

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

**In the Appeal of
OST, Inc.**

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Under DGS RFP No. BPM043644

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Docket No. MSBCA 3308

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Appearance for Appellant

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Appearance for Respondent

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OPINION AND ORDER BY MEMBER STEWART

Upon reviewing the testimony and all evidence presented at the merits hearing on August 13, 2025, the Maryland State Board of Contract Appeals (“Board”) denies this Appeal.

PROCEDURAL HISTORY AND FINDINGS OF FACT

On May 10, 2024, DGS issued Request for Proposals Statewide Agile Resources and Teams 2024 RFP No. BPM043644 (“RFP”) to obtain Agile resources and/or teams with the technical skills to support the State of Maryland’s technology modernization activities and staffing service needs. The purpose of the procurement was to create a pool of qualified contractors that would be engaged through a rotational Work Order process to provide services on an on-going, as-needed basis. The RFP solicited proposals for three functional areas: Functional Area 1: Software Engineering Resources; Functional Area 2: Software Engineering Teams Bundle; and Functional Area 3: IT Management Consulting Services. Offerors were only allowed to submit a proposal for one Functional Area.

DGS intended to award up to 40 contracts in the three Functional Areas - no more than 15 awards in Functional Area 1; no more than 20 awards in Functional Area 2; and no more than 5 awards in Functional Area 3. For purposes of this Appeal, only the RFP's solicitation for offers for Functional Area 1 is relevant.

The procurement method was Competitive Sealed Proposals per COMAR 21.05.03. Offerors were required to submit a Technical Proposal and a Financial Proposal. Proposals submitted by offerors were to be evaluated by an Evaluation Committee. Technical Proposals were required to be evaluated for technical merit and then ranked. Financial Proposals were to be evaluated separately from Technical Proposals, and upon completion of the evaluations, each offeror was to be assigned an overall ranking for Functional Area 1. Section 6.5.3 of the RFP required the Procurement Officer ("PO"), in making the determination and recommendation of award, to give greater weight to technical factors over financial factors. Section 6.2 of the RFP sets forth the Technical Proposal Evaluation Criteria:

6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that address and demonstrate an understanding of the work requirements and include plans to meet or exceed them.

6.2.2 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.G)

6.2.3 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

6.2.4 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.P)

The RFP in Section 3.10.01 informed offerors that their Technical Proposals would be evaluated in four key areas of experience:

3.10.1 Preferred Offeror Experience

The following experience is preferred and will be evaluated as part of the Technical Proposal (see the Offeror experience, capability and references evaluation factor from **Section 6.2**):

Following are for all three (3) Functional Areas:

- A. Demonstrated knowledge of project management and application development using SAFe and other Agile methodologies.
- B. Demonstrated knowledge of staffing processes, employee skills and requirements development, and compliance with employment and immigration law.
- C. Prior senior level experience in supporting State, Federal or Local Governments or Private Industry in technology projects through both development and staff augmentation.
- D. Demonstrated knowledge in current software paradigms, software development life cycle, and organizational environments including both State, Federal or Local government and private industry.

OST, Inc. (“OST” or “Appellant”) submitted a Technical Proposal and Financial Proposal for Functional Area 1 by the due date for submission of proposals. Of the 72 proposals submitted, 59 proposals, including Appellant’s, were deemed susceptible for award. OST’s proposal was ranked 22nd in technical merit, 24th in financial merit, and 22nd overall. OST received a non-award notification on December 23, 2024. A debriefing was held via telephone on December 31, 2024, wherein OST was informed that its Technical Proposal was found to have material weaknesses due to a “lack of strategy to ensure quality” and was missing four areas of expertise required by RFP Section 3.10.1. A written debriefing outline received by OST on January 8, 2025 documented what OST was informed at the December 31st debriefing, and it cited as weaknesses in OST’s Technical Proposal regarding the RFP’s evaluation criterion set forth in Section 6.2.1. Offeror’s Technical Response to Requirements and Work Plan:

- Very little on strategies to ensure service quality

- Staffing Acquisition Strategy mentions about the MDTHINK [*sic*] and Agilte [*sic*] Team experiences rather than strategy.

The debriefing outline cites as a weakness in OST's Technical Proposal regarding the RFP's evaluation criterion set forth Section 6.2.2. Offeror Qualifications and Capabilities, including proposed subcontractors:

- Missed the four key areas of experience and expertise listed in [RFP Section] 3.10.1.

OST filed a protest on January 6, 2025 ("Protest"). OST's Protest alleged four bases¹:

1. DGS violated the provision of COMAR 21.05.03.03A(1) mandating that proposal evaluations "shall be based on evaluation factors set forth in the request for proposals" by downgrading its Technical Proposal pursuant to § 6.2.1 because it contained "very little on strategy to ensure quality; talked about MD THINK² instead of strategy."(footnote omitted). OST further claimed that its [Technical] Proposal "was robust and comprehensive. Nowhere did it respond 'concur,' 'will comply' or any similar limited response."
2. DGS violated the provision of COMAR 21.05.03.03A(5) which provides that [f]actors not specified in the request for proposals may not be considered." OST contended "[n]owhere did the RFP, at Section 6.2.1 or otherwise, state that a 'strategy to ensure quality' would be an evaluation criteria."

¹ In the introduction to its Protest, OST claimed that DGS "failed to clarify or engaged [*sic*] in permitted discussions with OST to clarify where in ... [OST's Technical] Proposal the information the agency was seeking could be found," but did not list this as a formal protest basis. The PO in his Final Decision responded that discussions were unnecessary because proposals were evaluated as submitted per the RFP. OST did not include this issue in its Notice of Appeal.

² Maryland Total Human-services Integrated Network.

3. DGS arbitrarily and capriciously dismissed OST's MD THINK experience using SAFe³ as an incumbent contractor to the Maryland Department of Human Services ("DHS").
4. DGS erroneously downgraded OST's Technical Proposal for failing to address the four key areas of expertise set forth in Section 3.10.1 of the RFP. OST contended that the key areas of expertise set forth in Section 3.10.1 of the RFP "were fully and extensively addressed within the OST Proposal" and that "the four (4) areas of expertise required by § 3.10.1 are clearly present."

The PO denied OST's Protest on February 4, 2025 ("Final Decision"). In his Final Decision, the PO responded to OST's four bases of protest:

1. DGS evaluated proposals in accordance with the criteria and procedures outlined in COMAR 21.05.03 and Section 6.2 of the RFP, and that "[w]hile technical evaluations inherently involve subjectivity, this subjectivity was confined within the parameters established by the RFP."
2. As to the weakness cited in OST's Technical Proposal during the debriefing that it lacked a "strategy to ensure quality," the PO noted:

[T]hat just because OST may not have had a weakness in a particular area does not mean that another offeror may not have had a strength in that area. And even if OST was judged to have strength in a particular area, other offerors may also have had one or more strengths in that area, possibly including a more significant strength.

3. As to the DGS's alleged dismissal of OST's MD THINK experience using SAFe with DHS, the PO noted:

The evaluation committee reviewed the technical content of OST's proposal, including how the proposed solution aligned with the RFP's requirements, taking into consideration OST's experience with MDTHINK. The evaluation committee found that OST's proposal did not fully address the technical requirements and lacked the level of detail expected in critical areas. As a result,

³ Scaled Agile Framework.

despite its relevant experience, OST's proposal received a lower technical ranking compared to other offerors who provided more comprehensive and detailed responses to the RFP's criteria.

4. As to the missing four areas of expertise required by Section 3.10.01 of the RFP, the PO noted "that the missing areas of expertise were included, the evaluation committee found that they were not sufficiently detailed or addressed to the level of depth required by the RFP. The committee determined that other offerors demonstrated stronger expertise in these critical areas, leading to a higher proposal ranking."

OST filed a Notice of Appeal to the Board on February 14, 2025, raising the same four bases as in its Protest.⁴

The PO, Emmanuel G. Smith, was the only witness that testified at the merits hearing. At the close of OST's evidence offered by OST, DGS moved for judgment pursuant to COMAR 21.10.05.06E and, after consideration, the Board declined to render judgment until the close of all evidence.

STANDARD OF REVIEW

A procurement officer's decision will be overturned only if it is shown by a preponderance of the evidence that the agency's action was biased, arbitrary, capricious, unreasonable, or in violation of law. *See Hunt Reporting Co.*, MSBCA 2783 at 6 (2012).

⁴ In its Notice of Appeal, OST claims DGS provided false information about missing expertise in its Technical Proposal—first stating in the debriefing that areas were missing, then later in the PO's Final Decision stating they were present but not detailed enough. Because OST did not raise this issue with the PO in its Protest, the Board cannot consider it. Issues not included in the protest or decided by the PO cannot be considered on appeal. *See Ace Uniform Services, Inc.*, MSBCA No. 3027 at 23 (2019); *Mercier's, Inc.*, MSBCA No. 2629 at 4 (2008).

DECISION

The Board denies this Appeal because OST did not prove by a preponderance of the evidence that DGS's evaluation of its Technical Proposal was arbitrary, capricious, unreasonable, unlawful, or biased. The Board addresses each of OST's bases of protest as follows.

DGS'S EVALUATION OF OST'S TECHNICAL PROPOSAL AGAINST THE EVALUATION CRITERIA SET FORTH IN SECTION 6.2 OF THE RFP WAS NOT IMPROPER

Recently, in a case involving the same procurement, the Board reaffirmed the long-standing standard for reviewing a PO's evaluation of Technical Proposals in competitive sealed procurements. *See FEI.com, Inc. d/b/a FEI Systems*, MSBCA 3301 at 7-8 (2025). The procurement officer and agency head have the discretion to either accept the recommendation of the evaluation committee, or to substitute their judgment for that of the committee's. *See* COMAR 21.05.03.03A(6); *Aramark Corp. D/B/A Aramark Healthcare Support Servs.*, MSBCA 1893 (1995). This Board is reluctant to substitute its judgment for that of an agency, in part because it is the procuring agency that will have to "live with the results" of its decision. *See Klein's of Aberdeen*, MSBCA 1773 (1994); *Eisner Communications, Inc.*, MSBCA 2438, 2442 & 2445 (2005); *Caremark PCS*, MSBCA 2544, 2548 & 2565 (2007).

During nearly five hours of testimony, the PO repeatedly testified that OST's Technical Proposal was evaluated according to the RFP's criteria, and that three subject matter experts – the Evaluation Committee – independently assessed each offeror's Technical Proposal per Section 6.2 of the RFP using a matrix key to score responses. The PO explained that "[t]he score is based on the responses provided by the offeror and how the response aligns with the requirement of the RFP." *Merits Hr'g Tr.*, 119:23-25. The PO further explained how the evaluators assessed points in evaluating each offeror's Technical Proposal:

[I]f the evaluator[s] feel that the proposal -- the responses deserve excellent, they get five points. And there is a corresponding verbiage that goes along with the five points. And then it goes down to very good, you get four points. And good, three points. Adequate, two points. Poor, one point. And they have the equivalent verbiage that aligns to those points.

Merits Hr'g Tr., 42:1-8.

The scores were then combined for a total, ranked, and finally evaluated on price for overall ranking, with technical factors weighing more heavily than price. The PO testified that he did not evaluate Technical Proposals against the evaluation criteria set forth in Section 6.2 of the RFP, but that he only reviewed the Technical Proposals for “responsiveness”⁵ and that the evaluators evaluated them against the RFP evaluation criteria. Merits Hr'g Tr., 113:6-9. Further, the PO testified that he used his discretion to accept the recommendation of the Evaluation Committee. Merits Hr'g Tr., 113:14-17.

As part of the evaluation process, the evaluators made notes of the strengths and weaknesses of offerors' Technical Proposals for each evaluation criterion. The PO testified, however, that there was no direct correlation or alignment between the number of strengths and weaknesses noted by the evaluators and the scores ultimately assigned by the evaluators. Merits Hr'g Tr., 51:6-52:5; 207:4-19. The PO testified that he “glossed” over the evaluators' notes on strengths or weaknesses before accepting the Evaluation Committee's recommendation. Merits Hr'g Tr., 113:18-114:4. When questioned by the Board, the PO explained why he did not go into the nuts and bolts of the scoring done by the Evaluation Committee:

⁵ A “responsive” bid meets all material requirements of an invitation for bids. COMAR 21.01.02.01(78). In a procurement using competitive sealed proposals, the PO first classifies submissions as “[r]easonably susceptible of being selected for award,” or “not [r]easonably susceptible for award.” COMAR 21.05.03.03B(1). The PO uses the correct terminology later in his testimony. Merits Hr'g Tr., 61:4-8; 62:18-22; 183:24-184:2.

MR. STEWART: Mr. PO. Mr. Smith. So you're doing your -- well, when you're looking over the scoring and you look down and you review 59 -- 59 discrete strengths and weaknesses across three evaluators for 59 proposals, as you go through, as you said before, like if you saw something jarring, like four to one or something like that, then you might take a deeper dive. Otherwise you're probably going to rely on your subject matter expert?

A. Correct, sir.

MR. STEWART: So -- and not go behind the score?

A. No, not go behind the score.

Merits Hr'g Tr., 120:25-121:13.

The PO further testified that he only reviewed evaluators' notes in detail when preparing for the debriefing requested by OST. Merits Hr'g Tr., 52:10; 59:3-61:3. In its Protest and Notice of Appeal, OST complained that its Technical Proposal was "downgraded" although OST considered it "robust and comprehensive." OST referred to Section 6.2.1 of the RFP which reads:

Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that address and demonstrate an understanding of the work requirements and include plans to meet or exceed them.

OST contends that, because it did not respond with "concur" or "will comply" to any of the RFP requirements, it should have received higher evaluation scores. During the merits hearing, counsel for OST raised this issue during questioning of the PO:

Q. So Mr. Smith, did anybody -- did anybody respond "concur" or "will comply" to any requirement?

A. Not to the best of my knowledge.

Q. Okay. So nobody -- nobody received a lower ranking for saying concur or comply. That's what that means, to the best of your knowledge?

A. What I can tell you is that the RFP clearly state [*sic*] the requirements and what we're looking for.

Merits Hr'g Tr., 175:7-16.

The evidence before the Board demonstrates on this point that the Technical Proposals of offerors were evaluated per Section 6.2.1 of the RFP. Evidently, the Evaluation Committee believed OST's Technical Proposal was not as "robust" as OST believed. This mere disagreement over the subjective evaluation of its Technical Proposal is not proof, however, that the evaluation was arbitrary, capricious or unreasonable.

At the merits hearing, OST highlighted inconsistencies in the evaluators' notes, arguing that its Technical Proposal was not assessed per the RFP's requirements. OST pointed out that despite having CMMI Level 3 certification, it was not credited as a strength by two of three evaluators, in contrast to other offerors with the same credential. OST also noted that while CMMI Level 3 was preferred for Functional Area 2 proposals, it was not required for Functional Area 1.

When asked about the decision not to assign OST a strength for CMMI Level 3 certification, while other offerors received such recognition, the PO responded:

MR. STEWART: So is it fair to say, Mr. Smith, that you don't know why one evaluator may have found it as a strength for somebody but not OST?

A. Yes, sir.

MR. STEWART: You just don't know?

A. I don't know.

Merits Hr'g Tr., 79:8-14. When asked why an evaluator would note CMMI Level 3 certification as a strength even though it was not a preferred or required in Functional Area 1, the PO stated: "[i]n your response, if you provide information that is over and above that is required, somebody note it and say, you know, yes." Merits Hr'g Tr., 67:15-17. The PO further testified that if someone noted it as a strength, "[t]hey will be following the criteria. They are listing what is a strength in there. Even though it asks specifically about a functional area..." Merits Hr'g Tr., 68:12-14.

The Board notes a couple of examples that indicate that strengths and weaknesses noted by the evaluators do not directly align with the scores. Evaluator No. 1 identified “CMMI Level 3 SVC” as a strength for 4A Consulting, LLC (“4A”) in Section 6.2.1 of the RFP; 4A had the highest overall ranking and was tied for top Technical Proposal with three others. Evaluator No.1 listed eight other strengths and no weaknesses for 4A for RFP Section 6.2.1. Evaluator No. 1 scored 4A a 3. Although Evaluator No. 1 did not list “CMMI Level 3 SVC” for OST, Evaluator No.1 still gave OST a 3, even though Evaluator No. 1 only listed four strengths and a weakness for OST. *See Joint Exhibits 5 & 12.*

Evaluator No. 1 listed “CMMI Level 3 SVC” as a strength for Section 6.2.1 of the RFP for Navitas Business Consulting Inc (“Navitas”), whose Technical Proposal was tied with 4A and two other offerors. Evaluator No.1 listed four other strengths and no weaknesses for Navitas for RFP Section 6.2.1. Evaluator No. 1 scored Navitas a 3 – the same as OST. *See Joint Exhibits 5 & 12.* The Board is unpersuaded by OST’s argument that, if it had only been given a strength for having CMMI Level 3 certification, it would have received a higher score, and we decline OST’s invitation to sit as a Super Evaluation Committee and rescore its Technical Proposal. The RFP does not prohibit evaluators from noting an offeror’s CMMI Level 3 certification as a strength, even though such certification is not required for Functional Area 1. The Board finds that the failure by two out of three evaluators to assign a strength for CMMI Level 3 certification to OST while assigning it as a strength to other offerors does not render the PO’s acceptance of the Evaluation Committee’s award recommendation arbitrary, capricious, or unreasonable, particularly since the undisputed evidence is that strengths and weaknesses have no direct correlation to the ultimate score assigned to a technical proposal.

OST also questioned the PO regarding typos and duplications across evaluator notes. Merits

Hr’g Tr., 200:5-203:17. OST queried the PO first regarding a strength listed for 4A by Evaluator No. 1 for RFP Section 6.2.1.: “> Nice supervisory staff--they do not bill for their services.” *See* Joint Exhibit 5. Counsel for OST then pointed out to the PO that Evaluator No. 2 listed the very same strength for 4A for RFP Section 6.2.1 that included the similar language and formatting:

“• Nice supervisory staff--they do not bill for their services.” *See* Joint Exhibit 6.

Counsel for OST then asked the PO to look at Evaluator No. 1’s notation of a strength for CW Professional Services d/b/a Lochbridge (“CW”) for RFP Section 6.2.1.: “> CMMI Lever 3 for rDEV and SVC.” *See* Joint Exhibit 5. Counsel for OST then pointed out to the PO that Evaluator No. 2 listed the very same strength for CW for RFP Section 6.2.1 that included the same typos. *See* Joint Exhibit 6.

The PO did not have an explanation for how these duplications occurred, and testified that he had not noticed them before counsel for OST pointed them out. Early in the merits hearing, on direct examination, the PO testified that the evaluators provided him with their notes via email in an Excel spreadsheet. Merits Hr’g Tr., 52:6-53:12. Later, during direct examination, the PO testified that he “took this information and put it into the overall strength and weaknesses file, copy and pasting.” Merits Hr’g Tr., 204:17-19. It is unclear to the Board based on the evidence before it how these duplicative strengths with the same typos occurred for two evaluators. OST would have the Board engage in “where there’s smoke, there’s fire” speculation regarding the conduct of the evaluators. The Board need not engage in such speculation because OST provided no evidence that these irregularities impacted the evaluation of its Technical Proposal, resulting in a technical ranking of 22nd, and an overall ranking of 22nd.

The Board finds that the unexplained existence of duplicative notes with the same typos attributed to two evaluators does not prove bias or render the PO’s acceptance of the Evaluation

Committee’s recommendation arbitrary, capricious, or unreasonable. However, their presence raises serious concerns about whether the evaluations were conducted fairly and independently. The PO’s repeated assertions that the evaluations followed proper procedures are undermined by the evidence of duplicated notes and typographical errors, which he failed to identify prior to the merits hearing. Given the PO’s responsibility to ensure a fair and reasonable procurement, the existence of the duplicate notes raises the specter of a lack of due diligence.

The Statewide Agile Teams 2024 procurement required DGS officials to review 200 proposals across the three functional areas, eliminate those not reasonably susceptible for award, evaluate the remaining 146 technical and financial proposals, rank them, and recommend awards while facing a federal funding deadline. Although the Board finds that OST failed to prove by a preponderance of the evidence that DGS violated the provision of COMAR 21.05.03.03A(1) mandating that proposal evaluations “shall be based on evaluation factors set forth in the request for proposals” by failing to evaluate its proposal per the evaluation criteria set forth in Section 6.2 of the RFP, it does not mean that the Board believes best practices were followed in the evaluation of offeror’s Technical Proposals in this procurement. *The Maryland Procurement Manual* (“*Procurement Manual*”) in Section 6.4 Technical Proposal Evaluation Process – Competitive Sealed Proposals Only, provides:

After conducting the initial technical proposal review to verify the responsibility of the offeror and to ensure that all required items have been submitted with the technical proposal, **the procurement officer** and members of the evaluation committee **should begin a more thorough review of each technical proposal.**

(emphasis added). <https://procurement.maryland.gov/mpm-6-review-and-evaluation-process/#6.4>

(last visited September 12, 2025).

The PO’s testimony at the merits hearing suggests that, after his initial review of proposals to determine those that were “responsive,” he did not engage in “a more thorough review of each

technical proposal” as recommended. Additionally, the Board hopes that the inconsistencies and irregularities in the notes of the Evaluators was not due to the failure to follow one of the evaluation guidelines set forth in Section 6.4 of the *Procurement Manual*, which provides that “[t]he procurement officer and all evaluators must read all proposals. Evaluators cannot divide the proposals with each member reading certain ones and reporting their impressions back to the others.” (emphasis in original). *Id.*⁶

Although the existence of duplicates in the evaluators’ notes raises questions about the evaluation process in this procurement, Appellant has not established by a preponderance of the evidence that the evaluation of OST’s Technical Proposal was flawed or impacted. We cannot shift the burden and require DGS to prove that the PO’s acceptance of the Evaluation Committee’s recommendation was reasonable or lawful. *See Montgomery Park, LLC v. Maryland Dep’t of Gen. Services*, 254 Md. App. 73, (2022), *aff’d*, 482 Md. 706 (2023).

DGS DID NOT USE AN UNEXPRESSED CRITERION TO EVALUATE
OST’S TECHNICAL PROPOSAL

OST asserts that DGS introduced an evaluation criterion not specified in the RFP by requesting a “strategy to ensure quality.” However, upon review of the RFP, this assertion does not hold water - the RFP clearly indicates otherwise. RFP Section 6.2.1 Offeror’s Technical Response to Requirements and Work Plan directs offerors to RFP Section 5.3.2.F. The pertinent part of Subsection 1) of Section 5.3.2.F. reads as follows:

1) Staffing Plan

The Offeror **shall provide a Staffing Management Plan** that demonstrates how the Offeror will provide resources in addition to the personnel requested in this

⁶ The Appellant failed to prove by the preponderance of the evidence that the evaluators “cut corners” in evaluating Technical Proposals or that they engaged in collusion to influence the outcome. The Board notes, however, that a PO has a duty to provide written notice to the Attorney General “[i]f there is a reasonable basis for believing that collusion has occurred among *any persons* for any reason” in a procurement. *See* COMAR 21.05.01.03A.

Contract, and the Contractor Personnel shall be managed. **The plan shall include:**

* * *

vii. The Offeror's **strategy to maintain and assure the ongoing quality of the services** provided by the Offeror's staff on active contracts. (emphasis added).

The language of Section 5.3.2.F.1)vii. not only allowed but required the evaluators to evaluate OST's Technical Proposal on this basis. The evaluators were following their marching orders when they evaluated OST's Technical Proposal against the requirements of RFP Section 5.3.2.F.1)vii. and assigned it a weakness in this area. Therefore, the Board finds that evaluating OST's Technical Proposal against the express requirements of Section 5.3.2.F.1)vii. of the RFP was not arbitrary, capricious, unreasonable or unlawful.

THERE IS NO EVIDENCE THAT DGS DOWNGRADED OST'S
TECHNICAL PROPOSAL FOR CITING ITS MD THINK EXPERIENCE
AS AN INCUMBENT CONTRACTOR WITH DHS

OST alleges that DGS arbitrarily and capriciously dismissed OST's MD THINK experience using SAFe as an incumbent contractor to the Maryland DHS based upon the PO's comments in the December 31, 2024 debriefing that OST Staffing Acquisition Strategy mentioned MD THINK and Agile Team experiences *rather* than strategy. The PO under questioning by counsel for OST conceded that the RFP was seeking offerors for "essentially a staffing contract." Merits Hr'g Tr., 27:25-28:2. One of the evaluation criterion in the RFP was Section 6.2.1 Offeror's Technical Response to Requirements and Work Plan which referenced Section 5.3.2.F.1). Section 5.3.2.F.1) set forth the Staffing Plan requirements under the contract, and required offerors to provide their "strategy to maintain and assure the ongoing quality of the services provided by the Offeror's staff on active contracts."

In other words, offerors were required to include their staffing plans for the contract in their

Technical Proposals submitted to DGS. The PO explained in his testimony that OST was not assigned a weakness for mentioning its MD THINK experience with DHS, but that OST did not adequately address the RFP requirements regarding its staffing plan for *this* contract. Merits Hr’g Tr., 101:24-102:16.

OST suggests that MD THINK experience is “substantially similar to the services being requisitioned in this solicitation.” Merits Hr’g Tr., 94:16-18. Telling DGS about OST’s staffing experience on another similar contract for a different State agency is not the same as providing a detailed staffing plan and strategy for future performance on the Statewide Agile Teams 2024 contract as required by the RFP. The evidence before the Board does not demonstrate that DGS discounted or dismissed OST’s MD THINK experience or “downgraded” its Technical Proposal based on its inclusion in its Technical Proposal.

THE EVIDENCE DOES NOT SUPPORT A FINDING THAT DGS
ERRONEOUSLY DOWNGRADED OST’S TECHNICAL PROPOSAL FOR
FAILING TO ADDRESS THE FOUR KEY AREAS OF EXPERTISE
REQUIRED BY RFP SECTION 3.10.1

The evidence before the Board is that OST provided the information required by RFP Section 3.10.1 for Preferred Offeror Experience in four areas in its Technical Proposal but did so in the wrong portion of its Technical Proposal. In other words, the information was not missing, but misplaced. RFP Section 5.3.2.G required offerors to provide information in support of the Offeror Experience Criteria in Section 3.10.1 in Tab F of their Technical Proposals (to be evaluated per RFP Section 6.2.2 Offeror Qualifications and Capabilities, including proposed subcontractors). OST submitted this information in Tab E of its Technical Proposal (which was to be evaluated per RFP 6.2.1 Offeror’s Technical Response to Requirements and Work Plan). This caused all three evaluators to list as a weakness for OST that its Technical Proposal was missing the four key areas

of experience listed in Section 3.10.1. Evaluator No. 3, however, did note that this information was “(covered under TAB E).” The PO in his Final Decision noted:

...that the missing areas of expertise were included, the evaluation committee found that they were not sufficiently detailed or addressed to the level of depth required by the RFP. The committee determined that other offerors demonstrated stronger expertise in these critical areas, leading to a higher proposal ranking.

No further evidence on this point was adduced at the merits hearing. Merits Hr’g Tr., 158:5-160:11. As such, the Board is left with the PO’s explanation that the evaluators knew the information was there, but in the wrong place, and that they reviewed it and found it merely adequate, resulting in each evaluator giving OST’s Technical Proposal a 2 for RFP evaluation criterion 6.2.2. There is no evidence before the Board supporting the assertion that DGS “downgraded” OST’s Technical Proposal for missing the four key areas of experience listed in RFP Section 3.10.1.

CONCLUSION

For the foregoing reasons, the Board concludes that Appellant failed to prove by a preponderance of the evidence that the evaluation of OST’s Technical Proposal by DGS was biased, arbitrary, capricious, unreasonable, or in violation of law.

ORDER

Based on the foregoing, it is this 23rd day of September 2025, hereby:

ORDERED that Appellant OST, Inc.’s Appeal is DENIED.

/s/
Michael J. Stewart Jr., Esq., Member

I concur:

/s/
Michael L. Carnahan, Jr., Member

DISSENTING OPINION BY MEMBER CARTER

I join the majority on nearly all points. The Board's Opinion carefully and correctly applies longstanding precedent that affords procurement officials substantial deference in their evaluation of proposals. In most respects, the Procurement Officer's (PO's) actions were consistent with COMAR, and within the broad discretion afforded by law. On one narrow point, I respectfully dissent.

THE DUPLICATE EVALUATOR NOTES AND SHARED ERRORS

The evaluation record contains at least one instance where different evaluators' notes reflect not merely similar observations, but identical language, including the repetition of the same typographical error. While the majority acknowledges this as an 'irregularity,' it concludes that it does not rise to the requisite level of arbitrariness or prejudice. I view the matter differently.

When evaluators' comments are identical down to the same typographical mistake, the inference that independent judgment was not exercised is, in my view, unavoidable. This is not a matter of mere similarity in impressions; it is the wholesale duplication of phrasing and error, which undermines the integrity of the process itself.

THE INTEGRITY OF THE EVALUATION PROCESS

Integrity is a statutory cornerstone of Maryland Procurement Law. The Maryland General Assembly has expressly declared that one of the very purposes of procurement law is to provide safeguards for maintaining a procurement system of quality and integrity. MD. CODE ANN., STATE FIN. & PROC. § 11-201(a)(3); COMAR 21.01.01.03F. Here, the evaluation record itself contains documentary evidence that reflects not independent analysis but duplicated comments with identical typographical errors across evaluators. On its face, it fails the legislative mandate as it cannot be credibly assessed to maintain the integrity of the procurement system. This is not a case of "smoke without fire." The fire is visible in the record: the duplication of notes and errors demonstrates, on its face, that the

statutory and regulatory mandate for independent evaluation was not fulfilled; the PO's acceptance of and reliance on the evaluations without *any* inquiry or investigation according to his testimony; and the facially flawed evaluations were by definition arbitrary, providing the PO with no rational basis for reliance. In so doing, the PO failed to safeguard the integrity of the procurement process.

The majority requires Appellant to prove further that these irregularities altered the outcome, or prejudiced Appellant. Prejudice is inherent where the evaluation process is defective at its core. Just as a proposal with a facial statutory defect would not be reasonably susceptible of award, an evaluation that fails to reflect independent judgment cannot produce a result in which offerors – or the public – may have confidence. The proper test is not whether Appellant can trace a line to its final ranking and show the result would have been different, but rather were the process not structurally defective, could the outcome have been different.

COMAR 21.05.03.03A(1) mandates that evaluations shall be based solely on evaluation factors set forth in the request for proposals and that evaluation of proposals shall be conducted in accordance with the criteria set forth in the request for proposals, which this Board has interpreted to require each evaluator's independent, documented, application of the stated criteria rather than mechanical duplication or rubber stamping. *See Clifton Gunderson LLP*, MSBCA 2502 at 18-20 (2006) (rejecting evaluations that were mechanical or perfunctory).

CONCLUSION

Accordingly, while I concur with the majority's thoughtful resolution of all other issues raised in this Appeal, I would sustain it on this single point, set aside the evaluation as conducted, and remand for a new evaluation consistent with COMAR's requirements.

/s/
Jill P. Carter, Esq., Member

IN THE MATTER OF OST, INC.

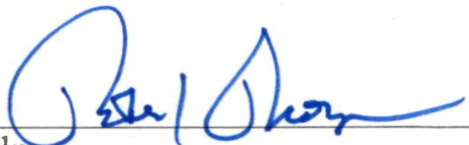
* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C-02-CV-25-003086

* * * * *

ORDER

This matter came before the Court on April 27, 2026 on the Petition for Judicial Review filed by OST, Inc. Having considered all documents submitted, as well as the Administrative Record of this matter, and following oral argument by counsel, for the reasons set forth on the record in open court, it is this 27TH day of April, 2026,

ORDERED that the September 23, 2025 Opinion and Order of the Maryland State Board of Contract Appeals is hereby **AFFIRMED**.



Judge
Circuit Court for Anne Arundel County

05/05/2026 AR