₂ as required by Condition III(a)(1)(E). [20 DCMR 201, 40 CFR 60.4320, and 20 DCMR 805.4(a)(1)(A)(i)] *Note that this is a streamlined permit condition and is more stringent than the requirements of both 40 CFR 60.4320 and 20 DCMR 805.4(a)(1)(A)(i), therefore compliance with the limit established pursuant to 20 DCMR 201 will ensure compliance with 40 CFR 60.4320 and 20 DCMR 805.4(a)(1)(A)(i).*
- E. NO_x emissions from CT/HDB train shall not exceed 5.0 lb/hr (the cumulative lb/hr emission rate contained in Table 2 above) as measured at the HRSG exhaust. [20 DCMR 201]

The application to operate these emission units and the draft renewal permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within thirty (30) days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered before taking final action on the permit application.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after June 10, 2019 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY**

Middle School Watershed Education

The Department of Energy and Environment (DOEE) seeks eligible entities to continue DOEE's commitment to provide meaningful watershed educational experiences (MWEE) to sixth-through-eighth grade students enrolled in DC Public Schools and DC Public Charter Schools in Wards 7 and 8. The Middle School Watershed Education (MSWE) grant program offers District students the opportunity to connect students to their watershed and to the Chesapeake Bay, and to help create an ethic of responsible citizenship. DOEE seeks projects that 1) work with students both inside and outside of the classroom to educate and empower youth to become stewards of the environment through watershed restoration project-oriented learning; 2) bring middle schools students Kingman and Heritage Island to focus on students' responsibility not to litter; and 3) support watershed restoration efforts, in DOEE's targeted subwatersheds, which benefit local streams, promote climate resilience, and improve downstream water quality.

The total amount of funding available is \$40,000. An applicant can request up to \$20,000. DOEE may make multiple awards.

Beginning 5/10/2019, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doe.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to 2019MSWE.grant@dc.gov with "Request copy of RFA 2019-1922-WPD" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call P. Trinh Doan at (202) 535-1653 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: P. Trinh Doan RE:2019-1922-WPD" on the outside of the envelope.

DOEE will host a public information session. Details and place and time appear in the RFA, found by following the instructions above on how to download the RFA.

The deadline for application submissions is 6/10/2019, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2019MSWE.grant@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies
- Universities/educational institutions; and
- Private Enterprises.

For additional information regarding this RFA, write to: 2019MSWE.grant@dc.gov.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH CARE FINANCE**

NOTICE OF FUNDING AVAILABILITY

The Department of Health Care Finance (DHCF) announces a Notice of Funding Availability (NOFA) for grant funds pursuant to the authority established by Fiscal Year 2019 Budget Support Act of 2018, Title V, Subtitle G, Section 5062 to make grant funds available to support health care providers to initiate or enhance a peer navigation program directed towards improving perinatal health services among high-risk expectant mothers in Wards 7 & 8 who are on Medicaid or are Medicaid-eligible. The Director of DHCF has authority to issue grants under the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code 7-771.05(4) (2012 Repl.).

A Request for Applications (RFA) for the opportunity below will be released under a separate announcement with guidelines for submitting the application, review criteria, and DHCF terms and conditions for applying for and receiving funding. The anticipated performance period for these grants is July 1, 2019 to September 30, 2019.

Descriptions of Opportunity:

Patient Centered Maternal Care Program: One (1) grant of up to \$200,000 will be awarded to support the District's efforts to improve perinatal health outcomes. The awardee will utilize peer navigation services to improve the timely delivery of appropriate prenatal and postnatal services to high-risk expectant mothers residing in Wards 7 and 8, who receive Medicaid or are Medicaid-eligible.

Eligibility Requirements:

Applicants must have a demonstrated record of involvement with District perinatal health improvement efforts and history, experience, and/or knowledge related to use of peer navigators, and with other health care delivery system quality improvement and transformation efforts, particularly with respect to improving maternal health care.

The applicant must have the operational readiness and capabilities to:

- i. staff the required team (At least 50% of the direct services delivery staff shall not possess an advanced level degree (bachelors level degree and higher));
- ii. implement a health care delivery model for expectant mothers incorporating peer navigators
- iii. identify a consistent source of referrals for patients;
- iv. provide patient-centered care for expectant mothers, including: regular office and in-home visits, access to nutritional education, and access to classes and support groups such as perinatal fitness, child birth education, newborn care, and parenting skills;
- v. provide access to essential maternity and postpartum maternal and newborn supplies such as clothes and diapers;

- vi. provide or refer expectant mothers to mental health services;
- vii. refer expectant mothers to WIC, health insurance, and other community resources;
- viii. provide expanded maternity services which will include care coordination of non-clinical health, nutritional, and social support through the end of pregnancy up to 6 months postpartum;
- ix. initiate intervention prior to 4 weeks postpartum for non-NICU and prior to 12 weeks postpartum for NICU;
- x. increase early access to and compliance with prenatal care;

All applicants must also be registered organization in good standing with the DC Department of Consumer and Regulatory Affairs (DCRA), Corporation Division, the Office of Tax and Revenue (OTR), the Department of Employment Services (DOES), and the Internal Revenue Service (IRS), and demonstrate Clean Hands certification at the time of application.

A RFA will be released on or around May 20, 2019. The application package will be available online at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> and the DHCF website (<https://dhcf.dc.gov/page/dhcf-grant-opportunities>). Hard copies of the application package may be obtained at DHCF, 441 4th St. N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk daily from 9:00 am until 4:00 pm.

DHCF will hold a pre-proposal conference on May 30, 2019 from 3 – 5 PM at 441 4th St., NW 10th Floor North, Main Street (Room 1028), Washington, DC. Prospective applicants must provide an email address to DHCF to receive notification of amendments or clarifications to the RFA.

Completed applications must be received on or before 4 PM on June 19, 2019. Applications must be submitted in hard copy and in-person at DHCF, 441 4th St. N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk. No applications will be accepted after the submission deadline. All eligible applications will be reviewed through a competitive process.

For additional information regarding this NOFA, please contact Pamela Riley, MD, Medical Director, DHCF, Office of the Senior Deputy Director/Medicaid Director at pamela.riley2@dc.gov or at 202-442-9077.

DEPARTMENT OF HEALTH (DC HEALTH)**PUBLIC NOTICE**

The District of Columbia Board of Podiatry (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the first Wednesday of each quarter starting on January 2, 2019. The meetings will held from 1:30 PM to 3:30 PM and will be open to the public from 1:30 PM until 2:30PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 2:30 PM until 3:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twenty four-month period will be as follows:

January 2, 2019
April 3, 2019
July 17, 2019
October 2, 2019
January 8, 2020
April 1, 2020
July 1, 2020
October 7, 2020
January 6, 2021
April 7, 2021

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Kingsman Academy Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY19.20:

- Facility Finance Advisory Services
- Legal Construction Advisory Services

School Overview

Kingsman Academy is an open-enrollment public charter school that serves approximately 300 students in grades 6 through 12 in a project-based academic program that emphasizes a therapeutic approach to personalized learning. Kingsman Academy welcomes all students, especially those who are over-aged and under-credited, who have attendance problems, or who have behavioral or emotional challenges.

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **5:00 p.m. EST on Monday, May 20, 2019.**

Contact rfp@kingsmanacademy.org for a copy of the Scope of Work. Proposal submissions should be emailed to rfp@kingsmanacademy.org.

A walkthrough for building-related services will take place on Wednesday, May 15 from 4:00 PM to 5:00 PM. No phone calls, please.

KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Kingsman Academy Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY19.20:

- Accounting Services
- Human Resource/Employee Benefit Services
- IT Services
- Legal Services
- Security Equipment Services
- Security Personnel
- Student Data Management
- Student Transportation
- Tutoring Services

School Overview

Kingsman Academy is an open-enrollment public charter school that serves approximately 300 students in grades 6 through 12 in a project-based academic program that emphasizes a therapeutic approach to personalized learning. Kingsman Academy welcomes all students, especially those who are over-aged and under-credited, who have attendance problems, or who have behavioral or emotional challenges.

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **5:00 p.m. EST on Friday, May 24, 2019.**

Contact rfp@kingsmanacademy.org for a copy of the Scope of Work. Proposal submissions should be emailed to rfp@kingsmanacademy.org.

A walkthrough for building-related services will take place on Wednesday, May 15 from 4:00 PM to 5:00 PM. The last day for questions is Wednesday, May 22. No phone calls, please.

**KIPP DC PUBLIC CHARTER SCHOOLS
REQUEST FOR PROPOSALS**

School Books

KIPP DC is soliciting proposals from qualified vendors for School Books. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM EST, on May 21, 2019. Questions can be addressed to tania.honig-silbiger@kippdc.org.

Afterschool Enrichment Coding Program

KIPP DC is soliciting proposals from qualified vendors for an Afterschool Enrichment Coding Program. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM EST, on May 31, 2019. Questions can be addressed to emmanuelle.stjean@kippdc.org.

PERRY STREET PREPARATORY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

Perry Street Prep PCS—a nonprofit, PK-8th Grade Public Charter School—seeks multiple proposals for the following services at 1800 Perry Street NE.

- Slate Roof and Gutter Repairs
- Food Service Management
- Special Education Related Services
- Temporary Employment Services

The complete RFPs can be obtained by contacting Kelly Smith, ksmith@pspdc.org.

Contact: For further information regarding the RFP contact Kelly Smith, ksmith@pspdc.org. Further information about Perry Street Prep Public Charter School—including our nondiscrimination policy—may be found at www.pspdc.org

Deadline & Submission: Submit bids responsive to the full RFP via **email to Ksmith@pspdc.org no later than 5pm on May 21st**.

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)
)
Clarence Sykes)
)
	Petitioner)
)
	v.)
)
District Department of Transportation)
	and)
American Federation of Government)
Employees Local 1975)
)
	Respondent)
<hr/>)

PERB Case No. 18-U-37
Opinion No. 1701
Motion for Reconsideration

DECISION AND ORDER

I. Introduction

On December 28, 2018, Clarence Sykes (“Petitioner”) filed a Motion for Reconsideration of the December 4, 2018 Executive Director’s administrative dismissal of an unfair labor practice complaint (“Complaint”). The Petitioner claims that the Executive Director erred in finding that the Complaint was untimely. The Motion for Reconsideration is before the Board for disposition. The Board denies the Motion for Reconsideration for the following reasons.

II. Statement of Case

The Petitioner works at the District Department of Transportation (“DDOT”). In September 2017 DDOT denied the Petitioner’s request to use paid sick leave. The Petitioner has used leave without pay and claims the denial of paid sick leave violates the CBA and various statutes outside of the Board’s jurisdiction.¹ The administrative dismissal denied claims related

¹ The Petitioner alleges a violation of D.C Code Official Code § 32-531(b)(5), the D.C. Accrued Sick and Safe Leave Act. The D.C. Accrued Sick and Safe Leave Act guarantees eligible employees the right to use paid sick leave for a... mental illness, injury, or medical condition of the employee. DDOT admits to violating the act in its Answer but the administrative and civil remedies for this violation as defined in D.C. Official Code § 32–531.12 and § 32-1308.01, are not within the jurisdiction of the Board.

Decision and Order
PERB Case 18-U-37
Page 2

to both respondents, DDOT and the AFGE Local 1975. The Motion for Reconsideration only request the Board's reconsideration of claims related to DDOT. The Complaint alleged conduct that occurred in September 2017, but the Complaint was not filed until September 2018.

III. Standard of Review

A mere disagreement with the Executive Director's decision is not a valid basis for the Board to grant a motion for reconsideration.² Moreover, the Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.³ The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by the facts and PERB precedent.⁴

IV. Discussion

Board Rule 520.4 states that “[u]nfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.” Herein, the Petitioner filed the Complaint on September 21, 2018, a year after the alleged violation. Therefore, the complaint was untimely.

Petitioner argues that the agency committed a continuing violation; the Board does not find this argument persuasive in the absence of specific violations. The Complaint fails to allege violations that show the agency repeatedly wronged the Petitioner during the limitations period, that the activity was more than a discrete act, and that the nature of the act was unknown in the first instance.⁵ The Board finds that Petitioner has failed to assert any legal grounds that would compel overturning the Executive Director's dismissal and that her decision is reasonable and supported by PERB precedent.

V. Conclusion

Petitioner's Motion for Reconsideration does not provide any authority that compels reversal of the Executive Director's decision. The Motion for Reconsideration is hereby denied.

²*Johnson v. District of Columbia and MPD*, 63 D.C. Reg. 6485, Slip Op. 1567 at 2, PERB Case No. 15-U-40 (2016); *Steele v. AFGE Local 383*, 61 DCR 12373, Slip Op. 1492 at 3, PERB Case No. 14-U-16 (2014).

³ *Johnson*, Slip Op. 1567 at 2.

⁴ *Id.*

⁵ *See, MPD v. FOP/MPD Labor Committee*, 62 D.C. Reg. 14606, Slip Op. 1535, PERB Case No. 09-U-48(R) (2015).

Decision and Order
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Page 3

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is hereby denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

March 21, 2019

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 18-U-37, Opinion No. 1701 was sent by U.S. Mail to the following parties on this the 25th day of March 2019.

Clarence Sykes
Petitioner, *Pro Se*
2251 Shannon Place, SE
Washington, D.C. 20020

This is to certify that the attached Decision and Order in PERB Case No. 18-U-37, Opinion No. 1701 was sent by File and ServeXpress to the following parties on this the 25th day of March 2019.

Gina Walton
President
American Federation of Government
Employees, Local 1975, AFL-CIO
95 M Street, SW
2nd Floor
Washington, DC 20024

Nana Bailey-Thomas
Office of General Counsel
District Department of Transportation
55 M Street, SE
7th Floor
Washington, D.C. 20003

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Administrative Assistant

**Government of the District of Columbia
Public Employee Relations Board**

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In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-17
	Petitioner)	
		)	Opinion No. 1702
	v.)	
)	
Fraternal Order of Police/)	
Metropolitan Police Department)	
Labor Committee)	
)	
	Respondent)	
<hr/>)	

DECISION AND ORDER

I. Introduction

On August 14, 2018, the Metropolitan Police Department (“MPD”) filed an Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act (“CMPA”), section 1-605.02(6) of the D.C. Official Code. MPD requests the review of an arbitration award (“Award”) issued on July 24, 2018, granting the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) finding that the Grievant’s termination violated the D.C. Official Code §5-1031(2004) (“90-day rule”).

MPD asserts that the Award is contrary to law and public policy due to the Arbitrator’s improper interpretation of the 90-day rule and, despite the interpretation, at least one charge is timely. FOP filed a timely Opposition to the Request.

Pursuant to section 1-605.02(6) of the D.C. Official Code, the Board may modify, set aside, or remand a grievance arbitration award only when (1) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means.

Upon consideration of the Arbitrator’s conclusions, applicable law, and record presented by the parties, for the reasons stated herein, the request is granted.

Decision and Order
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II. Statement of the Case

In 2011, the Grievant, a police officer with MPD for ten years, had been detailed to the Information Technology Division since 2009. The Grievant received an MPD laptop computer that he improperly allowed his ex-wife to use by sharing his password.¹ In March 2011, MPD ordered an inventory audit to locate all laptop computers. On August 15, 2011, the Grievant's laptop was located at the home of his ex-wife. On that day, MPD Internal Affairs Division ("IAD") interviewed the Grievant's ex-wife and subsequently revoked the Grievant's police powers and retrieved his service weapon.²

On November 11, 2011, IAD referred the matter to the United States Attorney's Office for the District of Columbia ("USAO"). On January 16, 2012, the USAO declined to prosecute the matter.³ Thereafter, on May 22, 2012, MPD served the Grievant with the Notice of Proposed Adverse Action.⁴

The Notice of Proposed Adverse Action contained four charges of misconduct. Charge 1 alleged that the Grievant made false statements related to providing an administrative password to an unauthorized user.⁵ Charge 2 alleged that the Grievant improperly provided an MPD laptop computer and administrative password to an unauthorized user.⁶ Charge 3 alleged that the Grievant failed to properly secure a service weapon.⁷ Charge 4 alleged that the Grievant failed to report his possession of the MPD laptop after learning of the inventory audit.⁸

On December 12, 2012, MPD conducted a trial board hearing. The Grievant was found guilty of all charges and served with the Notice of Final Adverse Action. On January 18, 2013, the Chief of Police denied the Grievant's appeal and terminated him from MPD.⁹ Subsequently, FOP invoked arbitration.

III. Arbitration Award

In accordance with the parties' collective bargaining agreement ("CBA"), the Arbitrator decided the issues based on the record submitted by the parties without a hearing. There were three issues to resolve:

1. Whether MPD timely served the Notice of Proposed Adverse Action in accordance with the requirements of D.C. Official Code §5-1031(2004), otherwise known as the 90-day rule;
2. Whether the evidence presented by MPD was sufficient to support the charges;
3. Whether termination was the appropriate penalty for the alleged violations.

¹ Award at 8.

² Award at 8.

³ Award at 9.

⁴ Award at 9.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 5.

⁸ Award at 5-6.

⁹ Award at 9.

Decision and Order
PERB Case 18-A-17
Page 3

The Arbitrator determined that the 90-day rule was a threshold issue for resolving the dispute.¹⁰ The Arbitrator analyzed MPD's service of notice under the 90-day rule in conjunction with MPD General Order 201.22 that states, in pertinent, part "in the event of an ongoing criminal investigation, the 90-day period for providing notice shall be suspended until the conclusion of the investigation."¹¹

The Arbitrator examined a series of emails between IAD and USAO and determined that between November 14 and December 27, 2011, there was nothing that would satisfy the requirement of an ongoing investigation to toll the statute.¹²

The Arbitrator reversed the trial board. In the final calculation of the 90-day period, the Arbitrator found that 30 business days elapsed where there was no ongoing criminal investigation after the MPD referred the matter to the USAO. In addition, the Arbitrator found that 89 business days elapsed after the USAO declined to prosecute the matter until MPD served of the Notice of Proposed Adverse Action. The Arbitrator concluded that 129 days had elapsed, 39 more than permitted under the 90-day rule.¹³

In its brief before the Arbitrator, MPD asserted that the criminal investigation tolled the period between August 15, 2011, and January 16, 2012. MPD argued that service of the Notice of Proposed Adverse Action was timely on day 88.¹⁴ MPD also asked the Arbitrator to find that the 90-day rule is directory rather than mandatory.

The Arbitrator found that the 90-day rule is mandatory and jurisdictional.¹⁵ Ultimately, the Arbitrator held that MPD violated the 90-day rule and ordered the Grievant reinstated with full backpay.¹⁶

IV. Position of Parties

A. MPD's Position

MPD argues that the Award is contrary to the plain language of the 90-day rule and therefore contrary to law and public policy. Notwithstanding the Arbitrator's interpretation that MPD violated the 90-day rule, MPD argues that Charge 1 was timely. MPD argues that the failure to provide any rationale for the dismissal of Charge 1 was contrary to law and public policy.¹⁷ Charge 1 alleged that the Grievant made a false statement to IAD on March 14, 2012,

¹⁰ Award at 9.

¹¹ Award at 10.

¹² Award at 12.

¹³ Award at 12.

¹⁴ Award at 12. The Arbitrator incorrectly found that the Notice of Proposed Adverse Action was served on day 89 after the USAO declined prosecution. The 89-day calculation failed to account for the Emancipation Day holiday.

¹⁵ Request at 8-9 n.16. While significant authority establishes that the 90-Day Rule is directory, see *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 14526, Slip Op. 1595, PERB Case No. 15-A-12 (2016); *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 10152, Slip Op. No. 1639, PERB Case No. 16-A-12 (2017); *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 2012, Slip Op. No. 1606, PERB Case No. 16-A-19 (2016), MPD is not asking PERB to reverse the Arbitrator's decision on this basis.

¹⁶ Award at 16.

¹⁷ Request at 15.

Decision and Order
PERB Case 18-A-17
Page 4

55 days before receiving the Notice of Proposed Adverse Action. MPD asserts that because the Award is void of discussion related to Charge 1 in the factual summary or legal analysis, the Arbitrator's analysis is neither thorough nor consistent with the law on its face.¹⁸

B. FOP's Position

FOP argues that the Board should deny the request because it is a mere disagreement with the determinations of the Arbitrator. FOP asserts that MPD did not carry its burden of showing the existence of a criminal investigation to toll the statute.¹⁹ In relation to Charge 1, FOP argues that MPD did not meet its burden to show that the Arbitrator misinterpreted the law or that law and public policy mandate a different outcome.²⁰ FOP argues that public policy requires Charge 1 to be considered untimely because the statements merged with the underlying untimely disciplinary action.²¹

V. Discussion

The law and public policy exception is "extremely narrow."²² The narrow scope limits potentially intrusive judicial reviews under the guise of public policy.²³ MPD has the burden to demonstrate that the award itself violates established law or compels an explicit violation of "well defined public policy grounded in law and or legal precedent."²⁴ The violation must be so significant that law and public policy mandate a different result.²⁵ Here, the Arbitrator's decision conflicts with the plain language of the statute and is contrary to law and public policy.

The Arbitrator interpreted the 90-day rule along with MPD General Order 201.22 and determined that the disciplinary action implemented by the MPD was untimely. The 90-day rule states:

"(a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department

¹⁸ Request at 15.

¹⁹ Additionally, FOP argues that MPD improperly brings a public policy argument for the first time on appeal, without first raising it before the Arbitrator. However, the public policy argument relates to the Board's authority to review arbitration awards, not to the legitimacy of the MPD's action. As stated earlier, the CMPA permits the Board to modify, set aside, or remand an arbitration award if it is contrary to law and public policy. MPD's argument is properly before the Board.

²⁰ Opposition at 20.

²¹ Opposition at 20-21 (citing *Alamedia v. State Personnel Board*, 15 Cal.Rptr.3d. 383, 395 (Cal. App. 2004)).

²² *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986). *Accord MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. 1487 at 8, PERB Case No. 9-A-05 (2014); *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. 925 at 11-12, PERB Case No. 08-A-01 (2012).

²³ *American Postal Workers* at 8.

²⁴ *Id.*

²⁵ *Id.*

Decision and Order
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or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.

(b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the United States Attorney for the District of Columbia. . . the 90-day period for commencing a corrective or adverse action under subsection (a) of this section shall be tolled until the conclusion of the investigation.” D.C. Official Code §5-1031 (2004).

Also relevant to the discussion, MPD General Order 201.22 states:

“[I]n the event there is an ongoing criminal investigation into the act constituting cause by the MPD, the United States Attorney’s Office (USAO), or the Office of the Attorney General for the District of Columbia (OAG), or if there is an ongoing investigation by the Office of Police Complaints (formally the Office of Citizen Complaint Review), the 90-day time period shall be suspended until the conclusion of the investigation.”²⁶

The Arbitrator tolled the period between August 15, 2011 and November 11, 2011. The Arbitrator found that on November 11, 2011, IAD referred a preliminary report to the USAO for a criminal investigation and on January 16, 2012, the USAO declined to criminally prosecute the matter. The Arbitrator reviewed a series of emails between IAD and the USAO and found that the emails were clear and convincing documentation that there was not an “ongoing” investigation during the period of November 14, 2011, through December 27, 2011.²⁷ The Arbitrator determined that the 30 days within the period between IAD referral and USAO declination would not toll the statute.

As the party attempting to toll the statute of limitations, MPD has the burden of proving circumstances that would toll the statute.²⁸ In this matter, the involvement of the USAO demonstrates that the Grievant’s conduct was the subject of a criminal investigation.²⁹ The express provision of the 90-day rule requires tolling if the act or occurrence allegedly constituting cause is the subject of a criminal investigation until the conclusion of a criminal investigation.³⁰ Here, the Arbitrator interpreted the word “ongoing” as set forth in General Order 201.22 to prevent the statute from tolling.

General Orders are among the matters entrusted to the arbitrator for interpretation.³¹ But General Orders do not have the effect of a statute or a regulation and cannot override provisions

²⁶ Fire and Police Disciplinary Action Procedure Act of 2004, Go-PER-201.22, Effective Date: June 1, 2005, Distribution B, Related to General Order 1202.1 (Disciplinary Procedures and Processes).

²⁷ Award at 12.

²⁸ *MPD v. FOP/MPD Labor Comm. ex rel. Fowler*, 64 D.C. Reg. 101115, Slip Op. 1635 at 13, PERB Case No. 17-A-06 (2017).

²⁹ See, *MPD v. PERB*, Civ. Case No. 2016 CA 009253 P(MPA) at 4 (D.C. Super. Ct. 2018).

³⁰ D.C. Official Code §5-1031(b) (2004).

³¹ *MPD v. FOP/MPD Labor Comm. ex rel. Robinson*, 59 D.C. Reg. 9778, Slip Op. 1261 at 4, PERB Case No. 10-A-19 (2012).

Decision and Order
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Page 6

of law.³² An interpretation of a General Order that is in explicit conflict with the law and other legal precedents is unenforceable.³³

A judicial body may consult a dictionary to determine the common, accepted meaning of a word used in a statute.³⁴ The plain meaning is the meaning attributed to a document by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent.³⁵

“When the plain meaning of the statutory language is unambiguous the intent of the legislature is clear, judicial inquiry need go no further. In determining the plain meaning, the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them It is appropriate for a court to look to dictionary definitions to determine the ordinary meaning of words which are used in a statute, but which are not defined in the statute or in related regulations.”³⁶

The relevant portion of the 90-day rule states, “[i]f the act or occurrence allegedly constituting cause is the subject of a criminal investigation . . . the 90-day period for commencing a corrective or adverse action . . . shall be tolled until the conclusion of the investigation.”³⁷ The word “subject” means “matter presented for consideration.”³⁸ The word “conclusion” means “outcome.”³⁹ Thus, when a matter is presented for consideration by way of a criminal investigation, the 90-day rule requires that the time for commencing disciplinary action is tolled until the outcome of that investigation.

The Arbitrator's interpretation of General Order 201.22 stopped the tolling of the statute while the conduct continued to be the subject of a criminal investigation, prior to its conclusion.⁴⁰ This interpretation conflicts with the statute. Therefore, the award is unenforceable and contrary to law and public policy.

The Board finds that the disciplinary action was timely. The Board sets aside the Arbitrator's holding that MPD violated the 90-day rule. In addition, the Board remands the Award for a decision on (1) whether the evidence presented by MPD was sufficient to support the charges, and (2) whether termination was the appropriate penalty for the alleged violations.

³² *MPD v. FOP/MPD Labor Comm. ex rel. Macdonald*, 59 D.C. Reg. 3974, Slip Op. 928 at 3, PERB Case No. 07-A-04 (2012); *Abney v. District of Columbia*, 580 A. 2d 1036, 1040-41 (D.C. 1990); *Wanzer v. District of Columbia*, 580 A. 2d 127, 133 (D.C. 1990).

³³ *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987).

³⁴ *Nat'l Union of Law Enforcement Assocs. v. Off. of Chief Med. Examiner*, 59 D.C. Reg. 5365, Slip Op. 976 at 5, PERB Case No. 08-RC-01(2012).

³⁵ *Nat'l Union of Law Enforcement Assocs. V. Off. of Chief Med. Examiner*, 59 D.C. Reg. 5365, Slip Op. 976 at 5, PERB Case No. 08-RC-01(2012).

³⁶ *Nat'l Union of Law Enforcement* at 5 (citing *Tippett v. Daly*, 964 A.2d 606 (D.C. 2009)).

³⁷ D.C. Official Code §5-1031 (2004).

³⁸ *Black's Law Dictionary* 1594 (4th Ed. Rev. 1968).

³⁹ *Merriam-Webster Collegiate Dictionary* 239 (Frederick C. Mish et al. eds., 10th ed. 1993).

⁴⁰ Award at 12.

Decision and Order
PERB Case 18-A-17
Page 7

VI. Conclusion

The Board accepts MPD's arguments and finds cause to set aside and remand the Arbitrator's Award. Accordingly, MPD's request is granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department Arbitration Review Request is hereby granted.
2. The Arbitrator is directed to make findings consistent with this decision.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

March 21, 2019

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 18-A-17, Opinion No. 1702 was sent by File and ServeXpress to the following parties on this the 26th day of March 2019.

Connor Finch, Esq.
Office of Attorney General
441 4th Street, NW
Suite 1180 North
Washington, D.C. 20001

Marc L. Wilhite
Pressler, Senftle, & Wilhite, P.C.
1432 K Street, NW
12th Floor
Washington, D.C. 20005

This is to certify that the attached Decision and Order in PERB Case No. 18-A-17, Opinion No. 1702 was sent by U.S. Mail to the following parties on this the 26th day of March 2019.

Ellen S. Saltzman, Esq.
Arbitrator & Mediator
3385 Piperfife Court
Keswick, Virginia 22947

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Administrative Assistant

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
National Association of		)	PERB Case No. 18-RC-02
Government Employees)	
)	
	Petitioner)	
		)	Opinion No. 1704
)	
and)	
)	
District of Columbia Office of the)	
Chief Medical Examiner)	
)	
	Respondent)	
_____)	

CERTIFICATION OF ELECTION RESULTS

The results of a secret ballot election in the above-captioned proceeding have been duly reported to the parties on March 12, 2019, as follows:

Pursuant to the Decision and Order of the Public Employee Relations Board in Slip Opinion No. 1693, an on-site, secret ballot election was conducted for the following unit:

All non-professional employees employed by the District of Columbia Office of the Chief Medical Examiner, excluding all management officials, supervisors, confidential employees or any employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

The on-site election was conducted by Board agents on March 12, 2019, in the Bennett Room of the Office of the Chief Medical Examiner. The National Association of Government Employees (“NAGE”) had one observer present for the duration of the election and the ballot tally. The District of Columbia Office of the Chief Medical Observer (“OCME”) waived its right to an observer.

Certification of Election Results

PERB Case No. 18-RC-02

Page 2

The ballot stated: “For the purposes of exclusive recognition under the Comprehensive Merit Personnel Act of 1978, who do you wish to be represented by” and offered a choice of NAGE, AIW, or no union.

The results are hereby reported as follows:

NAGE	18 votes
AIW	0 votes
No union	0 votes
Challenged ballots	1 ballot
Void ballots	1 ballot

Thirty-two employees of OCME were eligible to vote in the election. The Board agent challenged one ballot because the voter was not named on the list of eligible employees provided by OCME. The parties did not resolve the challenge; however, the challenged ballot was not determinative.

Pursuant to Board Rule 515.2, “within seven (7) days after the tally of ballots has been served, any party to the election may file with the Board objections to the election procedure, or to any conduct which may have improperly affected the results of the election.” The Board did not receive any objections from the parties regarding this election.

Having received no objections concerning the conduct of the above-described election proceeding, pursuant to Board Rule 515.3, the results of the election, as reported, are hereby certified.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

March 21, 2019

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-RC-02, Op. No. 1704 was transmitted to the following parties on this the 25th day of March 2019.

Robert J. Shore
National Association of Government Employees
1020 N. Fairfax Street
Suite 200
Alexandria, VA 22314

Stephanie T. Maltz
Office of Labor Relations
and Collective Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

/s/ Sheryl Harrington
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICEFORMAL CASE NO. 1115, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S REQUEST FOR APPROVAL OF A REVISED ACCELERATED PIPE REPLACEMENT PLAN

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that on April 19, 2019, the Liberty Consulting Group ("Liberty") filed public and confidential versions of its Final Report Management Audit of Washington Gas Light Company's ("WGL") Accelerated Pipe Replacement Plan ("PIPES 1 Plan").¹ By this notice, the Commission solicits parties' and interested persons' comments on Liberty's Final Audit Report of WGL's PIPES 1 Plan.

2. By Order No. 17431, the Commission approved the first five (5) years of WGL's proposed 40-year PIPES 1 Plan to address the aging gas pipeline infrastructure in the District of Columbia and required annual audits of WGL's PIPES 1 Plan and expenditures to ensure timely work performance and fair and accurate recording of costs. The Commission required that the audit be completed in two Tasks, each with a separate report.² Task 1 would address the Accuracy of the Commission approved Cost Recovery Mechanism and would focus on whether the PIPES 1 project costs being recovered through the surcharge mechanism are accurate and are properly computed.³ Task 2 would address the PIPES 1 Project Selection and Management and would focus on ensuring that the PIPES 1 projects that were completed and being recovered through the mechanism: (1) are timely; (2) are consistent with the Annual Project List submitted by WGL; and (3) include projects from Program 1 (Bare and /or unprotected steel services), Program 2 (Bare and targeted unprotected steel mains and affected services and Program 4 (Cast iron mains and affected services) that meet the four requirements set forth in paragraph 68 of Order No. 17431.⁴ Pursuant to Order No. 17431, "[p]rojects that qualify for funding under the surcharge mechanism must satisfy all of the following four requirements: (1) the projects started on after June 1, 2014; (2) project assets are not included in WGL's rate base in its most recent rate case; (3) the projects do not increase revenues by directly connecting the infrastructure replacement to new customers; and (4) the projects are needed to reduce risk and enhance safety

¹ *Formal Case No. 1115, In the Matter of Washington Gas Light Company's Request for Approval of a Revised Accelerated Pipe Replacement Plan, ("Formal Case No. 1115")*, Liberty Final Report Management Audit of PROJECTpipes, filed April 19, 2019 ("Final Audit Report").

² *Formal Case No. 1115*, Order No. 17789, ¶ 74, rel. January 29, 2015 ("Order No. 17789").

³ *Formal Case No. 1115*, Order No. 17789, ¶ 74.

⁴ *Formal Case No. 1115*, Order No. 17789, ¶ 74.

by replacing aging corroded or leaking cast iron mains, bare and/or unprotected steel mains and services; and black plastic services in the gas distribution system.”⁵

3. Liberty was selected to conduct the Task 2 Management Audit. Liberty’s Final Audit Report addresses key elements of the PIPES 1 Plan and project management, including, but not limited to: (1) use of sound engineering judgement; (2) construction integrity, including the quality of installation and construction; (3) accuracy of the cost estimates; (4) reasons for cost overruns; and (5) reasonableness of actual costs.⁶

4. All parties who have signed a confidentiality agreement⁷ and are interested in commenting on the confidential version of the Final Audit Report as well as other persons interested in commenting on the public version of the Final Audit Report may submit written comments and reply comments no later than 30 and 45 days from the date of publication of this Notice, in the *D.C. Register*, respectively. Comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, NW, Suite 800, Washington, DC 20005. Copies of the Final Audit Report may be obtained by visiting the Commission’s website at www.dcpsc.org. Once at the website, open the “eDocket” tab, click on “Search database” and input “*FC 1115*” as the case number and “282” as the item number for the public version of the Final Audit Report. Copies may also be purchased at cost by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

⁵ *Formal Case No. 1115*, Order No. 17431, ¶ 68.

⁶ *Formal Case No. 1115*, Final Audit Report at 2.

⁷ *See* 15 DCMR § 150 *et. seq.* (Confidential and Proprietary Information) (1992).

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after June 15, 2019.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on May 10, 2019. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: June 15, 2019

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Able	Autumn Demetria Ann	US Department of Housing and Urban Development 457 7th Street, SW	20410
Anuar	Ayia	PNC Bank 1913 Massachusetts Avenue, NW	20036
Banks	Calenthia W.	Commission on the Arts and Humanities 200 I Street, SE, Suite 1400	20003
Ballard	Mary M.	United States Postal Service 475 L'Enfant Plaza, SW	20260
Birmingham	John	Carr Workplaces 1717 K Street, NW, Suite 900	20006
Bosse	Lisa S.	Paragon Title 1410 Q Street, NW	20009
Burke	Julia	FRB Federal Credit Union 20th and C Street, NW	20551
Cooke	Michele M.	Hunton Andrews Kurth LLP 2200 Pennsylvania Avenue, NW	20037
Evert	Kaia	Navigant Consulting, Inc 1200 19th Street, NW, Suite 700	20036
Fernandez	Sergio	PNC Bank 1913 Massachusetts Avenue, NW	20036
Fox	David E.	Linden Business Advisors 1333 Connecticut Avenue, NW, #400	20036
Gibbons	Regina	Graduate School USA 600 Maryland Avenue, SW, Suite 180	20024
Gorman	Christelle S.	National Alliance of State & Territorial Aids Directors (NASTAD) 444 North Capitol Street, NW, Suite 339	20001
Grosf	Erik R.	National Transportation Safety Board 490 L'Enfant Plaza East, SW	20594

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

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Hangsin	Seda	Crowley, Hoge & Fein, P.C 1211 Connecticut Avenue, NW, Suite 300	20036
Hawkins	Lareesia	Capital Auto & Truck Auction, Inc 1905 Brentwood Road, NE	20018
Humiston	Kellie M.	United States House of Represenatives Room H-154	20515
Johnson	Angeline Moyd	Williams & Connolly LLP 725 12th Street, NW	20005
Johnson	Laquanda	NRL Federal Credit Union 4555 Overlook Avenue, SW	20375
Johnson	Tiffany	Industrial Bank 1317 F Street, NW	20004
Kucinich	Matthew John	Stewart Title Group 1707 L Street, NW, Suite 240	20036
Lane	Cecelia J.	Self 1304 Columbia Road, NW, #201	20009
Lasher	Julia	Jewish War Veterans of the United States of America, Inc. 1811 R Street, NW	20009
Lerner	Morgan Derek	Atlas Condominium Unit Owner Association 1111 25th Street, NW	20037
Mack	Cornelia	Self 4451 Ponds Street, NE	20019
Malcolm	Andrea Marie	Faith Full Gospel Deliverance Church Of God 125 Missouri Avenue, NW	20011
Masilela	Buhlebenkosi	Friends Committee on National Legislation 245 2nd Street, NE	20002
Mevissen	Monika	Metropolitan Engineering, Inc 2020 K Street, NW, #650	20006

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public****Effective: June 15, 2019****Page 4**

Mitchell	James	Hausfeld 1700 K Street, NW, Suite 650	20006
Monahan	Jacqueline	Self 2939 Van Ness Street, NW, #338	20008
Monroe	Nadia	Congressional Black Caucus Foundation 1720 Massachusetts Avenue, NW	20036
Murnane	David	Homeland Title & Escrow, Ltd 1140 3rd Street, NE, Suite 2152	20002
Niles	Leonica V.	Hughes Hubbard & Reed LLP 1775 I Street, NW	20006
Newsome	Angela R.	Weil, Gotshal & Manges, LLP 2001 M Street, NW	20036
Nova	Kandra E.	Open Government Partnership 1110 Vermont Avenue, NW, Suite 500	20005
Nwaete	Clothida	DC Fire and EMS 2000 14th Street, NW, Suite 500	20009
Peace	Nola	Spin Process 711 Longfellow Street, NW	20011
Perimbaraja	Dinesh Kumar	Bank of America 1339 Wisconsin Avenue, NW	20007
Pillay	Anand M.	LP Title, LLC 4725 Wisconsin Avenue, NW, Suite 250	20016
Pollard	Sonya	Bloomberg, LP 1101 New York Avenue, NW	20005
Purohit	Sandra	Defenders of Wildlife 1130 17th Street, NW	20036
Randall	Elaine S.	Conlon, Frantz & Phelan, LLP 1740 N Street, NW, Suite One	20036

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

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Ray	David S.	Federation for American Immigration Reform 25 Massachusetts Avenue, NW, Suite 330	20001
Reyes	Angie J.	RGS Title, LLC 1529-B 14th Street, NW	20005
Richardson	Lucille	Lend Lease Construction, Inc 1211 Van Street, SE	20003
Rodriguez	Sara Mendez	Titan Title, LLC 1455 Pennsylvania Avenue, NW, Suite 400	20004
Rollyson	Deborah M.	Craighill Mayfield Fenwick & Cromelin, LLP 4910 Massachusetts Avenue, NW, Suite 215	20016
Salgado	Miguel David	Trombly & Singer, PLLC 1825 K Street, NW, Suite 1150	20006
Seegers	Sylvia	Self 1635 Holbrook Street, NE	20002
Shellman	Allison D.	Federal Bureau of Investigation 935 Pennsylvania Avenue, NW	20001
Simmons	Ashley D.	Housing UP 5101 16th Street, NW	20011
Smith	Christopher W.	Department of Commerce Federal Credit Union 1401 Constitution Avenue, NW	20230
Stevens	Darlene L.	TIAA 601 13th Street, NW, Suite 700 North	20005
Tsegai	Bethlehem	Unites States Senate Federal Credit Union 441 G Street, NW	20548
Vahaly	Brian	Solidcore 1638 R Street, NW, Suite 301	20009
Williams-Howell	Shereese	Self 2059 38th Street, SE, #302	20020

D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public

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Wilson	G. Avery	US Department of Health and Human Services 200 Independence Avenue, SW, Room 20201 621E.1
Zamora	Katy M.	Office of the Clerk U. S. House of Representatives Longworth House Office Building 20515

**TWO RIVERS PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

Vended Meals

Two Rivers Public Charter School is advertising the opportunity to bid on the management of breakfast, lunch, snack and/or CACFP supper program to children enrolled at the school for the 2019-2020 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposal (RFP) such as student data, days of service, meal quality, etc., may be obtained beginning on **May 13, 2019** from **Alysha Brown at procurement@tworiverspcs.org**. Proposals will be accepted at **procurement@tworiverspcs.org** on **June 3, 2019**, not later than **3:00 pm**.

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT****Modular Competency-Based English Curriculum**

Washington Leadership Academy intends to award a sole source contract to CommonLit for modular competency-based English curriculum. For more information, contact Natalie Gould at ngould@wlapcs.org.

For full Notice of Intent to Award Sole Source Contract, please visit: www.wlapcs.org/bids

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****School Technology**

Washington Leadership Academy Public Charter School, an approved 501(c)3 organization, requests proposals for the following Chromebook technology:

Quantity: 150

Required Specifications:

Screen: 11.6 inch screen w/ webcam (1366 x 768 resolution or better)

CPU: Intel N3060 Celeron or better

RAM: 4GB or more

SSD/HDD: 16 GB MMC or better

OS: Chrome OS

Additional Specifications:

Require 1 Chromebook Management License per device.

Please exclude convertible or tablet models.

Purchase Reference model: Samsung Chromebook 3 (XE500C13)

Current Models in-use: Samsung Chromebook 3 (XE500C13), HP Chromebook 11 G5

Please email proposals to mleiter@wlapcs.org. We request proposals by May 24, 2019.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, June 6, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 125 O Street, S.E. (1385 Canal Street, S.E.), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | | |
|----|--|-------------------------|
| 1. | Call to Order | Board Chairman |
| 2. | Roll Call | Board Secretary |
| 3. | Approval of May 2, 2019 Meeting Minutes | Board Chairman |
| 4. | Committee Reports | Committee Chairperson |
| 5. | Chief Executive Officer's Report | Chief Executive Officer |
| 6. | Action Items
Joint-Use
Non Joint-Use | Board Chairman |
| 7. | Other Business | Board Chairman |
| 8. | Adjournment | Board Chairman |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18723-B of 2101 Morning Bright LLC, pursuant to 11 DCMR Subtitle Y § 705.1, for a second two-year time extension of BZA Order No. 18723.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy (§ 772), rear yard (§ 774), and off-street parking location (§ 2116.12) requirements, and a special exception from the rooftop structure requirements under § 770.6(b), to allow construction of a mixed-use residential building with ground-floor retail in the ARTS/C-2-B District at 2105 10th Street, N.W. (Square 358, Lots 5, 6, and 802).

HEARING DATES (Original Application):	March 11 and May 20, 2014
DECISION DATE (Original Application):	May 20, 2014
EFFECTIVE DATE (Original Application):	June 2, 2014
DECISION DATES (First Time Extension):	May 24 and June 7, 2016
DECISION DATE (Second Time Extension):	March 20, 2019

**SUMMARY ORDER ON SECOND REQUEST
FOR TWO-YEAR TIME EXTENSION**

BACKGROUND

On May 20, 2014, in Application No. 18723, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by 2101 Morning Bright LLC (the “Applicant”) for variances from the lot occupancy, rear yard, and off-street parking location requirements, and a special exception from the rooftop structure requirements to allow the construction of a mixed-use residential building with ground floor retail in the ARTS/C-2-B District at 2105 10th Street, N.W. (Square 358, Lots 5, 6 and 802). The Board issued Order No. 18723 on May 23, 2014. (Exhibit 2A.) Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it was issued.

On April 29, 2016, the Applicant filed a request for a two-year extension of Order No. 18723 as Application No. 18723-A. The Board granted the request for time extension on June 7, 2016 and issued Order No. 18723-A on April 19, 2019. By granting the two-year time extension, the Board extended the time period of the underlying Order’s validity until June 2, 2018.

SECOND MOTION TO EXTEND THE VALIDITY OF THE ORDER

On February 4, 2019, the Applicant submitted a request that the Board grant a second two-year extension of the validity of Order No. 18723. (Exhibits 1-3.) This request for extension is

pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

ANC 1B, the only other party to the underlying application, submitted a written report to the record. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 7, 2019, at which a quorum was present, the ANC voted 11-0-0 to take no action on the second request for two-year extension. The ANC stipulated that the second time extension should concur with the original effective date of Order No. 18723 and the dates cited in first time extension. (Exhibit 5.) Office of Planning ("OP") submitted a report recommending approval of the proposed time extension. (Exhibit 6.)

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that request for second two-year time extension to the validity of the Board's approval in Application No. 18723 is hereby **GRANTED**, and the Order shall be valid until **June 2, 2020**.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter A. Shapiro to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

**BZA APPLICATION NO. 18723-B
PAGE NO. 2**

FINAL DATE OF ORDER: April 29, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

**BZA APPLICATION NO. 18723-B
PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19975 of Warner Capital LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 513.1(m)¹ to permit the expansion of an existing animal care and boarding facility to an adjacent lot in the MU-4 Zone at premises 3509-3511 12th Street, N.E. (Square 3928, Lots 45, 46).

HEARING DATE: April 24, 2019

DECISION DATE: April 24, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 27, 2019, at which a quorum was present, the ANC voted 3-0-0 to support the application. (Exhibits 31 and 32.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 37.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 38.)

No letters were submitted in support of or in opposition to the application, nor did any person from the community testify at the hearing.

¹ The application was advertised with a citation to Subtitle U § 513.1(a), which applies to animal care uses, but the caption was subsequently corrected to reference Subtitle U § 513.1(m), which applies to animal boarding uses not meeting the conditions of Subtitle U § 512.1(l), as requested by the Applicant.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 513.1(m) to permit the expansion of an existing animal care and boarding facility to an adjacent lot in the MU-4 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS & ELEVATIONS.**

VOTE: 4-0-1 (Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull to APPROVE; Frederick L. Hill not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 26, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y

BZA APPLICATION NO. 19975

PAGE NO. 2

§ 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19979 of Nadia Shash, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a three-story rear addition to an existing, attached principal dwelling unit in the RF-1 Zone at premises 414 Constitution Avenue N.E. (Square 814, Lot 803).¹

HEARING DATE: April 24, 2019

DECISION DATE: April 24, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 10, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 34.)

¹ The application was advertised with citations to Subtitle F, but the caption was subsequently corrected to reference Subtitle E, which applies to the RF-1 zone.

The Board received letters in support of the application from one adjacent neighbor and from Capitol Hill Restoration Society. (Exhibits 11, 32.) The other adjacent neighbor submitted comments raising concerns about construction issues. (Exhibit 37.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28.**

VOTE: 4-0-1 (Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Michael G. Turnbull to APPROVE; Frederick L. Hill not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 26, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y

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§ 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19989 of Ryan Aires, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the minimum rear yard setback requirements of Subtitle E § 306.1 to construct a two-story rear addition to an existing principal dwelling unit in the RF-1 Zone at premises 1433 G Street N.E. (Square 1051, Lot 154).

HEARING DATE: April 24, 2019

DECISION DATE: April 24, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 11, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 37.)

The Office of Planning ("OP") submitted a timely report, dated April 12, 2019, in support of the application. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a report, dated April 12, 2019, expressing no objection to the approval of the application. (Exhibit 34.)

Three letters of support for the application, including two from the adjacent neighbors, were submitted to the record. (Exhibits 29-31.) A resident at 1409 G Street, N.E. filed comments in opposition. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X §

901.2, for special exceptions under Subtitle E § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the minimum rear yard setback requirements of Subtitle E § 306.1 to construct a two-story rear addition to an existing principal dwelling unit in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201, 304.1 and 306.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 39.**

VOTE: 4-0-1 (Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Michael G. Turnbull to APPROVE; Frederick L. Hill not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 29, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

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THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19992 of 3520 10th St NW LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the residential conversion requirements of Subtitle U § 320.2,¹ to convert an existing, semi-detached principal dwelling unit to a three-unit apartment house in the RF-1 Zone at premises 3520 10th St N.W. (Square 2832, Lot 833).

HEARING DATE: May 1, 2019

DECISION DATE: May 1, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 4, 2019, at which a quorum was present, the ANC voted 11-0-0 to support the application. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report, dated April 19, 2019, in support of the application. (Exhibit 42.) The District Department of Transportation ("DDOT") submitted a report, dated April 19, 2019, expressing no objection to the approval of the application. (Exhibit 43.)

The Board received seven letters in support of the application. (Exhibits 30-36.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X §

¹ During the hearing, the Applicant clarified that he was not seeking a waiver from Subtitle U § 320.2(e), as there were contradictory statements to that effect in Exhibit 9 of the application.

901.2, for a special exception from the residential conversion requirements of Subtitle U § 320.2, to convert an existing, semi-detached principal dwelling unit to a three-unit apartment house in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 320.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29.**

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, Lorna L. John, and Robert E. Miller to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 2, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19995 of Carl Holden and Amanda Parks, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, to construct a rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 639 Lexington Place, N.E. (Square 862, Lot 126). ANC 6C

HEARING DATE: April 24, 2019

DECISION DATE: April 24, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 10, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report, dated April 11, 2019, in support of the application. (Exhibit 34.) The District Department of Transportation ("DDOT") submitted a report, dated April 12, 2019, expressing no objection to the approval of the application. (Exhibit 35.)

Five letters of support from neighbors were submitted to the record. (Exhibits 27-31.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of

Subtitle E § 205.4, to construct a rear addition to an existing attached principal dwelling unit in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5201, 304.1, 205.5 and 205.4, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3.**

VOTE: 4-0-1 (Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull to APPROVE; Frederick L. Hill not present, not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 26, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal No. 20021 of ANC 6C, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on January 22, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy CO1901156, permitting the property to operate as a restaurant and bar with seating for 122 persons and a load occupancy of 269 persons in the NC-16 Zone at premises 707 H Street N.E. (Square 890, Lot 26).

DISMISSAL ORDER

Appeal No. 20021 was submitted to the Board of Zoning Adjustment (the “Board”) on March 25, 2019 by ANC 6C (the “Appellant”). The appeal challenged the decision made by the Zoning Administrator at the Department of Consumer and Regulatory Affairs (“DCRA”) on January 22, 2019 to issue Certificate of Occupancy CO1901156, which would allow a restaurant and bar with seating for 122 persons and a load occupancy of 269 persons in the NC-16 Zone at premises 707 H Street N.E. (Square 890, Lot 26) (the “Property”).

Pursuant to Subtitle Y § 501.1, the parties to the appeal are the Appellant, DCRA, and the owners of the Property, A. Jamil and A.F. Rahimi (the “Property Owner”).

On April 8, 2019, DCRA filed a motion to dismiss the appeal (“Motion to Dismiss”). (Exhibit 5.) The Motion to Dismiss indicated that DCRA canceled Certificate of Occupancy CO1901156 after it was voluntarily surrendered by the Property Owner. As the Certificate of Occupancy at issue is canceled, DCRA requests that the appeal be dismissed as moot. A representative of the Appellant consented to the dismissal of the appeal. (Exhibit 6.)

Under Subtitle Y § 101.6, “moot questions shall not be considered by the Board.” Therefore, based on the cancellation of Certificate of Occupancy CO1901156 and with the consent of DCRA and the Appellant, the Board voted to grant the Motion to Dismiss at its public meeting on May 1, 2019.

Accordingly, it is **ORDERED** that the appeal is **DISMISSED**.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Robert E. Miller to DISMISS.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 2, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

District of Columbia REGISTER – May 10, 2019 – Vol. 66 - No. 19 005802 – 006098