



# Decision

**Matter of:** Brandan Enterprises, Inc.

**File:** B-423385

**Date:** June 16, 2025

## DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Katherine B. Burrows, Esq., Jacqueline K. Unger, Esq., Eric A. Valle, Esq., Joseph P. Loman, Esq., Kelly A. Kirchgasser, Esq., and Antonio R. Franco, Esq., Piliero Mazza PLLC, for the protester.

Aron C. Beezley, Esq., Patrick R. Quigley, Esq., and Charles F. Blanchard, Esq., Bradley Arant Boult Cummings LLP, for Quality Innovation, Inc., the intervenor. Kenneth Gilliland, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest challenging conduct of discussions as not meaningful is denied where agency informed protester its labor hours were insufficient, protester chose not to adjust its labor hours, and the final evaluation reflects a more detailed rationale for the stated concern--insufficient labor hours--not an unrelated and undisclosed concern, as claimed by protester.
2. Protest challenging assessment of a significant weakness in protester's staffing approach is dismissed in part as an untimely challenge to the terms of the solicitation. Remaining protest allegations are denied where the evaluation was reasonable and consistent with the solicitation.

## DECISION

Brandan Enterprises, Inc. (BEI), a small business of Knoxville, Tennessee, protests the issuance of a task order to Quality Innovation, Inc. (Qi2), a small business of Austin, Texas, under request for proposals (RFP) No. W15QKN-24-R-0099, issued by the Department of the Army for visitor operations services at Arlington National Cemetery. The protester challenges the conduct of discussions, evaluation of BEI's proposal, and the resulting best-value tradeoff source selection decision.

We deny the protest.

## BACKGROUND

On September 17, 2024, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to holders of the Army's Human Resource Solutions Recruiting, Management, and Administrative Services multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 4, Initial RFP at 1.<sup>1</sup> The solicitation sought proposals for the provision of visitor operations services at Arlington National Cemetery (ANC) in Virginia. *Id.* The required services "include visitor screening at entry points (designated gates and Welcome Center), visitor information assistance at key locations within the cemetery, and vehicle/pedestrian traffic control at designated locations." AR, Tab 22, RFP attach. 1, Performance Work Statement (PWS) at 1. The solicitation provided the successful contractor would be required to "provide all personnel, supervision, equipment, materials, transportation, and non-personal services necessary to perform" the tasks set out in the PWS. *Id.*

The solicitation established that a "single Firm Fixed Price (FFP) Task Order (TO) with cost reimbursable (CR no indirects/fee) line items for Other Direct Costs (ODCs) for a 12-month base period . . . and three 12-month option periods" would be issued. AR, Tab 23, Task Order Evaluation Plan (TOEP) at 2. Award would be made on a best-value tradeoff basis, considering a technical factor and cost/price, with the technical factor being significantly more important than cost/price. *Id.* The technical factor consisted of four evaluation areas, which the solicitation specifically emphasized were not subfactors and would not be separately weighted. *Id.* at 5. The four evaluation areas were: (1) technical approach; (2) staffing approach; (3) management process; and (4) transition plan. *Id.* at 5-8.

Under the technical factor, the agency would assess an offeror's understanding of the requirements, the completeness and adequacy of the offeror's response, and the feasibility of the offeror's proposed approach. AR, Tab 23, TOEP at 11. The evaluators would assign an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable for the technical factor, and also would assess technical risk. *Id.* at 11-12. Price would be evaluated for reasonableness and balance. *Id.* at 14.

The agency received three proposals, including those submitted by the protester and awardee, Qi2. AR, Tab 45, Source Selection Decision (SSD) at 1. The Army established a competitive range that included all three offerors, and the agency conducted discussions with all three. *Id.* at 3. After reviewing offerors' discussion responses and revised proposals, "the Government identified the need to re-open discussions." *Id.* The Army conducted a second round of discussions, after which final revised proposals were submitted by all three offerors. *Id.* The agency assessed the protester's and awardee's final proposals as follows:

---

<sup>1</sup> Our citations use the Adobe PDF pagination of documents in the record.

	Protester--BEI	Awardee--Qi2
Technical Factor	Good	Outstanding
Price	\$32,144,684	\$37,859,757

*Id.* at 4.

The source selection authority (SSA) conducted a tradeoff between BEI's proposal, which was the lowest-priced of the three offers received, and Qi2's higher technically rated proposal, which was the highest-priced of the three offers received. AR, Tab 45, SSD at 8. In conducting the tradeoff, the SSA acknowledged various meritorious aspects of BEI's proposal, but also noted the proposal was assessed a significant weakness due to concerns that it did not include sufficient labor hours, resulting in a significant risk to performance. *Id.* at 10-11. The SSA found that while BEI "submitted the proposal with the lowest [price], the Offeror presents a less advantageous technical approach due to the inherent risks associated with the Significant Weakness." *Id.* at 11. In contrast, the SSA concluded Qi2's "technical proposal is superior to all other offerors and provides the Government with the highest degree of confidence of successful task order performance." *Id.* The SSA detailed a number of advantages offered by Qi2's proposal that warranted payment of its associated price premium, while still being below the independent government estimate (IGE) and "within the Government's budget constraints." *Id.* at 11-12.

After being notified of the award decision and receiving a debriefing, BEI filed this protest with our Office.<sup>2</sup>

## DISCUSSION

As noted above, the evaluators assessed a significant weakness in the protester's proposal because BEI did not propose sufficient labor hours to meet all the PWS requirements. The protester challenges the agency's conduct of discussions with regards to the significant weakness, as well as the underlying assessment of the weakness. For the reasons explained below, we deny BEI's challenges. While we do not address every argument, or permutation thereof, raised by the protester, we have considered them all, and find that none provides a basis to sustain the protest.<sup>3</sup>

---

<sup>2</sup> The value of the protested task order exceeds \$35 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

<sup>3</sup> For example, BEI contends the agency erred in not assessing one additional strength and two additional significant strengths in the firm's proposal related to the protester's retention plan, transition plan, and personnel, respectively, the assessment of which, the protester maintains, would have resulted in BEI's proposal being assigned the highest adjectival rating of outstanding--rather than a rating of good--for the technical factor. Protest at 33-37. In its comments on the agency's report responding to the  
(continued...)

## Significant Weakness

Relevant to the significant weakness at the heart of BEI's protest, are the solicitation's staffing requirements and staffing approach evaluation criteria. With respect to staffing, the solicitation required the successful contractor to provide all necessary personnel to perform three categories of visitor operations services--visitor screening, visitor information assistance, and vehicle/pedestrian traffic control. PWS at 40. Personnel will be required to perform these services at both fixed posts and roving posts. *Id.* The solicitation set out the post positions in PWS technical exhibit 4, which showed there were 43 posts to staff during the half of the year considered "summer months" and 38 posts to staff during the winter months. *Id.* at 40, 71; Protest at 180 (Protest exh. A, RFP Questions and Answers at Q. No. 2).<sup>4</sup> In addition to specifying the posts to be

---

protest, BEI withdrew its contention that the evaluators should have assessed a strength for the protester's proposed retention plan. Comments at 33 n.19. For the two remaining allegations of significant strengths the protester argues the agency improperly failed to assess, the crux of the protester's contentions is that BEI exceeded the RFP's requirements by having the incumbent contractor as part of its team, by virtue of which BEI was able to offer a "seamless transition" and personnel with experience working on the incumbent contract. Protest at 36, 38-39.

An agency's judgment that the features identified in a proposal do not exceed the requirements of a solicitation or provide advantages to the government warranting assessment of a strength is a matter within the agency's discretion, which we will not disturb unless a protester shows the evaluation was unreasonable. *Assessment and Training Solutions Consulting Corp.*, B-421575.3, B-421575.4, July 16, 2024, 2024 CPD ¶ 177 at 15. Here, the protester has not made such a showing, and the record provides no basis for us to question the evaluators' judgment that neither BEI's transition plan nor its personnel merited the assessment of additional significant strengths in the protester's proposal. For instance, the record shows the evaluators specifically noted BEI's "proposal describes in detail their personnel with qualified experience," but concluded BEI's proposal in this respect met "the requirements in the staffing approach area." AR, Tab 42, BEI Final Technical Evaluation at 11.

Although BEI may consider aspects of its proposal to be of greater value or benefit than what the agency assessed, such disagreement, without more, does not provide a basis on which to sustain the protest. See e.g., *CACI, Inc.--Federal*, B-420729.2, Mar. 1, 2023, 2023 CPD ¶ 51 at 9 (denying allegation that proposal merited additional strengths where protest submission and contemporaneous evaluation record demonstrated only that protester "holds a different opinion from the evaluators" about the proposal). Nor does the BEI team's incumbency status entitle it to higher ratings or provide any basis for finding the evaluation unreasonable. *PricewaterhouseCoopers Public Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 7.

<sup>4</sup> The protester submitted its protest and protest exhibits as a single, consolidated and continuously paginated Adobe PDF document. For ease of reference, our citation here (continued...)

staffed, the solicitation provided technical exhibit 3, which included detailed information about visitor trends and workload estimates to assist offerors with proposal preparation. *Id.* at 40, 63-70; *see also* AR, Tab 23, TOEP at 7.

For all three types of services--screening, information assistance, and traffic control--the solicitation required the contractor to "maintain the appropriate number of personnel without vacancies to ensure" effective performance, and cautioned that "no position shall remain vacant longer than five days without approval of the" agency. PWS at 17. Further, the solicitation indicated posts that "shall not be self-breaking," meaning "contractor personnel performing screening services in these positions shall remain at their designated area of responsibility at all times until relieved by another qualified contractor" personnel. *Id.* at 40-41; *see also* at 44.

The solicitation established the normal operating hours for Arlington National Cemetery as 8:00 a.m. to 5:00 p.m. every day, and that funerals are conducted Monday through Saturday. PWS at 6-7. The solicitation explained that the cemetery receives over 3 million visitors a year, conducts approximately 7,000 funerals a year, and "over 3,400 other ceremonies such as commemorations, wreath ceremonies, and head-of-state visits" each year. *Id.* at 1. The solicitation required the provision of additional surge personnel, beyond the number needed to staff the regular posts, on an as needed basis for events or holidays. *Id.* at 42.

For evaluation of the staffing approach area, the solicitation required each proposal to provide "[a] detailed explanation of the Offeror's staffing methodology," to include the "basis for calculating annual productive hours." AR, Tab 23, TOEP at 6-7. Specific to labor hours, the solicitation stated: "If the Offeror is proposing something not in accordance with historical hours/labor, the Offeror shall thoroughly detail the rationale for the variance and demonstrate in their proposal the feasibility of this variance." *Id.* at 7. With respect to technical exhibit 3, while it was "not a Government required level of effort," the solicitation stated that "any proposed deviations shall be clearly explained, and in sufficient enough detail, to demonstrate how the approach meets the Government's requirement." *Id.*

The record reflects the agency's evaluation was informed by the level of "historical support required" to perform the requirement. AR, Tab 42, BEI Final Technical Evaluation at 13. Additionally, the record shows to aid in its comparison of offerors' proposed staffing levels with historical staffing levels, the agency prepared an independent government estimate (IGE), which estimated a need for 100 full-time equivalents (FTEs) to perform the requirement.<sup>5</sup> AR, Tab 50, IGE at 1.

---

to protest exh. A uses the continuous Adobe pagination of the consolidated document, rather than the internal pagination of the individual exhibit.

<sup>5</sup> The IGE estimated a need for an additional 20 FTEs to perform a possible optional task. AR, Tab 50, IGE at 1.

## Adequacy of Discussions

The protester challenges the agency's conduct of discussions related to the significant weakness assessed in BEI's proposal for offering insufficient labor hours. The protester contends the agency failed "to conduct meaningful discussions" about the significant weakness. Protest at 17. The protester maintains the Army failed "to provide sufficient information to allow BEI to understand the aspects of its staffing plan that the Agency found problematic so as to provide a reasonable opportunity to address those aspects and be competitive for award." *Id.* The agency responds that "[d]iscussions were conducted appropriately and provided BEI with sufficient information allowing them to correct a significant weakness." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 13-14. We agree.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not as a general rule, govern task and delivery order competitions conducted under FAR subpart 16.5, such as the procurement at issue here. *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8. In this regard, section 16.505 of the FAR does not establish specific requirements for discussions in a task order competition; nonetheless, when an agency conducts exchanges with offerors in a task order competition, those exchanges must be fair, meaningful, and not misleading. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 10-11. In the context of both FAR part 15 and 16 procurements, our decisions have explained that for discussions to be meaningful an agency need not "spoon-feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. *Abacus Tech. Corp.*; *SMS Data Prods. Group, Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 7. Rather, agencies need only lead offerors into the areas of their proposals that require amplification or revision. *Id.*; *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 6. Further, the exact content of discussions largely is a matter of the contracting officer's judgment. *Id.* at 8.

Relevant here, the record shows that during the second round of discussions, the agency issued BEI an evaluation notice (EN) that identified a significant weakness. AR, Tab 39, EN TE-03 at 1. The EN stated: "The Offeror proposes labor hours that are insufficient to provide the tasks listed in the PWS." *Id.* The EN explained:

The Offeror's proposed hours for this effort increase the risk to the Government because the proposed hours are significantly low when considering PWS tasks, daily positions listed in Technical Exhibit 4, and historical support required to support this requirement. It does not take in account planned and unplanned vacancies/absences.

Insufficient staffing reflects a lack of understanding of the requirement. This insufficient staffing level and staffing approach is a flaw in the proposal that appreciably increases the risk of unsuccessful task order performance.

*Id.* The EN then advised: “Failure to address this finding will likely impact the offeror’s proposal rating when re-evaluated.” *Id.*

In response, BEI represented: “After a thorough review of our proposed staffing model, BEI has determined that we have provided adequate staffing to ensure each position/post is staffed 100 [percent] of the time in accordance with the Performance Work Statement (PWS) requirements and that we did take into account planned and unplanned vacancies/absences.” AR, Tab 41, EN TE-03 BEI Response at 2. BEI then went on to explain how it developed its proposed labor hours. *See id. generally* at 2-4. The protester concluded its response to the EN with the following assertion:

BEI has proposed adequate hours for all proposed posts during full years (option periods). Since BEI took a [DELETED] approach to staffing that ensured each post was staffed at 100 [percent], BEI has taken into account planned and unplanned vacancies/absences. . . . Any additional hours would unnecessarily increase the cost to the government.

*Id.* at 4. In short, BEI answered the EN by explaining the basis for its proposed labor hours, but chose not to increase its labor hours in response to the evaluators’ concern they were insufficient.

The evaluators found BEI’s response unconvincing, noting:

In reviewing the Offeror’s proposal revision, the Offeror addressed the following initial evaluation finding: Significant Weakness (Insufficient Proposed Labor Hours). Upon review of the Offeror’s final proposal submission, the previously identified significant weakness was not adequately resolved.

AR, Tab 42, BEI Final Technical Evaluation at 9. As a result, the agency assessed a significant weakness to BEI’s final proposal under the staffing approach area of the technical factor. *Id.* In addition to the significant weakness, BEI’s final proposal was assessed one significant strength and one strength, which resulted in the assignment of an overall rating of good for the technical evaluation factor. *Id.* at 2, 9.

With respect to the significant weakness, the Army found that BEI had continued to propose insufficient labor hours. Specifically, the evaluators concluded:

During the second round of discussions, the offeror provided an EN response for this finding that identified the Offeror did not take planned and unplanned vacancies/absences into account in their previous proposal submission. The Offeror provided a detailed EN response that explained how they calculated their proposed hours. However, there is significant risk to the Government based on the fact that the Government will not know if a post is manned (due to call outs/unplanned vacancies) under their staffing plan because the personnel are only responsible for

the hours they are on post. The proposal does not address roll call or the inherent tasks of getting people equipped for the day/transported to post. The Government would only find out about these issues when it is time to staff the post or upon notification from the employee that they are calling out and then have to scramble to get someone on site from the other shift, or flex someone to cover their post from another post within ANC.

The Offeror's proposed hours for this effort increase the risk to the Government because the proposed hours are significantly low when considering PWS tasks, daily positions listed in Technical Exhibit 4, and historical support required to support this requirement. It does not take into account the required pre and post shift tasks associated with contractor employee's daily shifts.

Insufficient staffing reflects lack of understanding of the requirement. This insufficient staffing level and staffing approach is a flaw in the proposal that appreciably increases the risk of unsuccessful task order performance.

*Id.* at 12-13.

In support of its contention that the agency failed to conduct meaningful discussions, the protester first claims that "the Final Technical Evaluation Report concedes that BEI 'addressed the following initial evaluation finding: Significant Weakness (Insufficient Proposed Labor Hours)' but, nonetheless, identified a Significant Weakness in BEI's Staffing Approach." Protest at 23. Here, the protester's claim--that the evaluators considered BEI's EN response sufficient to address the significant weakness--rings especially hollow given that the very next sentence in the final evaluation report unequivocally states, "the previously identified significant weakness *was not adequately resolved.*" AR, Tab 42, BEI Final Technical Evaluation at 9 (emphasis added).

The protester further compounds its selective reading of the agency's evaluation by asserting next that the Army "continues to couch its finally assigned Significant Weakness as a problem with BEI's proposed labor hours, [but] the Agency's actual concern appears to be" something else that was not conveyed to BEI during discussions. Protest at 23. Specifically, the protester contends "the Agency's actual concern appears to be that BEI's 'proposal does not address roll call or the inherent tasks of getting people equipped for the day/transported to post,' which could lead to late breaking changes in the specific personnel that may be available to perform on any given day and BEI 'scrambl[ing]' to adjust." *Id.* (citing AR, Tab 42, BEI Final Technical Evaluation at 12. In this connection, the protester contends:

That concern is not tied to the number of labor hours BEI, or any other offeror, proposes to perform "the tasks listed in the PWS," however, as personnel may call out of work on short notice and otherwise must get to work to perform "the tasks listed in the PWS" regardless of how many



labor hours an offeror proposed to provide. Indeed, “the tasks listed in the PWS” do not include, for example, personnel waking up, putting on clothes, and driving to work such that it is patently unreasonable to expect any proposal to address “the inherent tasks of getting people equipped for the day/transported to post” let alone to imagine that offerors would account for such time in pricing their proposals.

Protest at 23. The protester characterizes the agency’s EN as “vague,” maintaining that it “did not provide sufficient information for BEI to understand that it needed to address ‘roll call [and] the inherent tasks of getting people equipped for the day/transported to post’ to be competitive for award.” *Id.*

As an initial matter, we note the protester’s interpretation of the evaluation’s reference to “inherent tasks of getting people equipped for the day/transported to post” as equating to “personnel waking up, putting on clothes, and driving to work” is a fallacy premised on a false equivalency drawn from the language of the evaluation report. When read in context with the preceding sentence’s stated concern that “personnel are only responsible for the hours they are on post,” it is clear the evaluators’ reference to there being insufficient hours to account for “inherent tasks of getting people equipped for the day/transported to post” relates to various pre-shift and post-shift tasks an employee will need to attend to at the cemetery outside of the normal operating hours of 8:00 a.m. to 5:00 p.m. AR, Tab 42, BEI Final Technical Evaluation at 13; PWS at 6 (specifying the cemetery’s normal operating hours); see *also id.* at 41-48 (PWS sections 5.1.1.1, 5.1.1.2, 5.1.3.1, 5.2.1, 5.2.10, 5.2.10.6, 5.2.12, 5.2.13, 5.2.14, 5.3.1.1, 5.4.1.2, 5.3.2, 5.4.3, 5.4.4.1, 5.4.5.1, 5.5 specifying that various posts are required to be staffed during the entirety of the cemetery’s normal operating hours).

The agency explains that “[t]he PWS includes descriptions of the pre and post operational hour tasks in multiple areas,” and that ensuring sufficient labor hours to account for these tasks was “not reflected in BEI’s response to the EN” because “the proposed hours were based on an 8am start time.” AR, Tab 1b, Technical Evaluation Chair Decl. at 5-6. For example, section 5.7 of the PWS requires contractor personnel to perform daily checks of both government-furnished and contractor-furnished screening equipment to ensure the equipment is fully operational, and the PWS task estimates some of these checks may take approximately 20 minutes. PWS at 49-50; see *also* AR, Tab 32, BEI Final Technical Proposal at 5 (proposing to “Perform/ensure [DELETED].”) and at 6 (similarly proposing to perform [DELETED] related tasks). The agency acknowledges that BEI’s response to the EN showed “hours proposed for Visitor Screeners were based on 9 hours daily (8am - 5pm hours of operation IAW [in accordance with] PWS 5.1.1.1 and 5.1.1.2),” with additional hours proposed “for [DELETED],” but the evaluators found that BEI still made “no mention of pre-shift preparation or roll up of personnel to assume post positions by the 8am ANC opening time as a factor in BEI’s calculation of hours.” AR, Tab 1b, Technical Evaluation Chair Decl. at 6.

As another example, some of the post locations necessitate contractor personnel opening and closing access doors or other access points prior to the start of and after the end of a shift, respectively. See e.g., PWS at 44-46 (§§ 5.2.10, 5.2.12). A further example, is the PWS's description of "a significant amount of equipment, to include weather-conditional items which may need to be set-up, taken down, and stored daily such as umbrellas, tents, heaters, fuel, fans, folding chairs, and outdoor screening equipment," for which the pre-shift and post-shift set-up and take-down time "can be significant, especially considering the time it takes to transport personnel and equipment/supplies to the geographically dispersed post positions" throughout the cemetery. AR, Tab 1b, Technical Evaluation Chair Decl. at 6 (citing PWS at 37-38). While not an exhaustive recitation of the PWS sections that set forth various "inherent tasks of getting people equipped for the day/transported to post," these examples serve to highlight the disingenuous nature of the protester's contention that it could not have understood from the discussions EN that the agency wanted BEI's proposal to include labor hours for "personnel waking up, putting on clothes, and driving to work." Protest at 23.

Turning to BEI's contention that the EN was vague and failed to provide sufficient information about the specific areas for which the firm needed to provide additional labor hours, we find the protester's contention unavailing. The protester maintains that if "the Agency shared its actual areas of concern, BEI could and would have discussed 'roll call [and] the inherent tasks of getting people equipped for the day/transported to post' through additional explanation in its proposal and/or by increasing proposed labor hours to alleviate the Agency's concerns." Protest at 24.

Contrary to the protester's argument, the record reflects the EN provided to BEI made clear that the evaluators did not believe the protester's proposal included sufficient labor hours to perform *all* the PWS tasks. AR, Tab 39, EN TE-03 at 1. The record also shows the final evaluation report further elucidates the agency's concerns by including examples of why the evaluators did not consider BEI's proposed hours sufficient (e.g., coverage of incidental tasks). Compare AR, Tab 39, EN TE-03 at 1 with Tab AR, Tab 42, BEI Final Technical Evaluation at 12-13. While the agency could have discussed these more granular level examples with BEI, there was no requirement that the Army engage in such "spoon-feeding," and we will not substitute our view for matters within the contracting officer's judgment. See e.g., *Engility Corp.*, *supra* at 9 (denying discussions challenge where agency could have discussed additional areas of concern with protester's proposal, but was not required to do so).

Our review of the record finds that the agency's discussions properly led BEI to the area of concern with its proposal--i.e., insufficient labor hours to perform all PWS tasks. Further, the agency specifically cautioned, during discussions, that "[f]ailure to address this finding will likely impact the offeror's proposal rating when re-evaluated." AR, Tab 39, EN TE-03 at 1. In response to the EN, BEI made a business judgment to not increase the number of labor hours proposed, but to instead explain why it disagreed with the evaluators' assessment that the proposed hours were insufficient. See *generally* AR, Tab 41, EN TE-03 BEI Response at 2-4. Ultimately, it was the protester's

business judgment to leave unchanged BEI's proposed level of staffing that resulted in the negative evaluation, not discussions. Accordingly, we deny BEI's challenge to the agency's conduct of discussions. See e.g., *Abacus Tech. Corp.; SMS Data Prods. Group, Inc.*, *supra* at 9 (denying discussions challenge where agency led protester to general area of concern--staffing level for base period--and was under no obligation to provide any additional guidance or proposal direction).

### Assessment of Significant Weakness

In addition to protesting about the agency's conduct of discussions, the protester directly challenges, as unreasonable, the assessment of the significant weakness in BEI's proposal for offering insufficient labor hours. The protester contends the assessed weakness is "irrational" and "flawed." Protest at 24. Specifically, the protester maintains the evaluators unreasonably assessed the weakness because: (1) "historical staffing levels do not provide a valid comparison because the incumbent contract required more labor hours than the instant effort"; (2) "the Agency imposed unstated evaluation criteria in concluding that additional labor hours are required for certain pre- and post-duty tasks which are not identified in the PWS"; (3) "the Agency ignored critical information in BEI's proposal that directly addresses the Agency's concerns"; and (4) "BEI proposed significantly more hours than required based on the positions and tasks identified in the PWS."<sup>6</sup> *Id.* at 24-25. The agency responds that BEI's protest "merely argues with the evaluation results," and that such "mere disagreement with the agency's evaluation does not demonstrate that the agency's evaluation was unreasonable." COS/MOL at 25. We agree.

As stated above, the task order competition here was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *Verizon Bus. Network Servs., Inc.*, *supra* at 7. In reviewing protests of an award in a task order competition, we do not reevaluate proposals, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *CACI, Inc.--Federal*, *supra* at 7. A protester's disagreement with the agency's judgment of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Id.*; *Engility Corp.*, *supra* at 4-5.

### Use of Historical Staffing Levels in Evaluation of Proposals

Relevant here, the IGE estimated a need for 100 FTEs to staff the contract. AR, Tab 50, IGE at 1. The record shows BEI's proposal offered [DELETED] FTEs, and was assessed a significant weakness for proposing insufficient labor hours. AR, Tab 32, BEI

---

<sup>6</sup> The protester raises additional ancillary arguments challenging the assessed significant weakness as unreasonable. While not addressed in our discussion, we have considered each of these ancillary arguments and find them all to be without merit.

Final Technical Proposal at 13; Tab 42, BEI Final Technical Evaluation at 9, 12-13. In challenging the reasonableness of this significant weakness, the protester takes aim at the IGE, arguing it is “vastly overinflated, likely because it appears the Agency based its estimates on the expanded but now outdated requirements from the incumbent contract.” Comments at 13.

The protester argues the agency’s use of historical staffing levels as part of the evaluation was unreasonable because those “levels do not provide a valid comparison” to “the instant effort.” Protest at 24-25. The protester points out that the incumbent contractor is part of BEI’s team, and the firm represents that this provides “Team BEI” with “firsthand knowledge” and “an intimate understanding of the staffing levels and skill sets required.” *Id.* at 26-27. Similarly, the protester claims, “the BEI team has unique insight into the labor hours required for successful performance,” and that it “reasonably drew” on this “firsthand knowledge of staffing levels as the incumbent to develop its efficient and realistic proposed level of effort.” *Id.* at 27. Further, the protester maintains “the solicitation for the incumbent contract required lengthier hours at each post and a different labor mix as the basis for estimate for the required hours, so the total number of hours on the incumbent contract is markedly greater than required to perform the scope of work under the current Solicitation.” *Id.*

Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). Our 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. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. To this end, a protester may not wait until after award has been made to protest alleged flaws in the procurement’s ground rules that are apparent prior to submission of proposals. *Microsoft Corp.*, B-420004, B-420004.2, Oct. 29, 2021, 2022 CPD ¶ 155 at 30.

Here, as discussed above, the solicitation included as technical exhibit 3 visitor trends, workload estimates, and stated that while this exhibit did not establish a required level of effort “any proposed deviations shall be clearly explained, and in sufficient enough detail, to demonstrate how the approach meets the Government’s requirements.” AR, Tab 23, TOEP at 7. More directly, the solicitation’s evaluation methodology provided: “If the Offeror is proposing something not in accordance with historical hours/labor, the Offeror shall thoroughly detail the rationale for the variance and demonstrate in their proposal the feasibility of this variance.” *Id.* Thus, the solicitation squarely placed offerors on notice that the agency intended to use “historical hours/labor” as a benchmark for assessing proposals.

If, as expressed in its protest, BEI did not believe that historical staffing levels represented an accurate comparison point for the solicited requirement, the firm was required to raise that concern prior to the time set for receipt of proposals. Having waited to protest this issue until after the time set for receipt of proposals and after award, BEI’s argument arising from this alleged solicitation impropriety is dismissed as

untimely.<sup>7</sup> See e.g., *Microsoft Corp.*, *supra* at 30; *Facility Healthcare Servs., Inc.*, B-418743.2, B-418743.3, Sept. 2, 2021, 2021 CPD ¶ 313 at 7 n.4 (dismissing as untimely post-award argument that comparing proposed prices to IGE was not an adequate evaluation method where solicitation informed offerors such an evaluation could take place).

#### Unstated Evaluation Criteria

In addition to challenging the accuracy of the IGE used by the agency as a comparative evaluative benchmark, the protester contends the agency applied unstated evaluation criteria by downgrading BEI's proposal for not addressing "required pre and post shift tasks" that are "not actually specified in the Solicitation." Protest at 27-28. Contrary to the protester's contention, however, and as detailed above, the PWS included a variety of pre-shift and post-shift tasks--e.g., daily equipment checks, opening and closing access to certain parts of the cemetery, *etc.* Accordingly, we find no merit in BEI's claim that the agency applied unstated evaluation criteria by expecting offerors to propose sufficient staff to perform *all* the tasks set forth in the PWS. See e.g., *CAE USA, Inc.*, B-421550 *et al.*, June 22, 2023, 2023 CPD ¶ 149 at 7 (denying protest allegation that assessment of protester's staffing used unstated evaluation criteria where the language of the solicitation belied protester's argument).

#### Proposal Information and Sufficiency of Proposed Labor Hours

The protester further argues that BEI's proposal did, in fact, address the agency's concerns related to pre-shift and post-shift tasks by offering "more hours than required by the normal duty hours" to be "more than sufficient to cover" these various activities. Protest at 30. Specifically, the protester claims, "BEI proposed significantly more hours than required," and characterizes the assessed weakness as "unjustified and, frankly, baffling." *Id.* at 24-25. In support of this contention, the protester explains how it calculated the number of labor hours needed, and insists its methodology resulted in BEI proposing hours that were "roughly [DELETED] **higher than** the Government's stated requirement." *Id.* at 26. The explanation provided in BEI's protest, however, is simply a summation of the explanation included in BEI's proposal and responses to discussion ENs. Compare *id.* with AR, Tab 32, BEI Final Technical Proposal at 13-14; see also generally Tab 41, EN TE-03 BEI Response at 2-4.

In this connection, BEI's explanation describes how the firm calculated the number of hours required for each post to be continuously staffed during the cemetery's operating hours of 8:00 a.m. to 5:00 p.m. For example, for the visitor screener posts, BEI made

---

<sup>7</sup> Although we need not address the merits of this argument, we note the agency presented a detailed rebuttal of the protester's claim that the IGE is inaccurate. The Army explained that while the incumbent task order, as initially awarded, did require longer hours at various posts, the order was later modified to reduce the "hours of operation to those reflected in the current PWS." Supp. COS/MOL at 2; see also generally AR, Tab 56, Supp. Technical Evaluation Chair Decl. at 1-2.

one calculation for the 183 days of the summer months when there are 18 screener posts to staff and a second calculation for the 182 days of the winter months when there are 14 posts to staff. AR, Tab 32, BEI Final Technical Proposal at 13. BEI added [DELETED] FTE [DELETED], resulting in [DELETED] positions to staff in the summer and [DELETED] in the winter. *Id.* For each season's calculations, BEI multiplied 9 hours per day by 183 or 182 days, multiplied that by the number of posts for the summer and winter months, then added the two figures to reach a total number of [DELETED] hours--or [DELETED] FTEs--needed to staff each of the visitor screener posts for exactly 9 hours per day.<sup>8</sup> *Id.* at 13-14. BEI's proposal also included additional hours for [DELETED], but those hours were specified for those purposes and were not represented as being available for the performance of pre-shift or post-shift tasks or covering for employee breaks. *Id.* at 14.

As noted in our assessment of the protester's discussions challenge, the record shows the evaluators considered the basis for BEI's labor hour estimate that was included in the firm's proposal and discussions response, and, notwithstanding these explanations, found the proposed hours insufficient. Based on the record before us, we find imminently reasonable the evaluators' judgment that BEI's approach of providing enough FTEs to staff posts for exactly 9 hours per day, without provision for pre-shift and post-shift duties outlined in the PWS, and with minimal staffing to cover breaks failed to provide the amount of support needed to perform the contract, warranting assessment of a significant weakness. While BEI has expressed its disagreement with the evaluators' judgment in myriad arguments throughout its protest, BEI has not shown that the evaluation was unreasonable or inconsistent with the solicitation.<sup>9</sup> Accordingly,

---

<sup>8</sup> Summer (9 hours per day \* 183 days \* [DELETED] posts = [DELETED] hours) + Winter (9 hours per day \* 182 days \* [DELETED] posts = [DELETED] hours) = Total Annual Hours of [DELETED] divided by [DELETED] annual hours per FTE = [DELETED] FTEs. AR, tab 32, BEI Final Technical Proposal at 13-14.

<sup>9</sup> Among the protester's myriad arguments, is BEI's assertion that the assessed significant weakness is unreasonable because it "resulted from a cursory, mechanical comparison of bottom-line numbers between BEI's proposed labor hours and the IGE." Comments at 23. The protester claims "the Agency's cursory review showed that BEI's bottom-line numbers were below the IGE, and so, the Agency contrived generic reasons as to why that is problematic." *Id.* at 24. The record does not support such a finding. Rather, as detailed above, the record shows the evaluators fully considered the information in BEI's proposal and discussions response, and detailed in the contemporaneous evaluation record why that information was not sufficient to alleviate concerns about the insufficiency of BEI's proposed labor hours.

To the extent, the protester's contention that the evaluators "contrived generic reasons" for assessing a significant weakness in BEI's proposal can be construed as an allegation of bad faith, we find such an allegation meritless. As a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by  
(continued...)

we deny the protester's various challenges to the assessment of a significant weakness in BEI's proposal for offering insufficient labor hours. See e.g., *Abacus Tech. Corp.*; *SMS Data Products Group, Inc.*, *supra* at 5-6 (denying challenge to assessment of deficiency for protester's staffing plan where protester disagreed with assessment, but did not show it was unreasonable or contrary to solicitation); *NCI Info. Sys., Inc.*, B-418977, Nov. 4, 2020, 2020 CPD ¶ 362 at 8-10 (denying challenge to assessment of a significant weakness for protester's staffing approach where protester's various arguments expressed nothing more than protester's disagreement with the agency's evaluation judgments).

### Best-Value Tradeoff

Finally, the protester argues that the agency's best-value tradeoff decision was improper because it was based on a flawed technical evaluation.<sup>10</sup> Protest at 39-40. This allegation is derivative of the protester's challenges to the agency's evaluation of BEI's proposal. As discussed above, we find no basis to object to the agency's evaluation of the protester's proposal. Accordingly, we dismiss this allegation because derivative allegations do not establish an independent bases of protest. *DirectVizSolutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

---

convincing proof. *Cyberdata Techs., Inc.*, B-417084, Feb. 6, 2019, 2019 CPD ¶ 34 at 6. Here, the protester has failed to provide any proof, let alone convincing proof, that the evaluators "contrived generic reasons" for downgrading BEI's proposal.

<sup>10</sup> Initially, the protester also argued:

There is no indication that the Agency properly considered the lower price and numerous unique strengths associated with BEI's proposal as compared to the awardee's proposal in making the award decision, however. Nor does the record provide a rational explanation as to the purported benefits of the awardee's proposal which are unmatched by BEI so as to warrant paying the awardee's substantial price premium.

Protest at 40 (internal citations omitted). The agency report specifically and substantively addressed this issue. COS/MOL at 32, 34-37. In its comments on the agency report, BEI did not reply to the agency's response or further pursue this protest issue. See Comments at 41. We therefore consider this argument to be abandoned and we will not consider it further. 4 C.F.R. § 21.3(i)(3); *Calhoun Int'l, LLC*, B-421047, Nov. 14, 2022, 2022 CPD ¶ 282 at 3 n.3.