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Decision

Matter of: Qwest Government Services, Inc. d/b/a CenturyLink QGS

File: B-418649; B-418649.2; B-418649.3

Date: July 14, 2020

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DIGEST

1. Protest that the agency conducted unequal discussions is denied where the record shows the agency engaged in clarifications, not discussions.
 2. Protest that agency deviated from the terms of the solicitation and engaged in disparate treatment in evaluating price quotations by accepting an awardee's allegedly incomplete quotation while finding protester's quotation deficient is denied where the record shows that the agency's decision to accept the awardee's quotation was consistent with the terms of the solicitation, and the different treatment of the vendors resulted from a difference in the quotations.
 3. Protester is not an interested party to otherwise challenge the agency's price evaluation, the best-value tradeoff decision, or the awarded task orders where protester would not be in line for award because the agency reasonably determined that the protester's price quotation was defective and therefore ineligible for award.
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DECISION

CenturyLink QGS,¹ of Monroe, Louisiana, protests the issuance of task orders to Verizon Business Network Services, Inc. (Verizon), of Ashburn, Virginia, and AT&T Corp., of Oakton, Virginia, by the Department of Commerce (DOC), under request for quotations (RFQ) No. 1335753 for telecommunications, networking services, and associated support. CenturyLink argues that the agency conducted unequal discussions; deviated from the terms of the solicitation and engaged in disparate treatment in evaluating price quotations; made an unreasonable best-value tradeoff decision; and that the awarded task orders should be vacated because they violate applicable regulations.

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

BACKGROUND

The agency issued the RFQ on October 16, 2018, under the General Services Administration's (GSA) Enterprise Infrastructure Solutions (EIS) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) governmentwide acquisition contract using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5. Agency Report (AR), Tab 1, RFQ at 1.² The procurement is for the consolidation and transition of “telecommunication services, networking infrastructure and [information technology (IT)] services supporting the DOC’s mission critical applications.” *Id.* at 28. These services were previously acquired through multiple GSA and commercial sources and this procurement sought to consolidate the services under the EIS contract. *Id.* at 27. The services are to be provided to all existing DOC locations, and any future sites, with the exception of the National Oceanic and Atmospheric Administration.³ *Id.* at 30.

The RFQ stated that the agency intended to award task orders for six different task areas, which could be bid on separately or together.⁴ *Id.* at 30. The RFQ contemplated

¹ CenturyLink’s protest and bid were submitted on behalf of Qwest Government Services, Inc., doing business as CenturyLink QCS. Protest at 1.

² References to page numbers are to the Bates numbers provided by the agency for each document.

³ The RFQ explained that DOC’s mission is executed through 12 bureaus located throughout the United States, and that each bureau may require different types of services. RFQ at 28-30.

⁴ The task areas were: telecommunications infrastructure (task area 1); colocated hosting (task area 2); managed trusted internet protocol service (MTIPS) (task area 3); synchronized optical network service (task area 4); diverse carrier virtual private network service (task area 5); and diverse carrier MTIPS (task area 6). RFQ at 30. The RFQ described the services required for each task area. *Id.* at 30-31.

that the agency would award separate task orders for each task area or multiple task orders within each task area.⁵ *Id.* at 149. Award would be made using a best-value tradeoff approach considering the following evaluation factors: (1) technical; (2) past performance; and (3) cost/price. *Id.* at 148. The technical factor consisted of four elements listed in descending order of importance: technical approach, transition plan, management approach, and small business subcontracting plan. *Id.* The technical factor was more important than the past performance factor, and the two non-price factors combined were approximately equal to price. *Id.*

The RFQ instructed vendors to submit their quotations in three volumes, one for each of the three evaluation factors. *Id.* at 140. As relevant to this protest, for the price volume, vendors had to use the EIS pricing workbook, which was an excel spreadsheet attached to the solicitation.⁶ *Id.* at 146; AR, Tab 5, RFQ attach J.1 DOC EIS Pricing Workbook.⁷ The pricing workbook contained over 60,000 line items, which represented the baseline service requirements by service site locations. RFQ at 145; AR, Tab 5, RFQ attach J.1 DOC EIS Pricing Workbook. Each line item also corresponded to a particular task area and period of performance.⁸ *See id.* The pricing workbook instructed vendors to provide a unit price in each line item for the services required. AR, Tab 5, RFQ attach. J.1 DOC EIS Pricing Workbook. That unit price would be multiplied by a quantity provided by the agency to calculate a total extended price for each line item. *Id.* The RFQ stated that quoted prices had to be consistent with the vendor's underlying EIS contract.⁹ RFQ at 146.

The RFQ provided that price quotations would be evaluated for realism and reasonableness. *Id.* at 152. The agency also would evaluate "completeness in pricing information in each identified [t]ask [a]rea." *Id.* The RFQ informed vendors that "[f]ailure to list pricing for **ALL items** in any [t]ask [a]rea may render that [t]ask [a]rea un-evaluate-able for selection purposes." *Id.* (emphasis in original).

⁵ In response to questions about the RFQ, the agency further explained that all the task areas could be awarded to one vendor, or that two or more vendors each could win one or more respective task areas. AR, Tab 7, RFQ Questions and Answers.

⁶ Vendors also had to submit a price narrative that described their pricing for the required services. RFQ at 146.

⁷ The pricing workbook was updated a number of times and provided to vendors through RFQ amendments. This citation is to the final version of the pricing workbook, which was provided to the vendors in February 2019 with RFQ amendment 10.

⁸ The period of performance for the contract was a 1-year base period plus twelve 1-year option periods. RFQ at 11-12.

⁹ The RFQ also encouraged vendors to propose pricing methodologies that would be economically beneficial in the long term. RFQ at 147. Examples of these methodologies included declining prices in subsequent years, waiving certain one-time charges, or crediting parallel operating costs. *Id.*

CenturyLink submitted a quotation for all six of the task areas; Verizon quoted task areas 1, 2, 4, and 5; while AT&T quoted all but task area 4. See AR, Tab 34, Source Selection Decision Document (SSDD) at 8-19. The agency determined that CenturyLink's pricing for task areas 1, 2, 3, and 5 was defective and therefore CenturyLink was ineligible for award for those four areas. *Id.* at 8. After evaluation of the quotations, the agency awarded task areas 1 and 2 to Verizon, task areas 3 and 5 to AT&T, and task areas 4 and 6 to CenturyLink.¹⁰ *Id.* at 21.

After it received a debriefing, CenturyLink filed a protest with our Office challenging the task orders issued to Verizon and AT&T.¹¹

DISCUSSION

CenturyLink alleges that the agency conducted unequal discussions regarding the price quotations because it allowed other vendors, but not CenturyLink, to make revisions to their price quotations. CenturyLink also asserts that the agency violated the terms of the solicitation and engaged in disparate treatment by accepting Verizon's allegedly incomplete quotation, but finding CenturyLink's quotation deficient. For the reasons discussed below, we find that the agency engaged in clarifications with the vendors and therefore did not conduct unequal discussions. We also find that the agency's acceptance of Verizon's quotation did not violate the terms of the solicitation or constitute disparate treatment. Accordingly, we deny CenturyLink's protest.

Agency Communications with Vendors

After receiving quotations, in June 2019, the agency emailed each of the vendors "a few questions intended to clarify [their] price proposal volume[s]." See AR, Tabs 8-10, Emails from Agency to Vendors, June 14, 2019. In the email, the agency instructed the vendors to answer only the questions provided and stated that "[t]he request does not allow for you to change or materially alter your proposal, and under no circumstances will any proposal revision be accepted." See *id.* As relevant to this protest, one question explained that for some of the line items in the pricing workbook, vendors had input in the unit pricing field either "\$0.00" or "\$-," or had left the field blank.¹² *Id.* The

¹⁰ The agency issued one task order to each company that covered their two respective awarded task areas. See AR, Tabs 12-14, Task Order Awards.

¹¹ The total awarded value of each of the individual task orders issued to Verizon and AT&T exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(1)B).

¹² For this question, each vendor's quotations were slightly different. CenturyLink had input both "\$0.00" and "\$-" but did not leave any line items blank; Verizon had input
(continued...)

agency asked vendors to confirm whether they intended to “zero price bid” that particular line item, or not bid it at all. *See id.*

CenturyLink responded that “\$0.00 and \$- is [sic] zero price bids. CenturyLink is not providing no bids.” AR, Tab 9, Email from CenturyLink to Agency, June 17, 2019. Verizon responded that its quotation contained some pricing errors and explained that it had intended to bid some of the unit prices that it had left blank. AR, Tab 10, Email from Verizon to Agency, June 18, 2019. Verizon requested that the agency allow it to provide pricing for these line items.¹³ *Id.* However, Verizon did not submit, and the agency never accepted, a revised price quotation from Verizon. Contracting Officer’s Statement (COS) at 12.

Another question noted that some of the line item prices quoted by the vendors were higher than the corresponding line item prices in the vendors’ EIS contracts.¹⁴ *See* AR, Tabs 8-10, Emails from Agency to Vendors, June 14, 2019. The agency provided each vendor a spreadsheet listing the applicable line items, and showing the vendor’s quoted price and what the agency believed to be the corresponding EIS line item price. The agency also asked vendors to confirm to which line item on the EIS contract the quoted prices corresponded. *See, e.g.,* AR, Tab 10b, Verizon Unit Price Comparison Spreadsheet. As relevant here, Verizon responded that its quoted prices were inserted in error and should not be higher than the EIS pricing, and requested an opportunity to make revisions. AR, Tab 10, Email from Verizon to Agency, June 18, 2019. Again, despite Verizon’s request, the agency did not accept a revised quotation from the company.¹⁵ COS at 12.

In October 2019, the agency contacted CenturyLink again regarding its price quotation and asked whether CenturyLink’s quoted prices were accurate. AR, Tab 11, Email from Agency to CenturyLink, October 25, 2019. The agency explained: “In our evaluation, we identified some anomalies that could be interpreted as being innovative or suspect and therefore I’m seeking clarification on the matter to ensure we interpret it correctly. CenturyLink is not being asked to provide any update to its proposal and no such proposal revision will be accepted.” *Id.* In response, CenturyLink confirmed that the

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“\$0.00” and left some items blank; and AT&T had input “\$-” and left some items blank. AR, Tabs 8-10, Emails from Agency to Vendors, June 14, 2019.

¹³ Verizon also confirmed that “\$0.00” was a zero price bid, and that it was not bidding on task areas 3 and 6, so “no bid” should have been entered in the line items for those task areas. AR, Tab 10, Email from Verizon to Agency, June 18, 2019.

¹⁴ The RFQ required vendors to use existing EIS contract line item numbers when submitting prices for the task orders being competed in this procurement. RFQ at 10.

¹⁵ The record shows that the agency did not accept revised quotations from any vendor in response to these emailed questions.

pricing for task areas 4 and 6 was accurate and correct, but acknowledged that there were anomalies in pricing for the other task areas. *Id.*, Email from CenturyLink to Agency, October 29, 2019. CenturyLink asked for the opportunity to submit a corrected quotation, and stated “[w]e would appreciate your consideration of our corrected pricing, which would replace the initial, incorrect pricing submission covering [t]ask [a]reas 1, 2, 3 and 5.” *Id.* The agency responded that same day and stated that it could not accept an updated pricing quotation from CenturyLink.¹⁶ *Id.*, Email from Agency to CenturyLink, October 29, 2019.

The Agency’s Price Evaluation

The agency’s evaluation of CenturyLink’s price quotation found that the pricing for the first year was reasonable “but was listed as either \$0 cost or drastically reduced (by 50-70%) in subsequent years for many services.” AR, Tab 33, Cost/Price Evaluation Team (CET) Report at 4. The evaluation noted that the agency contacted CenturyLink to confirm whether the quotation was accurate and that CenturyLink “confirmed that their pricing submission was not made on the most recent version of the [p]ricing [t]ables . . . and that pricing errors existed in [t]asks 1, 2, 3 and 5.” *Id.* at 4-5. The agency therefore concluded that CenturyLink’s pricing for task areas 1, 2, 3, and 5 was defective and that it was ineligible for award of those task areas. *Id.* at 5; AR, Tab 34, SSDD at 8.

With respect to Verizon’s price quotation, the agency explained that it evaluated the pricing as \$0.00 for the line items that Verizon had left blank, notwithstanding the company’s claim that it would have priced those line items if allowed by the agency. Memorandum of Law (MOL) at 16. In other words, rather than allow Verizon to submit pricing for those blank line items, the agency simply treated these line items as if Verizon had quoted a price of \$0.00. Verizon left a total of 1,072 (less than two percent of the over 60,000 line items) line items blank that it otherwise would have priced if

¹⁶ CenturyLink again responded to the agency and explained that the errors occurred because its pricing data did not populate correctly when it merged the data from multiple spreadsheet tabs to a single tab. AR, Tab 11, Email from CenturyLink to Agency, November 4, 2019. CenturyLink indicated that this happened because it had used a prior version of the pricing workbook in its quotation, and not the final version that the agency had issued with amendment 10 to the RFQ. CenturyLink also questioned why the agency had not raised this issue in its June communications with the vendors, and argued that acceptance of a revised quotation would be consistent with the agency’s acceptance of corrected quotations in response to the June communications. *Id.* CenturyLink again requested that the agency accept a corrected version of its quotation, and stated that it was evaluating all remedies, including “award protest,” if the agency did not accept the corrected quotation. *Id.* In response, the agency stated that the June communications did not allow for submission or acceptance of revised quotations, and the agency did not accept a corrected quotation from CenturyLink. *Id.*, Email from Agency to CenturyLink, November 5, 2019.

given the opportunity. Supp. MOL at 8. The agency's pricing workbook evaluation, which was a spreadsheet mirroring the pricing workbook from the RFQ that the agency used to calculate and evaluate vendors' total quoted prices, confirms that the agency entered \$0.00 for Verizon's relevant blank line items. See AR, Tab 33a, CET Report - Supporting Pricing Workbook Evaluation. The pricing workbook also shows that for those line items where Verizon's quoted line item price was higher than its corresponding EIS line item price, the agency utilized Verizon's corresponding EIS line item price in its evaluation.¹⁷ See *id.*

Unequal Discussions

CenturyLink alleges that the agency's June 2019 communications with the vendors were discussions, not clarifications. In this regard, the protester explains that despite Verizon's response to the June communications stating that it intended to price the blank line items, the agency "unilaterally chose to apply \$0.00 pricing to those blanks." Comments & Supp. Protest at 23. CenturyLink thus argues that the agency "revised Verizon's proposal on its own accord, evaluating blanks to mean \$0.00 bids, where the evidence was completely to the contrary" and that this confirms the communications were discussions, not clarifications. *Id.* The agency maintains that the communications were clarifications, not discussions, pointing to the fact that it did not accept revised quotations from any vendor at any time.

As noted above, this task order procurement was conducted as a competition between EIS contract holders and therefore was subject to the provisions of FAR subpart 16.5, which does not establish specific requirements for conducting clarifications or discussions. *FEI Sys.*, B-414852.2, Nov. 17, 2017, 2017 CPD ¶ 349 at 7. However where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will reflect the standards applicable to negotiated procurements. See, e.g., *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; *Uniband, Inc.*, B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4. In a negotiated procurement, clarifications are limited exchanges that agencies may use to allow vendors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes. FAR 15.306(a)(2); *FEI Sys.*, *supra*. In contrast, exchanges between a procuring agency and a vendor that permit the vendor to materially revise or modify its quotation generally constitute discussions. FAR 15.306(d); *Lockheed Martin Simulation, Training & Support*, B-292836.8 *et al.*, Nov. 24, 2004, 2005 CPD ¶ 27.

Based on our review of the record, we find that the agency engaged in clarifications, not discussions. As explained above, in its June email to the vendors, the agency expressly stated that the communication "does not allow for you to change or materially alter your proposal, and under no circumstances will any proposal revision be accepted." AR, Tabs 8-10, Emails from Agency to Vendors, June 14, 2019. Consistent

¹⁷ The agency used the corresponding EIS line item price that it had previously identified in the spreadsheet it sent to Verizon in June 2019.

with this statement, the record confirms that the agency did not accept revised quotations from any vendor. While Verizon requested an opportunity to submit pricing for certain line items that it had left blank, Verizon never submitted, and the agency never accepted, a revised quotation from Verizon.

CenturyLink argues that the agency's decision to treat the blank line items in Verizon's price quotation as \$0.00 bids effectively amounts to a revised quotation. We find that the agency's actions are unobjectionable and do not constitute discussions. The vendor was not allowed to materially revise or modify its quotation; rather, the agency made the decision to treat blank line items as \$0.00 bids. There is nothing in the solicitation that prevented the agency from taking this approach. Indeed, had Verizon been allowed to revise its proposal, it stated that it would have priced these blank line items. Thus, because the agency did not allow Verizon--or any vendors--to revise their quotations in response to the June communications, we find that the agency engaged in clarifications and not discussions.¹⁸ Similarly, the agency's October 2019 communications with CenturyLink were clarifications as the agency did not accept a revised price quotation from the company.¹⁹

CenturyLink also alleges that the agency's question regarding quoted line item prices that were higher than the vendor's corresponding EIS line item pricing constituted discussions. Comments & Supp. Protest at 25. CenturyLink asserts that by asking this question, the agency "was seeking revisions to [o]fferor's proposals by requesting that they submit lower prices as offered on the EIS contract." *Id.* CenturyLink claims that in response to this question, a vendor could have changed its EIS pricing to any amount. *Id.* CenturyLink's claim is not supported by the record.

¹⁸ CenturyLink also contends that there is nothing in the contemporaneous evaluation record that shows the agency considered the completeness of Verizon's quotation or that it was evaluating blank line items as \$0.00 prices, and that the agency provided this explanation only in response to the protest. Supp. Comments at 8. However, while the CET narrative report does not discuss treating blank line items as \$0.00, the pricing workbook evaluation spreadsheet shows that the agency input \$0.00 for the relevant blank line items in Verizon's quotation. See AR, Tab 33a, CET Report - Supporting Pricing Workbook Evaluation. The agency's explanation in response to the protest is therefore consistent with the underlying contemporaneous evaluation documents.

¹⁹ The agency and intervenors argue that CenturyLink's protest is untimely. In this regard, the parties assert that CenturyLink's November email to the agency, in which it stated that the agency must accept its corrected price quotation and that it was considering a potential "award protest," amounted to an agency-level protest. The parties assert that the agency's statement that it would not accept a corrected quotation was adverse agency action that CenturyLink had to protest to GAO within 10 days, which it did not do, and therefore CenturyLink's protest is untimely. We disagree. Based on our review of CenturyLink's November email, we do not find that it amounts to an agency-level protest, and therefore find CenturyLink's protest is timely.

As explained above, the record shows that for those quoted line item prices that were higher than the corresponding EIS prices, the agency ultimately used the prices from Verizon's corresponding EIS line items, and not the quoted prices or revised prices.²⁰ See AR, Tab 33a, CET Report - Supporting Pricing Workbook Evaluation. Also, there is nothing in the record indicating that Verizon--or any other vendor--changed its EIS prices in response to this question. In fact, the record confirms that the agency's evaluation used the same EIS line item prices that it had identified in its June communications with Verizon. See *id.* Thus, vendors were not able to revise their quotations in response to this question, and therefore the question--and subsequent responses--did not constitute discussions.

Violation of Solicitation Terms and Disparate Treatment

CenturyLink also contends that the agency violated the terms of the RFQ and engaged in disparate treatment by accepting Verizon's quotation even though it did not provide a bid for all services. CenturyLink argues that the RFQ required the agency to consider the "completeness" of a vendor's quotation and that "failure to price **ALL items** renders a proposal 'unevaluable' for selection purposes." Comments & Supp. Protest at 9 (emphasis in original). CenturyLink maintains that because Verizon's quotation included a number of blank line items, "the [a]gency should have found Verizon ineligible for consideration of any of the [t]ask [a]reas that had blanks." *Id.* at 11.

We find the agency's acceptance of Verizon's proposal to be unobjectionable. The RFQ stated that the agency would evaluate "completeness in pricing information in each identified [t]ask [a]rea" and that "[f]ailure to list pricing for **ALL items** in any [t]ask [a]rea may render that [t]ask [a]rea un-evaluable for selection purposes." RFQ at 152 (emphasis in original). The RFQ thus permitted--but did not require--the agency to reject a proposal that failed to provide a price for all line items in a particular task area. Accordingly, the agency's decision to evaluate Verizon's price quotation despite the fact that Verizon failed to quote a price for a number of line items does not violate the solicitation.

CenturyLink also asserts that the agency engaged in disparate treatment by evaluating Verizon's quotation even though it contained blank line items, but concluding that CenturyLink's price quotation was defective and ineligible for award in task areas 1, 2, 3, and 5. Supp. Comments at 12-13. Where a protester alleges unequal treatment in an evaluation, it must show that the differences in the evaluation do not stem from differences between the quotations. See *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6; *Camber Corp.*, B-413505,

²⁰ We note that the agency also used CenturyLink's EIS line item prices for those line items that were quoted higher than the corresponding EIS line item. See AR, Tab 33a, CET Report - Supporting Pricing Workbook Evaluation.

Nov. 10, 2016, 2016 CPD ¶ 350 at 8. Here, CenturyLink has not shown that the agency treated the vendors' quotations unequally.²¹ See *22nd Century Techs., Inc., supra*.

The record shows that Verizon's price quotation contained blank entries for 1,072 (or less than two percent) of the line items; these are the line items that Verizon stated it would have priced. AR, Tab 32a, Verizon Vol. III, Price Quotation, Pricing Workbook. In contrast, CenturyLink quoted "\$-," indicating a zero dollar quoted price, for approximately 47,545 (or 77 percent) of the line items. AR, Tab 30a, CenturyLink Vol. III, Price Quotation, Pricing Workbook; COS at 9. As explained above, the zero dollar cost and drastically reduced pricing for so many services in CenturyLink's quotation led the agency to conclude that CenturyLink's pricing was defective. AR, Tab 33, CET Report at 4. Moreover, CenturyLink even admitted that its price quotation as submitted was erroneous.

On this record, we find that the agency's decision to evaluate Verizon's quotation but not CenturyLink's was reasonable and did not amount to disparate treatment. CenturyLink's quotation contained a majority of zero dollar line items, which led the agency to reasonably conclude that CenturyLink's quotation was defective; CenturyLink even admitted as much. In contrast, Verizon's quotation contained a small percentage of blank line items, which the agency reasonably evaluated as \$0.00 bids. Thus it was the difference in the quotations--and not unequal treatment--that led the agency to conclude that CenturyLink's quotation was defective while proceeding with evaluation of Verizon's quotation. This protest ground is denied.

Because we find that the agency reasonably determined that CenturyLink's quotation was defective and ineligible for award of task areas 1, 2, 3, and 5, CenturyLink would not be in line for award even if we sustained its other challenges to the agency's price evaluation, or its challenges to the agency's best-value tradeoff decision, for these same task areas. Accordingly, we find that CenturyLink is not an interested party to

²¹ CenturyLink also argues that the agency engaged in misleading discussions because it did not inform CenturyLink of the deficiencies in its price quotation in the June 2019 communications, and unequal discussions because the agency treated Verizon's blank line items as \$0.00 bids but determined that CenturyLink's quotation was defective. Because we find that the agency did not engage in discussions, we need not address these arguments.

pursue these challenges to the agency's price evaluation. See *ACTA, LLC*, B-418352, B-418352.2, Mar. 17, 2020, 2020 CPD ¶ 107 at 8; 4 C.F.R. § 21.0(a)(1). These bases of protest are dismissed.²²

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

²² For the same reasons, we also dismiss CenturyLink's arguments that the awards for task areas 1, 2, 3, and 5 should be vacated because they violate applicable regulations. CenturyLink also argues that its own award for task areas 4 and 6 should be vacated. Protest at 22. To the extent that the company wishes to terminate its own task order, we think it should discuss those concerns with the agency.