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Decision

Matter of: Cellco Partnership dba Verizon Wireless

File: B-418155.4; B-418155.5

Date: November 5, 2020

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DIGEST

1. Protest that the awardee's proposed price could not include all of the items required under the solicitation is denied, where the protester in essence contends that the agency should have performed a price realism evaluation, but no such evaluation was provided for or permitted under the solicitation.

2. Protest challenging an agency's technical evaluation is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

3. Protest alleging the agency's evaluation of vendors' technical and management quotations was unequal and disparate is denied where the protester's assertions are not supported by the record.

DECISION

Cellco Partnership d/b/a Verizon Wireless, of Basking Ridge, New Jersey, protests the issuance of a blanket purchase agreement (BPA) to AT&T Mobility, LLC, of Hanover, Maryland, under request for quotations (RFQ) No. DJF-19-2000-PR-0002965, which was issued by the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), for wireless voice and data telecommunication services. The protester asserts that the agency conducted flawed price and technical evaluations, and evaluated quotations unequally.

We deny the protest.

BACKGROUND

On May 23, 2019, the FBI issued the RFQ to AT&T, T-Mobile, and Verizon under information technology schedule 70 of the General Services Administration's Federal Supply Schedule (FSS), in accordance with the procedures of Federal Acquisition Regulation (FAR) 8.405. RFQ at 2; AR, Tab 13, Quotation Evaluation Board (QEB) Report at 2.¹ The agency intended to establish a fixed-unit-price single-award BPA with a 12-month base year and four 12-month option periods for comprehensive wireless voice and data telecommunication services, including pooled rate plans and devices. RFQ at 2.

The agency anticipated requiring 70,000 lines, inclusive of handsets, air cards, and modems, within the first year. *Id.* at 3. The maximum aggregate value of orders that could be placed under the BPA was \$300 million. *Id.* at 2. Verizon and AT&T submitted timely quotations by the initial due date of July 22. AR, Tab 13, QEB Report at 3.

On September 30, the FBI issued the BPA to Verizon. *Id.* On October 10, AT&T protested that issuance with our Office. *Id.* We dismissed AT&T's protest as academic after the FBI advised our Office of its intent to take corrective action by reevaluating quotations and making a new award decision. *AT&T Mobility, LLC, B-418155, B-418155.2, Nov. 15, 2019* (unpublished decision).

On February 21, 2020, after completing corrective action, the FBI again selected Verizon, and on March 2, AT&T again protested the issuance of the BPA at our Office. AR, Tab 13, QEB Report at 3. On April 2, we dismissed AT&T's second protest as academic after the FBI advised our Office of its intent to take corrective action by amending the solicitation and permitting the submission of revised quotations. *AT&T Mobility, LLC, B-418155.3, Apr. 2, 2020* (unpublished decision). After the agency revised the solicitation, AT&T and Verizon submitted revised quotations prior to the new deadline of June 15. AR, Tab 13, QEB Report at 3.

The RFQ contemplated issuance of the BPA based on a best-value tradeoff determination, considering the following factors in descending order of importance: technical approach, supply chain risk management (SCRM), past performance, management, security, and price. RFQ at 55. Under the factors of technical, SCRM, and management, quotations would receive adjectival ratings; under the factors of past performance and security, quotations would be evaluated on a pass/fail basis. *Id.* Quotations receiving a failing rating under the past performance or security factors were ineligible for award. *Id.* Additionally, if the agency evaluated a vendor's SCRM risk as unacceptable, the RFQ permitted the agency to consider the vendor to be ineligible for award. *Id.* All non-price factors, when combined, were more important than price;

¹ Citations to the RFQ are to the document at tab 3 of the agency report (AR).

however, as the evaluation results become more similar, price was to increase in importance. *Id.*

As relevant to this protest, in the statement of work, the RFQ provided that “[t]he contractor shall take steps to ensure that products purchased or obtained for this contract shall NOT be identified as being destined for use by the U.S. Government.” *Id.* at 20.

The FBI evaluated Verizon’s and AT&T’s quotations as follows:

	AT&T	Verizon
Technical	Green ²	Green
SCRM	Pass	Pass
Past Performance	Pass	Pass
Management	Green	Green
Security	Pass	Pass
Price	\$91,928,640	\$147,609,360

AR, Tab 13, QEB Report at 11, 17.

Pertinent to this protest, as part of its technical evaluation, the agency assigned AT&T the following significant strength for its “FirstNet product solution”:³

This solution exceeds the public safety, priority and preemption requirements outlined in Section 2 and 2.6.2 in the RFQ. [. . .] The FirstNet solution provides several advantages to the Government outlined here:

- “The FirstNet service plans will provide the FBI and DOJ agencies with “always-on” Quality of Service with Priority and Preemption (QPP) for voice, data, and video Communications.” The “always-on” operates 24/7 365 days a year and requires no manual attention. FirstNet users automatically receive priority and preemption with this feature.

² A rating of green corresponded to an adjectival rating of acceptable. RFQ at 56.

³ FirstNet is the short name for the First Responder Network Authority, an independent entity within the Department of Commerce’s National Telecommunications and Information Administration, which was created by the Middle Class Tax Relief and Job Creation Act of 2012. Pub. L. No. 112-96, title VI, subtitle B, 126 Stat. 156, 206-218 (2012) (codified at 47 U.S.C. §§ 1421-1433). In March 2017, FirstNet entered into a public-private partnership with AT&T, awarding AT&T a 25-year contract for the network’s deployment. AR, Tab 13, QEB Report at 11; Gov’t Accountability Office, GAO-20-346, *Public-Safety Broadband Network: Network Deployment Is Progressing, But FirstNet Could Strengthen Its Oversight* (GAO FirstNet Report), Jan 27, 2020, at 1.

- FirstNet Network, built with AT&T, inclusive of Band 14,^[4] was recently recognized as the BEST and the FASTEST NETWORK according to Global Wireless Solutions and based on analysis by Ookla® of Speedtest Intelligence® data average download speeds during all quarters in 2019. The Ookla® of Speedtest Intelligence® independent study also noted FirstNet users experienced 25 percent greater speeds compared to the fastest commercial carrier. The ability for the Government to access this network will ensure faster downloads. For example, an agent will be able to access information and contact individuals at a quicker rate to execute the mission as quickly as possible. In an emergency response situation, every second is important.

AR, Tab 13, QEB Report at 11-12.

In making the best-value tradeoff determination, the agency considered AT&T's quotation to be slightly stronger than Verizon's quotation under the technical and SCRM factors, even though the quotations received the same adjectival rating. AR, Tab 13, QEB Report at 24-25. The FBI viewed Verizon's quotation as slightly stronger under the past performance and management factors, and found the quotations to be essentially equal under the security factor. *Id.* at 26. Overall, the agency considered AT&T's quotation to be superior under the combined non-price factors. *Id.* at 28. However, while the differences in the non-technical factors were not especially significant, the agency found value in the discount proposed by AT&T, which the agency noted represented a savings of 46.5 percent as compared to Verizon's proposed price. *Id.* at 26-27. As a result, the agency determined that AT&T's quotation represented the best value to the government. *Id.* at 28. The FBI advised Verizon of the selection of AT&T on July 21. Protest at 11. This protest was timely filed with our Office on July 31.

DISCUSSION

Verizon raises multiple protest grounds challenging various aspects of the FBI's evaluation. The protester asserts that the agency failed to recognize that AT&T did not comply with the RFQ's pricing requirements, conducted a flawed technical evaluation, and evaluated quotations unequally. For the reasons below, we find no basis to sustain the protest.⁵

⁴ Band 14 is the portion of the radio spectrum set aside for FirstNet use. Comments & Supp. Protest at 7-8.

⁵ We have considered all of the protester's arguments and, while not all are discussed here, none provides a basis to sustain the protest. We also dismiss one of Verizon's protest grounds. Verizon argues that the agency improperly ignored the negative views of FBI personnel about AT&T's poor prior performance and should instead have assigned AT&T a "fail" rating under the past performance factor. Protest at 27-29. Verizon bases this protest ground on the statement of its vice president of contract

Price Evaluation

Verizon asserts that AT&T did not comply with the RFQ's pricing requirements. Protest at 32. In the protester's opinion, such alleged non-compliance is apparent because "[t]his amount [AT&T's proposed price] simply could not have included the price of all the required hardware and the cellular service components, while also including the price of providing new devices at least once every two years." *Id.* at 31. The protester's argument in this regard is tantamount to requiring that the agency conduct a price realism analysis.

Here, the RFQ provided that prices would be evaluated for fairness and reasonableness; it did not provide for a price realism analysis. RFQ at 52. An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. *Vital Link, Inc.*, B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Arguments that the agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism not price reasonableness; price realism is not required (or permitted) to be evaluated by the agency unless the solicitation provides for such an analysis. *SDV Sols., Inc.*, B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. To the extent Verizon contends that the agency failed to consider whether AT&T's proposed prices were too low, such an evaluation was not permitted by the RFQ. Accordingly, this protest ground is denied. *Jardon & Howard Techs., Inc.*, B-415330.3, B-415330.4, May 24, 2018, 2018 CPD ¶ 195 at 6.

Technical Evaluation Challenges

Verizon raises multiple protest grounds challenging various aspects of the FBI's technical evaluation. The protester argues that the agency failed to identify instances in which AT&T's quotation did not meet the RFQ's requirements.

management, who declared that to the best of his knowledge, an unspecified number of unnamed "Verizon personnel" "described" to him that, on an unspecified date or dates, that person or those persons "observed FBI personnel expressing frustration" with AT&T. *Id.* at 29 (citing protest exh. B, Decl. of Cellco Vice President of Contract Mgmt.).

This description, without more, does not provide a sufficient factual basis for this protest ground, which is thus dismissed as factually insufficient. 4 C.F.R. § 21.5(f). In addition, Verizon withdrew an allegation that the agency's requirements changed after quotation submission, as the agency demonstrated that this claim was based on an agency typographic error. Comments & Supp. Protest at 5 n.2; Memorandum of Law (MOL) at 4 (citing Decl. of Contracting Officer, Electronic Protest Docketing System No. 21). The protester also withdrew allegations that the agency improperly failed to find benefit in Verizon's quotation to exceed the [DELETED] and in its [DELETED] program. Comments & Supp. Protest at 5 n.2.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *CMI Mgmt.*, B-404645, Mar. 2, 2011, 2011 CPD ¶ 66 at 3.

Devices Identified as Intended for Government Use

Verizon argues that the FBI erred by failing to find that AT&T's technical quotation was ineligible for award. Protest at 16. The protester contends that AT&T cannot comply with the RFQ requirement that devices not be identifiable as intended for the U.S. government.⁶ *Id.* at 16-17. The protester asserts that AT&T's products are labeled as part of the government's FirstNet network and that such labeling violates this RFQ requirement because FirstNet devices are intended for use by public safety personnel, including but not limited to federal public safety personnel. *Id.*

The relevant solicitation language is as follows:

The awardee shall establish and maintain an appropriate organizational structure to enable central management of this contract (i.e., in accordance with its enterprise approach, the FBI shall process all ordering and payment matters through a single national office rather than through local wireless account representatives.) Although orders shall be shipped directly to the end-user, all ordering shall originate directly from the MPO [mobility program], unless otherwise agreed to through a contractual modification or separate task order issued off this BPA. The contractor shall have written, repeatable processes for the purchasing, receipt and delivery of materials. **The contractor shall take steps to ensure that products purchased or obtained for this contract shall NOT be identified as being destined for use by the U.S. Government.** Orders shall be processed and delivered within three (3) business days and be

⁶ According to the FirstNet website, "FirstNet provides public safety officials with streamlined and interoperable communications to execute their missions while working with other public safety officials at all levels of government. FirstNet offers priority and preemption capabilities and coverage solutions for public safety communications, allowing public safety officials to avoid network congestion that occurs during emergencies. Public safety organizations have local control of all the users registered under their FirstNet subscription, which means they are able to control the mobile device management, onboarding, off-boarding, and prioritization of individual users." See <https://firstnet.gov/public-safety/firstnet-for/federal-users> (last visited Oct. 30, 2020).

trackable by FBI COR [contracting officer's representative] or participating DOJ Component. Contractor shall have written processes for explaining the automation of adding Wireless Priority Service (WPS) to FBI/DOJ [devices] without the burden of manual processes being placed on the agency.

RFQ at 20 (emphasis added).

The FBI contends that Verizon misinterprets the RFQ because the requirement at issue "is clearly intended to apply only to packaging and shipping of device orders."⁷ MOL at 6-7. First, the agency states that this requirement is intended to address the risk that a device could be intercepted during shipment and unknowingly fitted with surveillance hardware or software. COS at 15. Next, the agency asserts that the context of this sentence, bookended by sentences relating to the processing and delivery of orders, indicates that the requirement only applies to the packaging and shipping. MOL at 6-7 (citing RFQ at 20). Finally, the FBI argues that, to the extent the requirement is viewed as ambiguous, any ambiguity was patent and Verizon's protest should be dismissed as untimely. MOL at 8 n.3 (citing 4 C.F.R. § 21.2(a)(1); *Dix Corp.*, B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3; *U.S. Facilities, Inc.*, B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10).

Where a protester and agency disagree over the meaning of solicitation language, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Id.* A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.*

Here, the parties disagree as to whether the sentence "[t]he contractor shall take steps to ensure that products purchased or obtained for this contract shall NOT be identified as being destined for use by the U.S. Government" applies to the phones themselves, or simply their packaging during shipment. *Compare* Protest at 16-17 *with* MOL at 6-7. As noted above, the protester asserts that the phrase applies to the phones themselves, rendering AT&T's devices with the "FirstNet" logo on the screen ineligible for award, while the agency contends that the phrase applies only to the outer packaging of the phones during shipment. *Id.*

We conclude that the sentence can reasonably be read with either meaning. In this regard, the reference to "products" suggests the restriction applies to the phones themselves, but the phrase "destined for use" suggests that the restriction applies while

⁷ As to the risk that a FirstNet-logged device is lost or stolen and thus susceptible to compromise after delivery, the FBI asserts that it can remotely disable the device. Contracting Officer's Statement (COS) at 15.

the phones are packaged during transit. Further, we note that the sentences surrounding the sentence at issue generally address shipment. Thus, while overall the restriction appears to apply to shipment packaging only, reading the sentence as applying to devices themselves is not unreasonable, *i.e.*, there are two or more reasonable interpretations of the terms.

However, the dual meanings are readily apparent in the sentence, rendering the ambiguity patent. *Crew Training Int'l, Inc.*, *supra* at 4. Where a patent ambiguity is not challenged prior to the submission of quotations, we will dismiss as untimely any subsequent protest asserting the protester's own interpretation of the ambiguous provisions. 4 C.F.R. § 21.2(a)(1); *Energy Eng'g & Consulting Servs., LLC*, B-407352, Dec. 21, 2012 2012 CPD ¶ 353 at 3 n.3; *Pitney Bowes, Inc.*, B-416787, Dec. 6, 2018, 2018 CPD ¶ 414 at 4. An offeror that competes under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a manner inconsistent with one of the possible interpretations. *Pitney Bowes, Inc.*, *supra* at 4; *Shertech Pharmacy Piedmont, LLC*, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 4 n.2. Therefore, this protest ground is dismissed.⁸

Band 14 Coverage

Next, Verizon contends that AT&T's transmission coverage is too geographically limited to meet the FBI's requirements. Protest at 22. In this regard, the protester asserts that AT&T's service coverage is provided through Band 14, which will not meet the agency's needs. *Id.* The protester asserts AT&T's reliance on Band 14 coverage should have been evident to the agency during its evaluation of the coverage map that AT&T was required to include in its quotation. *Id.* at 22-24 (citing RFQ at 10). Verizon also claims that AT&T's Band 14 coverage has limited functionality because it cannot yet provide full priority and preemption.⁹ *Id.* at 25.

⁸ In addition, the FBI argues that to the extent that AT&T's quotation could be viewed as failing to meet the solicitation requirements with respect to avoiding identifying markers on the product, Verizon similarly failed to satisfy this requirement and thus suffered no competitive prejudice. MOL at 11. In this respect, the FBI claims that Verizon's quotation wholly fails to address this requirement, and yet the quotation was not downgraded for this failure. *Id.* at 12; *see also* COS at 17. Because we find that the ambiguity was patent and therefore untimely, we do not address the agency's argument alleging that any error failed to result in competitive prejudice to Verizon. *See People, Tech. & Processes, LLC*, B-417273, May 7, 2019, 2019 CPD ¶ 173 at 3 n.2 (declining to address protest ground where protester's filing was untimely).

⁹ According to the FBI, "priority is a function that enables a user's access to the network to take precedence over another user's access (*i.e.*, getting to the front of the line). Preemption goes a step further and permits higher priority network traffic to take over network resources assigned to lower priority traffic (*i.e.*, the ability to bump lower priority users off the network)." Supp. MOL at 9-10 (internal citations omitted).

The FBI responds that the RFQ required only that vendors' maps accurately indicate the geographic extent of the vendor's service, and that AT&T's map did so satisfactorily. COS at 18; MOL at 14. The agency asserts that the protester misinterprets the RFQ's requirements related to public safety initiative capabilities, and the record demonstrates that Verizon merely disagrees with the FBI's reasonable determination that AT&T exceeded the requirements. MOL at 15.

Here, section 2.6.2 of the RFQ required vendors to provide maps of the United States showing where their network offered functions required by the FBI's public safety initiative (PSI), such as quality of service, priority, and preemption for both voice and data when responding to public safety incidents. RFQ at 10. Specifically, the solicitation required vendors' maps to "clearly define the boundaries of PSI networks compared to non-PSI coverage areas. The FBI clearly needs to understand where PSI starts/stops and where the carrier's primary network will start/stop." *Id.* While the RFQ requires that these maps be accurate, the solicitation did not include any specific requirements for the extent of the coverage. *Id.* Thus, the protester does not show that the agency's evaluation was inconsistent with the solicitation. Verizon's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Consequently, we deny this protest ground.¹⁰

Download Speeds

Verizon further argues that the agency improperly assigned AT&T's quotation a significant strength for having the fastest average data download speeds, without verifying those speeds. Comments & Supp. Protest at 23-24. Specifically, the protester

¹⁰ During the course of this protest, the parties identified an error in the summary of the agency's technical evaluation. Specifically, the QEB report incorrectly states that Band 14 "reaches 99% of the population," while the parties agree that coverage is not this broad. See AR, Tab 13, QEB Report at 26, AR, Tab 15, Decl. of Supervisory Contract Specialist; Protester Supp. Comments at 4. However, the record does not show that Verizon was competitively prejudiced by this mistake. First, it is not repeated in the significant strength assigned to AT&T's quotation, see AR, Tab 13, QEB Report at 11-12. Furthermore, the best-value tradeoff discussion lists the advantages of AT&T's technical quotation, of which this inaccurate conclusion is but one. *Id.* at 25. Thus, even if this statement were removed and instead of finding AT&T to be technically superior, the agency found the two quotations to be essentially equal, we do not find that Verizon can show competitive prejudice. In this regard, based on the record we see no reasonable possibility that the contracting officer would have concluded that Verizon's quotation was worth paying approximately 50 percent more than AT&T's quotation. Competitive prejudice is an essential element of every viable protest, and where none is shown or is otherwise evident, we will not sustain a protest. *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3 (protester challenging technical evaluation could not show prejudice where even if the protester prevailed in its challenges, there was no reasonable possibility it would have been selected due to the price differential between it and the other offerors).

asserts that the awardee did not include information in its quotation about its data speeds, as Verizon asserts was required by the solicitation. *Id.* at 25.

The RFQ required vendors to “provide detail on the most advanced network speeds for data” and, overall, established a minimum monthly average network speed of 500 Kbps for both upload and download. RFQ at 8-9.

The agency defends the assignment of a significant strength to AT&T’s quotation for its FirstNet network. Supp. MOL at 6. The significant strength recognized the FirstNet network for showing, through the results of independent testing, that its historical download speeds were considerably faster than those of commercial carriers. AR, Tab 13, QEB Report at 12. The FBI asserts that its evaluation was reasonably based on the information in AT&T’s quotation. For example, AT&T’s quotation included a chart of data from an independent evaluation (by Ookla Speedtest) of 2019 historical speeds for FirstNet, AT&T commercial, Verizon, T-Mobile and Sprint, which showed that in 2019 its FirstNet network exceeded the solicitation’s minimum monthly average network speed of 500 Kbps and exceeded the speed of the fastest commercial carrier by over 25 percent. AR, Tab 8, AT&T Technical Quotation at 37. On this record, we find that the agency had a reasonable basis to award AT&T a significant strength for its FirstNet network.

Verizon also asserts that the agency misunderstood AT&T’s quotation and conflated Band 14 with AT&T’s commercial services. *See, e.g.,* Comments & Supp. Protest at 26. Yet the record shows that AT&T provided information about the components of its FirstNet service in its quotation. AR, Tab 8, AT&T Technical Quotation at 29 (“FirstNet uses all of AT&T’s commercial LTE spectrum (147 MHz) plus the 20 MHz of Band 14 spectrum dedicated to law enforcement and public safety[.]”). The record also shows that independent evaluation of data speeds related to the FirstNet network as a whole, and not the components. AR, Tab 8, AT&T Technical Quotation at 37. While Verizon expresses dissatisfaction with the agency’s conclusions, the protester does not demonstrate that the agency lacked a basis to assign AT&T’s quotation a significant strength. Verizon’s disagreement with the agency’s evaluation, without more, is not sufficient to render the evaluation unreasonable. *DEI Consulting, supra* at 2. Accordingly, this protest ground is denied.

Alleged Unequal and Disparate Evaluation

Verizon raises two grounds alleging that the agency evaluated quotations unequally. Comments & Supp. Protest at 25-27. In this regard, the protester claims that aspects of its quotation were the same as in AT&T’s quotation, yet the agency allegedly failed to recognize the merit of these aspects of Verizon’s quotation. *Id.* In our view, Verizon’s assertions of disparate treatment are premised on an incorrect comparison of the vendors’ quotations.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. *Arc Aspicio, LLC, et al., B-412612 et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of

federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the vendors' quotations. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8; *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9.

First, the protester asserts that the agency engaged in unequal treatment of quotations because it, like AT&T, offered fast download speeds and was not appropriately credited.¹¹ Comments & Supp. Protest at 25. The FBI disputes Verizon's claim that Verizon offered the "same" performance as AT&T. Supp. MOL at 6. The agency argues that while the protester proposed "[t]ypical user throughput speeds of 5 Mbps to 12 Mbps for download and 2 Mbps to 5 Mbps for upload," *id.* at 7 (citing AR, Tab 5, Verizon Quote Volume A at 2), Verizon undermined its performance claims with the caution that "[a]ctual network loads can impact performance." *Id.* The agency also notes that Verizon offered the further caveat that "[u]nder optimal conditions our network technology may see" performance in excess of the minimum requirements, while failing to address "what 'optimal conditions' are or how often they occur." *Id.* at 8. On this basis, the agency concluded that Verizon's proposed network speed met, but did not exceed the RFQ's requirements. *Id.* at 8. Overall, the agency found that while neither Verizon nor AT&T specifically proposed to provide a minimum network speed in excess of the minimum, AT&T showed that its proposed network consistently performed well above the RFQ's minimum. *Id.* at 9. In contrast, Verizon did not demonstrate similar historical performance nor support its claims regarding data speed with outside analysis. *Id.*

Our review of the record provides no basis to find that the agency's evaluation was unequal. The protester has not shown that either its historical performance or its future speeds would consistently match or exceed AT&T's historical performance. Further, the protester has not demonstrated that its quotation was the "same" as AT&T's. *CSRA, LLC, supra* at 11 (protest alleging unequal evaluation denied where the quotations were neither the same nor substantially similar). Rather, Verizon only disagrees with the agency's evaluation. Such disagreement, without more, fails to show that the evaluation was unreasonable or otherwise inconsistent with the RFQ. *Logistics Mgmt. Institute*, B-418160, B-418160.2, Jan. 16, 2020, 2020 CPD ¶ 31 at 5. Thus, this protest ground is denied.

Second, Verizon contends that the FBI unequally evaluated quotations and improperly favored AT&T's priority and preemption services over those offered by Verizon. Comments & Supp. Protest at 26. The protester alleges that it offered "the same thing"

¹¹ The protester provides no legal support for this claim. See *generally* Comments & Supp. Protest.

as the awardee, but did not receive the same significant strength.¹² *Id.* As to priority, Verizon's quotation stated that "[d]uring times of network congestion, MBP [mobile broadband priority] users will receive priority over commercial users." AR, Tab 5, Verizon Technical Quotation at A-44. Those users will be able to "use applications on Smartphones or data devices to transmit mission critical data between users on the scene, command centers, or back to Headquarters." *Id.* In addition, Verizon's preemption service "will be automatically included in select data plans and upon enrollment in Wireless Priority Service." *Id.* In Verizon's view, the agency lacked a reasonable basis for preferring AT&T's priority and preemption services. *Id.*

In response, the agency asserts that "differences in the evaluation results stemmed from clear differences in the two vendors' proposed capabilities related to priority and preemption." Supp. MOL at 9. The agency found differences in the quotations because "Verizon's proposed solution . . . requires manual attention, is not 'always on,' and requires extra administrative steps in order for devices to be enabled," such as registration. *Id.* at 11; MOL at 14. The FBI also noted that under Verizon's prioritization feature, calls were only prioritized within an interpolated network, not end-to-end, and that only outbound calls were prioritized, all of which differentiated Verizon's quotation from AT&T's quotation. *Id.* at 11-13. Overall, Verizon does not clearly show that the agency was incorrect in identifying differences between the priority and preemption features in its quotation and AT&T's quotation. Accordingly, because the protester does not show that the differences in the evaluation did not stem from differences in the vendors quotations, this aspect of Verizon's protest is denied. *CSRA, LLC, supra* at 9.

We deny the protest.

Thomas H. Armstrong
General Counsel

¹² The priority and preemption aspects of AT&T's quotation were a part of the single significant strength assigned to AT&T's quotation under the technical factor. AR, Tab 13, QEB Report at 11-12.