



# Decision

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**Matter of:** 360 IT Integrated Solutions

**File:** B-414650.7; B-414650.12

**Date:** May 18, 2018

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Richard J. Conway, Esq., Michael J. Slattery, Esq., and Ioana Cristei, Esq., Blank Rome LLP, for the protester.

Richard P. Rector, Esq., Dawn E. Stern, Esq., and Eric P. Roberson, Esq., DLA Piper LLP (US), for Inerso Corporation, the intervenor.

Gabriel E. Kennon, Esq., and Christopher M. Alwood, Esq., Department of Homeland Security, for the agency.

Alexander O. Levine, 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. Protest that agency improperly considered negative past performance information about the protester's subcontractor, which was not included in the protester's quotation, is sustained where the agency failed to document the basis for its consideration.
  2. Protest that agency identified strengths in the awardee's quotation, but unreasonably failed to recognize similar strengths in the protester's quotation is sustained where the agency did not provide a meaningful explanation for its unequal treatment.
  3. Protest that agency failed to assign a strength to the protester's quotation for its proposed staffing approach, under the management approach evaluation factor, is sustained where the agency did not provide a meaningful explanation for its evaluation.
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## DECISION

360 IT Integrated Solutions (360 ITIS), a small business located in Reston, Virginia, protests the issuance of a task order to Inerso Corporation, a small business located in Vienna, Virginia, under request for quotations (RFQ) No. HSCETC-17-Q-00010, issued by the Department of Homeland Security (DHS) for information technology operations support services (ITOSS). The protester argues that the agency unreasonably and unequally evaluated 360 ITIS's past performance, unreasonably and unequally evaluated quotations under the management and technical approach evaluation factors, and conducted a flawed best-value tradeoff determination.

We sustain the protest.

## BACKGROUND

On March 31, 2017, DHS issued the RFQ, which consolidated seven separate ITOSS task orders into one task order under DHS's Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) multiple-award contract vehicle. The effort solicited includes the provision of a service desk, information technology (IT) field operations, cabling, video teleconferencing, hardware/maintenance, deployment, and financial/travel system support services, all in support of the U.S. Immigration and Customs Enforcement's (ICE), Office of the Chief Information Officer Operations Division.

The RFQ anticipated that the resulting task order would be a hybrid fixed-price, time-and-materials, and labor-hour task order with a 12-month base year and three 12-month option years. RFQ at 1.<sup>1</sup> The solicitation called for the evaluation of four factors, in descending order of importance: management approach, technical approach, past performance, and price. Id. at 10. The non-price factors, when combined, were significantly more important than price. Id.

Under the management approach factor, the RFQ contemplated the evaluation of the degree to which each vendor's management approach reflected "an effective, efficient, feasible, and practical level of understanding of the operating environment and management methods for accomplishing the tasks and deliverables of the [performance work statement (PWS)], with minimal risk, and innovative and cost effective ideas." Id. at 11. The agency stated it would also evaluate each vendor's project management strategy, including indicators showing how the project would be implemented and the vendor's ability to manage resources and multiple groups of stakeholders. Id.

For the technical approach factor, the RFQ contemplated the evaluation of: (1) the extent to which each vendor's quotation demonstrated the knowledge, skill, and ability to fulfill relevant PWS requirements, (2) the extent to which the quotation demonstrated an understanding of IT operations challenges and convincingly justified how the vendor's approach would solve such challenges, and (3) the quotation's recommendations for improvements in knowledge management, remote support, and user self-help. Id. at 13.

For past performance, the RFQ contemplated the evaluation of the breadth and depth of each vendor's relevant experience on projects of similar size, scope, and complexity. Id. at 14. The agency stated that the past performance evaluation would only examine past performance efforts from the last three years that have been performed by the vendor, its subcontractor, or a combination of both. Id. The solicitation provided that

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<sup>1</sup> Unless otherwise indicated, citations to the RFQ refer to the amended RFQ provided in Tab 25 of the agency report (AR).

this review would focus on “work performed, progress, and projects of a similar size, scope, and complexity pertaining to this Government requirement.” Id. DHS reserved the right to utilize past performance information “from other sources available at the time of evaluations in the [p]ast [p]erformance evaluation.” Id. at 8.

On May 8, the agency received a total of 11 quotations from interested vendors, including quotations from Insero and 360 ITIS. On September 29, following discussions and the submission of revised quotations, DHS issued a task order for the ITOSS requirement to Insero. Following the issuance of the task order, our Office received protests from several vendors, including 360 ITIS. DHS subsequently agreed to take corrective action by conducting another round of discussions and permitting vendors to submit revised quotations.

Following the submission of final quotations from 10 vendors,<sup>2</sup> the agency evaluated the quotations of Insero and 360 ITIS as follows:

	<b>Insero</b>	<b>360 ITIS</b>
<b>Management Approach</b>	Excellent	Excellent
<b>Technical Approach</b>	Excellent	Good
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Total Price</b>	\$192,261,426	\$159,768,113

AR, Tab 329, Source Selection Decision Memorandum (SSDM), at 1, 10-15.

On January 31, 2018, the agency reaffirmed its decision to issue the subject task order to Insero, finding that Insero’s quotation conformed to all solicitation requirements and provided the best value to the agency. Id. at 26. This protest followed.<sup>3</sup>

## DISCUSSION

The protester argues that the agency unreasonably downgraded its past performance rating on the basis of negative past performance information known to the agency regarding the protester’s subcontractor. The protester additionally contends that the agency unreasonably and unequally assigned strengths to Insero’s quotation under the management approach and technical approach factors. 360 ITIS asserts that these errors led to a flawed best-value tradeoff determination.<sup>4</sup>

<sup>2</sup> One vendor withdrew its quotation.

<sup>3</sup> The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

<sup>4</sup> While we do not address in detail every argument raised by 360 ITIS in its protest, we have reviewed each issue and, with the exception of those arguments discussed herein,  
(continued...)

A contracting agency's evaluation of quotations in a task order competition is a matter within the agency's discretion. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4. In reviewing an agency's evaluation, we will not reevaluate quotations; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4-5.

## Past Performance

The protester challenges the agency's consideration of negative past performance information regarding one of 360 ITIS's proposed subcontractors, [DELETED]. The protester argues that the agency unreasonably penalized 360 ITIS on the basis of that past performance, despite the fact that 360 ITIS limited the subcontractor's proposed role in its quotation. The protester further contends that DHS lent unreasonable weight to the subcontractor's past performance effort, despite having found that same effort to be only partially relevant during an earlier evaluation round.<sup>5</sup>

By way of background, on October 16, 2017, [DELETED], an incumbent DHS contractor providing enterprise operations support services (EOSS), which is one portion of the instant ITOSS requirement, received a corrective action letter on its contract due to DHS's determination that [DELETED] was not adequately staffing the contract. See

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(...continued)

we do not find any basis to sustain the protest. For example, the protester argues the agency unequally assigned a strength to Insero's quotation for its proposed program manager (PM) being an IT infrastructure library (ITIL) certified expert in IT service management, which DHS found to be of benefit because "a PM that has a deep understanding of ITIL" would increase the level of performance on the contract. AR, Tab 310, Insero Factor 1 Technical Evaluation Team (TET) Consensus Report, at 3. The protester asserts that it should have received a similar strength because its PM led an ITIL implementation for a federal IT program, an experience that the protester contends also demonstrated a deep understanding of ITIL. The agency responded to this argument by explaining that it considered the ITIL certification held by Insero's proposed PM to be more beneficial than the ITIL experience cited by the protester, which was only summarily described in 360 ITIS's quotation. Based on our review of the record, we find the agency's assignment of strengths here to be unobjectionable in light of DHS's reasonable differentiation between the differing qualifications of the two proposed personnel.

<sup>5</sup> The protester additionally asserts that the RFQ categorically prohibited the consideration of the past performance effort at issue, because such information was not included within the past performance portion of 360 ITIS's quotation. We find no merit to this argument. In this regard, the RFQ expressly permitted the consideration of past performance information "from other sources available at the time of evaluations in the [p]ast [p]erformance evaluation." RFQ at 8.

AR, Tab 300, 360 ITIS Past Performance Evaluation Team (PPET) Consensus Report, at 6. During discussions, DHS asked 360 ITIS how it would address the staffing issues encountered by its subcontractor. In response, 360 ITIS provided a comprehensive plan to address these issues, proposing, among other solutions, to lower turnover, increase compensation levels, add more staffing to the service desk, and reduce the role of [DELETED] on the contract. See AR, Tab 257, 360 ITIS Quotation Vol. 1, at F1-SP-3-4. 360 ITIS also represented that both [DELETED] and a second subcontractor would have a “diminished role” under the task order here, with a combined work share of “not much more than [DELETED],” and that both subcontractors would be removed from their prior management roles and “used primarily for staff augmentation.” Id. at F1-MA-8, F1-SP-4. In its past performance volume, the protester also removed the EOSS contract as a reference and replaced it with a contract performed by a third subcontractor. DHS subsequently evaluated the three past performance efforts included in 360 ITIS’s past performance volume as having substantial, satisfactory, and substantial confidence ratings respectively.

Despite the removal of the EOSS contract from the protester’s past performance volume, the PPET nonetheless considered [DELETED] performance under that contract in its evaluation, noting that 360 ITIS had previously submitted this contract reference in a prior quotation submission. AR, Tab 300, 360 ITIS PPET Consensus Report, at 6. After discussing the staffing problems encountered by [DELETED], the PPET concluded that, based on 360 ITIS’s three submitted contracts and the “entire performance on the incumbent EOSS contract,” the vendor’s past performance was rated “as a high Satisfactory Confidence.” Id. at 7.

As a general matter, the evaluation of a vendor’s past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. See Patricio Enters., Inc., B-412740 et al., May 26, 2016, 2016 CPD ¶ 152 at 7. Where a protester challenges the past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations, and to ensure that the agency’s rationale is adequately documented. See id.

Here, we find the PPET’s consideration of the EOSS contract to be unreasonable. As an initial matter, we note that the contemporaneous record is largely devoid of explanation regarding the agency’s decision to evaluate the EOSS contract. In this connection, the PPET report does not discuss the role [DELETED] was proposed to have in 360 ITIS’s quotation, nor does it discuss whether the EOSS contract was relevant to the instant requirement. Instead, the PPET report only states that 360 ITIS previously submitted the EOSS contract during a prior round of quotation submissions, an explanation also proffered in the agency’s legal memorandum. See AR, Tab 300, 360 ITIS PPET Consensus Report, at 6; Memorandum of Law (MOL) at 44. We find this explanation insufficient. The simple fact that 360 ITIS previously submitted the EOSS reference, as part of a now-superseded, prior quotation, by itself, does not

provide the agency with a reasonable basis to consider that reference in evaluating the protester's final quotation, which did not include that reference.

In its legal memorandum, the agency also argues that it was permitted to consider the EOSS contract since the information was otherwise known to the agency. MOL at 44. The agency notes that the EOSS contract was an incumbent contract, for a portion of the scope of the instant requirement, and that the contracting officer who issued the corrective action letter was the source selection authority (SSA) for the instant procurement. The agency further notes that, under Federal Acquisition Regulation § 15.305(a)(2)(iii), agencies are directed to take into account past performance information regarding "subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant requirement."

Here, however, the contemporaneous evaluation record contains no indication that DHS concluded that [DELETED] would be performing major or critical aspects of the ITOSS requirement. Indeed, as discussed above, the PPET report does not contain any consideration of the role that [DELETED] would be performing on the instant requirement. This is significant because the protester proposed that [DELETED] would be performing a significantly reduced workshare, would not be part of the contract management, and would be used primarily for staff augmentation purposes. See AR, Tab 257, 360 ITIS Quotation Vol. 1, at F1-MA-8, F1-SP-4. The PPET report also contains no consideration of the relevance of the EOSS contract, which the agency had previously--during a prior evaluation round--found to be only partially relevant to the instant requirement. See AR, Tab 223, December 2017 360 ITIS Factor 3 PPET Consensus Report, at 1. In sum, the final PPET report does not provide any reason for considering such performance information beyond noting that the contract reference had previously been submitted by 360 ITIS.

We find the agency's failure to consider whether the EOSS reference was relevant to the approach actually proposed by the protester to be unreasonable, particularly in light of the weight given to the reference in the agency's assessment of 360 ITIS's past performance. In this regard, the evaluation record shows that, with the exception of the EOSS contract, the protester was evaluated as having very favorable past performance, receiving two substantial confidence ratings and one satisfactory confidence rating for its three submitted past performance references. See AR, Tab 300, 360 ITIS PPET Consensus Report, at 1. Despite this favorable assessment, the agency determined--following a lengthy discussion of the problems encountered on the EOSS contract--that the protester's past performance only warranted a "high" satisfactory confidence rating. Id. at 7. By way of comparison, Insero similarly received two substantial confidence ratings and a satisfactory confidence rating for its three submitted past performance efforts. See AR, Tab 312, Insero PPET Consensus Report, at 1. Insero, however, received an overall substantial confidence past performance rating despite the fact that its submitted contracts were generally less relevant, in size, scope, and complexity, than the three contracts submitted by 360 ITIS. See id. The record therefore supports the protester's contention that DHS's consideration of the EOSS contract had a meaningful impact on the agency's overall assessment of 360 ITIS's past performance.

## Unequal Evaluation

The protester argues that the agency unequally assigned numerous strengths to Inerso's quotation under the management approach and technical approach evaluation factors.<sup>6</sup> In this regard, the protester contends that 360 ITIS's quotation did not receive equivalent strengths despite proposing similar features to those assigned strengths in Inerso's quotation. It is a fundamental principle of government procurement that agencies must treat vendors equally, which means, among other things, that they must evaluate quotations in an even-handed manner. See SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 10. Accordingly, where an agency treats vendors unequally, it must provide a reasonable explanation for doing so. See id. For a number of these strengths, the agency has provided reasonable explanations demonstrating that the unequal treatment was based on meaningful differences, as found by the evaluators, between the two quotations. Discussed below are those areas where we agree that the agency has not provided a reasonable explanation for unequally evaluating Inerso's and 360 ITIS's quotations.

The protester notes that Inerso received a strength for spreading out job functions and having teams perform multiple overlapping functions to provide backup to each other. In this regard, the PWS envisioned splitting the service desk into three support tiers with "Tier 1" supporting the first line of customer support, "Tier 2" supporting incidents that could not be resolved by Tier 1 support, and "Tier 3" support providing the greatest level of technical expertise to address the most complex technical problems. AR, Tab 50, PWS, at 13. Inerso received a strength for proposing to use its IT field operations staff to [DELETED] while at the same time having [DELETED]. AR, Tab 311, Inerso Factor 2 Technical Evaluation Team Consensus Report, at 1.

360 ITIS argues that it similarly spread functions across multiple teams in order to free tiers for other tasks, but did not receive a similar strength. Specifically, 360 ITIS proposed to foster cross-training and "implement a [DELETED] approach," wherein senior service desk technicians would provide [DELETED]. AR, Tab 257, 360 ITIS Quotation Vol. I, at F2-13. 360 ITIS also proposed to have IT field operations technicians support [DELETED] to assist with [DELETED] planned and unplanned events on short notice. Id.

The agency responds to this argument by asserting that it did assign a strength to 360 ITIS's approach, pointing to a strength assigned for the protester's proposed approach of having Tier 1 service desk technicians obtain Help Desk Institute certifications and Tier 3 technicians obtain ITIL v3 certifications. See AR, Tab 299, 360 ITIS Factor 1 TET Consensus Report, at 3. We do not agree that this was an equivalent strength. In this

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<sup>6</sup> The solicitation defined a strength as an "aspect of the quote that exceeds specified performance in a way that will be advantageous to the government OR an aspect of the quote that increases the likelihood of successful contract performance." RFQ at 17.

regard, the above strength focused on the qualifications of the Tier 1 and Tier 2 personnel and the benefits to be realized once Tier 1 personnel developed into [DELETED] personnel. The strength did not discuss the benefits stemming from 360 ITIS's approach to spreading job functions between overlapping teams, and thus was not similar to the strength assigned to Inserso.

In a supplemental statement provided to our Office after the receipt of comments, the TET chair provided a new explanation for the agency's failure to assign a strength to 360 ITIS for its approach. According to the TET Chair, the TET did not assign a strength in this area because, among other reasons, [DELETED] would be the "highest-level skill" a service desk technician would work and also "[DELETED] does not appear to extend beyond [DELETED] in 360 ITIS's approach." TET Supp. Statement at 4.

We do not find this post-protest explanation to be reasonable or well-supported in the evaluation record. As an initial matter, we note that the TET Chair's explanation is inconsistent with the agency's legal memorandum, which states that the agency did recognize 360 ITIS's approach as warranting a strength. See MOL at 29 ("the record plainly demonstrates that the TET and SSA considered both vendor[s]' approaches as strengths . . ."). Additionally, we note that the TET Chair's contention appears inconsistent with 360 ITIS's quotation since the quotation did not state that cross-trained staff would be limited to [DELETED], and, indeed, noted that all teams would be involved in the cross-training initiative. See AR, Tab 257, 360 ITIS Quotation Vol. I, at F2-33. Moreover, we find the two vendors' approaches to be largely similar in that they both involve Tier 1 personnel addressing service request tickets that would normally be elevated to Tier 2, and, conversely, both envision [DELETED] in resolution of such tickets. Ultimately, we conclude that the agency has failed to provide a meaningful explanation for its unequal treatment of the two vendors' approaches.

The protester also challenges the assignment of a strength to Inserso's quotation for utilizing remote support to assist in balancing workloads across [DELETED]. In this regard, Inserso received a strength for "embracing the proposed remote management approach" by [DELETED] and to give Inserso "the ability to respond better to surge needs." AR, Tab 311, Inserso Factor 2 TET Consensus Report, at 1.

The protester argues that DHS failed to assign 360 ITIS a strength even though it proposed a similar approach, which also proposed to expand the use of remote support tools. The agency responds to this argument by contending that it did assign a strength to 360 ITIS for proposing to increase remote support. In this respect, the TET assigned a strength for 360 ITIS's plan to increase remote support and reduce travel, noting that:

By insuring they will put plans in place to reduce the need for travel, and committing to it by indicating insurances to the government travel will be reduced, will increase the speed of resolutions and decrease the [other direct cost] travel cost on the contract.

AR, Tab 299, 360 ITIS Factor 2 TET Consensus Report, at 3.



We do not find this strength to be equivalent to the strength assigned to Inerso. In this regard, the strength given to 360 ITIS--in contrast to the strength given to Inerso--does not credit the protester's approach of using remote support tools to assist in the balancing of workloads across the different service desk tiers. Instead, it credits 360 ITIS's remote support approach for reducing travel costs, and for the resulting increase in the speed of ticket resolutions that would result from the reduction in travel costs. We find this benefit to be fundamentally distinct from the one recognized in Inerso's strength, where DHS recognized the benefits that would result from using remote support to balance the workload across Tier 1 and Tier 2. See AR, Tab 311, Inerso Factor 2 TET Consensus Report, at 4. Importantly, while 360 ITIS did propose to use remote support tools to reduce travel costs, it also proposed [DELETED] to increase the resolution of tickets at the [DELETED] and [DELETED] levels, while reducing the number of tickets [DELETED]. See AR, Tab 257, 360 ITIS Quotation Vol. I, at F2-7. Thus, 360 ITIS's approach was fundamentally similar to Inerso's approach, despite the agency's failure to recognize the former approach with a similar strength. Accordingly, we find that the agency has not provided a reasonable explanation for its unequal treatment of the two quotations in this regard.

#### Evaluation of 360 ITIS Management Approach

The protester additionally challenges the agency's failure to assign a strength, under the management approach factor, for 360 ITIS's proposal of [DELETED] extra full time equivalents (FTEs) to support the [DELETED], beyond the minimum staffing levels established by the PWS. In this regard, the RFQ anticipated that the agency would evaluate vendors' staffing and workforce under the management approach factor, including staffing plans, labor mix, and the number of personnel and their qualifications, roles, and responsibilities proposed to execute the services defined in the PWS. RFQ at 11.

Responding to this argument, the agency does not contend that the extra FTEs would not benefit the protester's management approach. Instead, the TET chair explained that it awarded a strength for this approach under the technical approach evaluation factor, rather than the management approach factor, because, although the extra personnel were mentioned in 360 ITIS's management approach, the protester "actually discussed and explained [the [DELETED] approach] as part of its technical approach, particularly its technical approach to accomplishing the [DELETED] work." TET Chair Suppl. Statement at 3.

Contrary to this representation, however, the protester's quotation did contain extensive discussion and explanation, within the management approach section, of 360 ITIS's plan to increase the number of [DELETED] personnel. For instance, on the second page of its management approach, 360 ITIS discussed the extra personnel in two separate sections as part of its approach to solving the [DELETED] staffing issues previously encountered by [DELETED]. AR, Tab 257, 360 ITIS Quotation Vol. 1, at F1-MA-2. On the fourth page, the quotation again discussed the extra FTEs, noting that such extra staffing would help resolve staffing issues, and would improve "[first call

resolution], ticket triage, wait time, call abandonment, VIP response time, and customer satisfaction metrics.” Id. at F1-MA-4. The quotation repeated and expanded upon this discussion several more times within the management approach section of the quotation. See, e.g., id. at F1-MA-13, F1-SP-4.

Accordingly, we find that the agency has not provided a reasonable explanation for its decision not to award a management approach strength to 360 ITIS for proposing extra [DELETED] personnel. To the extent the agency contends that 360 ITIS was only entitled to one strength regardless of whether the approach was of benefit in multiple evaluation areas, we note this is inconsistent with its treatment of Inerso’s quotation. In this regard, DHS assigned two strengths, under separate management approach factor sub-elements, to Inerso’s quotation for proposing [DELETED] personnel beyond the PWS minimum staffing levels. The agency thus recognized Inerso’s approach to be beneficial under separate management sub-elements, and therefore assigned it two strengths. In contrast, for 360 ITIS, DHS only assigned one strength for 360 ITIS’s approach. This is significant because the agency has not rebutted the protester’s assertion that the extra personnel provided the agency with a management benefit.

## PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17.

Here, but for the above discussed errors, the agency might have rated the protester’s past performance substantially higher, and might have found additional strengths in 360 ITIS’s technical and management approaches that would have reduced the gap between the two vendors’ overall technical standing. An increase in the standing of 360 ITIS’s quotation under the non-price factors could have resulted in a different best-value tradeoff determination, particularly given that the protester’s quotation was nearly \$32.5 million less expensive than Inerso’s. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.-- Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that 360 ITIS has established the requisite competitive prejudice to prevail in its bid protest.

## RECOMMENDATION

We recommend that the agency reevaluate quotations in a manner consistent with the terms of the solicitation and the discussion above, and make a new source selection decision based on that reevaluation. We also recommend that the agency reimburse 360 ITIS its reasonable costs of filing and pursuing its protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). The protester’s certified claim for costs, detailing

the time spent and the cost incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong  
General Counsel