



## MEMORANDUM

**TO:** APPLICANTS IN THE 2019 REQUEST FOR APPLICATIONS -  
CULTIVATION AND VERTICAL

**FROM:** JEFF BROWN, EXECUTIVE DIRECTOR

**SUBJECT:** GENERAL RESPONSES TO DEBRIEF QUESTIONS

**DATE:** NOVEMBER 10, 2021

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The Commission has received several questions as part of the formal debriefing period for the 2019 Request for Applications (RFA). Four common questions have been identified: (1) reviewer identities, qualifications, and training; (2) perceived variation among scores; (3) perceived inconsistency between Reviewers 2, 5, and 6, and general consistency between reviewers; and (4) requests for additional details explaining Reviewer 3's scores on Criterion 7, Measure 3.

### **Reviewer Identities, Qualifications, and Training**

There have been questions regarding reviewer identities, their curriculum vitae, and more details about the reviewer's trainings. The expertise for each reviewer is outlined in the 2019 RFA Final Agency Decisions. The expertise of each scoring team is outlined in the Executive Director's Recommendation Report to the Commission. The training presentation utilized to train the selection committee reviewers is posted on the Commission's website. The scoring instructions provided to the selection committee are also posted on the Commission's website at: <https://www.nj.gov/cannabis/businesses/medicinal/>

Regarding the identities of the selection committee members, this information is withheld to protect the integrity of the 2019 RFA and potential future RFAs. Furthermore, regarding curriculum vitae of the reviewers, such information could be used by applicants to ascertain the identity of the reviewers and therefore is also withheld.

The withholding of this information has been upheld by the Superior Court of New Jersey, Appellate Division in Matter of the Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343, 379, 243 A.3d 688, 709 (App. Div. 2020).

As full-time State employees, all selection committee reviewers are subject to the provisions of the Uniform Ethics Code as adopted by the State Ethics Commission



pursuant to N.J.S.A. 52:13D-23. Prior to beginning work on the selection committee, reviewers were screened for real or perceived conflicts of interest. Reviewers completed a confidentiality agreement and a business disclosure form to verify that they did not have any outside business interests that would conflict with their work on the committee. Additionally, selection committee reviewers were provided a list of the applicants they would be scoring, including the names of associated principals, owners, and directors. Each selection committee reviewer signed a certification verifying they possessed no conflicts of interest with respect to the applicants.

### **Independent Scoring and Variation Among Reviewers**

As noted in the recommendation report, the Department of Health convened a selection committee pursuant to N.J.A.C. 17:30A-6.2 and N.J.A.C. 17:30A-6.4. The selection committee was tasked with scoring applications in accordance with the Notice of the Request for Applications, published on July 1, 2019, pursuant to N.J.A.C. 17:30A-6.1. On April 12, 2021, the oversight of the Selection Committee was transferred to the Cannabis Regulatory Commission pursuant to P.L. 2019, c.153.

The most critical aspects of the scoring process are (1) integrity, and (2) compliance with governing rules, statutes, and the terms of the Request for Applications.

In regard to integrity, the entire RFA process was designed and executed to ensure that there is no undue influence over the evaluation of applications. Specifically, the following safeguards were implemented:

1. Notice of the 2019 RFA was published in the New Jersey Register, providing all potential applicants information on the process at the same time;
2. Questions about the RFA process were gathered via a formal submission process and answered publicly so that all applicants had access to the same information when developing their applications;
3. There was strict adherence to the application deadlines in the 2019 RFA, so that no applicant had more time than another to submit an application;
4. The selection committee was comprised of all full-time state employees, subject to Uniform Ethics Code, and each reviewer certified they had no conflicts of interest with respect to any of the applicants to be scored; and
5. Reviewer's identities are strictly confidential so that applicants, or any person not affiliated with the Department or Commission, cannot contact them before, during or after the 2019 RFA has concluded.



More broadly, the entire selection process, from committee to Commission (or Commissioner, when under the Department of Health), is designed so that no individual can have too much influence over the results. The selection committee delivers the scores but does not recommend the selections. The Executive Director recommends the selections, but cannot determine the scores, nor make the awards. The Commission votes on the recommendations of the Executive Director, based on the scores of the selection committee, and ultimately determines whether to make the awards. Because the RFA process is highly competitive, it is critical to have a process that has built-in checks and balances.

Importantly, to protect the integrity of the scoring process, the selection committee was directed to score independently. Some selection methods allow committee reviewers to meet to discuss scores to standardize variations. But here, there was a conscious decision to keep each reviewer independent and to use an average of their scores to account for possible disparities. Consistent with the goal of ensuring no one individual can exert too much influence over the process, reviewers were directed to score independently so that the scores delivered were solely their individual work product, reflective of their own experience and expertise.

In the 2019 RFA, the selection committee was permitted to discuss applications, and in fact in the early months, to assist them in becoming acclimated with the process, the selection committee was encouraged to meet with Department staff so that the Department could help troubleshoot issues and questions related to applications or the scoring instructions. However, they were explicitly directed not to discuss specific scores. This, by design, was a check to ensure no one selection committee member could exert too much influence over the scores of other reviewers.

Furthermore, the reviewers were divided into teams of three, with each team responsible for scoring a portion of the application so that no one selection committee reviewer had control over an application's overall score. Team 1 and Team 2 reviewers each scored the same measures, and their scores were averaged. On Team 3, because of the specificity of the measures, reviewers were each designated a specific measure, or measures, and their individual score was the final score for that measure. But no single reviewer could independently determine the score for the entire team.

Because this method does result in some variation between scores – when committee reviewers cannot discuss their scores they do not know that they disagree with another reviewer – the Commission built in additional checks and balances to ensure the reviewers were delivering their intended scores, and that any variation between reviewers



was the result of an intentional, reasonable review of an application and not the result of a misunderstanding of the scoring instructions, or an inconsistent approach by a reviewer. Specifically, the Commission staff conducted a review and audit in which they:

1. Assessed select measures where there was variation among the assigned scores and asked reviewers to revisit and confirm their scores;
2. Examined individual scores and the average scores for specific measures to make sure the resulting average score delivered to the applicant was consistent with the application instructions and the material the applicant submitted, and consistent with the scoring instructions;
3. Conducted a statistical analysis of all scores assigned by each reviewer and each team to identify any potential outlier results or any inconsistencies with scoring; and
4. When a potential outlier was identified, asked the reviewer(s) to revisit the score and application and confirm or amend the score to conform with the scoring instructions.

The Department/Commission could have allowed Committee reviewers to discuss specific scores and resolve their differences in opinion. Hypothetically, if this approach were followed, there could be a few outcomes in areas where there is variation among scores: the reviewers would discuss and one or more reviewers would amend their scores to either align with another reviewer, or they would agree to meet somewhere in the middle.

For Team 1 and Team 2, the approach of averaging scores forces the reviewers to meet in the middle without discussing scores – the result is an average of their scores. It protects against any one reviewer potentially exerting too much influence over the scores of other reviewers, while still accounting for producing an end agreement among the reviewers and delivering a final result to the applicant.

In most cases, reviewers delivered scores that were similar to each other, and more importantly, delivered scores that were statistically consistent. There were some instances where reviewers disagreed on the merits of an applicant's response and his disagreement was reflected in variation among their scores. But disagreement on the merits of a response does not mean the scores are inherently wrong or improperly delivered.

Below are some specific examples raised in submitted debriefing questions. An overview of the scoring is provided to assist applicants in understanding the evaluation process.



### Example Grievances on Scoring Variation

**Grievance 1:** Variation in Scoring for Criterion 5, Measure 1 (Research Contributions). Application instructions for this measure state:

“Applicants shall provide evidence of past contributions – in the form of cited original and published work – to expanding clinical and scientific research related to medical cannabis or the debilitating medical conditions that can be treated with medical cannabis. 10 pts”

One applicant received the following scores:

Reviewer 2: 0/10

Reviewer 5: 10/10

Reviewer 6: 8/10

Average (composite):  $(0+10+18)/3 = 6$

**Explanation:** In its application, the applicant in question provided a lot of details about research experience and industry experience but provided very few examples of “cited original and published work.” While the applicant explained in detail how many of the individuals involved with the entity had experience in research, it provided very little evidence of such research. Upon quality control review, it was determined that although there was variation among scores, the average score delivered to the applicant – a 6/10 as part of the composite/average score – was reflective of the quality of the response. Furthermore, quality control measures revealed that the reviewer who assigned a score of 0 had a perfectly valid rationale to deliver that score because the scoring instructions expressly allowed reviewers to deliver a 0 on the measure where applicants failed to include any examples of legitimate published research. The applicant listed resumes of staff and principals involved with the entity, but only provided one actual example of “cited original and published work,” which was not included in the application but was rather provided via hyperlink (therefore not part of the application and not eligible to be scored) and failed to properly cite the published work in the application. Even for the one example included, it was not clear that the research was published. The overall score (6/10) reasonably reflects the response that was clearly lacking in some key areas: while the response noted much experience in research, which two reviewers valued, it failed to deliver any specific cited, original, and published work in the application itself.

**Grievance 2:** Variation in scoring of submitted financing plan, Criterion 3, Measure 1. Application instructions for this measure state:



“Applicants shall provide a description and evidence of all funding sources pledged to the ATC, to be evaluated on transparency, suitability and overall adequacy of funding. 20 pts”

**Explanation:** Again, one reviewer gave a much lower score on this measure than the other two reviewers on the team and the applicant has questioned the results (applicant received scores of 1, 16 and 20). For this applicant, the financing plan submitted with the application included adequate funding but the funding source was not clearly dedicated to the ATC entity. The funding commitment was to a parent company of the applicant entity, and there were no terms in the funding agreement requiring funds to be spent on the applicant entity. Furthermore, although the applicant presented financial projections, the applicant’s financial projections were not sufficiently detailed, and there was very little information about the lender itself. Thus, one reviewer was justified in penalizing this applicant even though the other two reviewers felt the response was adequate. Although there was variation among the scores given for this measure based on this disagreement, the average score delivered to the applicant was 12.33 out of 20, which was a reasonable score for the information the applicant provided. The response showed adequate funding; however, the projections lacked detail and specificity, and the note from the lender was not clearly dedicated to the ATC entity, nor was much detail given about the lender.

**Grievance 3:** Variation among an applicant’s raw scores for Criterion 4, Measure 1 (community support and participation). Application instructions for this measure state:

“Applicants shall provide a list of all owners, officers, board members, and principals that have resided in NJ for at least 2 years, and supply proof of their residency. 20 pts.”

The applicant received scores of 2, 19, and 20, with a resulting average score of 13.67. The RFA also instructed:

“For Part B, applicants shall file a single .pdf for each endorsement being sought that includes a full and truthful response to the following criteria and measures. The page limit for Part B is 100 pages for each endorsement, with no exceptions/exemptions.”

**Explanation:** For this measure, the applicant provides a list of owners, but did not include adequate proof of residency in Part B, as instructed. While the applicant provided a list of owners, where they lived, and additional information on their ties to the local community, including charitable contributions and local memberships (providing more than what the scoring instructions asked for) the applicant did not follow directions and



did not provide adequate proof of residency. It's reasonable for this applicant to receive some credit for the information provided, but the lack of proof of residency is problematic. Therefore, the average score of 13.67 is reasonably justified. The applicant went above and beyond in one aspect but failed to follow a key instruction in another.

In all the cases listed, the Commission could have forced selection committee reviewers to discuss and come to an agreement on a score. But if the goal was total consistency, then the Commission could have simply had one reviewer score the entire application – and consistency between reviewers was not the goal. Instead, the goal of having multiple individuals review applications has always been to have scores reflective of the diverse experience of the selection committee reviewers, delivered in accordance with consistent scoring instructions and a methodology in which no one reviewer could have more influence than another on the final score, and where independence among reviewers is preserved. In the cases identified by Commission staff where there were score variations between reviewers, the end composite score was indeed found to be a reasonable score based on the responses provided by the applicants even when there was variation among the scores. As importantly, every reviewer was determined to, statistically, apply scores consistently across the entire applicant pool.

### **Reviewer 2 and Consistency Among Reviewers**

Several applicants inquired about perceived discrepancies regarding Reviewer 2, who provided lower scores than the other two reviewers on Team 1 (Reviewer 5 and Reviewer 6). Reviewer 2 was, indeed, consistently a more conservative scorer than Reviewers 5 and 6. But Reviewer 2 was consistent across all applicants in this approach, and the variation resulting from lower scores from Reviewer 2 is simply reflective of that reviewer's reasonable evaluation of each applicant's submitted documentation.

For example, for vertically integrated applicants, of all scores provided, Reviewer 2 delivered a low score of 55 and a high score of 216, out of 300 total possible points. Reviewer 2's median score was 131.

Reviewer 5 delivered a low score of 183, a high score of 291 and had a median score of 274.

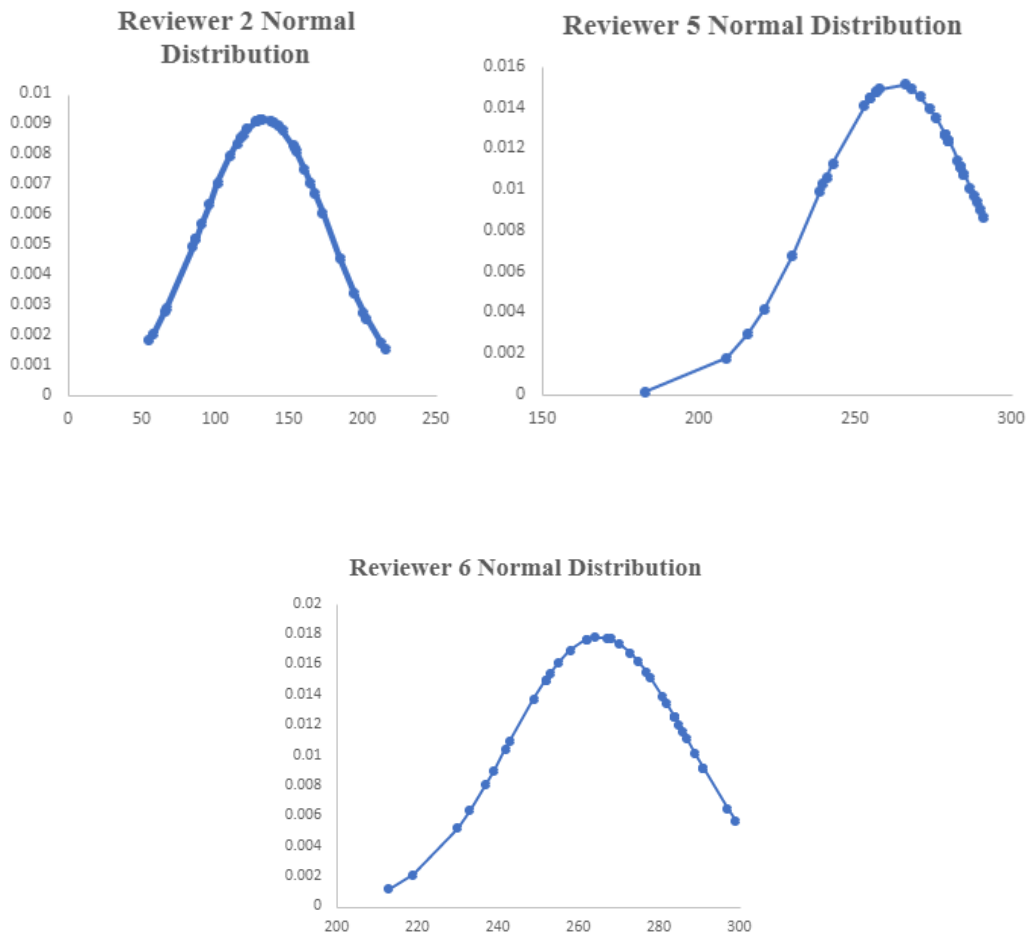
Reviewer 6 delivered a low score of 213, a high score of 299 and had a median score of 268.

The data clearly shows that Reviewer 2's scores were lower overall than Reviewer 5 and Reviewer 6, and Reviewer 2 had a greater range between high and low scores.



Importantly, despite that difference, a statistical analysis of all three Reviewers shows a consistent distribution of scores and shows that all three reviewers scored in a statistically consistent manner.

### Distribution of Scores for Team 1



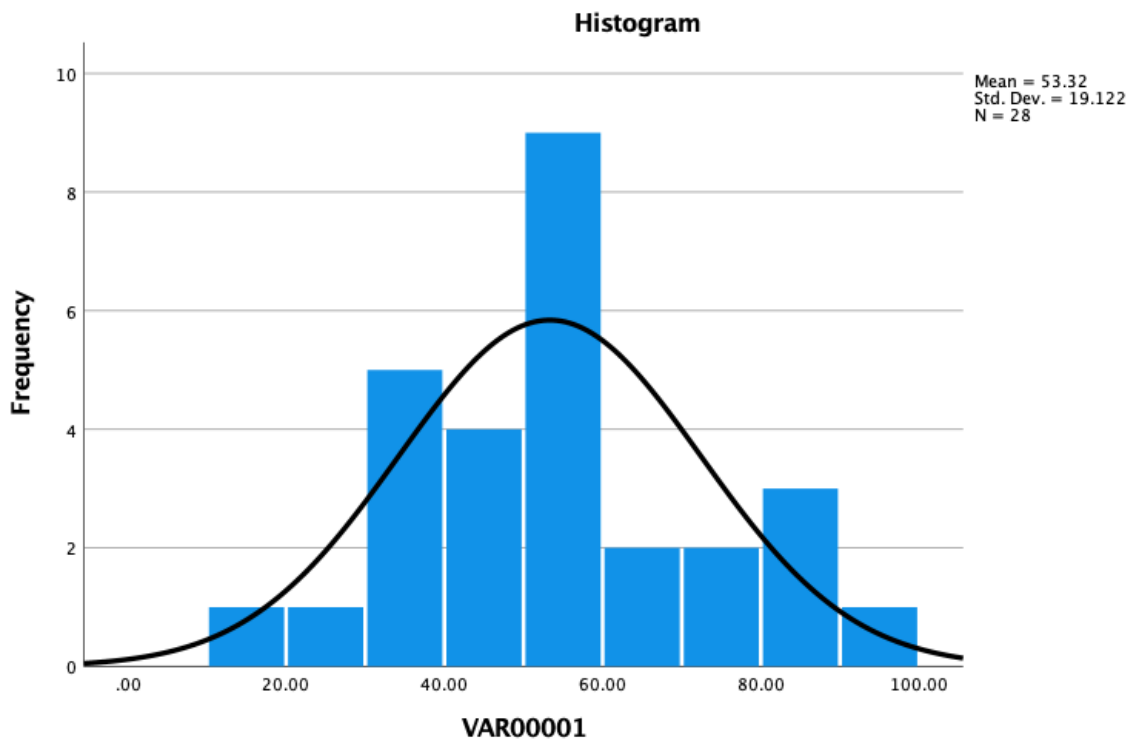
Additionally while Reviewer 2 scored on a perhaps more conservative scale, the reviewer applied this approach fairly among the applicants: Reviewer 2's mean cultivation score is 53.3214, and Reviewer 2's median cultivation score is 51.500. The fact that the mean and the median are so close is a heuristic test for a normal distribution in a data set. If the scores assigned by a single scorer are normally distributed, it means they approached each applicant with the same scoring rubric in mind.





The fact that Reviewer 2's scores were so evenly distributed indicates that they were applied evenly among the candidates. This is evidenced by the distributions shown in the charts above and below. Therefore, it is correct to conclude that Reviewer 2, while approaching the evaluation scale differently than the other scorers, was fair and evenhanded in their scores.

### Distribution of Scores for Reviewer 2-Cultivation



There were less than five outlier scores in the hundreds of scores delivered, and every outlier was confirmed with the respective reviewer that delivered it, and confirmed to be consistent with the scoring instructions.

Because all reviewers were, in fact, statistically consistent across all applicants, no applicant was specifically disadvantaged or advantaged over another applicant because of one reviewer's scores. No applicant was spared from Reviewer 2's conservative scoring, just as no applicant was unfairly advantaged by Reviewer 6's more generous scoring approach.



To assume that differences in reviewers' strict or generous scoring approach indicates that the process is somehow unreasonable is misguided. What is most important in a process such as the 2019 RFA is that (1) each reviewer scored in accordance with the scoring instructions, and (2) each reviewer scored the entire applicant pool consistently. The Commission verified that both these conditions were in fact met with the scores delivered.

### **Requests for Additional Details Explaining Reviewer 3's Scores on Criterion 7, Measure 3**

Several applicants raised issues and questions related to Reviewer 3 and the scores delivered for Criterion 7, Measure 3 (minority-owned, women-owned or veteran owned business certification). Application instructions for this measure state:

"Applicants shall provide a copy of certification(s) issued by the Department of the Treasury, Division of Revenue which verifies MBE/WBE certification or VOB certification, or evidence that the applicant would otherwise meet the MBE/WBE certification or VOB certification requirements once generating revenue. Applicants with a certification will receive the full 30 pts. Applicants that provide evidence of meeting the criteria in the future shall receive partial credit, based on the strength of the evidence. The selection committee shall take into account related entities for this measure. 30 pts."

The scoring instructions state:

"On a scale of 1-30, with 30 representing the highest possible score, assess whether the applicant has supplied a certification from the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, proving the business is minority-owned, women-owned, or veteran-owned (including disabled-veteran owned). If an applicant provides one or more of the certifications, they shall receive the full 30 pts. If the applicant fails to supply a certification because they are a brand-new entity with no revenue but supplies evidence, they may meet the criteria once generating revenue, the scorer can result in partial credit (up to 25 pts) based on the strength of the evidence provided. A score of 0 should only be given to applicants with no certification and that submitted no evidence supporting their ability to qualify in the future, or their involvement of minorities, women, or veterans in their leadership. In lieu of a certification, scorers should consult Part A, Question 20 when assessing this measure. Individuals not listed on Part A, Question 20 should not be considered in the evaluation of this measure."



Pursuant to the scoring instructions, applicants possessing one or more certification proving that the business is minority-owned, woman-owned, or veteran-owned received 30 points. Applicants who did not provide any certifications could still receive partial credit, up to the 25 points, for providing evidence that they could qualify for one of the certifications in the future.

Reviewer 3's expertise included business development and the certification of minority-owned, women-owned, and veteran-owned businesses.

The language in the application instructions and scoring instructions provided Reviewer 3 clear guidelines for when an applicant should receive full credit, no credit, or partial credit. The reviewer was instructed to use their expertise to determine appropriate partial credit, based on the strength of the evidence provided in the application and their knowledge of the statutes and rules governing the Department of the Treasury's MBE/WBE and VOB certification processes.

Based on a review of scores for Criterion, Measure 3, some common reasons for partial credit (ranging from 1-25) included:

- Applicants submitted certifications or stated that it would apply for certifications from entities other than the Division of Revenue and Enterprise Services, such as: the African American Chamber of Commerce, the federal System for Award Management, Women's Business Enterprise National Council, and the Eastern Minority Supplier Development Council to name a few. The application instructions specifically directs applicants to submit (or indicate that they would be eligible for) certifications from the New Jersey Department of the Treasury's Division of Revenue and Enterprise Services. Providing certifications or attestations of eligibility for certification from other entities represents a failure to adhere to the explicit application instructions. The Commission has no knowledge as to the certification criteria utilized by third-party organizations or whether such criteria is aligned with certifications issued by the State's Division of Revenue and Enterprise Services.
- Applicants submitted information in Part B that is contradicted by information included in Part A. Reviewer 3 was instructed to consult Part A to confirm that the information in Part B was consistent with the applicant's ownership structure outlined in Part A. If the two were inconsistent, or if the ownership structure was inconsistent with eligibility for a MBE/WBE or VOB certification as outlined in N.J.A.C. 17:46-1.10 (e.g., did not meet percentage ownership required), full credit was not given;



- Applicants submitted certifications for an entity that was not the applicant for a medical cannabis business permit (e.g., the certification provided was for a different company owned by one of the applicant’s owners);
- Applicant presented a certification or a certification number as its own, however, the provided information was registered to a different entity;
- Applicant stated that its ownership structure would not qualify for a MBE/WBE/VOB certification and provided an attestation that it would attempt to ensure inclusion in future hiring, management, and contracting practices, which does not qualify an applicant for full credit based on the express application instructions; and
- Applicants did not submit sufficient information in the application to make a determination that they could indeed qualify for an MBE/WBE or VOB in the future.

Like the scores of other reviewers, Reviewer 3’s scores were analyzed for statistical consistency and reviewed for compliance with scoring instructions and the RFA instructions. The scores were found to be consistent across applicants, consistent with the scoring instructions and RFA instructions, and reflective of the reviewer utilizing their unique expertise to evaluate the information submitted by applicants.