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## Decision

**Matter of:** The Ginn Group, Inc.

**File:** B-420165; B-420165.2

**Date:** December 22, 2021

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Robert G. Palmer, Esq., and Luke F. Killam, Esq., Department of the Navy, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protester's allegation that during discussions the agency misleadingly encouraged it to increase staffing is denied where the agency raised concerns during discussions about the protester's low labor hours and asked the protester to either revise its hours or provide additional support for its labor hours, and the protester made a business decision to increase labor hours.
  2. Protest that agency should have assigned protester's proposal an additional strength reflects the protester's disagreement with the agency's evaluation judgment, and provides no basis for sustaining the protest.
  3. Agency's selection of a lower-rated, lower-priced proposal for award is unobjectionable where the agency's tradeoff decision was reasonable, and where the agency adequately documented its tradeoff rationale.
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### DECISION

The Ginn Group, Inc. (Ginn), a service-disabled, veteran-owned small business (SDVOSB), of Peachtree City, Georgia, challenges the award of a contract to Government Contracting Resources, Inc. (GCR), an SDVOSB of Pinehurst, North Carolina, under request for proposals (RFP) No. N6945021R0056, issued by the Department of the Navy, Naval Facilities Engineering Command for base operations support (BOS) services. The protester asserts that the agency failed to conduct

meaningful discussions, misevaluated proposals, and made an unreasonable source selection decision.  
We deny the protest.

## BACKGROUND

The RFP consolidated contracts for BOS services at the Naval Support Activity (NSA) in Panama City, Florida, and the Navy Operational Support Center in Tallahassee, Florida. Agency Report (AR), Ex. B, RFP at 13.<sup>1</sup> The successful offeror will furnish all labor, materials, and other items necessary to provide facility management, facility investment, and custodial, pest control, integrated solid waste management (ISWM) services, including recycling, pools, grounds maintenance and landscaping, pavement clearance, and environmental services. *Id.*

The Navy issued the solicitation as an SDVOSB set-aside under Federal Acquisition Regulations (FAR) part 15, negotiated contracts. *Id.*; AR, Ex. E, Pre-Business Clearance Memo. at 6.<sup>2</sup> The solicitation contemplated the award of indefinite-quantity contract for recurring services/fixed-price line items and non-recurring/ indefinite-delivery, indefinite-quantity (IDIQ) line items. RFP at 13. The RFP anticipated that the resulting contract would have a 12-month base period and seven 1-year option periods. *Id.* at 28.

The solicitation provided that award would be made to the offeror whose proposal presented the best value, considering the following factors: corporate experience, technical approach, safety, past performance, and price.<sup>3</sup> *Id.* at 75. Under the evaluation criteria, the corporate experience, technical approach, and safety factors,<sup>4</sup>

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<sup>1</sup> The Navy provided a conformed solicitation in its response to the protest; citations to the RFP refer to the conformed solicitation.

<sup>2</sup> Citations to the AR documents refer to the electronic Adobe Acrobat file (.pdf) page number.

<sup>3</sup> The solicitation provided that proposed prices would be assessed to determine whether they were fair and reasonable. *Id.* at 76. The RFP also provided that any inconsistency between proposed performance and price must be clearly explained. *Id.* at 77. The RFP did not specify that the agency would evaluate prices for realism, but provided that the agency's analysis may consider price realism. *Id.*

<sup>4</sup> For the non-price, technical factors, excluding past performance, the Navy used a combination technical/risk adjectival rating to evaluate offers as either outstanding, good, acceptable, marginal, or unacceptable. AR, Ex. R, Contracting Officer's Statement (COS) at 3-4.

when combined, were of equal importance to past performance.<sup>5</sup> *Id.* The four non-price factors, when combined, were of equal importance to price. *Id.* at 75-76. Under the technical approach factor, the RFP provided that the agency would evaluate how well the offeror's approach demonstrates adequate labor hours on an overall level, as well as for each technical specification, and whether the proposed approach demonstrates "a reasonable understanding of the requirements and labor quantities and skills needed to successfully perform." *Id.* at 79. To make this determination, the solicitation anticipated that the agency would evaluate both the offeror's completed labor-hours worksheet and narrative rationale for the basis of estimate (BOE). *Id.* The solicitation required offerors to describe their methodology for the services and how the proposed approach would achieve the performance objective and standards for each technical specification. *Id.*

Ginn, GCR, and four other offerors timely submitted proposals in response to the solicitation.<sup>6</sup> COS at 1-2. Following the establishment of a competitive range, the Navy conducted discussions with all offerors and issued evaluation notices (ENs) to each offeror. *Id.* at 5.

Among other discussion items, the agency advised Ginn of a significant weakness that had been assessed for Ginn's proposed staffing for an activity category the Navy terms sub-annex 1800000 Environmental because the staffing was "lower than anticipated by the Government, which does not demonstrate adequate staffing levels and presents a flaw that appreciably increases the risk of unsuccessful contract performance." AR, Ex. F.6, EN for Ginn at 4. The Navy also advised Ginn that a deficiency had been assessed on the following basis:

labor hours are significantly lower than anticipated for the following Sub-Annexes and the Basis of Estimate (BOE) lacks sufficient detail to demonstrate the ability to accomplish the proposed technical approach at the staffing levels provided:

- a. 1501000 Facility Management
- b. 1502000 Facility Investment
- c. 1503050 Grounds Maintenance and Landscaping

The offeror's significantly low labor hours for Facility Management, Facility Investment and Grounds Maintenance labor hours does not demonstrate adequate staffing levels and presents a material flaw that increases the risk of unsuccessful contract performance to an unacceptable level.

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<sup>5</sup> The Navy evaluated past performance relevancy as either acceptable or unacceptable, and assigned an overall performance confidence assessment of satisfactory, neutral, limited, or no confidence. COS at 4.

<sup>6</sup> Ginn was the incumbent contractor on one of the consolidated requirements and GCR was the incumbent contractor on the other requirement. RFP at 13-14.

*Id.*

GCR was similarly advised of a significant weakness related to sub-annex 1503010 Custodial because GCR's labor hours are "lower than anticipated by the Government, which demonstrates inadequate staffing levels and presents a flaw that appreciably increases the risk of unsuccessful contract performance." AR, Ex. G, Revised EN for GCR at 4. The agency further advised GCR of a deficiency because

labor hours are significantly less than anticipated for the following Sub-Annexes and the Basis of Estimate (BOE) lacks sufficient detail to demonstrate the ability to accomplish the proposed technical approach at the staffing levels provided:

- a. 1502000 Facility Investment
- b. 1503040 Other (Swimming Pools)
- c. 1503060 Pavement Clearance

The offeror did not propose several spec items under Facility Investment. The offeror's significantly low or missing Facility Investment, Swimming Pools, and Pavement Clearance labor hours does not demonstrate adequate staffing and presents a material failure that increases the risk of unsuccessful contract performance to an unacceptable level.

*Id.*

For every EN advising offerors that their labor hours were lower than anticipated, the agency instructed offerors to

[r]eview and confirm, or revise [the labor-hour worksheet] and the narrative BOE to demonstrate adequate labor hours on an overall level, as well as, for each technical specification (and specification item) supported by a reasonable Basis of Estimate (BOE) and a reasonable understanding of the requirements and labor quantities and skills needed to successfully perform. If confirming the narrative BOE and labor hours are correct, the narrative must clearly state how the proposed approach and labor hours will effectively achieve each performance objective and associated performance standard(s) for each technical specification.

*Id.*; see also AR, Ex. F.6, EN for Ginn at 4.

In response to these discussion items, both Ginn and GCR submitted revised proposals that contained further explanation for their staffing levels and increased the proposed staffing levels for certain of the sub-annexes. COS at 8-9.

Following submission of the revised proposals, the agency evaluated offerors' proposals as follows:<sup>7</sup>

	<b>GCR</b>	<b>Ginn</b>
<b>Overall Technical Rating</b>	Acceptable	Good
Corporate Experience	Outstanding	Good
Technical Approach	Acceptable	Good
Safety	Acceptable	Acceptable
<b>Past Performance</b>	Satisfactory Confidence	Satisfactory Confidence
<b>Price</b>	\$54,929,957	\$57,192,977
<b>Price Position</b>	1	3

AR, Ex. I.3, Source Selection Evaluation Board (SSEB) Report at 5. After conducting a best-value tradeoff analysis, the agency concluded that GCR's proposal was the most advantageous to the government and selected GCR for award. AR, Ex. M, Source Selection Decision Document (SSDD) at 4. This protest followed.

## DISCUSSION

Ginn raises multiple arguments contending that the Navy conducted discussions that were not meaningful and misevaluated Ginn's and GCR's proposals. As a result, Ginn contends, the agency made an unreasonable award decision. We address these arguments in turn and, as explained below, we conclude that none have merit.<sup>8</sup>

### Meaningful Discussions

Ginn argues the Navy failed to conduct meaningful discussions under the technical approach factor.<sup>9</sup> Protest at 9-11. Ginn contends that the Navy encouraged it to add staff to its proposal because the Navy assessed Ginn with a significant weakness and a deficiency for proposing labor hours that were lower than the labor hours the Navy

<sup>7</sup> The Navy did not provide an overall ranking for the proposals.

<sup>8</sup> While our decision does not discuss every argument Ginn raised, we have considered each allegation and have determined that the record does not provide a basis to sustain the protest. This decision addresses the protester's central arguments.

<sup>9</sup> In its initial protest, Ginn alleged that the agency conducted unequal discussions with GCR by asserting simply that it appeared the Navy treated offerors unequally. Protest at 11. GCR asked that we dismiss those allegations as speculative. GCR Req. for Partial Dismissal at 1, 3. We agreed with the intervenor and advised the parties that Ginn's allegation that the agency conducted unequal discussions was dismissed. Electronic Procurement Docketing System No. 18.

expected to successfully perform the contract. *Id.* at 10. According to Ginn, it therefore proposed additional staff, which increased its price significantly, and resulted in the Navy's award of the contract to GCR based on its lower price. *Id.* at 9, 11.

The Navy responds that it did not encourage Ginn to add labor hours to its proposal but instead instructed Ginn to review its offer and either confirm or revise its proposed labor hours and BOE, as appropriate. AR, Ex. F.6, EN for Ginn at 4. The Navy further explains that it advised Ginn that if Ginn elected to confirm its labor hours as initially proposed, Ginn should explain how its proposed approach and labor hours would achieve the specified performance objectives and standards. *Id.* Following its evaluation of Ginn's revised proposal, the agency determined that Ginn had resolved the agency's earlier concerns and Ginn's proposal no longer merited the significant weakness and deficiency identified in the initial proposal. *Id.*

When an agency engages in discussions with an offeror, the discussions must be meaningful and enhance the offeror's potential for receiving the award. FAR 15.306(d); *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 6. Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *Id.* at 9. During discussions, agencies may not consciously mislead or coerce an offeror into raising its prices. *Centerra Group, LLC*, B-414768, B-414768.2, Sept. 11, 2017, 2017, CPD ¶ 284 at 7; *Eagle Tech., Inc.*, B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4. We will not find coercion in discussions, however, where an agency in good faith provides accurate information to an offeror about its concern, and provides the offeror with the opportunity to explain or revise its rates. *First Info. Tech. Servs., Inc.*, B-405602, Dec. 1, 2011, 2011 CPD ¶ 261 at 10

Here, we find that the agency's discussions were not misleading. The evaluation record demonstrates that the Navy accurately identified its concern that the Ginn's staff was low under certain sub-annexes and asked Ginn to provide more explanation or revise its proposal. In response, Ginn provided further explanation and also increased its labor hours. On this record, we find that Ginn's increase in labor hours was not the result of coercion, and instead reflected Ginn's business decision to increase its staffing.<sup>10</sup>

## Evaluations

The protester's challenges to the Navy's evaluation primarily relate to the recycling requirements under the solicitation. First, Ginn contends that the agency's evaluation of GCR's proposal is unreasonable because the amount of recycling GCR proposed is

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<sup>10</sup> We note that the Navy conducted similar discussions with GCR. For both offerors, the agency raised concerns regarding staffing levels on certain sub-annexes, and provided the offerors with an opportunity to explain their staffing or revise their proposal. In response, both offerors provided further explanation of their staffing levels and increased labor hours. Ultimately, the agency accepted both offerors' approaches to staffing.

insufficient to meet the Navy's requirement for offerors to "provide recycling to the fullest extent possible."<sup>11</sup> Protest at 7-9 (citing RFP at 198, 200). Second, Ginn contends that the Navy unreasonably failed to assess Ginn's proposal with a strength for proposing increased recycling--[DELETED]--at these Navy facilities.<sup>12</sup> Protest at 8-9, 12-13; Comments & Supp. Protest at 2, 5-6.

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.* In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and with procurement statutes and regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

The RFP established that recycling was part of integrated solid waste management (ISWM) and included recycling under solid waste collection (Spec Item 3.1) and disposal (Spec Item 3.2). RFP at 198, 199. The solicitation provided that the contractor is to "provide collection of residential, commercial, and industrial solid wastes to ensure refuse and recyclables are properly collected." *Id.* at 198. The RFP required offerors to "use [a] Materials Recovery Facility . . . or a Single Stream Recycling Facility to the fullest extent possible." *Id.* With respect to disposing recyclable solid waste, the RFP instructed that the "[r]ecyclable roll-off dumpsters shall be disposed at a Materials Recovery Facility[ ] or a Single Stream Recycling Facility to the fullest extent possible and providing (sic) the government yearly updates of recycling opportunities." *Id.* at 200. Recycling accounted for a small part of the overall evaluation of BOS services. AR, Ex. P, Response to Debriefing Questions at 1. Moreover, the RFP only specified that "concrete, scrap metal, tires, wooden pallets, cardboard, asphalt, and yard waste" were to be recycled.<sup>13</sup> RFP at 118.

GCR's proposal stated that it would remove recyclable waste from designated containers at locations specified in the RFP, and collect the waste at the frequencies set forth in the RFP. AR, Ex. J, GCR Non-Price Final Proposal Revisions at 69, 71. GCR

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<sup>11</sup> Ginn uses the term responsiveness in its protest; however, the concept of responsiveness is not applicable to negotiated procurements under FAR part 15 such as the one here. See *e.g.*, *Carlson Wagonlit Travel*, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 1 n.1 ("Where a proposal submitted under a negotiated procurement fails to meet a material requirement of the RFP, it is unacceptable, not nonresponsive.").

<sup>12</sup> We note that Ginn also alleged that it merited two additional strengths for including in its proposal [DELETED], neither of which the RFP required. Protest at 12. We have reviewed the record and find no basis to sustain these protest grounds.

<sup>13</sup> The RFP also specified that used oil and fuel filters, anti-freeze, and hydraulic fluid were to be recycled under sub-annex 1800000 Environmental services. RFP at 240-44.

provided that “[a]ll recyclable solid waste will be delivered to [an] approved local recycling facility.” *Id.* at 69. GCR also indicated that it would collect recyclables at the locations specified in the RFP in accordance with the standards listed in the RFP “to the fullest extent possible.” *Id.* at 71. Additionally, GCR stated that it would provide appropriate recycling containers, in sufficient quantities, “labeled as to the type of material to be recycled . . . to prevent commingling of different types of recyclables.” *Id.* at 71, 72.

The agency evaluated GCR’s proposed approach against the evaluation criteria and specifications in the RFP and determined that GCR’s methodology met the solicitation requirements and explained an acceptable approach to meet the agency’s requirements and performance objectives. COS at 10-11.

We find that the agency reasonably evaluated GCR’s proposal in accordance with the solicitation’s evaluation criteria. Although it is true that GCR did not specifically address recycling [DELETED] as Ginn proposed, discussed below, GCR otherwise provided a plan that satisfied the solicitation’s recycling requirements. Therefore, we see no basis to conclude that the Navy acted unreasonably in finding that GCR’s proposal was acceptable. To the extent that Ginn believes that GCR’s proposal should have received a lower evaluation rating under this factor, we find the protester’s arguments to be nothing more than disagreement with the agency’s evaluation, which does not render the agency’s evaluation unreasonable. *See Vectrus Sys. Corp., supra.*

In the alternative, Ginn alleges that the Navy unreasonably failed to assign a strength to its proposal for the addition of [DELETED] recycling. Protest at 8-9, 12-13; Comments & Supp. Protest at 2, 5-6. The protester argues that the Navy currently does not recycle [DELETED] at NSA, Panama City, and therefore, the protester deserves a strength for exceeding the RFP requirements. Comments & Supp. Protest at 2, 5-6. The protester argues there is value to the agency in keeping “[DELETED] out of the landfill” for up to eight years. Protest at 7-8, 9.

According to the protester, in GCR’s performance of its incumbent contract, GCR is not currently recycling [DELETED]. Protest at 12. Ginn contends that it expended significant efforts to identify additional recycling capabilities [DELETED] in order to propose adding these services. *Id.* at 12-13. Ginn argues that its proposal should have been assessed a strength for expanding recycling, *id.*, and asserts that the cost for this additional recycling was \$[DELETED]. Protest exh. B, Ginn President Decl. at ¶ 7.

While the agency acknowledges that Ginn proposed to add new recycling services, it argues that the proposal “did not provide sufficient detail for the Agency to conclude that the approach exceeded specified performance or capability requirements in a way that would be advantageous to the Government during contract performance.” COS at 11. The agency maintains it properly evaluated Ginn’s approach as meeting RFP requirements but not meriting the assignment of a strength. *Id.* Consequently, the agency concluded that Ginn’s recycling approach was not advantageous to the government. *Id.*



With regard to the assertion that the agency should have credited Ginn's proposal with a strength for proposing increased recycling, our Office has previously noted that an agency is not required to assign a strength for a feature that exceeds the requirements of a solicitation, unless the agency also concludes that the feature will be "advantageous to the government." *Avon Prot. Sys., Inc.*, B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 8. An agency's judgment that the features identified in the proposal do not significantly exceed the requirements of the RFP or provide advantages to the government--and thus do not warrant the assessment of unique strengths--is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4.

Here, the record shows that, while the Navy reviewed the specific proposal features at issue, the agency did not conclude that such features would be of value to the government. AR, Ex. P, Response to Debriefing Questions at 1-2; COS at 11. While the protester disagrees with that assessment, such disagreement, without more, does not render the evaluation unreasonable. *Owens & Minor Distribution, Inc.*, B-418223.5 *et al.*, Feb. 3, 2021, 2021 CPD ¶ 336 at 6. Based upon our review of the record, we find that the agency reasonably considered Ginn proposed recycling approach and ultimately did not find it warranted a strength.

#### Best-Value Determination

Next, Ginn challenges the source selection authority's (SSA's) best-value determination, which resulted in GCR's lower-rated, lower-priced proposal being selected for award. Protest at 11-12. The protester argues that the agency evaluated proposals on a lowest-price, technically acceptable basis contrary to the RFP evaluation criteria and failed to consider the superior technical merits of its proposal. *Id.* We find no basis to sustain this argument.

Source selection officials in negotiated best-value tradeoff procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. *World Airways, Inc.*, B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 22. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated proposal, and explain why they are not worth the price premium. *See id.*

Here, the record shows that the SSA conducted an independent assessment of the SSEB findings and tradeoff analysis, and concurred with the SSEB conclusions. The SSA recognized that Ginn was rated higher than GCR for technical approach and for the overall non-price factors. AR, Ex. M, SSDD at 3. Nevertheless, the SSA concluded that Ginn's non-price advantages for technical approach did not outweigh GCR's comparative superiority over Ginn for corporate experience and past performance. *Id.* at 2-4. In this regard, the selection official noted that GCR "demonstrated vast knowledge and experience in performing services similar in size, scope and complexity to this solicitation on three relevant projects," including one relevant project that contained all relevant sub-annexes to this requirement. *Id.* at 2. The SSA determined although Ginn was an incumbent for one of the current contracts that will be consolidated under this requirement, Ginn does not "demonstrate the same depth and breadth of experience performing all of the required services as GCR." *Id.* at 3. Consequently, the SSA concluded that "[a]lthough [Ginn] is rated higher in Factor 2 – Technical Approach with one strength identified, the non-price advantages presented in their FPR for this factor do not outweigh GCR's non-price advantages in the remaining factors or merit the \$2,263,020.19 price premium of selecting their proposal over GCR." *Id.* at 3-4. We find nothing unreasonable in the agency's assessments and conclusions; accordingly, we find no merit in the protester's challenge to the agency's best-value tradeoff or award to a lower-rated, lower-priced offeror.

Further, with regard to the protester's contention that the agency improperly converted the procurement to a *de facto* lowest-price, technically-acceptable procurement, we find no basis to sustain the protest. Rather, on this record, as explained above, we find that the SSA clearly acknowledged the benefits associated with the protester's higher-rated, higher-priced proposal, but concluded that the benefits did not merit paying the price premium. While the protester disagrees with the agency's determination, the protester's disagreement, without more, does not provide a basis to sustain the protest. *Democracy Int'l., Inc.*, B-415243, B-415243.2, Dec. 13, 2017, 2017 CPD ¶ 293 at 7.

Finally, the protester argues that the agency's best-value tradeoff decision was improper because it was based on a flawed evaluation. Comments & Supp. Protest at 8. This allegation is derivative of the protester's challenges to the agency's proposal evaluation. As discussed above, we find no basis to object to the agency's evaluation, and therefore, 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