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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: AT&T Corp.

File: B-299542.3; B-299542.4

Date: November 16, 2007

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Thomas L. McGovern III, Esq., Todd R. Overman, Esq., and Ann M. Lichter, Esq., Hogan & Hartson LLP, for Nortel Government Solutions, Inc., an intervenor.

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DIGEST

1. Agency's discussions with protester were not meaningful where the agency found the protester's staffing plan contained significant weaknesses but failed to sufficiently identify the scope of the agency's concerns in discussions.
 2. Protest challenging the evaluation of awardee's management approach proposal (specifically, its proposed staffing plan) is sustained where the agency subsequently reached conclusions that differed from the underlying evaluation findings, and provided no explanation for the inconsistency.
 3. Protest challenging the evaluation of offerors' technical proposals is denied where the record establishes that the agency's evaluation was reasonable and consistent with the evaluation criteria.
 4. Protest challenging the evaluation of the protester's past performance is denied where the record establishes that the agency's evaluation was reasonable and consistent with the stated evaluation criteria.
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DECISION

AT&T Corp. protests the award of a contract to Nortel Government Solutions, Inc. under request for proposals (RFP) No. SSA-RFP-06-1031, issued by the Social Security Administration (SSA) for the agency's telephone systems replacement

project (TSRP). AT&T argues that the agency's evaluation of offerors' proposals and subsequent source selection decision were improper. AT&T also contends that the agency's discussions with the protester regarding the offeror's proposed staffing plan were not meaningful.

We sustain the protest in part and deny it in part.

BACKGROUND

The SSA, the federal government agency charged with administering the social security trust fund, has a staff of over 65,000 employees. In addition to the agency's headquarters, SSA has a field organization consisting of 10 regional offices, 6 program service centers, and more than 1,500 field offices to provide services at the local level. The TSRP represents SSA's replacement of its current telephone systems with an enterprise voice over Internet protocol (VoIP) telephone solution, to support the agency's current and future requirements and the transition to Internet protocol (IP) telephones. In general terms, the statement of work here required the contractor to remove SSA's existing telephone system, and to provide all hardware, software, and services necessary to engineer, install, and integrate the TSRP solutions with SSA's government-furnished equipment.¹ RFP amend. 6, SOW §§ C.1.1 – C.1.3.

The RFP, issued on August 10, 2006, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year together with nine 1-year options.² The RFP identified five evaluation factors: technical approach, past performance, key personnel qualifications, management approach, and price.³

¹ The statement of work (SOW) also included a performance schedule comprised generally of an implementation period during which the contractor would engineer, furnish, and install the TSRP system and a "managed services" period (also referred to as the "steady state" period) in which the contractor would manage, administer, and maintain the VoIP solution. SOW § C.1.3.

² The contract line item numbers (CLIN) within each performance period, also fixed-price in nature, consisted of specific products and/or SOW tasks (e.g., site implementation of medium-sized field office).

³ The RFP did not expressly identify evaluation subfactors. However, the solicitation did instruct offerors that their technical approach submissions were to be structured as follows: 1) TSRP solution architecture and configuration; 2) TSRP solution features; 3) TSRP solution operations and management capability; and 4) TSRP system supplementary features. RFP amend. 6, § L.2.1. Similarly, with regard to the management approach factor, offerors were instructed that their proposals were to be organized according to, and address, the following areas: 1) program management requirements; 2) quality and test requirements; and 3) training requirements. The

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The solicitation stated that the four technical/non-price (hereinafter technical) factors were listed in descending order of importance and, when combined, were more important than price. Award was to be made to the responsible offeror whose proposal was determined to be the “best value” to the government, all factors considered. RFP amend. 3, § M.1.

Four offerors, including AT&T and Nortel, submitted proposals by the November 9 closing date. An agency technical evaluation team (TET) evaluated offerors’ proposals as to the technical factors using an adjectival rating system (i.e., excellent, good, acceptable, marginal, and unsatisfactory) that was set forth in the RFP.⁴ The TET’s evaluation ratings of offerors’ initial proposals were as follows:

Factor	AT&T	Nortel	Offeror C	Offeror D
Technical Approach	Marginal	Good	Marginal	Unsatisfactory
Past Performance	Good	Good	Good	Acceptable
Key Personnel	Acceptable	Acceptable	Acceptable	Acceptable
Management Approach	Marginal	Acceptable	Marginal	Marginal
Overall	Marginal	Good	Marginal	Unsatisfactory
Price	\$297,094,538	\$285,651,653	\$296,494,909	\$423,313,419

Agency Report (AR), Tab 13, Initial Technical Evaluation Report, at 4-46; Tab 14, Competitive Range Determination, at 16, 23.

The contracting officer subsequently decided that discussions with offerors were necessary, and established a competitive range consisting of the three most highly-rated, lowest-priced proposals. *Id.*, Tab 14, Competitive Range Determination, at 25-26. The agency conducted written and oral discussions, followed by the offerors’

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solicitation also set forth tables of requirements, cross-referenced to sections of the SOW, that offerors’ proposals were to explicitly address. *Id.*, § L.2.3.

⁴ The solicitation also included narrative descriptions for each of the adjectival ratings under each evaluation factor, as well as for the overall rating of offerors’ technical proposals. RFP amend. 3, § M.1.1 – M.1.1.4.

submission of final proposal revisions (FPR).⁵ The TET then evaluated the offerors' FPRs as well as responses to discussions and clarifications.⁶ The TET's final evaluation ratings of the AT&T and Nortel proposals were as follows:

Factor	AT&T	Nortel
Technical Approach	Acceptable	Good
Past Performance	Good	Good
Key Personnel	Acceptable	Acceptable
Management Approach	Acceptable	Good
Overall	Acceptable	Good
Price	\$224,590,779	\$273,788,464

AR, Tab 33, Final Technical Evaluation Report, at 3, 9.

After receipt of the final price and technical evaluation reports, the contracting officer then prepared a detailed best value tradeoff memorandum recommending award to Nortel.⁷ *Id.*, Tab 35, Best Value Tradeoff Memorandum. Additionally, the agency source selection advisory council (SSAC) briefed the source selection authority and also recommended contract award to Nortel. *Id.*, Tab 37, SSAC Award Recommendation. On July 27, 2007, after having received the contracting officer's best value tradeoff memorandum and the SSAC's award recommendation, the source selection authority determined that Nortel's higher technically-rated, higher-priced proposal represented the best value to the government. *Id.*, Tab 38, Source Selection Decision. This protest followed.

⁵ Prior to the submission of FPRs, SSA also amended the solicitation and changed the TSRP implementation period from 3 years (calendar year (CY)-1 through CY-3) to 4 years (CY-1 through CY-4). RFP amend. 9, § C.1.3. The agency also sought technical and price clarifications from offerors after the submission of FPRs.

⁶ The proposal of the third offeror included in the competitive range is not relevant to the protest here and will not be discussed further.

⁷ The contracting officer found that Nortel's proposal was technically superior to AT&T's under both the technical approach and management approach factors. Under the management approach factor, the contracting officer cited, among a number of identified proposal strengths, Nortel's staffing plan (both its staffing levels and labor mix). By contrast, the contracting officer stated that the agency's evaluation had revealed that AT&T's staffing plan represented the offeror's principal weakness and area of risk insofar as its proposed staffing levels were so low as to potentially threaten the ability of the offeror to successfully perform. *Id.*, Tab 35, Best Value Tradeoff Memorandum, at 22-26.

DISCUSSION

AT&T's protest raises numerous issues that can be grouped into five categories. First, the protester contends that the agency failed to engage in meaningful discussions with the firm regarding its proposed staffing plan. Second, the protester argues that the agency's evaluation of offerors' proposals under the management approach factor (specifically, staffing plans) was improper. Third, AT&T alleges that the agency's evaluation of offerors' proposals under the technical approach factor was improper. Fourth, the protester argues that the agency's evaluation of its past performance was unreasonable. Lastly, AT&T alleges that SSA's best value tradeoff determination was flawed and unreasonable.⁸ As detailed below, we conclude that the agency failed to conduct meaningful discussions with AT&T regarding its proposed staffing plan, and that the agency's evaluation of Nortel's proposal under the management approach factor was improper. Although we do not here specifically address all of AT&T's remaining arguments about the evaluation of proposals, we have fully considered all of them and conclude that they are without merit.

Lack of Meaningful Discussions

AT&T protests that the agency failed to adequately raise the concerns it had regarding AT&T's staffing plan during the discussions held with the offeror. AT&T also contends that the agency's discussions were misleading, because SSA identified one narrow area of the offeror's staffing plan as lacking sufficient detail and failed to inform AT&T of the true nature and breadth of the evaluated weaknesses here. The protester argues that the lack of meaningful discussions was prejudicial to it, since the perceived weaknesses in AT&T's staffing plan became a major factor in the agency's subsequent best value tradeoff determination. Protest, Sept. 20, 2007, at 44-51.

When discussions are conducted, they must at a minimum identify deficiencies and significant weaknesses in each competitive-range offeror's proposal. Federal Acquisition Regulation (FAR) § 15.306(d)(3); Multimax, Inc., et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 12; PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. Discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 12; Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 8. For example,

⁸ AT&T's original protest also raised two additional issues: (1) that SSA's evaluation of offerors' proposals under the key personnel factor was unreasonable; and (2) that the agency's evaluation of offerors' proposals under the management approach factor in areas other than staffing plans was improper. AT&T subsequently withdrew these protest issues. Comments, Sept. 20, 2007, at 3-4.

discussions are not meaningful where the agency fails to apprise an offeror that its staffing levels are viewed as unreasonably low. Professional Servs. Group, Inc., B-274289.2, Dec. 19, 1996, 97-1 CPD ¶ 54 at 4. Further, an agency may not mislead an offeror—through the framing of a discussion question or a response to a question—into responding in a manner that does not address the agency’s concerns, or misinform the offeror concerning a problem with its proposal or about the government’s requirements. Multimax, Inc., et al., *supra*; Metro Mach. Corp., B-281872 *et al.*, Apr. 22, 1999, 99-1 CPD ¶ 101 at 6.

Here, with regard to the management approach factor, the RFP stated as follows:

The Government will evaluate the Offeror’s Management Approach to determine whether it presents an effective means of control and oversight of the Offeror’s and subcontractors’ actions during the performance of the contract. . . . The Offeror is to provide a narrative description of its Management Approach, as well as provide the management related plans and documentation detailed in the Instructions to Offerors (see Section L.2.2.3.1 – L.2.2.3.6).

RFP amend. 3, § M.1.1.4. Among the various management-related plans that offerors were instructed to submit was a TSRP program plan, which included the offeror’s proposed staffing plan.⁹ *Id.*, amend. 6, § L.2.2.3.1.

AT&T submitted its TSRP staffing plan as part of its initial proposal. AR, Tab 11, AT&T Initial Proposal, Vol. II, Business Factors, at II-112, Table II.3.1.1.5-1. The TET evaluated AT&T’s initial proposal as marginal under both the management approach factor and program management subfactor, and identified various strengths and weaknesses supporting its determinations. *Id.*, Tab 13, Initial Technical Evaluation Report, at 10-11. This first version of the agency’s initial technical evaluation report makes no reference to AT&T’s staffing plan.

The contracting officer then directed the TET to specifically evaluate offerors’ proposed staffing plans.¹⁰ With regard to AT&T, the TET determined that the

⁹ The staffing plan submitted by an offeror as part of its proposal was a notional one. That is, the contract to be awarded under the RFP here requires the contractor to perform identifiable tasks for fixed prices. Thus, the offerors were not required to commit to perform the work with the level or mix of labor actually identified in their staffing plans, and the agency was not entitled to actually receive the level or mix of labor that offerors identified in their staffing plans. However, the agency evaluated offerors’ staffing plans to assess the understanding and risk associated with each offeror’s proposal under the management approach factor.

¹⁰ In a conference call held by GAO with all parties, the agency stated that after completing the initial evaluation of proposals but before making the competitive

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offeror's staffing plan indicated a total of [DELETED] staff years for the entire TSRP project life cycle. AR, Tab 13, Initial Technical Evaluation Report, app. 5, Evaluation of Proposed Project Lifecycle Staffing Plans, at 5. The TET also stated:

We analyzed the man-loading charts in the AT&T technical proposal and found the proposed levels of effort appear to [be] at minimal levels as outlined in the following observations:

- Staffing, as presented in the proposal, for the [voice network operations center] VNOc and Help desk personnel at the Durham [North Carolina] and [national computer center] NCC locations could not be determined.¹¹ A final evaluation of staffing and workloads is dependent upon a response to this clarification. The proposed staffing at current levels would be considered inconsistent with the proposed implementation schedule without a clear understanding of the support personnel. The risk of implementing a minimal staffing plan as presented could jeopardize the success of the project.

Id. (emphasis added).

SSA conducted written discussions with each competitive-range offeror.¹² The agency's discussions with AT&T consisted of 18 pages, broken down by evaluation factor, that identified weaknesses,¹³ items requiring clarification or additional detail, and erroneous assumptions. The discussions identified five specific weaknesses in

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range determination, the contracting officer requested that the TET take a more detailed look at offerors' staffing plans. This resulted in the development of the "TET Evaluation of Proposed Project Lifecycle Staffing Plans," which was appended to the initial technical evaluation report.

¹¹ The statement of work required the contractor to establish a multi-site VNOc—with one site located at SSA's NCC in Baltimore, Maryland, and the second site at the agency's alternate data center in Durham, North Carolina—that would perform TSRP network operations and help desk functions. SOW § C.6.4.1.

¹² The agency subsequently held oral discussions with each offeror as well. The record does not reflect that the agency's oral discussions with AT&T regarding the offeror's staffing plan went beyond the written discussion items. AR, Tab 20, Record of Negotiation with AT&T.

¹³ The agency's discussion items also generally characterized the identified weaknesses (e.g., "significant weakness," "major weakness"). Id., Tab 15, Discussions with AT&T, at 1-9.

AT&T's proposal regarding the offeror's management approach, but did not address AT&T's staffing plan. Id., Tab 15, Discussions with AT&T, at 8-9. Rather, within the section of the discussions dealing with AT&T's pricing volume, the agency addressed AT&T's staffing plan as follows:

1.3.7 AT&T Staffing Analysis

The programmatic methods proposed in the Technical Approach Volume by AT&T appear sufficient to meet the Government's performance and delivery requirements for managed services; however, the personnel staffing charts do not provide sufficient information to determine that the staffing levels are consistent with AT&T's proposed programmatic methods. Specifically, staffing levels for VNOC and Help Desk problem intake personnel at the Durham and NCC locations could not be determined from the staffing charts. This is an area of risk that must be clarified and/or addressed.

Id. at 13-14.

AT&T submitted its FPR after the completion of discussions. As part of its revised proposal, AT&T increased its total TSRP lifecycle staffing from [DELETED] staff years to [DELETED] staff years,¹⁴ and provided additional details regarding its staffing plan for VNOC and Help Desk problem intake personnel at the Durham and NCC locations. Id., Tab 23, AT&T's FPR, Vol. II, Business Factors, at II-115 to II-116, Table II.3.1.1.5-a. The TET evaluated AT&T's FPR and, as to the management approach factor, changed AT&T's evaluation rating from "marginal" to "acceptable," since the offeror's revised proposal was found to have "satisfactorily addressed a number of issues that were judged to be weaknesses in the original proposal." Id., Tab 33, TET Final Evaluation Report, at 6. With regard to AT&T's revised staffing plan, however, the TET stated:

As presented in the initial RFP proposal, [staffing levels] for the VNOC and Help desk personnel at the Durham and NCC locations could not be determined. The FPR provides a listing of each job description within the NCC and Durham VNOC.

* * * * *

AT&T has presented a conservative staffing plan for CY-1 staffing levels. The implementation years (CY-1 through CY-4) show staffing

¹⁴ The protester contends that that increase in its staffing was primarily related to the change in the TSRP implementation period from 3 years to 4 years. Comments, Sept. 20, 2007, at 20.

levels for each quarter and appear to be set at minimal and conservative levels.¹⁵

Id., app. II, Evaluation of Proposal Project Lifecycle Staffing Plans, at 5-6. The TET also concluded that:

AT&T has not provided sufficient details on staffing and management in their final revised proposal for the Agency to definitively determine that they will be able to supply all resources of the proper qualifications and skill-mix to address the Agency's requirements regarding implementation, engineering and service provisioning over the entire life-cycle of the TSRP. This lack of detail represents potential performance risks if AT&T is unable to staff appropriately.

Id., Tab 33, Final Technical Evaluation Report, at 9.

After completion of the final technical and price evaluations, the contracting officer prepared a best value tradeoff memorandum, which the agency source selection authority relied upon and adopted without exception in making his award determination. In summarizing the strengths and weaknesses in AT&T's proposal, the contracting officer stated:

[T]here are some weaknesses present related to staffing levels for certain task areas that could negatively impact the Offeror's ability to deliver the TSRP system in accordance with the Government's specifications and delivery schedule, as well as affect the delivery of managed services over the life of the contract. AT&T details on staffing and management in their final revised proposal were such that the Agency was unable to definitely determine that they will be able to supply all resources of the proper qualifications and skill-mix to address the Agency's requirements regarding implementation, engineering and service provisioning over the entire life-cycle of the TSRP. This . . . is a weakness that cannot be minimized because it has

¹⁵ The TET also identified three new weaknesses in AT&T's revised staffing plan: 1) the staffing levels for field engineers and technicians were inconsistent (*i.e.*, they increased and decreased quarterly) during the implementation years; 2) AT&T was using a subcontracted staffing approach to accomplish training in the field, using a dispersed network of field training personnel; and 3) AT&T's operations and customer support staffing levels during the "steady state" years represented a performance risk because the levels were the same as those proposed for the implementation years. Id., Tab 33, Final Technical Evaluation Report, app. II, Evaluation of Proposal Project Lifecycle Staffing Plans, at 6.

potential performance risk impacts that must be considered in the trade-off analysis.

AT&T has presented a conservative staffing plan for CY-1 staffing levels. The implementation years (CY-1 through CY-4) show staffing levels for each quarter and appear to be set at minimal and conservative levels. . . . Upon completion of CY-4 AT&T proposes to staff at very conservative levels to support ongoing “steady state” activities. With the full burden of supporting all of the Agency’s telephone systems, the level of effort required could represent a risk for the Operations and Customer Service staff to adequately support the systems throughout the steady state years of the program.

Id., Tab 35, Best Value Tradeoff Memorandum, at 6 (emphasis added).

Further, in the comparison of offerors’ strengths and weaknesses, the contracting officer stated:

SSA’s non-price evaluators feel that AT&T’s overall staffing approach presents the highest level of potential performance risk of the three proposals, whereas Nortel’s staffing approach provides the least degree of potential performance risk, both through installation/ implementation and over the steady state/managed services portion of the project.

For AT&T the non-price evaluations revealed the principal weakness and area of risk related to life cycle staffing levels being so low as to potentially threaten the ability of the vendor to successfully deliver the proposed solution in accordance with the Government’s delivery schedule and to support the TSRP user community across the contract term in a fully satisfactory manner.

Id. at 22 (emphasis added).

In its report to our Office, SSA argues that its actions here were proper for the following reasons: (1) the weaknesses found by the agency in AT&T’s staffing plan were not significant ones, so no discussions were in fact required here; (2) the agency nevertheless conducted meaningful discussions with AT&T regarding its staffing plan; and (3) the agency was not required to re-open discussions with AT&T simply because AT&T’s staffing plan subsequently became a discriminator for source selection purposes. AR, Oct. 1, 2007, at 1-5, AR, Nov. 2, 2007, at 1-6.

As discussed in detail below, we conclude that the agency’s actions were improper because: (1) the agency’s initial technical evaluation regarded AT&T’s staffing plan as a significant weakness; (2) the agency failed to conduct meaningful discussions

with AT&T regarding this significant weakness; and (3) the agency's substantial reliance on AT&T's staffing plan in its best value tradeoff determination clearly demonstrates that the lack of meaningful discussions here was prejudicial to AT&T.

As set forth above, the record reflects that the TET's initial evaluation of proposals identified two separate concerns with AT&T's proposed staffing plan. First, the evaluators found that AT&T's staffing appeared to be at minimal levels in relation to the RFP's requirements. Second, the TET also believed that AT&T's entire staffing plan lacked sufficient detail, as exemplified by the offeror's staffing for the VNOC and help-desk personnel at the Durham and NCC locations. Moreover, the agency evaluators considered AT&T's staffing plan to be a significant weakness, as evidenced by the initial evaluation report. Specifically, in addition to stating that "[t]he proposed staffing at current levels would be considered inconsistent with the proposal implementation schedule without a clear understanding of the support personnel," the TET expressly found that "[t]he risk of implementing a minimal staffing plan as [AT&T] presented could jeopardize the success of the project." AR, Tab 13, Initial Technical Evaluation Report, app. 5, Evaluation of Proposed Project Lifecycle Staffing Plans, at 7. We think that when an agency finds, as it did here, that the risk associated with a given aspect of an offeror's proposal may jeopardize the overall success of the project, this represents a significant weakness. See FAR § 15.001 (a "significant weakness" in an offeror's proposal is a flaw that appreciably increases the risk of unsuccessful contract performance). Given this finding regarding the risk associated with AT&T's staffing plan, the fact that SSA did not expressly characterize the staffing plan as a significant weakness is not controlling.¹⁶ See Alliant Techsystems, Inc.; Olin Corp., B-260215.4, B-260215.5, Aug. 4, 1995, 95-2 CPD ¶ 79 at 7-8. Accordingly, we conclude that the agency was required to conduct discussions with AT&T regarding its staffing plan.¹⁷

¹⁶ The agency argues that because AT&T's initial proposal received a management approach rating of "marginal," and the rating here was defined as an approach having weaknesses that are not offset by strengths, AT&T's staffing plan could not, by definition, have been a "significant weakness." AR, Nov. 2, 2007, at 5. We note that, following this logic, the other management approach weaknesses that SSA expressly identified in its discussions with AT&T as significant weaknesses would not in fact be so. In any event, an agency's assigned evaluation rating is also not controlling of whether the offeror's proposal contains significant weaknesses that must be identified if discussions are conducted.

¹⁷ AT&T argues that the "new" weaknesses identified by the TET in its revised staffing plan were also apparent in its initial staffing plan, and should also have been raised in discussions. Protest, Sept. 20, 2007, at 22, 48-49. Where, after discussions are completed, an agency identifies significant weaknesses or deficiencies pertaining to the proposal as it was prior to discussions, the agency is required to reopen discussions in order to raise the concerns with the offeror. Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 67 at 8. Here, the record reflects that the first and third
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Further, while the record shows that SSA did conduct discussions with AT&T regarding its staffing plan, we think that these discussions were not meaningful. As set forth above, the agency provided AT&T with one discussion item regarding its staffing plan. This item informed AT&T only of SSA's concern that the staffing plan lacked sufficient detail ("the personnel staffing charts do not provide sufficient information to determine that the staffing levels are consistent with AT&T's proposed programmatic methods," AR, Tab 15, Discussions with AT&T, at 13-14), and completely failed to mention the agency's equal, if not greater, independent concern that AT&T's staffing levels were considered too low. An agency's belief that an offeror's staffing levels are too low is materially different from a concern that a staffing plan lacks sufficient detail; the fact that both involve staffing is not sufficient to conclude that the agency here provided meaningful notice to AT&T as to the total scope of its concern. See Andrew M. Slovak, B-253275.2, Nov. 2, 1993, 93-2 CPD ¶ 263 at 4 (discussions limited to a food menu's item cycle did not put offeror on notice of the agency's separate concern that the menu also failed to provide for healthy food items).

Moreover, the discussion item here specified only one particular area of AT&T's staffing plan as lacking sufficient detail ("[s]pecifically, staffing levels for VNOc and Help Desk problem intake," id. at 14), when the agency's real concern was that AT&T's entire staffing plan lacked sufficient information. See Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 14 (agency failed to conduct meaningful discussions when it determined that offeror's entire quality control plan was a significant weakness, but identified only two specific aspects of the quality control plan in discussions). In our view, not only was AT&T inadequately advised of other areas of its staffing plan that lacked sufficient detail, but the agency's failure to identify the scope of its concern may have misled the offeror into believing that those areas did not require further adjustment.¹⁸ Also, unlike other identified

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additional weaknesses identified in AT&T's revised staffing plan--the inconsistent field engineer and technician staffing levels during the implementation years, and the operations and customer support staffing levels during the steady state years being the same levels as during the implementation years--should have been apparent to the agency prior to discussions. Nevertheless, the record does not establish that SSA considered these weaknesses to be significant ones. See AR, Tab 33, Revised Technical Evaluation Report, at 8-9, Tab 35, Best Value Tradeoff Memorandum, at 6. Also, the record shows that the remaining new weakness identified--AT&T's use of a subcontracted staffing approach to accomplish field training--was one that the offeror introduced in its post-discussions FPR. Accordingly, we have no basis to conclude on this record that SSA had to raise any of these additional weaknesses in discussions with AT&T.

¹⁸ We note that AT&T's FPR addressed the specific area of its staffing plan where the agency identified a lack of detail, but not its staffing plan as a whole. See AR, Tab 33,
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management approach weaknesses, the discussions here did not characterize AT&T's staffing plan as a significant weakness, or inform the offeror of the agency's belief that the risk associated with AT&T's minimal staffing plan could jeopardize the success of the project. See AR, Tab 15, Agency Discussions with AT&T, at 8, 13-14. Under the circumstances here, we cannot conclude that AT&T, reviewing the agency's discussions in conjunction with the material that it had submitted with its proposal, reasonably could have recognized the total scope of the agency's concerns regarding both the staffing levels and the lack of detail in AT&T's entire staffing plan.

The record also reflects that AT&T was prejudiced by the lack of meaningful discussions regarding its staffing plan. In its final evaluation report, the TET found that AT&T's staffing levels, while higher than those proposed originally, were still "minimal and conservative," and the lack of detail in AT&T's staffing plan (in areas other than VNOC and Help desk, which AT&T's FPR specifically addressed) represented potential performance risks if AT&T was unable to staff appropriately. Id., Tab 33, Final Technical Evaluation Report, at 9, app. II, Evaluation of Proposal Project Lifecycle Staffing Plans, at 6. The agency's subsequent best value tradeoff determination then went further, and characterized AT&T's staffing levels as the offeror's "principal weakness and area of risk," since its staffing levels were "so low as to potentially threaten the ability of the vendor to successfully deliver the proposed solution in accordance with the Government's delivery schedule and to support the TSRP user community across the contract term in a fully satisfactory manner." Id., Tab 35, Best Value Tradeoff Memorandum, at 22. Quite simply, AT&T's staffing plan, which the agency considered to be a significant weakness from the time of the initial evaluation, was a material factor in the agency's source selection determination.¹⁹

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Final Technical Evaluation Report, at 9, app. II, Evaluation of Proposal Project Lifecycle Staffing Plans, at 5.

¹⁹ We recognize, as the agency argues, that where a weakness is minor in nature and does not render a proposal unacceptable, but "ultimately becomes a discriminator for source selection purposes among closely ranked proposals," the failure by an agency to raise the matter in discussions is unobjectionable. PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 7. Here, however, as discussed above, the agency's initial evaluation of proposals found AT&T's staffing plan was a significant weakness when it determined that the risk associated with AT&T's minimal staffing plan could jeopardize the success of the project. Because the resulting discussions regarding AT&T's staffing plan were not meaningful, the offeror was not provided an adequate opportunity to respond to the agency's concerns.

Management Approach Evaluation

AT&T protests the agency's evaluation of proposals under the management approach factor, specifically, offerors' staffing plans. AT&T alleges that the agency's final evaluation of its staffing plan was unreasonable because various findings made by the evaluators were unreasonable and inadequately explained or documented. The protester also argues that SSA's evaluation of Nortel's staffing plan was unreasonable. Specifically, AT&T contends that the TET identified various weaknesses in Nortel's staffing levels but then ignored its own findings, without explanation, in the final technical evaluation report. The protester also argues that this action was prejudicial to it insofar as the agency's subsequent best value tradeoff determination viewed Nortel's staffing levels to be an unqualified strength, notwithstanding the various weaknesses identified by the TET. Protest, Sept. 20, 2007, at 57. We need not address the agency's evaluation of AT&T's staffing plan in light of our determination that SSA's discussions with AT&T were not meaningful. However, as detailed below, we find the agency's evaluation of Nortel's staffing plan was not reasonable.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation reasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As detailed above, the agency evaluated offerors' proposed staffing plans as part of its management approach factor evaluation. The TET determined that Nortel's revised staffing plan indicated a total of [DELETED] staff years for the entire project life cycle, down from an initial count of [DELETED] staff years. AR, Tab 33, Final Technical Evaluation Report, app. II, TET Evaluation of Proposed Project Lifecycle Staffing Plans, at 7. Also, the TET found that Nortel's staffing plan was comprehensive and gave considerable detail as to how the offeror would perform all contract requirements.

However, the TET also found that Nortel's Program Management, Operations, and Customer Relations staffing levels changed little throughout the entire TSRP program lifecycle (*i.e.*, implementation years 1-4, and managed-services years 5-10). In this regard, the evaluators stated that "[w]hile considered disproportionate to the number of sites being supported in the initial deployment start-up [period], the value of having a full staff to experience lessons learned, corrective actions, policies and procedures should be considered 'risk insurance.'" *Id.* Additionally, the TET found that Nortel's implementation staffing levels continued well beyond the deployment schedule without explanation, and deemed "Nortel's continuation of staffing managers, trainers, field engineers, and other personnel associated with systems

implementation beyond the deployment schedule” to be an apparent “ineffective and uneconomical use of resources.”²⁰ Id. at 7-8.

Notwithstanding its own determination that Nortel’s staffing levels did not provide value to the government in all instances, the TET’s final evaluation report stated:

Overall, the staffing and management documents in Nortel’s FPR indicate that they will supply sufficient resources of the proper qualifications and skill-mix to address [the] Agency’s requirements regarding implementation, engineering and service provisioning over the entire life-cycle of the TSRP. The staffing levels and skill-mix are considered to be strengths in the Nortel proposal that represent significant benefits to the Agency.

Id., Tab 33, Final Technical Evaluation Report, at 20.

The best value tradeoff memorandum then adopted essentially verbatim the language in the TET’s final evaluation report regarding Nortel’s staffing levels. The memorandum also characterized Nortel’s overall staffing levels as one of the areas in which Nortel’s proposal offered a significant technical advantage over AT&T’s proposal. Id., Tab 33, Final Technical Evaluation Report, at 20, 23. The memorandum did not address the TET’s finding that Nortel’s continued staffing of managers, trainers, field engineers, and other personnel associated with the TSRP system’s implementation beyond the deployment schedule was an ineffective and uneconomical use of resources.

AT&T argues that both the TET’s final technical evaluation report and the best value tradeoff memorandum are inconsistent with the evaluators’ findings regarding Nortel’s staffing levels. The protester argues that while the evaluators found that Nortel had proposed excessive staffing levels throughout the entire contract period--too many management and operations personnel in the implementation period and too many implementation personnel in the steady state period--the agency ignored these findings and instead, without explanation, characterized Nortel’s staffing levels as an unconditional strength. Protest, Sept. 20, 2007, at 27, 57-58.

The agency does not dispute the TET’s determination that Nortel’s final proposal contained “some overstaffing,” nor deny that the best value tradeoff memorandum considered Nortel’s higher staffing levels to be an unqualified strength. Rather, SSA argues that under the RFP’s best value evaluation scheme here, the agency set forth its preference for a low risk technical solution and thus, could properly conclude that a proposal that reduced risk by exceeding the staffing requirements, even when

²⁰ The TET did not, however, quantify what portion of Nortel’s proposed staffing levels it believed to be of no apparent value. Id. at 7-8.

there is a price premium, will better satisfy the agency's needs. AR, Oct. 1, 2007, at 13.

While source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluators, Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 8-9 (protest sustained because selection official did not document the basis for concluding that proposals were technically equal, after the evaluation panel concluded that one proposal was superior to the other).

As shown above, SSA's best value tradeoff determination reached conclusions regarding Nortel's staffing levels that were inconsistent with the underlying evaluation findings. Further, the best value tradeoff memorandum provides no explanation for its conclusion that Nortel's higher staffing levels represented an unqualified strength of significant benefit to the agency, in contrast to the evaluators' determination that certain aspects of Nortel's staffing plan appeared to be an ineffective and uneconomical use of resources. In fact, the best value tradeoff memorandum does not indicate that the contracting officer, who prepared the memorandum, considered or was even aware of the TET's finding of no apparent benefit in Nortel's decision to continue implementation staffing levels beyond the deployment schedule. The record also reflects that this conclusion regarding the benefits of Nortel's staffing levels was material to the agency's source selection determination. We recognize that an agency may properly conclude that a proposal with higher staffing levels may reduce the offeror's risk of performance. The fact that a proposal has higher staffing levels does not automatically mean reduced risk, however, and there has been no showing or explanation offered here as to how Nortel's continuation of its implementation staffing personnel during the managed services years would reduce the risk of performance here. In sum, we cannot find SSA's evaluation of Nortel's management approach to be reasonable when the agency reached a conclusion regarding the offeror's staffing plan that was inconsistent with the underlying evaluation findings and provided no explanation for this inconsistency, and then relied on this conclusion as a material part of its best value tradeoff determination.

Technical Approach Evaluation

AT&T protests the agency's evaluation of offerors' proposals with regard to the technical approach factor. Although we do not specifically address all of AT&T's arguments here, we have fully considered all of them and find that they provide no basis upon which to sustain the protest.

For example, AT&T argues that SSA employed an unstated evaluation criterion when evaluating offerors' proposals. Specifically, the protester contends that the agency

improperly credited Nortel with being the manufacturer of the TSRP equipment it proposed to install, and downgraded AT&T for not being an equipment manufacturer, even though the RFP did not identify manufacturer status as an evaluation criterion. Protest, Aug. 18, 2007, at 16-17. The agency argues that it properly credited Nortel with being the manufacturer of its proposed equipment because this specific factor was reasonably related to the RFP's stated evaluation criteria.²¹ AR, Sept. 10, 2007, at 104-05. We agree with the agency.

With regard to the technical approach factor, the RFP stated:

The Government will evaluate the degree to which the technical approach of the Offeror demonstrates the ability to provide technically compliant hardware, software, and services solutions to fulfill the requirements specified in the . . . SOW. This evaluation will assess the proposed solution's compliance with the stated requirements, conformity and interoperability with SSA's existing network, and potential risk factors. The Government will evaluate the Technical Approach . . . to determine the stated Approach's likelihood for successfully providing products and services associated with the requirements stated in Section C of the solicitation in a manner consistent with the Government's delivery schedule.²²

RFP amend 3, § M.1.1.1.

In its evaluation of Nortel's FPR under the technical approach factor, the TET found that Nortel's proposed use of a uniform telephone platform/common configuration provided benefits due to systems interoperability, configuration management, and standardization of support, maintenance, and equipment training. AR, Tab 33, Final Technical Evaluation Report, at 16. In connection therewith, the evaluators also found that Nortel's status as the product manufacturer and designer of its proposed equipment could result in benefits to the agency due to logistical efficiencies, design product compatibility and management effectiveness. *Id.* The contracting officer subsequently concluded that Nortel's status as manufacturer of its proposed system

²¹ The agency also argues that, contrary to the protester's assertions, AT&T's proposal did not receive a lower technical approach evaluation rating because it was not a manufacturer of its proposed equipment, AR, Sept. 10, 2007, at 105, and the record fails to show that AT&T was in fact downgraded here.

²² The RFP also set forth tables of requirements, cross-referenced to sections of the SOW, that offerors' proposals were to explicitly address, including systems interoperability, configuration management, standardization, logistical efficiencies, and management effectiveness. RFP amend. 6, § L.2.1.

hardware was a comparative advantage over AT&T's proposal. Id., Tab 35, Best Value Tradeoff Memorandum, at 8, 18.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 23 at 5; STEM Int'l, Inc., B-295471, Jan. 24, 2005, 2005 CPD ¶ 19 at 7.

Based on our review, we agree with the agency that consideration of Nortel's status as manufacturer of its proposed equipment as part of its evaluation of proposals under the technical approach factor was consistent with the stated evaluation criteria. As set forth above, the RFP established that the agency would consider offerors' proposed technical solutions and the potential risks associated with an offeror's proposed technical approach. The TET then determined that Nortel's status as product manufacturer and designer of its proposed equipment could reduce the risk with Nortel's proposed solution by means of logistical efficiencies, design product compatibility, and management effectiveness. We think that consideration of the fact that Nortel was the manufacturer of the equipment it proposed to install was reasonably related to determining the risk associated with the offeror's proposed technical approach.²³ Accordingly, we find that the agency did not apply an unstated evaluation criterion in its evaluation.

Past Performance Evaluation

AT&T protests the agency's evaluation of offerors' past performance. Again, although we do not here specifically address all of AT&T's arguments, we have fully considered each of them and find that they provide no basis upon which to sustain the protest.

For example, AT&T argues that SSA's decision to assign the protester a past performance rating of "good" was inconsistent with the agency's own underlying evaluation findings. The protester contends that all of its past performance references were determined by the agency to be "highly similar" to the work being performed here, and all the reference responses expressed a high level of satisfaction with AT&T's prior performance. AT&T argues that, in light thereof, the agency's decision to rate its past performance as "good" was inconsistent with the

²³ To the extent that AT&T believes that Nortel's status as product manufacturer is not of value to the agency, see Comments, Sept. 20, 2007, at 69-70, we find this amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

RFP's stated evaluation criteria. The protester also contends that, regardless of the ultimate evaluation rating assigned to its proposal, the agency should have found AT&T's past performance to be superior to that of Nortel.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10. Regarding the relative merits of offerors' past performance information, this matter is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. See, e.g., Clean Harbors Env'tl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was improper. Id. As detailed below, our review of the record leads us to conclude that the agency's past performance evaluation was unobjectionable.

The RFP required offerors to provide three past performance references from prior and/or current contracts that were similar in scope and complexity to the work being performed here.²⁴ RFP amend. 6, § L.2.2.1. The solicitation also stated:

The evaluation of past performance will consist of a qualitative assessment of the Offeror's demonstrated corporate experience and success, using the adjectival ratings listed below, in the performance of previous and/or ongoing contracts of similar size, scope, and complexity to the requirement of this solicitation. Evaluation of past performance will be based upon consideration of all relevant facts and circumstances. The Government will evaluate the relevance of the cited past performance reference information to the requirements stated in this solicitation as well as the quality of the Offeror's past performance and determine each Offeror's probability of success on the proposed contract based upon this record of past performance. . . . For cited references, the Government will make only 2 attempts to contact a relevant reference for obtaining past performance information.

RFP amend. 3, § M.1.1.2.

Relevant to the protest here, the solicitation also set forth the following past performance adjectival ratings and definitions:

²⁴ The requirement to provide three references also extended to each subcontractor that the offeror planned to utilize. RFP amend. 6, § L.2.2.1.

Excellent	Past performance is highly similar and relevant to the stated requirements in size, scope, and complexity. Past performance record is entirely favorable and there are no unfavorable comments from references. The past performance record possesses exceptional strengths.
Good	Past performance is similar and relevant to the stated requirements in size, scope, and complexity. Past performance record is more favorable than unfavorable. Unfavorable references, if any, are minor and are more than offset by favorable references.
Acceptable	Past performance is somewhat similar and relevant to the stated requirements in size, scope, and complexity. Has favorable and unfavorable references. Unfavorable references are generally offset by favorable references.

Id.

AT&T's proposal included three past performance references for prior telephone system replacement projects: (1) Bank of America; (2) the Department of the Treasury; and (3) the Ford Motor Company. AR, Tab 4, AT&T Proposal, Vol. II, Business Factors, at II-12 to II-21. The agency contacted AT&T's references and received responses from Bank of America and the Treasury Department; the agency made multiple attempts to contact AT&T's third reference, Ford, without success. Id., Tab 13, Initial Technical Evaluation Report, at 6. Nortel's proposal also included three references regarding its own past performance: (1) American Airlines; (2) the Defense Information Systems Agency (DISA); and (3) the Department of Homeland Security (DHS). Id., Tab 12, Nortel's Proposal, Vol. II, Business Factors, at 30-47. The agency contacted and received responses from all Nortel references. Id., Tab 13, Initial Technical Evaluation Report, at 25.

The TET then evaluated the offerors' past performance references, both individually and overall, for relevance and quality as follows:²⁵

²⁵ The TET also evaluated the references of AT&T's and Nortel's proposed subcontractors as part of its evaluation of offerors' past performance. AR, Tab 13, Initial Technical Evaluation Report, at 6-9, 25-30. Neither the protester nor the agency contend that SSA's evaluation of the subcontractors' past performance is relevant to the protest issue here. See Comments, Sept. 20, 2007, at 64-66; AR, Sept. 10, 2007, at 105-08.

AT&T's References	Relevance	Quality	Rating
Bank of America	Highly Similar	High Satisfaction	Good
Treasury Department	Highly Similar	High Satisfaction	Good
Ford	Highly Similar	No Response	Neutral
Overall			Good

Nortel's References	Relevance	Quality	Rating
American Airlines	Highly Similar	High Satisfaction	Good
DISA	Highly Similar	High Satisfaction	Good
DHS	Somewhat Similar	High Satisfaction	Good
Overall			Good

Id., Tab 13, Initial Technical Evaluation Report, at 6-9, 25-30. The TET concluded that both AT&T and Nortel had provided strong references, the projects were similar in size and complexity to TSRP, the feedback consistently indicated that the offerors had done a good job on prior projects, and no significant weaknesses had been identified. Importantly, the evaluators also found no exceptional strengths in either offeror's past performance. Id.

AT&T argues that, based on the agency's findings that all three of its references were highly similar, and the fact that the two references that responded expressed high levels of satisfaction with the firm's prior performance (the protester agrees that the third reference's failure to respond rendered that reference "neutral"), it should have received "excellent" ratings for its first two references as well as an "excellent" rating overall. Protest, Sept. 20, 2007, at 65-66. The agency argues that its evaluation of AT&T's past performance was reasonable and consistent with the stated evaluation criteria--the TET found no exceptional strengths that warranted an "excellent" rating--and that its treatment of offerors was fair, insofar as the TET applied the same standards when rating Nortel's past performance. AR, Sept. 10, 2007, at 105-08. We agree.

As a preliminary matter, we note that the agency's past performance rating definitions contained multiple and independent characteristics, and thus, it was possible for an offeror's past performance to meet some but not all aspects of a certain rating. For example, if an offeror's past performance was determined to be highly relevant and entirely favorable, but was found not to possess any exceptional strengths, then it did not fall squarely into any of the established adjectival rating definitions.

We find the agency's evaluation of AT&T's past performance to be reasonable and consistent with the stated evaluation criteria. As set forth above, the TET found all three of AT&T's references to be highly relevant, and the two references that responded did express high levels of satisfaction with AT&T's performance.

However, the evaluators also found no exceptional strengths with AT&T's past performance, a determination that AT&T does not dispute. Since the "excellent" rating was, by definition, reserved for past performance that was found to be highly relevant, entirely favorable, and which possessed exceptional strengths, we find the agency's decision to rate AT&T's past performance as "good" to be reasonable.

Moreover, we agree with the agency that the TET was even-handed in its evaluation of the offerors' past performance. As detailed above, the evaluators found that Nortel, like AT&T, had two references that were found to be both highly relevant and which had high levels of customer satisfaction. As with AT&T, Nortel also received "good" ratings for these references as well as a "good" rating overall. Quite simply, the record shows that SSA applied the same standard to the evaluation of both offerors' past performance.

AT&T also argues that the agency should have found AT&T's past performance to be superior to that of Nortel, irrespective of the ultimate ratings assigned to the offerors' proposals. The protester argues that because it had more references than Nortel that were deemed to be highly similar, the agency's decision to view the offerors' past performance as equal was unreasonable. Comments, Sept. 20, 2007, at 66. We disagree. As detailed above, the record reflects that the agency properly took into account the relevance of each contract reference as part of its evaluation of offerors' past performance. For example, the TET recognized that Nortel's DHS reference was "somewhat similar" to the work being performed here, while its remaining references were found to be "highly similar."²⁶ There is simply no requirement that offerors have an equal number of relevant references in order to receive equal ratings. Paragon Sys., Inc., B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 11.

Source Selection Decision

AT&T argues that SSA's price/technical tradeoff decision was flawed and unreasonable. In light of our conclusion that the agency's evaluation of proposals was unreasonable and that a new evaluation and source selection decision are necessary, we need not address this issue.

RECOMMENDATION

We conclude that the agency failed to conduct meaningful discussions with AT&T regarding its proposed staffing plan, which the evaluators regarded as a significant

²⁶ The record also reflects that, in accordance with the terms of the solicitation, SSA's past performance evaluations were also based on a determination of the quality of offerors' references; Nortel had a greater number of references than AT&T that were found to have a high level of satisfaction.

weakness, and that the agency's evaluation of Nortel's proposal was unreasonable because the best value tradeoff determination without explanation reached conclusions regarding the awardee's staffing plan that were inconsistent with the evaluators' underlying findings.

We recommend that the agency reopen discussions with the offerors consistent with our conclusions above, request and evaluate revised proposals, and then rely on that revised evaluation in making a new source selection determination. If, upon reevaluation of proposals, AT&T is determined to offer the best value to the government, SSA should terminate Nortel's contract for the convenience of the government and make award to AT&T. We also recommend that AT&T be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees, limited to the costs relating to the grounds on which we sustain the protest. 4 C.F.R. § 21.8(d)(1) (2007). AT&T should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Gary L. Kepplinger
General Counsel