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Decision

Matter of: Peraton, Inc.

File: B-417358; B-417358.2

Date: June 11, 2019

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Colonel C. Taylor Smith, Michael J. Farr, Esq., and Jonathan P. Widmann, Esq., Department of the Air Force, for the agency.

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DIGEST

Protest alleging that the awardee was ineligible for award because it failed to meet a material requirement for small business participation is sustained where the agency's evaluation was unreasonable, inconsistent with the terms of the solicitation, and undocumented, and where the awardee's proposal, if evaluated in a manner consistent with the solicitation's mathematical formula, failed to meet the requirement.

DECISION

Peraton, Inc., of Herndon, Virginia, protests the award of a contract to Engility Corporation of Chantilly, Virginia, under request for proposals (RFP) No. FA8818-18-R-0021, issued by the Department of the Air Force for engineering, development, integration, and sustainment (EDIS) services in support of satellite systems for the Air Force Space Command, Space Warfighting Construct. Peraton asserts that Engility did not meet the RFP's material requirement for small business participation under the program management technical subfactor and, therefore, was ineligible for award. Peraton also challenges various aspects of the agency's evaluation of both Peraton's and Engility's proposals, and the agency's best-value tradeoff decision.

We sustain the protest.

BACKGROUND

The agency issued the RFP on May 8, 2018,¹ for technical services for ground systems to command and control satellites in space. Agency Report (AR), Tab 12, RFP Amendment 1, at 83; AR, Tab 10, Synopsis for RFP, at 2. Specifically, the RFP sought “engineering, development, integration, test, and sustainment” services for the Research and Development Space and Missile Operations program, in support of the Air Force Space Command, Space Warfighting Construct.² RFP at 83. Among other responsibilities, the contractor will be involved in transitioning the current infrastructure into “enterprise ground systems” that will be able to operate multiple satellites and provide a “standardized hardware capacity and service oriented architecture software platform required to perform tracking, telemetry, and commanding, contact scheduling, and cyber defense functions.” Id. In this regard, the agency seeks to develop a common system for control of all Air Force and potentially any other Department of Defense space vehicle assets and missions to be flown under its control.³ MOL at 1-2; see RFP at 83.

The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract for a 5-year base period and two 1-year option periods, under which the agency would issue cost-plus-award-fee or fixed-price task orders (TOs), with a maximum ordering value of \$655 million. RFP at 41, 86. In this regard, the RFP instructed offerors to provide a single proposal for the IDIQ contract and five sample TOs. Id. at 420. The RFP explained that “the effort spanned in the five TOs is considered to be representative of the types [of] work for future TOs; and will provide a basis for establishing competitively influenced contractual rates for fair and reasonable pricing of future TOs under the anticipated contract.” Id. For each sample TO, the RFP required offerors to complete the following table for each subcontractor, which included several columns of particular relevance here:

¹ The agency amended the RFP twice. All citations are to the conformed solicitation provided by the agency at Tab 12 of the agency report and are based on the PDF page numbers in the document.

² The Space Warfighting Construct is “the implementation of the Space Enterprise Vision, which was developed as a result of an [Air Force Space Command] commissioned study to look at how to make the nation’s national security space enterprise more resilient.” RFP at 83. According to the RFP, development of the “enterprise ground systems” covered by the EDIS procurement is “one of the major components” of the Space Warfighting Construct. Id.

³ The Air Force explains that, while the EDIS procurement is largely a follow-on requirement to a predecessor contract performed over the past ten years, the scope of the current effort was significantly reworked and is the result of “extensive acquisition planning activities” since at least 2015. AR, Tab 2, Memorandum of Law (MOL), at 2; Synopsis for RFP at 2; see RFP at 284.

Non-Prime Company Name	Subcontract Proposed Cost	Subcontract Proposed Fee	Subcontract Proposed Price	Prime Proposed Cost	Prime Proposed Fee	Prime Proposed Price

Id. at 310.

The RFP established that award would be made on a best-value tradeoff basis, weighing cost/price and two technical subfactors: systems engineering and program management.⁴ RFP at 421. Of relevance here, the program management technical subfactor contained five individual criteria--including a requirement for small business participation--and advised offerors that “[f]ailure to meet any one of the individual criteria . . . will result in an ‘unawardable’ rating at the subfactor level.” Id. at 424. In this regard, the RFP established a 25 percent minimum requirement for small business participation, to be evaluated on a pass/fail basis. Id. at 297, 425. Offerors were required to submit a small business participation commitment document (SBPCD), and the RFP advised that, “[f]or other-than-small business offerors, their [SBPCD] will comply with the small business percentage requirement of 25 [percent].”⁵ Id. at 425. To calculate the small business participation percentage, the RFP instructed:

4.3.2.5 Small Business. The Offeror shall describe how [its SBPCD] will ensure the 25 [percent] small business requirement is met. Small business participation constitutes small business utilization contributions to contract performance at 1st tier subcontract level. The percentage shall be based on percentage of small business costs/prices on labor [Contract Line Item Numbers] CLINs only, to include [firm-fixed-price] FFP CLINs that are predominately labor (e.g., Sustainment).^[6] The percentage shall

⁴ The RFP provided that the technical factor was considered more important than price, and, within the technical factor, the systems engineering subfactor was considered more important than the program management subfactor. RFP at 421. Under each technical subfactor, the proposals were to be assessed for technical capability and technical risk. The technical capability ratings were: outstanding/blue, good/purple, acceptable/green, marginal/yellow, and unacceptable/red. Id. at 422. For clarity, this decision omits the color code and refers only to the associated adjectival rating.

⁵ The RFP also instructed offerors to submit a small business subcontracting plan in accordance with Federal Acquisition Regulation (FAR) clause 52.219-9 and Defense Federal Acquisition Regulation Supplement clause 252.219-7003, which would become part of the contract upon award. RFP at 38-39, 313.

⁶ Section B of the RFP lists ten basic CLINs. The agency explained that, “[s]ince the EDIS contract is a service contract, labor CLINs are only those CLINs which call for work (labor) to be performed,” and stated that it considered the following to be labor CLINs: CLIN 0002 Mission Support, CLIN 0003 Mobile Range Flight, CLIN 0004

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be calculated on an annual basis by dividing total small business expenditures by total labor costs/prices on all TOs on just those labor CLINs. (Sec. M. 4.3.2.5). The SBPCD will become part of the contract upon award.

RFP at 297 (emphasis added). The RFP also required offerors to address the method used to develop the percentage in their SBPCD. Id. at 314.

On or before June 21, the agency received five proposals. AR, Tab 3, Source Selection Decision Document (SSDD), at 1. After evaluating the initial proposals, the agency established a competitive range of three offerors,⁷ conducted two rounds of discussions, and obtained final proposal revisions (FPRs) by December 18. MOL at 3-5; AR, Tab 5, Source Selection Evaluation Board (SSEB) Report, at 6. The SSEB evaluated the FPRs, and the source selection advisory council (SSAC) conducted a comparative analysis. Of particular relevance here, the evaluation report referenced text from Engility’s proposal and concluded that Engility’s SBPCD “complies with the small business percentage requirement of 25 [percent] by proposing 27 [percent].” AR, Tab 6, SSEB Report Attachment A, Evaluation Findings, at 291.

The source selection authority (SSA) reviewed the findings of the SSEB and the SSAC, and considered the following ratings:

	Peraton	Engility
Technical Subfactor 1: Systems Engineering	Acceptable	Good
Technical Subfactor 2: Program Management	Acceptable	Good
Total Proposed Price	\$57,041,907	\$80,342,567
Total Evaluated Price	\$53,770,874	\$75,919,659

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Special Studies, and CLIN 0005 Sustainment. AR, Tab 91, Supp. Contracting Officer’s Statement of Facts (COS) and Memorandum of Law in Response to GAO (Second Supp. COS/MOL), May 20, 2019, at 3; see RFP at 4-8. For the purposes of calculating the percentage of small business participation, the agency explained, and the parties agreed, that certain CLINs should be subtracted from the denominator (CLIN 0001 Transition, CLIN 0009 Travel, and CLIN 0010 Other Direct Costs) or, where the RFP did not instruct offerors to propose values, were not factored into the calculation by design. Second Supp. COS/MOL at 3. We note that the RFP describes CLIN 0004 as “furnish[ing] material” and not labor; however, this discrepancy does not affect the outcome of our decision because the offerors were not required to propose any value under CLIN 0004.

⁷ The third offeror’s proposal is not relevant to this protest, and is not further discussed.

SSDD at 10.⁸ Ultimately, the SSA selected Engility for award as offering the best value to the government. The SSA recognized that Engility’s proposal “demonstrated significant technical merit” and “clear technical advantages” as discussed by the SSEB and the SSAC, and concluded that the lower prices of the other acceptable proposals were outweighed by the technical advantages of Engility’s higher-priced proposal. Id. at 12-13.

On January 31, 2019, the agency issued the notice of award to Engility. AR, Tab 21, Notice to Peraton of Award, Jan. 31, 2019, at 1; AR, Tab 22, Notice to Engility of Award, Jan. 31, 2019, at 1. After receiving a debriefing, Peraton filed a protest with our Office challenging various aspects of the agency’s technical evaluation of both proposals, best-value tradeoff decision, and decision not to evaluate past performance. Following receipt and review of the agency report, Peraton filed a supplemental protest raising other challenges to the agency’s evaluation, including asserting that Engility’s proposal was ineligible for award because it did not meet the material requirement for small business participation.⁹ On May 15, our Office held a conference call with the parties to discuss certain substantive matters, including concerns about the record and the agency’s evaluation of Engility’s proposal under the small business participation requirement. Following the call, the agency filed a second supplemental report, to which the protester and the intervenor responded.

DISCUSSION

Peraton asserts that Engility’s proposal did not meet the small business participation requirement under the program management technical subfactor and, therefore, was ineligible for award. While Engility’s proposal represents that its small business subcontracting percentage is 27 percent, Peraton asserts that Engility actually proposed only 23.8 percent, and therefore failed to meet the solicitation’s 25 percent minimum requirement. Protester’s Comments and Supp. Protest, Apr. 15, 2019, at 23-25. Peraton states that it calculated this percentage by dividing Engility’s subcontract

⁸ The agency also assessed low technical risk for both offerors under both technical subfactors; assigned one strength to Peraton under the program management technical subfactor; and assigned two strengths to Engility, one under the systems engineering technical subfactor and one under the program management technical subfactor. SSDD at 10. The agency also determined that the total proposed prices of both offerors were reasonable, realistic, and not indicative of unbalanced pricing. Id.

⁹ Citing FAR § 33.104(c)(2)(ii), the agency notified our Office of its decision to continue with contract performance notwithstanding Peraton’s protests, based on its finding that “urgent and compelling circumstances that significantly affect the interests of the United States” would not permit waiting for a decision from our Office. Agency Memorandum for GAO Regarding Continuation of Contract Performance, Apr. 18, 2019, at 1.

proposed price by Engility's total labor costs/prices on all task orders.¹⁰ Id.; see RFP at 297 ("The percentage shall be calculated on an annual basis by dividing total small business expenditures by total labor costs/prices on all TOs on just those labor CLINs."). In this regard, Peraton argues that the term "total small business expenditure[s]" in the solicitation "can only reasonably mean the amount actually paid to small businesses." Protester's Supp. Comments, Apr. 30, 2019, at 19.

The Air Force asserts that "total small business expenditures" means "the total cost to the government for utilizing small businesses, including the prime contractor's fee." Second Supp. COS/MOL at 4. Accordingly, the agency states that it calculated Engility's proposed small business subcontracting percentage by using, as the numerator, Engility's total proposed price for its small business subcontractors, which includes overhead and fees added on by Engility as the large business prime contractor. Supp. COS/MOL at 29; Second Supp. COS/MOL at 4; see Intervenor's Response to Second Supp. COS/MOL at 2-3. The agency contends that allowing a large business prime to include its own fees in calculating the percentage subcontracted to small businesses "incentivizes the prime contractor to continue to subcontract with small businesses." Second Supp. COS/MOL at 9.

In response, Peraton asserts that "the government's approach does not make sense because the higher the fee the prime opts to charge on small business subcontracts, the less the prime will have to subcontract to its small business subcontractors to meet the requirement." Protester's Supp. Comments at 20. Peraton contends that the agency's calculation "would significantly reduce the subcontractor's actual participation to well below the 25 [percent] minimum mandatory requirement" and, as here, result in "a situation where the prime contractor was effectively permitted to inflate its small business participation rate by charging the government an additional \$[REDACTED] in prime contractor fees." Protester's Supp. Comments at 20; Protester's Response to Second Supp. COS/MOL, May 21, 2019, at 9. We have considered all of the parties' various arguments on this issue, and we agree with the protester.

In reviewing an agency's evaluation of proposals, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Mission Servs., Inc., B-415136.3, B-415136.4,

¹⁰ The parties agree, for the most part, on the methodology for calculating this denominator. Although the parties' calculations yield slightly different totals, the differences are immaterial to our resolution of the protest. See AR, Tab 87, Supp. COS/MOL, Apr. 25, 2019, at 27-28 (calculating the total as \$[REDACTED]); Protester's Supp. Comments at 16-17 (calculating the total as \$[REDACTED]); Intervenor's Supp. Comments at 19-20 (calculating the total as \$[REDACTED]). In response to the agency's second supplemental report, Engility states that it actually calculated a much lower amount for the denominator, but did not provide any reason for why it did not raise this in its earlier filings. See Intervenor's Response to Second Supp. COS/MOL, May 21, 2019, at 3 (calculating the total as \$[REDACTED]).

May 22, 2018, 2018 CPD ¶ 222 at 11. 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, undocumented, or not reasonably based. Conley & Assocs., Inc., B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 54.

Further, where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. See Bluehorse Corp., B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5.

We reject the agency's assertions for several reasons. The solicitation clearly dictates a formula for calculating the small business subcontracting percentage: "The percentage shall be calculated on an annual basis by dividing total small business expenditures by total labor costs/prices on all TOs on just those labor CLINs." RFP at 297. While the agency contends that "Peraton can point to no authority . . . dictating how the small business subcontracting percentage must be calculated," Second Supp. COS/MOL at 6-7, it is readily apparent that the purpose of a small business subcontracting requirement is to assess the extent to which an offeror proposes small businesses to actually perform, and be paid for, the work required under a solicitation. Therefore, we find that the agency's interpretation of the term "total small business expenditures"--that is, allowing money charged to the government as fees for the large business prime to be counted as payment to small businesses for work performed by small businesses--is plainly unreasonable. See, e.g., Synaptek Corp., B-410898.6, Feb. 29, 2016, 2016 CPD ¶ 78 at 12 (interpretation of solicitation as allowing dollars subcontracted to large businesses to be counted towards overall small business contracting goals was "plainly unreasonable and defeated the very purpose of the [agency's] analysis"); see also HydroGeoLogic, Inc., B-311263, B-311263.2, May 27, 2008, 2008 CPD ¶ 218 at 11 n.9 (in the context of small business subcontracting requirements in a solicitation, "[c]alculations of whether an offeror will comply with the subcontracting limitation must consider the cost of performance by the prime and subcontractor employees").

We also reject the agency's contention that allowing a large business offeror to count its own fees as part of the subcontracting percentage "incentivizes" large businesses to subcontract with small businesses. Second Supp. COS/MOL at 9. In addition to agreeing with the protester's assertions above--that allowing large business fees to be considered part of small business expenditures in fact could have the opposite of an incentivizing effect--we note that here, an offeror is motivated to subcontract with small businesses in order to avoid the risk of rejection for failing to meet a pass/fail requirement. See, e.g., Central Texas Coll., B-309947, Oct. 12, 2007, 2007 CPD ¶ 187

at 4 (offeror has the burden of submitting “a subcontracting plan that adequately demonstrate[s] its merits” and “[runs] the risk of rejection by failing to do so”), citing DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47 at 2.

Moreover, the record is devoid of any documentation to show that the agency contemporaneously calculated and verified Engility’s proposed small business subcontracting percentage. Rather, the evaluation report simply references text from Engility’s proposal and concludes: “[Engility’s SBPCD] in Vol. II Sec. 2.5 complies with the small business percentage requirement of 25 [percent] by proposing 27 [percent].” SSEB Report Attachment A, Evaluation Findings at 291. The Air Force concedes that “the contemporaneous evaluation record does not show the specific calculations the Air Force made,” Second Supp. COS/MOL at 11-12, but has not provided a meaningful explanation for the absence of such documentation.¹¹ Although an agency is not required to retain every document generated during its evaluation of proposals, the agency’s evaluation must be sufficiently documented to allow our Office to review the merits of a protest. Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 10. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Id.

In their supplemental filings, the Air Force and Engility present an alternative argument that if “subcontract proposed price” is used to represent “total small business expenditures” in the calculation of small business participation, then the “total labor costs/prices” as defined in the solicitation should be reduced to exclude “Engility’s fee and other costs.” According to the Air Force, this exclusion would result in a “cost-to-cost” comparison that it argues should be permissible under the solicitation; Engility also asserts that it used this approach to calculate the small business subcontracting percentage represented in its proposal.¹² See Supp. COS/MOL at 28-29; Second

¹¹ In response to questions raised by our Office regarding the lack of documentation in the record, the agency provided only a partially redacted internal agency communication--dated after the receipt of initial proposals and before the establishment of the competitive range--between the CO and a “contract cost/price evaluator,” in which the CO asked for “a way you can figure out” Engility’s small business subcontracting percentage. AR, Tab 90, Email from CO to Contract Cost/Price Evaluator Regarding Calculation of Small Business Subcontracting Percentage (Redacted), Sept. 5, 2018, at 2. This single document, presented in a piecemeal fashion, does not establish whether--or explain how--any calculation was contemporaneously conducted by the agency.

¹² In response to questions raised by our Office, Engility explained that it calculated the denominator as \$[REDACTED]. Intervenor’s Response to Second Supp. COS/MOL at 3. This figure is inconsistent with the figure that Engility submitted in its prior comments and, in any event, nowhere in the contemporaneous record. See Intervenor’s Supp. Comments at 19-20.

Supp. COS/MOL at 7-8; Intervenor's Response to Second Supp. COS/MOL at 3. In this regard, the agency contends that a separate sentence in the solicitation--which states that "the percentage shall be based on small business costs/prices"--allows for calculating the percentage of small business participation only at "the cost-to-cost level (meaning without fee) or the price-to-price level (meaning with fee)." Second Supp. COS/MOL at 7-8; Supp. COS/MOL at 28-29; see RFP at 297. Based on this interpretation of the solicitation, the Air Force claims that Peraton is comparing costs to prices, and asserts that such a calculation "would be invalid."¹³ Second Supp. COS/MOL at 8.

As noted above, where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., supra, at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. See Bluehorse Corp., supra, at 5.

The agency's alternative interpretation is illogical and inconsistent with the plain language of the solicitation. As noted above, the solicitation prescribes a clear formula for calculating the small business subcontracting percentage: "The percentage shall be calculated on an annual basis by dividing total small business expenditures by total labor costs/prices on all TOs on just those labor CLINs." RFP at 297. We fail to see how the solicitation's requirement to use "total labor costs/prices" as part of the calculation to determine small business participation permits discretion to exclude from this calculation a portion of the amount charged to the government for labor as defined in the solicitation. Id. Moreover, while the agency attempts to create a connection between two juxtaposed provisions, we reject the agency's assertion that the solicitation contemplates either adding the large business prime contractor's fee to the total small business expenditures or removing the large business prime contractor's fee from the total labor costs/prices. Such an approach leaves the calculation open to manipulation and, as the protester points out, "significantly reduce[s] the subcontractor's actual participation[.]"¹⁴ Protester's Supp. Comments at 20.

¹³ The agency and intervenor's alternative argument is also based on describing Engility's subcontract proposed price as "a non-fee-bearing number," i.e., a cost; we note, however, that Engility's proposal plainly labels this value as a "price" and states that it includes subcontractor costs and subcontractor fees. Supp. COS/MOL at 28; Intervenor's Response to Second Supp. COS/MOL at 2; see AR, Tab 75, Engility Proposal, Vol. III, at 98 (Table 3-11, columns listing "subcontract proposed fee" and "subcontract proposed price"). In their various filings, neither the agency nor the intervenor address this underlying discrepancy.

¹⁴ Moreover, even were we to accept the flawed premise that the solicitation contemplated only a cost-to-cost or a price-to-price calculation--which we do not--the agency's proposition is flatly contradicted by the record. Engility's proposal plainly states its method for calculating its small business participation percentage as follows:

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In sum, we find unpersuasive the agency's position that the solicitation permitted a large business offeror to meet a material requirement for small business participation by counting amounts paid to the large business instead of to its small business subcontractors. Because the agency's alleged evaluation was unreasonable, inconsistent with the terms of the solicitation, and undocumented, we sustain the protest.¹⁵

Furthermore, based on the plain language of Engility's proposal and a reasonable application of the solicitation's methodology for calculating the small business participation percentage, Engility's proposal failed to meet the minimum requirement of 25 percent small business participation and, therefore, was technically unacceptable and ineligible for award. As noted above, it is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. The Boeing Co., supra, at 54. Therefore, the agency's award to Engility was improper.

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Engility is proposing a Small Business Participation Commitment of 27 [percent] . . . based on the percentage of small business proposed prices on labor CLINs only, to include FFP CLINs that are predominately labor.

The percentage was and will continue to be calculated on an annual basis by dividing total small business expenditures by total labor costs on all TOs, on just those labor CLINs.

AR, Tab 84, Engility SBPCD, June 21, 2018, at 1 (emphasis added); see also SSEB Report Attachment A, Evaluation Findings at 290. Engility further confirms that it calculated its small business participation percentage by dividing "the sum of its [REDACTED] small business subcontract prices for labor CLINs" by the "total proposed costs on all labor CLINs." Declaration of Director of Finance, May 21, 2019, at 1-2. As noted above, the agency asserted to our Office that a price-to-cost approach, which is what Engility used, "would be invalid." Second Supp. COS/MOL at 8. Therefore, even by the agency's alternative argument, the Air Force should have found Engility to be technically unacceptable.

¹⁵ We decline to address Peraton's other challenges, since Engility's failure to meet the minimum percentage requirement for small business participation renders its proposal technically unacceptable. In its various filings, Peraton contested the following, including but not limited to: the agency's evaluation of Peraton's proposal under both technical subfactors; the agency's alleged unequal evaluation of Peraton's and Engility's proposals; the agency's evaluation of Peraton's FPRs, and documentation thereof; the agency's best-value tradeoff and award decision; and the agency's decision not to evaluate past performance. We have considered all of Peraton's challenges and find no merit to them.

RECOMMENDATION

We recommend that the Air Force review the terms of the solicitation to determine if this requirement reflects the agency's actual requirements with regard to small business participation in the EDIS contract. If the agency determines that this requirement does meet its actual requirements, we recommend that the agency either terminate the contract awarded to Engility for the convenience of the government and make award to the offeror whose proposal complies with the terms of the solicitation and offers the best value to the government; or open discussions with all offerors, obtain revised proposals, document its evaluation, and make award consistent with the terms of the solicitation. In the alternative, the agency may consider revising the terms of the solicitation if appropriate. If the agency revises the terms of the solicitation, it should open discussions with all offerors, obtain revised proposals, document its evaluation, and make award consistent with the terms of the solicitation.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel