



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.

Decision

Matter of: Peraton Inc.

File: B-421839; B-421839.2

Date: November 3, 2023

Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., and Jeffrey M. Lowry, Esq., Vedder Price PC, for the protester.

Kelli Cochran-Seabrook, Esq., and Nathan Bangsil, Esq., General Services Administration, 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.

DIGEST

Protest challenging agency's decision to exclude proposal from the competition based on considerations not contemplated by the solicitation's requirements is denied where the protester cannot show competitive prejudice from the agency's improper elimination of its proposal.

DECISION

Peraton Inc., of Herndon, Virginia, protests the elimination of its proposal from consideration under task order request (TOR) No. 47QFCA23R0029, issued by the General Services Administration (GSA), for technical support services for the United States Special Operations Command. The protester argues that the agency unreasonably eliminated it from the competition.

We deny the protest.

BACKGROUND

Pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation on May 11, 2023, to firms holding contracts under GSA's One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity governmentwide acquisition contract unrestricted pool 1. Contracting

Officer's Statement (COS) at 1-2; Agency Report (AR), Tab 4, TOR amend. 2 at 1-2.¹ The TOR contemplated the issuance of a cost-plus-award-fee task order, with a 1-year base period of performance and four 1-year option periods. AR, Tab 4, TOR amend. 2 at 2, 28. The solicitation sought specialized services enabling the Department of Defense to conduct persistent, networked, and distributed global information operations. *Id.* at 10-11. Specifically, the task order, which comprised five separate task areas, sought subject matter experts to deliver culturally relevant internet-based activities for synchronizing, planning, and integrating online military information support operations and assessing the effectiveness of the campaigns.² *Id.*

Offerors were required to submit their proposals in three parts. TOR amend. 2 at 85. First, each offeror was to submit a written cost/price proposal, including attachment Q, a cost/price Microsoft Excel workbook. *Id.* at 86, 89. Attachment Q was to provide back-up documentation for the labor contract line item numbers (CLINs) for each period of performance and for each task area, as well as other direct and indirect rate information. *Id.* at 89-90. For part two, each offeror was required to provide its technical proposal, including attachment P, (a project staffing plan template), containing all proposed individuals or labor categories for this effort. *Id.* at 91-92. In attachment P, offerors were to identify key personnel and proposed labor categories for non-key personnel, and specify qualifications for each labor category and the hours proposed for each task area and period of performance. *Id.* at 91. Finally, offerors were to provide an oral technical proposal presentation covering the offeror's technical approach, management approach, and a technical capability scenario. *Id.* at 97.

The solicitation advised that award would be made to the offeror whose proposal was most advantageous to the government, considering cost and other factors. *Id.* at 99. In addition to cost, the TOR included the following technical evaluation factors, in descending order of importance: technical approach; management approach; key personnel and project staffing; and corporate experience. *Id.* at 101. The technical factors combined are significantly more important than cost. *Id.* The agency would combine the results of the written technical proposal and the oral presentation for the overall technical evaluation rating. *Id.* Moreover, the TOR advised offerors that the procedures of FAR part 15.3 did not apply and that the agency intended to issue the task order based on initial proposals, without discussions, unless the agency determined discussions necessary. *Id.* at 99.

¹ The solicitation was amended twice and references herein to the TOR are to the last amended solicitation.

² The task areas set forth in the TOR's performance work statement are: task 1 - provide program and project management; task 2 - conduct internet-based military information support operations (MISO); task 3 - provide MISO assessment services; task 4 - provide mission technology and infrastructure; and task 5 - provide internet-based MISO enabling services. COS at 4.

For cost/price purposes, the solicitation provided that the agency would conduct a cost realism and price reasonableness analysis of offers. *Id.* at 100. The solicitation informed offerors that the total estimated cost of the task order is between \$300 million and \$330 million, not including certain direct costs, and required that any proposal with proposed costs not within the range to include an explanation specifying unique technical aspects of the proposal that justified deviation from the range. *Id.* at 84, 100. The TOR also advised that a “cost and price evaluation will only be done for offerors with a technical proposal receiving an overall technical rating of ACCEPTABLE or higher.”³ *Id.* at 99.

The solicitation also required offerors to meet four specific pass/fail criteria: identify by name each key person; provide letters of commitment; section 508 compliance; and demonstration offeror is an awardee of an OASIS contract.⁴ TOR amend. 2 at 99-100. The TOR stated that “[a] failure on any single Pass/Fail criteria will make the proposal ineligible for award, with no further evaluation of the technical and cost proposal[s] conducted by the Government.” *Id.* at 100.

As relevant to this protest, the TOR instructed offerors to “ensure there is consistency in the level of effort” between the staffing plan provided in the technical proposal and the cost/price proposal. *Id.* at 92. With respect to the written cost/price proposal, the solicitation instructions specified that “[a]ny inconsistency, whether real or apparent, between promised performance and cost/price, shall be explained in the proposal.” *Id.* at 86. The TOR further advised that “[p]roposals shall set forth full, accurate, and complete information as required by this solicitation package (including Attachments).” *Id.* at 99.

In response to the solicitation, Peraton, and four other offerors, timely submitted proposals. COS at 8. The agency conducted a “conformance check” of Peraton’s proposal to determine whether it met the pass/fail criteria and to ensure “responsiveness” with the TOR’s requirement for “full, accurate, and complete information.” *Id.* at 2; AR, Tab 7, COS Memo. to File, July 14, 2023 at 1. The agency identified inconsistencies between Peraton’s proposed task level of effort in the staffing

³ The agency intends to award a cost-plus-award-fee task order; as relevant here, the agency appears to use the terms cost and price interchangeably and the catchall term cost/price to refer to cost.

⁴ Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires agencies developing, procuring, maintaining or using electronic and information technology, to ensure that federal employees with disabilities and members of the public with disabilities seeking information from the agencies have access to and use of information and data that is comparable to federal employees and members of the public without disabilities. TOR amend. 2 at 44. Under the section 508 pass/fail element, offerors were required to include a statement indicating their capability to comply with section 508 requirements during performance of the task order. *Id.* at 91.

plan, attachment P, and its cost/price workbook, attachment Q. AR, Tab 7, COS Memo. to File, July 14, 2023 at 1.

Specifically, the agency maintains there are inconsistencies between the two attachments in the mapping of labor hours to the various task areas. *Id.*; COS at 2-5; see also 2nd Supp. COS at 1-3. The agency identified the difference between the two attachments when reviewing the total hours for each of the five tasks for each year of the contract and comparing the staffing plan to the cost/price workbook. COS at 3; see 2nd Supp. COS. The contracting officer also reviewed Peraton's written cost/price proposal narrative to ascertain if the inconsistencies were explained there and found nothing addressing the difference in hours. AR, Tab 7, COS Memo. to File, July 14, 2023 at 1-2.

The agency attempted to resolve the discrepancy through written clarifications. As the agency discovered multiple columns in the cost/price workbook, attachment Q, included the term "task," the agency first asked Peraton to clarify which column the agency should use to calculate the total hours by task in the cost/price workbook.⁵ AR, Tab 5, Clarification Req. and Resp. 1 at 2. Peraton responded that "[t]o tabulate total hours by task, utilize Task (Column T) in the Peraton P-Sheet tab."⁶ *Id.* at 1. Peraton's response, however, did not resolve the difference in hours for the agency and so the agency issued another clarification question to Peraton.

In the second clarification, the agency informed the protester that the staffing plan hours and the cost/price workbook hours in the proposal do not match and asked Peraton to "identify which document proposes the correct labor hours."⁷ AR, Tab 6, Clarification Req. and Resp. 2 at 1. In response, Peraton identified the staffing plan, attachment P,

⁵ Clarification request 1 was as follows:

Within the Peraton P-Sheet tab of Peraton's cost workbook, which column should be used to tabulate total hours by task? Task ID (Column A) or Task (Column T)?

AR, Tab 5, Clarification Req. and Resp. 1 at 2.

⁶ The Peraton P-Sheet tab is part of the cost/price workbook, attachment Q. It is not part of Peraton's technical proposal.

⁷ Clarification request 2 was as follows:

Based on your previous clarification response, the proposed labor hours in the cost workbook by employee and task do not match your proposed project staffing plan labor hours by employee and task. Please identify which document proposes the correct labor hours?

AR, Tab 6, Clarification Req. and Resp. 2 at 1.

as having the correct labor hours by employee and task. *Id.* at 1. Peraton also admitted there were “mapping inconsistencies for 10 positions” in the base and option periods in attachment Q, column T, Tasks, and explained the correct mapping. *Id.* at 1-2.

For example, Peraton explained that in attachment Q, cost/price workbook, tab Peraton P-Sheet, for positions 1, 12, and 227, in column AG, Hours, the total number of hours for transition activities, as part of task 1 ([DELETED] hours), were correct but that the task operations hours ([DELETED] hours) for other tasks for each position were mapped incorrectly. *Id.* at 1. Peraton provided the following correction:

- Position No. 1 should map to Task 3 on Column T;
- Position No. 12 should map to Task 2 on Column T;
- Position No. 227 should map to Task 4 on Column T.

Id. Peraton further asserted that the cumulative hours for the staffing plan, attachment P, and the cost/price workbook, attachment Q, match and so Peraton’s proposed technical solution, including overall hours, and its proposed cost are not affected by the mapping inconsistencies. *Id.* at 1-2.

After reviewing Peraton’s response, the agency found the discrepancies were still present in the proposal and that the discrepancies were more than simple clerical errors or minor administrative mistakes. AR, Tab 7, COS Memo. to File, July 14, 2023 at 3. Moreover, the agency found that Peraton’s response included new information not present in its initial proposal. The clarification request advised Peraton that “[t]his communication shall not be considered to be an invitation to enter into discussions nor an opportunity to amend or revise Peraton’s proposal.” AR, Tab 6, Clarification Req. and Resp. 2 at 2. The agency concluded that Peraton’s response included information that was not present in the initial proposal submission and could not, in the agency’s view, be considered. AR, Tab 7, COS Memo. to File, July 14, 2023 at 3. The agency further concluded that the “proposal did not conform to the requirements of the solicitation” and Peraton’s proposal “was not accurate and complete” in accordance with the solicitation. *Id.* Based on these conclusions, the agency removed Peraton from the competition and from further evaluation. *Id.*

Subsequently, the contracting officer verbally informed the technical evaluation board that Peraton’s proposal would not be evaluated and cancelled Peraton’s oral presentation, which would have been part of the agency’s overall technical evaluation. COS at 8. On July 17, the agency notified Peraton of its removal from the competition because a significant discrepancy of hours existed between the staffing plan and the cost/price workbook which the agency was unable to reconcile. AR, Tab 10, Notice of Decision to Remove Peraton from the Competition. The agency advised that Peraton’s responses to the clarification questions failed to resolve the discrepancies and

attempted to submit new proposal information. Peraton requested and received a debriefing from the agency. This protest followed.⁸

DISCUSSION

Peraton argues that the agency unreasonably eliminated its proposal from the competition and failed to provide Peraton with a fair opportunity to be considered for the task order award. Specifically, the protester contends that the removal of its proposal from further consideration is inconsistent with terms of the TOR, which does not notify offerors that proposals may be eliminated from the competition based on inconsistencies between the staffing plan, attachment P, and the cost/price workbook, attachment Q. Protest at 17, 20. Peraton further argues that, to the extent its proposal did in fact include the mistakes identified by the agency, those discrepancies were minor in nature as they do not change the total number of proposed hours or cost and could have been resolved in the agency's cost realism analysis or through clarifications to its original proposal. Protest at 19-20.

GSA responds that it reasonably eliminated Peraton's proposal from consideration during its conformance review in accordance with the terms of the solicitation. The agency contends that the inconsistencies between the staffing plan and the cost/price workbook hours prevented the agency from conducting a technical evaluation and failed to satisfy the solicitation's material requirements. Memorandum of Law (MOL) at 5-6. The agency further contends that the protester's responses to clarification questions did not resolve the discrepancies, and that they offered new information absent from Peraton's initial proposal. MOL at 9-11.

A contracting agency's evaluation of offeror responses in a task order competition is a matter within the agency's discretion. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4. In reviewing an agency's evaluation, we will not reevaluate the responses; 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. *American Fuel Cell & Coated Fabrics Co.*, B-420551, B-420551.2, June 2, 2022, 2022 CPD ¶ 139 at 9. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, inadequately documented, or not reasonably based. *McCann-Erickson USA, Inc.*, B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 3.

As explained below, we find that the agency's determination to exclude Peraton's proposal from the competition was inconsistent with the terms of the solicitation's

⁸ As the estimated value of the task order is at least \$300 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under civilian agency multiple-award indefinite-delivery, indefinite-quantity contracts exceeding \$10 million. 41 U.S.C. § 4106(f)(1)(B).

evaluation criteria. We cannot conclude however that the agency's error caused Peraton to suffer any competitive prejudice and therefore we find no basis on which to sustain the protest.⁹

Elimination from the Competition

We note first that nothing in the TOR's evaluation criteria advised offerors that the agency would perform a preliminary pass/fail conformance review of proposals to determine whether the offerors had complied strictly with the solicitation's proposal instructions. We also note that there is no evaluation criterion informing offerors that the agency would eliminate proposals having inconsistencies between technical and cost/price proposals. Agencies are required to evaluate proposals exclusively based on the evaluation factors stated in the solicitation. While a solicitation may establish additional informational, technical, administrative, or other requirements in the instructions for proposal preparation, those requirements may not properly be considered in connection with the evaluation of proposals--and correspondingly may not provide a basis for eliminating a proposal from consideration--unless those additional requirements also are specified as a basis for proposal evaluation. *Veterans Evaluation Servs., Inc., et al.*, B-412940, *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 16-17 n. 21; *Metis Sols., LLC et al.*, B-411173.2 *et al.*, July 20, 2015, 2015 CPD ¶ 221 at 5 n. 6.

Here, the agency reviewed Peraton's staffing plan, attachment P, and its cost/price workbook, attachment Q, and found inconsistencies between the documents. Specifically, some hours proposed for the tasks in the staffing plan did not match the hours proposed for those same tasks in the cost/price workbook; despite the misaligned hours for some tasks, the cumulative hours proposed for each CLIN were the same on both attachments. By way of example, the contracting officer points to the following discrepancies pertaining to the base period:¹⁰

⁹ Although we do not specifically address each of Peraton's challenges, we have reviewed them all and conclude that none provides a basis to sustain the protest.

¹⁰ Base year labor is contract line item number (CLIN) 0001. (For each year of performance, the TOR includes a single CLIN for labor, encompassing all of the tasks.) TOR amend. 2 at 2.

Base Period	Staffing Plan– Attachment P	Cost/Price Workbook – Attachment Q	Difference in Hours
Task 1	[DELETED]	[DELETED]	-8,525
Task 2	[DELETED]	[DELETED]	9,473
Task 3	[DELETED]	[DELETED]	-474
Task 4	[DELETED]	[DELETED]	-474
Task 5	[DELETED]	[DELETED]	0
Total Base Period Hours	[DELETED]	[DELETED]	0

2nd Supp. COS at 2.

The record shows that the agency decided to exclude Peraton’s proposal from the competition based on considerations not contemplated by the solicitation’s requirements. In deciding to exclude the proposal, the agency relies upon language in the solicitation instructions, section L.6.1., Project Staffing Plan, which states “[t]he offeror shall ensure there is consistency in the level of effort between the Project Staffing Plan provided in Part II and the Written Cost/Price Proposal provided in Part I, being cognizant of rounding issues.” TOR amend. 2 at 92; AR, Tab 7, COS Memo. to File, July 4, 2023 at 1. The agency also refers to another instruction to offerors in section L.5, Submission of The Written Cost/Price Proposal (PART I), requiring offerors to explain in their written cost proposal any inconsistency between proposed performance and cost/price, as a basis for excluding Peraton’s proposal. TOR amend. 2 at 86; see COS at 3. As noted, however, nothing in the TOR’s evaluation criteria advised offerors that the agency would perform a preliminary pass/fail conformance review to determine whether the firms had prepared their proposals in strict compliance with the instructions or warned offerors that their proposals could potentially be excluded from the competition.¹¹

The agency argues that Peraton’s proposal “was not accurate and complete” in accordance with the evaluation factors in section M.1, Method of Award, because the proposal did not conform to the TOR’s instructions; thus, in the agency’s view, the

¹¹ In contrast, the TOR advised offerors that a proposal would be ineligible for award if it failed to meet any of the four pass/fail criteria. TOR amend. 2 at 99-100. Thus, the solicitation itself shows that the agency distinguished between its evaluation methodology for certain proposal elements versus its evaluation methodology for the other non-cost evaluation factors, which were to be evaluated using adjectival ratings based on a meaningful, substantive assessment of the proposal’s content. The solicitation also advised offerors that unless a technical proposal received a rating of acceptable or higher, the agency would not perform a cost/price evaluation. *Id.* at 99.

protester's proposal did not meet a material requirement of the solicitation. MOL at 4-7, COS at 2-5. Moreover, despite admitting that the TOR's evaluation criteria do not include pass/fail evaluation regarding inconsistencies between the staffing plan, attachment P, and the cost/price workbook, attachment Q, the agency contends that it "considers a discrepancy of over 100,000 hours between the technical and cost proposal significant and material to its ability to evaluate an offeror[']s proposal." COS at 5.

In section M.1, Method of Award, the TOR states, "[p]roposals shall set forth full, accurate, and complete information as required by this solicitation package (including Attachments)," which is language generically describing proposal contents, as opposed to describing the evaluation factors that the agency would use to evaluate proposals. TOR amend. 2 at 99. That section is followed by other sections of the solicitation entitled "M.2, Pass/Fail Elements;" M.3, Cost/Price Proposal Evaluation; and "M.7, Technical Evaluation Factors," wherein the actual evaluation factors are described. Notwithstanding this distinction, neither the "Method of Award" section, nor the evaluation criteria in other sections, advised offerors that their proposals could be rejected for inconsistencies between cost and technical proposals. *Id.* at 99-101.

Because the solicitation did not advise offerors that their proposals could be rejected for inconsistencies between cost and technical proposals, we find the agency's rejection of Peraton's proposal on this basis unreasonable. Requirements provided in the instruction section (section L) of a solicitation are not the same as evaluation criteria provided in the evaluation section (section M); rather than establishing minimum evaluation standards, the instructions of section L generally provide guidance to assist offerors in preparing and organizing proposals. See *All Phase Envtl., Inc.*, B-292919.2 *et al.*, Feb. 4, 2004, 2004 CPD ¶ 62 at 4; *JW Assocs., Inc.*, B-275209.3, July 22, 1997, 97-2 CPD ¶ 27 at 3-4. Moreover, the solicitation failed to notify firms that such inconsistencies could result in the removal of their proposals from the competition before a substantive evaluation of their technical proposals. As Peraton's proposal passed the four pass/fail elements, its technical proposal, including the written proposal and the oral presentation, should have been evaluated. Only after the technical evaluation was completed could the agency consider inconsistencies between the staffing plan and the cost/price workbook as part of the cost/price evaluation pursuant to the TOR's evaluation criteria.

Competitive Prejudice

Despite finding that the agency improperly removed Peraton's proposal from the competition, we cannot conclude that the agency's error caused Peraton to suffer competitive prejudice. Competitive prejudice is an essential element of any viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *American Fuel Cell & Coated Fabrics Co.*, *supra* at 14. The

record fails to demonstrate that Peraton would have had a substantial chance of award absent the agency's premature removal of Peraton's proposal from the competition.

Here, the TOR provided that the agency intended to issue the task order without discussions and that the procedures of FAR subpart 15.3 do not apply to this acquisition. The TOR instead provided that the agency may ask clarifying questions of offerors regarding their written technical proposals "without allowing proposal revisions." TOR amend. 2 at 99.

The record shows that Peraton's response to the agency's second clarification question included information that was not in Peraton's initial proposal. While Peraton confirmed that the hours in the staffing plan, attachment P, were correct for labor hours by employee and task, Peraton identified "mapping inconsistencies for 10 positions" which did not correspond to its cost/price workbook, attachment Q. AR, Tab 6, Clarification Req. and Resp. 2 at 1. For example, Peraton explains that for Position No. 310 the cost/price workbook, attachment Q, column T incorrectly allocates base period and option period hours to Task 1, when the position and person should map to Task 2 on column T.¹² *Id.* Peraton explained further that the total hours for the staffing plan, attachment P, and the cost/price workbook, attachment Q, were the same so that price and its proposed solution were unaffected by the mapping misalignment. *Id.*

Peraton argues that GSA acted unreasonably by not addressing the apparent mistakes in its proposal through the cost realism evaluation envisioned by the solicitation. Protest at 19-20. Peraton also contends that its clarification responses sufficiently addressed the agency's concerns and did not amount to proposal revisions. *Id.* at 20-23.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. *Id.*; FAR 15.404-1(d)(1), 16.505(b)(3). The end product of a cost realism analysis is the total estimated cost (commonly referred to as "most probable cost") that the agency realistically expects to pay for the offeror's proposed effort, and it is the estimated cost, and not the offeror's proposed cost, that must be the basis of the

¹² Position No. 310 is identified as a key person. In the staffing plan, attachment P, for the base period this individual was proposed for Task 1 for [DELETED] hours and for Task 2 for [DELETED] hours. AR, Tab 13, Peraton Staffing Plan, Attachment P at Tab Base Period, Cells T10 & U10. In the cost/price workbook, attachment Q, for the base period, in column T, this individual was proposed for Task 1, for [DELETED] hours in Cells T542-T553 and for [DELETED] hours in Cells T2750-2761. AR Tab 11, Peraton Cost/Price Workbook, Attachment Q, at Tab Peraton P-Sheet.

agency's source selection determination. *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14. n.19.

We find the protester's reliance upon a cost realism adjustment to remedy the mapping inconsistencies between the staffing plan, attachment P, and the cost/price workbook, attachment Q misplaced. Based upon the protester's response to GSA's clarification questions, the protester submitted new information about its cost/price workbook. Although the protester argues that that the cumulative hours for each CLIN do not change because the structure of the procurement does not individualize the tasks, and therefore, its clarification responses are not proposal revisions, we are unpersuaded. Peraton's responses changed the information in its initial cost/price proposal, and we do not think it is unreasonable for the agency to conclude the changes are proposal revisions when the protester changes hours allotted to individuals, including key personnel, in its cost/price proposal. It is an offeror's responsibility to submit a well-written proposal that clearly demonstrates compliance with the solicitation, and where a proposal fails to do so, the offeror runs the risk that its proposal will be rejected. *Mission Essential, LLC, supra* at 5. Because we do not find unreasonable the agency's determination that Peraton's responses to the agency's clarification questions were proposal revisions, the only way for the protester to resolve the mapping inconsistencies would be by amending its proposal via discussions, which the solicitation did not require.

Moreover, at the time the agency received Peraton's second clarification response and decided to remove Peraton from the competition based on the inconsistencies before evaluating Peraton's proposal, the agency contends it had completed evaluations of two other proposals that the agency determined did not have "material deficiencies" that would render the proposals unacceptable; these proposals were thus eligible for award without discussions. COS at 8. Because the agency could make the award without discussions as contemplated by the solicitation, and Peraton could not properly receive an award without the agency opening discussions, the agency's failure to fully evaluate Peraton's proposal was ultimately of no consequence. If, however, the agency had not identified proposals eligible for award without discussions, the agency's failure to evaluate Peraton consistent with the solicitation might have required the agency to revise its solicitation and resolicit or to conduct discussions with all offerors including Peraton, whom the agency had already excluded from the competition.

In summary, the TOR informed offerors that GSA intended to issue the task order without discussions, and the protester's proposal required revisions to resolve inconsistencies between its technical and cost proposals. Further, the agency determined two firms were eligible for award without discussions, and therefore we cannot conclude that the protester would have a substantial chance for award. On this record, we find no basis on which to sustain the protest. *A.T. Kearney, Inc.*, B-237731, Mar. 19, 1990, 90-1 CPD ¶ 305 (finding no competitive prejudice where an agency has decided not to conduct discussions to resolve perceived cost deficiencies in protester's proposal). Thus, while we conclude that the agency unreasonably eliminated Peraton's proposal from the competition based on findings relating to inconsistencies in the firm's

proposal and alleged non-compliance with the solicitation's proposal instructions rather than a substantive evaluation consistent with the terms of the solicitation, we also conclude that Peraton cannot establish it has suffered competitive prejudice.

This protest is denied.

Edda Emmanuelli Perez
General Counsel