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Decision

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

File: B-419271.4; B-419271.7

Date: April 14, 2021

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DIGEST

1. Protest challenging the agency's evaluation of the protester's technical proposal is denied where the agency's evaluation was reasonable and consistent with the stated evaluation criteria, and without prejudice to the protester.
 2. Protest alleging the agency failed to engage in proper discussions with the protester is denied where the protester fails to demonstrate that it was prejudiced as a result thereof.
 3. Protest alleging that the agency's corrective action subsequent to the initial award decision was unfair and unequal is denied where the corrective action did not treat offerors unequally and did not permit any offeror to revise its proposal.
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DECISION

Qwest Government Services, Inc. d/b/a CenturyLink QGS (CenturyLink), of Monroe, Louisiana, protests the issuance of task orders to AT&T Corp., of Oakton, Virginia, under fair opportunity request for proposals (RFP) No. 70RTAC20R00000026, issued by the Department of Homeland Security (DHS) for DHS headquarters core data (HQCD) requirements. The protesters contend that the agency's evaluation of offerors' task order proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The DHS is in the process of modernizing its information technology services and capabilities, with the goal of “improve[ing] network and telecommunications service delivery across the Department. . . .” Agency Report (AR), Tab 7d, Statement of Work (SOW) at 13; see Contracting Officer’s Statement (COS) at 2. To support its network transition, transformation, and modernization efforts, DHS developed the HQCD requirements SOW here. Specifically, “DHS seeks to acquire, or have the option to acquire in the future,” the following: virtual private network service; ethernet transport service; optical wavelength service; private line service; internet protocol service; internet protocol voice service; managed network service; managed trusted internet protocol service; access arrangements; cable and wiring service; dark fiber service; modernize to a software-defined wide area network (SD-WAN); trusted internet connection and policy enforcement point; web conferencing service; and circuit switch voice service. SOW at 13.

The RFP was issued on June 24, 2020, to holders of General Services Administration (GSA) Enterprise Infrastructure Solutions (EIS) governmentwide acquisition contracts, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.¹ AR, Tab 7, RFP at 4.² The solicitation contemplated the issuance of four task orders, on a fixed-price with economic price adjustment, and a time-and-materials with economic price adjustment bases, for a base year with eleven 1-year options.³ RFP at 9, 63. The RFP also established that task order award would be made on a best-value tradeoff basis, based on three evaluation factors in descending order of importance: (1) performance management approach; (2) transition and modernization approach; and (3) price. *Id.* at 76-77. The non-price factors, when combined, were significantly more important than price. *Id.* at 77.

AT&T and CenturyLink were among the offerors that submitted task order proposals by the July 27 closing date. An agency technical evaluation team (TET) evaluated non-

¹ GSA’s EIS is a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ), contract awarded on July 31, 2017, to provide agencies with telecommunications services on a global basis. AR, Tab 33, GSA EIS IDIQ Contract No. GS00Q17NSD3009 (EIS Contract) § C.1.3. The EIS contract defines services by Core Based Statistical Areas (CBSAs), which are used to group federal user locations into standard geographic areas approximating individual telecommunications markets. *Id.* The EIS contract includes more than 900 CBSAs, and each CBSA includes numerous mandatory and optional services. *Id.* at §§ B.1.2.1.1.1 and J.1.1. Each permissible individual pricing element (e.g., individual mandatory or optional services) within a CBSA is identified by a Contract Line Item Number (CLIN). *Id.* at § B.1.2.1.1.1.

² The solicitation was subsequently amended three times. Unless stated otherwise, all citations are to the final conformed version of the RFP.

³ The four task orders were for different components within DHS; however, all tasks orders involved the same SOW requirements and evaluation criteria.

price proposals using the following adjectival rating scheme to assess the level of confidence of successful performance: high confidence, some confidence, or low confidence. A separate price evaluation team (PET) evaluated price proposals, in accordance with the solicitation, for accuracy, completeness, and reasonableness. See RFP at 78. On September 28, after completing its evaluation, the agency selected AT&T for four task order awards. COS at 3.

On October 6, CenturyLink filed a protest with our Office challenging the evaluation and awards to AT&T. The agency thereafter informed our Office that it planned to take corrective action by terminating the task orders issued to AT&T, reevaluating proposals, and making a new award decision; DHS also reserved the right to conduct discussions with offerors as part of its corrective action. AR, Tab 27, DHS Notice of Corrective Action, B-419271, Nov. 9, 2020, at 1. We thereafter dismissed the earlier CenturyLink protest as academic. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419271, Nov. 10, 2020 (unpublished decision).

On December 29, the agency completed its reevaluation, with the final evaluation ratings and prices of the AT&T and CenturyLink proposals as follows:

	AT&T	CenturyLink
Performance Management Approach	High Confidence	Some Confidence
Transition and Modernization Approach	High Confidence	Some Confidence
Price	\$306,183,079	\$279,932,592

AR, Tab 15, Source Selection Decision Document (SSDD) at 3.

The agency evaluators also made narrative findings--identified as elements that increased the confidence of success, or elements that decreased the confidence of success--in support of the assigned ratings. For example, with regard to the performance management approach factor (the most important of the solicitation's evaluation criterion), the TET identified three elements that increased confidence in AT&T's proposal, while finding three elements that decreased confidence in CenturyLink's proposal. AR, Tab 12, TET Report at 6-7.

On December 29, the agency's source selection authority (SSA) received and reviewed the evaluation ratings and findings. AR, Tab 15, SSDD at 1-9. The SSA determined that AT&T's technical advantages, as compared to CenturyLink's proposal, outweighed CenturyLink's price advantage, and thereby made AT&T the overall best value to the government. *Id.* at 10-11. On January 5, 2021, the agency issued the four task orders

to AT&T. COS at 4. After requesting and receiving a debriefing, CenturyLink filed this protest with our Office on January 11.⁴ *Id.*

DISCUSSION

CenturyLink raises a multitude of issues regarding the agency's evaluation and resulting award decision. First, CenturyLink contends that DHS's evaluation of the offeror's technical proposal was unreasonable and inconsistent with the stated evaluation criteria. CenturyLink also alleges the agency failed to hold meaningful, adequate, and equal discussions with it. Lastly, the protester claims that the entirety of DHS's corrective action was unequal and unfair, and engaged in only for the benefit of AT&T. Had the agency performed a reasonable evaluation of CenturyLink's proposal, or if proper discussions had occurred, CenturyLink argues, its proposal would have been represented the overall best solution to the government. Protest at 14-29; Comments & Supp. Protest at 19-46. Although we do not address all of the issues and arguments raised by CenturyLink, we have considered them all and find no basis on which to sustain the protest.

Technical Evaluation of CenturyLink

CenturyLink protests the agency's technical evaluation. Specifically, CenturyLink challenges the four instances where DHS found elements that decreased confidence in the offeror's proposal under the two non-price factors; CenturyLink does not dispute any other aspect of its technical evaluation, nor the technical evaluation of AT&T. Protest at 15-25; Comments & Supp. Protest at 20-37.

As stated above, the task order competition here was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *NCI Info. Sys., Inc.*, B-418977, Nov. 4, 2020, 2020 CPD ¶ 362 at 5; *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 15. In reviewing protests of an award in a task order competition, we do not reevaluate proposals, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester's disagreement with the agency's judgment regarding the evaluation of proposals or quotations, without more, is not sufficient to establish that an agency acted unreasonably. *Engility Corp.*, *supra* at 16; *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5. Our review indicates

⁴ As the value of the issued task orders (both individually and collectively) was greater than \$10 million, the procurement here is within our jurisdiction to hear protests related to the issuance of task orders under IDIQ contracts awarded by civilian agencies. 41 U.S.C. § 4106(f)(1)(B); *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 4-5.

that the agency's technical evaluation of CenturyLink was both reasonable and without prejudice to the protester.

For example, CenturyLink challenges the "decrease confidence" element assessed against its proposal under the transition and modernization approach factor. Here, the RFP established the agency would evaluate the extent to which proposals: (1) presented a clear understanding of the solicitation's transition and modernization requirements; (2) provided a clear explanation of the offeror's transition management approach; and (3) presented a modernization management approach "which represent[ed] short term modernization and beyond, inclusive of the ability to design, test and implement emerging technologies, . . . key resources and organization structure." RFP at 72.

CenturyLink's transition and modernization approach proposal included tables indicating a notional, 9-month transition schedule (October 1, 2020, to June 30, 2021), and a notional, 18-month modernization schedule (October 1, 2020, to March 31, 2022). AR, Tab 8, CenturyLink Proposal, Vol. I, Technical Proposal, at 82-83, 116. Additionally, relevant to the protest here, CenturyLink's transition proposal stated:

The objective of this [transition] plan is to address the transition of like-for-like services on the current network services provisioned through expiring contracts to the EIS contract with a targeted completion in approximately nine months contingent upon DHS approval. As this plan evolves, CenturyLink and DHS can begin to refine the Modernization Strategy as discussed in Section 2.4 below.

Id. at 81.

The TET found this aspect of CenturyLink's proposal to be an element that decreased performance confidence.⁵ *Id.* Specifically, the evaluators stated:

CenturyLink proposes a 9[-]month like-for-like transition in its initial phase and does not attempt to undertake any modernization efforts during this window, aside from completing some preparatory site work for future upgrades. This decreases DHS'[s] confidence in CenturyLink's approach because a like-for-like transition without modernization can be completed more quickly[,] but the modernization is delayed until [a] later phase and this does not increase the Government's confidence.

Id.

⁵ Separately, the TET also identified one aspect of CenturyLink's transition and modernization approach proposal that increased performance confidence (*i.e.*, its proposed use of [DELETED]). AR, Tab 12, TET Report at 8.

CenturyLink argues the agency misconstrued its proposal and failed to consider the substantial modernization efforts which CenturyLink had proposed during its 9-month transition period. Comments & Supp. Protest at 27-32. The protester also argues that “CenturyLink proposed some of the same modernization efforts . . . within the same timeframe as proposed by AT&T,” whose proposal was assessed favorably with regard to modernization.⁶ *Id.* at 32. The agency maintains that the evaluation here was reasonable in light CenturyLink’s statement to provide the agency “with the same services it has today” (*i.e.*, “like-for-like”) during the 9-month transition period. COS at 12. DHS also argues that it did not engage in disparate treatment, as offerors’ modernization plans were different. Supp. Memorandum of Law (MOL) at 16-19.

We find the agency’s evaluation here to be reasonable and consistent with the stated evaluation criterion. As set forth above, CenturyLink stated that the goal of its transition plan was “to address the transition of like-for-like services on the current network services provisioned through expiring contracts to the EIS contract with a targeted completion in approximately nine months contingent upon DHS approval.” AR, Tab 8, CenturyLink Proposal, Vol., I, Technical Proposal, at 81. Based on this language, the agency evaluators reasonably concluded that CenturyLink intended to provide the same telecommunication services currently in place, and not undertake modernization efforts, during the 9-month transition period. AR, Tab 12, TET Report at 8. The TET also reasonably found that CenturyLink’s delayed modernization effort decreased confidence in successful performance. *Id.*

Although CenturyLink contends that other parts of its proposal indicated the offeror would undertake modernization activities concurrent with transition, the protester does not dispute that the aforementioned language in its submission expressed only like-for-like efforts during the transition period. As we have consistently stated, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *Adams Commc’n & Eng’g Tech., Inc.*, B-419052 *et al.*, Dec. 3, 2020, 2021 CPD ¶ 95 at 18; *Engility Corp.*, *supra*. Where a proposal is unclear or internally inconsistent, the offeror risks having such an inadequately written proposal evaluated unfavorably. *Aerostar Perma-Fix TRU Servs., LLC*, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 8; *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. At best, even assuming as the protester argues, that CenturyLink’s proposal contained differing statements in different places regarding its modernization schedule, the agency’s evaluation of the offeror’s contradictory and inconsistent proposal language was a reasonable one. *Davis Def. Grp., Inc.*, B-417470, July 11, 2019, 2019 CPD ¶ 275 at 8.

⁶ The TET noted that AT&T had proposed a 180-day schedule “to complete transition and near-term modernization opportunities” (*e.g.*, [DELETED]), and found that AT&T’s “approach covers most areas of modernization [that] DHS could reasonably expect to achieve during the transition phase and provides immediate gains to the DHS network environment.” AR, Tab 12, TET Report at 6.

We also find no merit to CenturyLink's assertion that DHS's evaluation of modernization plans was unequal. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors or vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9; *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 offerors' proposals. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8. In our view, CenturyLink's disparate treatment argument is premised on an incorrect "apples and oranges" comparison of offerors' task order proposals and not unequal treatment. *CSRA LLC*, *supra*; see *AMTIS-Advantage, LLC*, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 6.

CenturyLink claims that it proposed "substantial" modernization activities within the first nine months (270 days) after task order award; the protester also essentially "cherry-picks" instances where the two offerors had modernization efforts in common. Comments & Supp. Protest at 29. The TET, however, found that AT&T had proposed completing most areas of modernization within the first six months (180 days) of task order award. AR, Tab 12, TET Report at 5-6. As AT&T's modernization activities were reasonably found to be both more extensive and over a shorter time period than CenturyLink's, there is no evidence of unequal treatment. In sum, the record does not indicate that CenturyLink and AT&T proposed the same modernization plans and were given different ratings. Rather, our review indicates that the offerors proposed different features and reasonably received different evaluation ratings from the agency. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 13.

In any event, we find that CenturyLink has failed to establish that it was prejudiced by the technical evaluation errors it alleges. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *Information Mgmt. Res., Inc.*, B-418848, Aug. 24, 2020, 2020 CPD ¶ 279 at 7 n.4. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest irrespective of whether a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

As set forth above, CenturyLink disputes the four elements the agency found decreased confidence in the protester's technical proposal. The record reflects, however, that it was not CenturyLink's technical shortcomings, but rather, the elements which increased confidence in AT&T's proposal on which the SSA relied when making the price/technical tradeoff decision. Specifically, the SSA compared AT&T's higher-rated, higher-priced proposal with CenturyLink's lower-rated, lower-priced proposal and identified the following AT&T technical advantages:

- AT&T was the sole offeror to [DELETED] per task order and to [DELETED], thereby ensuring service continuity at the task order level.

- AT&T was the sole offeror to propose to execute the transition, inclusive of all modernization objectives, in the initial 180 calendar day phase of its schedule.
- AT&T was the sole offeror to include a [DELETED] in the initial transition period.
- AT&T was the only offeror to correctly identify [DELETED] and include it in its proposal as a recommendation for future use by DHS.
- AT&T's proposal was superior to all other offerors with regard to the number of key personnel, transition schedule, and associated level of modernization.

AR, Tab 15, SSDD at 10.

The SSA thereafter concluded that DHS was “willing to pay the increase in price by \$26,250,487 higher (9%),” because the aforementioned advantages in AT&T's technically-superior proposal made it the overall best value to the government. *Id.*

Here the record demonstrates that CenturyLink's shortcomings were not relied upon nor relevant to the agency's award determination. *Dell Servs. Fed. Gov't, Inc.*, B-412340 *et al.*, Jan. 20, 2016, 2016 CPD ¶ 43 at 5 n.3. Even with the removal of the identified shortcomings to CenturyLink's proposal, the technically-superior aspects of AT&T's proposal on which the SSA relied when making his best-value tradeoff decision remain undisturbed. *Bodell Constr. Co.*, B-419213, B-419213.2, Dec. 28, 2020, 2021 CPD ¶ 44 at 5; *Perspecta Enter. Sols., LLC*, B-418533.2, B-418533.3, June 17, 2020, 2020 CPD ¶ 213 at 19. In sum, although CenturyLink claims the agency erred in assigning the decrease confidence elements to the offeror's proposal, CenturyLink has failed to show that it was prejudiced by those aspects of the evaluation it challenges.

Adequacy of Discussions

CenturyLink also protests the adequacy of the agency's discussions. Specifically, the protester contends that DHS failed to hold meaningful and adequate discussions with it regarding the aforementioned, decrease-confidence elements found in the offeror's proposal. Protest at 25-29; Comments & Supp. Protest at 38-44. Had such discussions taken place, CenturyLink argues, it would have easily addressed the four shortcomings identified in its technical proposal. Protest at 27-29.

After receipt of offerors' proposals, the agency held several rounds of exchanges with offerors. COS at 13-17. These exchanges largely concerned clarifications to the offerors' price proposals, *e.g.*, the agency requested clarification/updates to 37 CLINs in CenturyLink's proposal for which no offered price was specified, and reminded offerors that “\$0.00” should be inserted where a price was being waived. AR, Tab 13c, DHS Exchange with CenturyLink, Aug. 10, 2020, at 3-5.

CenturyLink argues that the four decrease-confidence elements assessed against its technical proposal were “tantamount to ‘significant weaknesses,’” which the agency was therefore required to raise in discussions. Protest at 28. The agency maintains that its exchanges with offerors were equal and did not amount to discussions. MOL at 12. Further, even should the exchanges be considered discussions, the agency posits, they

were fair and meaningful, and that the four shortcomings identified in CenturyLink's technical proposal were not significant weaknesses that were required to be discussed. *Id.* at 17.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the procurement for the task order here. See *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. In this regard, FAR section 16.505 does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *Id.*; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 7 (finding that exchanges in the context of FAR section 16.505, like other aspects of such a procurement, must be fair). When holding discussions, procuring agencies are not permitted to engage in conduct that favors one offeror over another. *Deloitte Consulting, LLP*, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 17. An agency is not required, however, to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. *Education Dev. Center, Inc.*, B-418217, B-418217.2, Jan. 27, 2020, 2020 CPD ¶ 61 at 5-6; *L-3 STRATIS*, B-404865, June 8, 2011, 2011 CPD ¶ 119 at 6-7.

Here, we need not decide whether the agency's exchanges constituted discussions, or whether DHS was required to discuss the four elements found to decrease confidence in the offeror's submission, because CenturyLink has again failed to demonstrate that it was prejudiced by the challenged agency conduct.

CenturyLink argues that had DHS conducted discussions with it regarding the identified technical shortcomings, CenturyLink would have addressed these issues. Protest at 27-29. The protester, however, has neither alleged nor demonstrated that it would have altered its proposal in any other regard. Protest, *passim*; Comments & Supp. Protest, *passim*. As we have found that the four technical shortcomings in CenturyLink's proposal were not prejudicial to the protester--their removal would not alter the agency's price/technical tradeoff determination--the discussions regarding same are also without prejudice to CenturyLink. Quite simply, the protester's competitive standing would not have improved even if the firm had been able to address the shortcomings identified in its technical proposal.⁷ See *Picturae Inc.*, B-419233, Dec. 30, 2020, 2021 CPD ¶ 13 at 7.

⁷ CenturyLink also alleges that DHS held an unequal exchange with another unsuccessful offeror regarding that offeror's compliance with the RFP's service level agreement requirements, but failed to address this same issue with CenturyLink. Comments & Supp. Protest at 3, 39-40. We need not address the merits of CenturyLink's allegation here, because even if the argument had merit, the protester

Conduct of the Agency's Corrective Action

CenturyLink also challenges the conduct of the agency's corrective action subsequent to the initial award determination. The protester alleges that even if DHS opened discussions with offerors during corrective action, the agency again failed to hold equal and adequate discussions with CenturyLink regarding the shortcomings identified in its technical proposal. Protest at 26-29. CenturyLink also maintains that the agency's corrective action was generally unfair and unequal. Comments & Supp. Protest at 3. As detailed below, we find all of CenturyLink's assertions regarding the agency's corrective action to be meritless.

After the initial award to AT&T, CenturyLink filed a protest with our Office on October 6, 2020, challenging the agency's evaluation and award decision. Protest, B-419217, Oct. 6, 2020. First, CenturyLink alleged that AT&T was ineligible for task order award because AT&T did not have all required CLINs on its EIS contract as of the task order award date.⁸ Protest, B-419217, Oct. 6, 2020, at 15-17. Additionally, as with its protest here, CenturyLink asserted the agency's technical evaluation was unreasonable and the discussions were inadequate for not raising the identified technical shortcomings with the offeror. *Id.* at 17-29.

could not have suffered prejudice based on the agency's action. We have repeatedly found that where an agency conducts discussions with another unsuccessful offeror, but does not conduct discussions with the protester or the awardee, the protester cannot demonstrate prejudice. See, e.g., *JHC Tech., Inc.*, B-417786, Oct. 23, 2019, 2019 CPD ¶ 376 at 6 (finding that because Vendor F's quotation was neither advanced further in the competition nor selected for award, protester could not have been prejudiced by exchanges between agency and Vendor F, even if found to be discussions); *Joint Venture Penauillie Italia S.p.A.; Cofathec S.p.A.; SEB.CO S.a.s.; CO.PEL.S.a.s.*, B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 7 n.4.

⁸ By way of background, the RFP required proposals to comply with the terms and conditions found in GSA's EIS contract. RFP at 5. Section G.3.2.5 (authorization of orders) of the EIS contract provides that an EIS contract holder may compete for an agency task order--even if it does not have all of the agency-required services included on its EIS contract--if the contractor, at the time of its task order proposal submission, submits to GSA a modification adding the missing services (and the associated pricing) to its EIS contract. See AR, Tab 33, EIS Contract, § G.3.2.5, at 10-11. Section G.3.2.5 goes on to specifically state that contractors are prohibited from accepting a task order for services that are not on their EIS contract (*i.e.*, until GSA has processed the EIS contract modifications and added the to-be-performed services, and their related pricing, to a firm's EIS contract). *Id.* at 11 ("The contractor shall not accept a [task order] or service order or provision services not on its contract."); see also AR, Tab 20, EIS Fair Opportunity and Ordering Guide at 21 (explaining that the ordering contracting officer may not issue a task order until after the contractor has modified its EIS contract to include the particular service or service component specified in the ordering agency's solicitation).

The contracting officer determined it appropriate to take corrective action with regard to the first issue raised in that earlier CenturyLink protest. AR, Tab 22, Memorandum For Record Regarding Corrective Action, B-419271, Oct. 30, 2020. Specifically, prior to the initial award decision, DHS had utilized the EIS contract pricing tool to determine that AT&T had all RFP-required CLINs on its EIS contract. *Id.* After receipt of CenturyLink's protest, however, the contracting officer discovered that two of AT&T's EIS CLINs no longer appeared on the EIS contract pricing tool. *Id.* DHS requested clarification from GSA, which stated that there may have been a clerical error regarding the information displayed on the EIS contract pricing tool. *Id.* Based on GSA's response that AT&T did not have all CLINs on its EIS contract at the time of task order award, DHS determined the best course of action was to terminate AT&T's task orders, conduct a reevaluation, and make a new best-value determination. *Id.* Also, prior to any new award decision, DHS planned to "re-verify and obtain written confirmation of the apparent awardee's CLINs to ensure that the GSA had not made another clerical error." *Id.* Lastly, the contracting officer stated that "I have reviewed the other [CenturyLink] protest grounds and believe they lack merit." *Id.*; see also COS at 4.

DHS subsequently informed our Office that it would take corrective action as follows:

DHS will terminate the task orders for the convenience of the government; DHS reserves the right to conduct discussions as described in FAR 16.505; DHS will conduct a re-evaluation of proposals; DHS will conduct a best value determination and source selection decision; DHS will re-check and obtain written confirmation of the apparent awardee's CLIN's to ensure that the GSA has not made another clerical error.

AR, Tab 27, DHS Notice of Corrective Action, B-419271, Nov. 9, 2020, at 1. Based on the proposed corrective action, we dismissed the protest as academic. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419271, Nov. 10, 2020 (unpublished decision).

During its corrective action, DHS held exchanges with all offerors regarding their EIS contracts. COS at 17. For example, on November 23, DHS notified AT&T that it had found one RFP-required CLIN that was not on the offeror's EIS contract and requested AT&T provide information showing that its EIS contract had been modified to include same. *Id.* Similarly, also on November 23, DHS notified CenturyLink that it had found 27 RFP-required CLINs that were not on the offeror's EIS contract and requested CenturyLink provide information showing that the proposed CLINs were added to its EIS contract. *Id.* at 18. The agency also undertook an EIS CLIN validation effort--involving GSA, GSA's EIS pricing vendor, and AT&T--to confirm that all RFP-required CLINs were on the prospective awardee's EIS contract. COS at 21-23; Supp. COS at 9-10, 13-16. "These exchanges did not involve the submission of a revised [task order] proposal to DHS and were part of an administrative CLIN validation process required by the EIS Ordering Guide." Supp. COS at 14. The agency ultimately determined that all

required CLINs were properly awarded on AT&T's EIS contract.⁹ AR, Tab 13, PET Report at 1-17; Tab 13a, Addendum to Price Evaluation Report at 1-14.

CenturyLink argues the agency failed to hold equal and meaningful discussions during its corrective action. Protest at 26-29. Additionally, the protester alleges that “the entirety of the [c]orrective [a]ction was neither fair nor equal, and was only engaged in to the extent necessary to allow AT&T to cure its noncompliant proposal.”¹⁰ Comments & Supp. Protest at 3. Related thereto, CenturyLink argues that it was improper for the corrective action to only address one issue--regarding the requirement that the awardee have all RFP-required CLINs on its EIS contract prior to task order issuance--without correcting any of the other alleged improprieties. *Id.* at 2, 12. Lastly, CenturyLink argues the agency failed to adhere to its announced corrective action when DHS failed to reevaluate all aspects of the proposals and again made the same selection decision. CenturyLink Supp. Comments at 13.

The agency argues that it did not hold discussions with any offerors during corrective action, but instead held exchanges with all offerors related to the administration of regarding their EIS contracts.¹¹ MOL at 18-20. The agency also argues that its corrective action was equal and fair, and that it provided an equal opportunity to all offerors to demonstrate that they had modified their EIS contracts with GSA. Supp. MOL at 11-16. DHS further contends that its corrective action was limited to the EIS contract issue, because this was the only aspect of the initial evaluation and award determination that the agency believed required remedying. *Id.* at 7-11. Lastly, DHS argues that the corrective action taken was entirely consistent with the corrective action announced. *Id.* We agree.

As a general rule, contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. *CenturyLink QGS, supra* at 4; *Northrop Grumman Sys. Corp.*, B-410990.3, Oct. 5, 2015, 2015 CPD ¶ 309 at 8. The details of a corrective action are within the sound discretion and judgment of the contracting

⁹ While CenturyLink points to exchanges which DHS held with AT&T after the agency's December 29 award determination, and an excel spreadsheet in which AT&T presented pricing information in a different manner from that in its task order proposal, Comments & Supp. Protest at 14-15, the record reflects that such exchanges did not involve a change to AT&T's task order proposal, including its pricing. Supp. COS at 15-16.

¹⁰ Unlike its earlier protest, CenturyLink no longer challenges AT&T's eligibility for task order award or disputes that AT&T possesses all required CLINs on its EIS contract. See Protest, *passim*; Comments & Supp. Protest, *passim*.

¹¹ As the “acid test” for deciding whether discussions have been held is whether it can be said that an offeror was provided an opportunity to revise or modify its proposal, see *Allied Tech. Grp., Inc.*, B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6, we have found that exchanges limited to the administration of an offeror's EIS contract do not constitute discussions. *CenturyLink QGS, supra* at 6 n.5.

agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; see *Alliant Enter. JV, LLC*, B-410352.4, Feb. 25, 2015, 2015 CPD ¶ 82 at 4 (“[A]n agency’s corrective action is reasonable if it is appropriate to remedy the flaw which the agency believes exists in its procurement process.”); *Unissant, Inc.*, B-418193.2, Jan. 31, 2020, 2020 CPD ¶ 67 at 4 (“[A]s a general rule, an agency has the discretion to determine its needs and the best way to meet them.”); see also *Dell Fed. Sys., L.P. v. United States*, 906 F.3d 982, 994-995 (Fed. Cir. 2018) (finding an agency’s corrective action to be reasonable because it was rationally related to procurement defect).

First, we find no merit in CenturyLink’s assertion that the agency held unequal and inadequate discussions with offerors during the corrective action, because the agency did not conduct discussions as part of its corrective action. The record reflects that after DHS’s initial award decision, AT&T submitted requests to GSA to modify its EIS contract. We have previously determined, however, that this action did not concern the competition for the task order; rather it concerned the administration of AT&T’s EIS contract. See *CenturyLink QGS*, B-418556.3, Sept. 8, 2020, 2020 CPD ¶ 293 at 5. As stated in that *CenturyLink QGS* decision:

the EIS contract modification submission requirements enable GSA to process necessary modifications before issuance of a task order, ensuring that all of the [ordering] agency’s task order requirements are within the scope of the offeror’s EIS contract. And, for the [ordering] agency, the EIS contract modification requirement allows the [ordering] agency to track and confirm whether an offeror has the required services on its EIS contract prior to the agency’s issuance of the task order. The [EIS contract] modification process did not otherwise affect the agency’s evaluation of the task order proposals, or impact the task order competition in any way.

Id. at 5-6.

Similarly, as the exchanges between DHS and AT&T concerned the scope of the offeror’s EIS contract, and were matters of EIS contract administration, they did not constitute discussions regarding the offeror’s task order proposal. *Intermarkets Global*, B-400660.12, B-400660.13, May 6, 2011, 2011 CPD ¶ 130 at 6; *Global Assocs. Ltd.*, B-271693, B-271693.2, Aug. 2, 1996, 96-2 CPD ¶ 100 at 4.

We also find no merit in CenturyLink’s assertion that the entirety of DHS’s corrective action was unequal and unfair. The record reflects that, as a consequence of the earlier protest filed by CenturyLink, the agency learned that AT&T may not have been eligible for task order award because DHS had not confirmed that AT&T had all of the task order required services on its EIS contract, as required by section G.3.2.5 of the EIS contract. In fact, the agency learned the same issue applied equally to CenturyLink, that is, the protester also may not have had all of the task order-required services on its EIS contract. COS at 18. To correct this issue, the agency’s corrective action sought to

confirm whether each offeror had all of the required services included and priced on its EIS contract. The proposed corrective action did not require, nor allow, for the submission of task order proposal revisions from any offeror--a remedy sought by CenturyLink in order for it to address the shortcomings identified in its technical proposal. We find the agency's chosen approach unobjectionable.

Moreover, we find no merit to CenturyLink's allegation that the agency's corrective action was improper or unfair because it addressed only one issue raised in the earlier protest and not others. The record reflects the agency was concerned that offerors, including AT&T, may not have had all RFP CLINs on their EIS contracts at the time of task order award. Consequently, as part of its corrective action, DHS held exchanges with offerors regarding their EIS contracts, providing all offerors with the opportunity to modify their EIS contracts, and performed an EIS CLIN validation effort to confirm that all RFP-required CLINs were on the prospective awardee's EIS contract. We find the agency's corrective action to be reasonable as it was appropriate to remedy the flaw which the agency believed existed in its procurement process. *Alliant Enter. JV, LLC, supra*; *Dell Fed. Sys., L.P. v. United States, supra*.

By contrast, DHS found that CenturyLink's remaining protest grounds lacked merit, and therefore, the agency's corrective action did not include conducting discussions or reevaluating technical proposals. In sum, CenturyLink's allegation that its protest grounds here were (self-proclaimed) meritorious ones did not make them so, and there is no requirement that an agency's corrective action remedy flaws alleged in an earlier protest where, as here, no decision on the merits was issued by our Office. *XYZ Corp., B-413243.2*, Oct. 18, 2016, 2016 CPD ¶ 296 at 3; *SOS Int'l, Ltd., B-407778.2*, Jan. 9, 2013, 2013 CPD ¶ 28 at 2.

Lastly, we find no merit in CenturyLink's assertion that the agency improperly deviated from its announced corrective action. DHS plainly did not state, as the protester avers, that the agency would reevaluate all aspects of offerors' proposals. A simple review of the agency's notice of corrective action confirms this reading. See AR, Tab 27, DHS Notice of Corrective Action, B-419271, Nov. 9, 2020. The mere fact that the best-value tradeoff determination again resulted in the selection of AT&T does not indicate that the agency failed to make a new source selection decision, or that it was somehow improper. *DynCorp Int'l LLC, B-414647.2, B-44647.3*, Nov. 1, 2017, 2017 CPD ¶ 342 at 16.

In sum, CenturyLink's many claims of disparate treatment by the agency in the evaluation of proposals are wholly unsupported by the record and provide no basis on which to sustain the protest.

The protest is denied.

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General Counsel