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## Decision

**Matter of:** Verizon Business Network Services, Inc.

**File:** B-419271.5; B-419271.6; B-419271.8

**Date:** April 26, 2021

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### DIGEST

1. Protest alleging that the difference between the offerors' proposed prices shows that they were not competing on a common basis is denied where the protester does not identify any solicitation provisions which were vague or misleading.
2. Protest challenging the agency's evaluation of the protester's technical proposal is denied where the evaluation was without prejudice to the protester.
3. Protest alleging the agency engaged in inadequate discussions is denied where the agency's exchanges were meaningful, not misleading, and without prejudice to the protester.
4. Protest alleging that awardee was ineligible for award is dismissed as untimely where it fails to independently meet GAO timeliness requirements and represents an unwarranted piecemeal development and presentation of protest issues, which our Bid Protest Regulations do not contemplate.

### DECISION

Verizon Business Network Services, Inc., of Ashburn, Virginia, 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 protester

contends the agency's evaluation of offerors' task order proposals and award decision were improper.<sup>1</sup>

We deny the protest.

## BACKGROUND

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 1-2. 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; a modernized software-defined wide area network (SD-WAN); a 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.<sup>2</sup> AR, Tab 7, RFP at 4.<sup>3</sup> The solicitation contemplated the issuance of four task orders, on

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<sup>1</sup> Although this is a task order competition under a multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, the agency issued the solicitation as an RFP rather than a request for quotations and refers to the submissions of proposals from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

<sup>2</sup> GSA's EIS is a multiple-award IDIQ contract awarded on July 31, 2017, to provide agencies with telecommunications services on a global basis. AR, Tab 37, GSA EIS Contract No. GS00Q17NSD3000 (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.1.1.1. 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; see also *CenturyLink QGS*, B-418556.3, Sept. 8, 2020, 2020 CPD ¶ 293.

<sup>3</sup> The solicitation was subsequently amended three times. Unless stated otherwise, all citations are to the final conformed version of the RFP.

fixed-price with economic price adjustment, and time-and-materials with economic price adjustment bases, for a base year with eleven 1-year options.<sup>4</sup> RFP at 9, 63. The RFP 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 Verizon were among the offerors that submitted task order proposals by the July 27 closing date. An agency technical evaluation team (TET) evaluated non-price proposals using an 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. On September 28, after completing its evaluation, the agency selected AT&T for four task order awards. COS at 2.

On October 6, Verizon 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. DHS Letter to GAO, B-419271.2, B-419271.3, Nov. 9, 2020. We then dismissed the earlier Verizon protest as academic. *Verizon Bus. Network Servs., Inc.*, B-419271.2, B-419271.3, Nov. 9, 2020 (unpublished decision).

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

	AT&T	Verizon
<b>Performance Management Approach</b>	High Confidence	High Confidence
<b>Transition and Modernization Approach</b>	High Confidence	Some Confidence
<b>Price</b>	\$306,183,079	\$749,085,499

AR, Tab 17, Source Selection Decision Document (SSDD) at 3.

The agency technical 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

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<sup>4</sup> The four task orders were for different components within DHS; however, all tasks orders involved the same SOW requirements and evaluation criteria.

performance management approach factor, the TET identified three elements that increased confidence in AT&T's proposal, while finding two elements that increased confidence and one element that decreased confidence in Verizon's proposal. AR, Tab 14, TET Report at 6, 9.

On December 29, the agency's source selection authority (SSA) received and reviewed the evaluation ratings and findings. AR, Tab 17, SSDD at 1-9. The SSA determined that AT&T's proposal was both higher-rated and lower-priced--by more than \$442 million--than that of Verizon, and that AT&T represented 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, Verizon filed this protest with our Office on January 19.<sup>5</sup> *Id.*

## DISCUSSION

Verizon raises a multitude of challenges regarding the agency's evaluation and resulting award decision. The protester asserts that, as evidenced by the differences in proposed pricing, offerors did not compete on a fair and equal basis. Verizon also contends the evaluation of technical proposals was unreasonable and unequal. Verizon also alleges the agency failed to hold meaningful discussions with it regarding its price and technical proposals. Lastly, Verizon alleges that AT&T is ineligible for award because AT&T does not offer SD-WAN services on its EIS contract, as required by the RFP here. Had the agency properly evaluated the proposals, Verizon argues, its proposal would have been selected for award.<sup>6</sup> Protest at 1-43; Comments & Supp. Protest at 1-40. Although we do not address all of the various issues and arguments raised by the protester, we have considered them all and find no basis on which to sustain the protest.

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<sup>5</sup> 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); *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 4-5.

<sup>6</sup> Verizon also protested that: (1) AT&T failed to price all CLINs as required by the RFP and the agency relaxed this requirement for AT&T; (2) the agency's discussions with Verizon were not meaningful specifically because the agency failed to communicate to Verizon the relaxation of this requirement; and (3) the agency failed to consider the actual relative cost of proposals specifically because AT&T failed to price all CLINs and DHS would be required to purchase legacy services under the incumbent contract. Protest at 14-29. Verizon subsequently elected to withdraw these protest grounds. Verizon Letter to GAO, Mar. 31, 2021, at 1.

## Price Evaluation/Common Basis for Competition

Verizon first alleges the agency's price evaluation was unreasonable. More specifically, the protester contends that offerors did not compete on a fair and equal basis, which "infected" the agency's price evaluation and resulting best-value decision. Comments & Supp. Protest at 16.

The RFP contemplated the issuance of task orders on a fixed-price (or a time-and-materials) basis, and provided offerors with detailed pricing worksheets to be used with their proposals. AR, Tab 7c, RFP attach. 1, Pricing Schedule. The record reflects that when completing the pricing worksheets, offerors often provided a price of "\$0.00" for various CLINs. AR, Tab 15, PET Report at 3; COS at 13. As set forth above, Verizon's total evaluated price was \$749,085,499, AT&T's evaluated price was \$306,183,079, and the evaluated price for the third offeror (Offeror C) was \$279,932,592. AR, Tab 15, PET Report at 8. The TET evaluated the prices in accordance with the solicitation and found them to be accurate, complete, and reasonable. *Id.* at 13-17.

Verizon states that "[w]e are not suggesting that AT&T's or [Offeror C's] prices were unrealistically low: We are not claiming that AT&T or [Offeror C] cannot perform the work at their proposed prices, or that their proposed prices present too much risk." Comments & Supp. Protest at 23. Rather, Verizon argues, the offerors' "irreconcilable and erratic pricing" indicates that AT&T and Offeror C priced something very different than Verizon, which provided these other offerors with an unfair and unequal advantage. *Id.*

The agency states that "[a]ll offerors proposed prices using the same price workbooks and the same [RFP] requirements". Supp. Memorandum of Law (MOL) at 11-12. In the agency's view, the submitted prices were based on each offeror's independent business judgments regarding the discounts they elected to offer from their EIS contract pricing. *Id.* at 10.

It is a fundamental principle of government procurements that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 6; *Continental RPVs*, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8. Additionally, the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. *Arch Sys., LLC; KEN Consulting, Inc.*, B-415262, B-415262.2, Dec. 12, 2017, 2017 CPD ¶ 379 at 10; *Global Tech. Sys.*, B-411230.2, Sept. 9, 2015, 2015 CPD ¶ 335 at 17.

Although Verizon asserts the differences between prices show that offerors did not have a common understanding of the solicitation requirements, the protester does not identify any specific parts of the RFP which it asserts are vague, or ambiguous, or that

otherwise prevented offerors from competing on a common basis.<sup>7</sup> On this record we find no basis to conclude that the RFP failed to provide a common basis for offerors to compete or was otherwise defective. See *Arch Sys., LLC; KEN Consulting, Inc., supra* (finding alleged differences in price, alone, do not establish that offerors had differing understandings of a solicitation or that the solicitation failed to provide a common basis for competition); *Centerra Grp., LLC*, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 6.

We also find Verizon's reliance on our decision in *Veterans Evaluation Services, Inc., et al.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185, to be inapt. In *Veterans Evaluation Services*, we found the agency's price evaluation to be unreasonable because the price evaluation methodology provided no insight to the agency regarding the likely cost to the government of awarding a contract to one firm versus another. *Id.* at 18. Here, by contrast, the agency's price evaluation as well as the underlying price evaluation methodology provides the agency with clear insight regarding the likely cost to the government of awarding a contract to one firm over another, which Verizon does not dispute.

Finally, we find that which Verizon argues DHS failed to do--*i.e.*, reconcile offerors' divergent prices--was plainly not required as part of the RFP's price evaluation criterion and provides no basis on which to sustain the protest. See *Per Aarsleff A/S, et al.*, B-410782 *et al.*, Feb. 18, 2015, 2015 CPD ¶ 86 at 18. Quite simply, nothing required the agency to determine why Verizon's price was not as low as those of the other offerors.

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<sup>7</sup> Verizon contends that our Office has recognized that disparate prices provide a basis to conclude that offerors did not compete on a common basis. Comments & Supp. Protest at 17, *citing PCA Aerospace, Inc.*, B-293042.3, Feb. 17, 2004, 2004 CPD ¶ 65; *Federal Sec. Sys., Inc.*, B-281745.2, Apr. 29, 1999, 99-1 CPD ¶ 86. The decisions relied on by the protester, however, concern challenges to agencies' decisions to take corrective action in response to a protest.

In *PCA Aerospace* and *Federal Security Systems*, we concluded that the agencies' decisions to take corrective action based on significant differences in the offerors' proposed prices were reasonable. These decisions relied on the broad discretion afforded to agencies to take corrective action. As we explained, it is not necessary for an agency to conclude that the protest is certain to be sustained before it may take corrective action; where the agency has reasonable concern that there were errors in the procurement, even if the protest could be denied, we view it as within the agency's discretion to take corrective action. *Federal Sec. Sys., Inc., supra*, at 4-5. The protester here does not establish that the differences between the proposed prices, alone, demonstrates a lack of common understanding among the offerors.

## Technical Evaluation of Verizon

Verizon also challenges the evaluation of its technical proposal. Specifically, Verizon alleges that various aspects of DHS's evaluation under the transition and modernization approach factor were unreasonable and unequal. Comments & Supp. Protest at 26-35. Had the agency performed a reasonable evaluation, Verizon argues, it would have received a "high confidence" rating for this evaluation factor, rather than a rating of "some confidence." Protest at 5.

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 reviews indicate that the agency's technical evaluation of Verizon was both reasonable and without prejudice to the protester. *Synergy Sols. Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 12-13 (finding no prejudice associated with the challenged agency actions where the protester fails to demonstrate that, but for such actions, it would have had a substantial chance of receiving the award).

With regard to the transition and modernization approach factor, 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.

The TET identified two elements in Verizon's transition and modernization approach that decreased performance confidence.<sup>8</sup> AR, Tab 14, TET Report at 9. First, the agency evaluators found that Verizon's proposal contained extensive discussion of managed network services (MNS) as part of its strategy (e.g., "MNS service orders are present in multiple places in the transition schedule/approach"). *Id.* However, because

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<sup>8</sup> The TET also identified a third shortcoming in Verizon's proposal under the performance management approach factor, which the protester does not dispute.

DHS intended to order managed network services in limited circumstances, the TET concluded that Verizon's emphasis on MNS demonstrated a lack of understanding of the agency's requirements.<sup>9</sup> *Id.* Additionally, the TET found that Verizon had proposed [DELETED] for SD-WAN deployment, but that the total time and method to complete SD-WAN deployment was left unclear. *Id.*

Verizon argues that its response to the RFP's MNS requirements was proper such that the identified shortcoming was in error (or alternatively, the agency's MNS requirements materially changed after RFP issuance).<sup>10</sup> Comments & Supp. Protest at 26-29, 34-35. Verizon also contends that the evaluation of its transition approach was unreasonable and unequal. *Id.* at 29-32. We need not decide the merits of Verizon's technical evaluation challenges, however, because Verizon fails to demonstrate that it was competitively prejudiced by the errors alleged.

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.

The SSA, when making his source selection decision, found AT&T to be both higher technically-rated and lower-priced than Verizon. AR, Tab 17, SSDD at 10. The SSA also identified aspects of AT&T's proposal that evidenced AT&T's technical superiority to the other offerors:

- 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.

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<sup>9</sup> In this regard, the SOW stated: "Note that the offeror will only manage their own network . . . and . . . their own NOC [network operations center], not a DHS NOC. MNS services in the pricing tables . . . are for specialized services, not general DHS WAN MNS service." SOW at 104 (emphasis added).

<sup>10</sup> Verizon also protested the other decreased-confidence element found in its transition and modernization approach, *i.e.*, the total time and method for the offeror to complete SD-WAN deployment was unclear. Protest at 33-34. We consider this argument abandoned, since the agency provided a detailed response to the protester's assertion in its report to our Office (MOL at 25-26), and Verizon elected not to reply to the agency's response in its comments (Comments & Supp. Protest, *passim*). See *Citrus College; KEI Pearson, Inc.*, B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.



- AT&T was the only offeror to correctly identify managed network services as mostly optional and to include these services 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 levels of modernization.

*Id.*

As a preliminary matter, Verizon challenges two aspects of the evaluation of its proposal under the transition and modernization approach factor; it does not dispute the remaining technical shortcomings identified by the evaluators. The record reflects, however, that the SSA did not rely upon Verizon's identified shortcomings when making the best-value determination. The SSA instead found that it was the many benefits associated with AT&T's proposal--including those under the performance management approach factor (the most important of the evaluation criterion), which Verizon does not dispute--that made AT&T technically superior overall and the best value. *Engility Corp., supra* at 17.

Moreover, even if Verizon were to receive a rating of "high confidence" under the transition and modernization approach factor, as the protester avers, such that the proposals from AT&T and Verizon were rated as equivalent under each non-price factor, Verizon's price would remain more than \$442 million higher than AT&T's price--more than twice as high. We fail to see, and the protester has failed to demonstrate that, even if its technical evaluation challenges had merit, Verizon would either be higher rated than, or technically superior, to AT&T.

In sum, as AT&T's lower-priced proposal would remain in line for award ahead of Verizon's even if all of the protester's allegations concerning the technical evaluation were supported by the record, Verizon has failed to establish that it was prejudiced by the alleged technical evaluation errors.<sup>11</sup> *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14 (finding that no price/technical tradeoff was required as part of a best-value source selection when proposals are deemed technically equal and one was lower-priced than the other); *Orion Int'l Techs., Inc.*, B-293256, Feb. 18, 2004, 2004 CPD ¶ 118 at 3 (finding protester was not prejudiced by agency's alleged unequal evaluation of its proposal and the awardee's higher-rated proposal, where the awardee's proposal had a lower price and the protester does not assert that its proposal should be rated higher than the awardee's proposal).

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<sup>11</sup> In any event, we find the decreased-confidence element assigned to Verizon's proposal for its over-emphasis of MNS, as well as the evaluation of its transition plan, to be unobjectionable. Likewise, we find that Verizon's challenges to the evaluation of AT&T's technical proposal provide no basis on which to sustain the protest.

## Adequacy of Discussions

Verizon next argues that the discussions regarding its proposed price were misleading and not meaningful. Comment & Supp. Protest at 24-26. Verizon also argues that by failing to raise the two decreased-confidence elements identified in the offeror's transition and modernization approach, DHS's discussions were not meaningful. Protest at 29-32.

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).

In our decisions discussing an agency's obligations in conducting discussions under FAR part 15, we have consistently stated that an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements. *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8-9. However, in the context of both FAR part 15 and 16 procurements, we have also stated that agencies are not required to "spoon-feed" an offeror during discussions; rather, agencies need only lead offerors into the areas of their proposals that require amplification or revision in order for the discussions to be meaningful. *Engility Corp.*, *supra* at 6; *Clark/Caddell Joint Venture*, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 7.

Here, after the receipt of proposals, the agency held several rounds of exchanges with offerors. COS at 13-16. These exchanges largely concerned clarifications to offerors' price proposals, e.g., the agency requested clarification or correction where Verizon's price workbook did not have prices populated in certain columns. AR, Tab 15g, DHS Exchange with Verizon, Aug. 24, 2020, at 4. As part of the last round of exchanges, DHS informed Verizon that the agency's review had resulted in a concern that the offeror's price may be too high.<sup>12</sup> AR, Tab 33, DHS Exchange with Verizon, Aug. 27, 2020. In its response, Verizon lowered its price to \$749,085,499. AR, Tab 9c, Verizon Response to DHS Exchange, Sept. 1, 2020, at 2. The PET subsequently determined

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<sup>12</sup> At the time this exchange occurred, Verizon's price was then \$[DELETED], as compared to the independent government cost estimate (IGCE) of \$1,934,414,582, AT&T's price of \$[DELETED], and Offeror C's price of \$[DELETED]. AR, Tab 15, PET Report at 8, 14. Also, Verizon had already lowered its proposed price from its initial submission of \$[DELETED] to \$[DELETED]. *Id.* at 8.

that Verizon's price, while higher than those of the other offerors, was fair and reasonable. AR, Tab 15, PET Report at 17.

Verizon argues the agency's discussions were inadequate and "in no way alerted Verizon to . . . the magnitude of the price disparity between Verizon's offer and its competitors." Comments & Supp. Protest at 25. The agency argues that the exchange with Verizon regarding the offeror's price was meaningful and not misleading. Supp. MOL at 12.

When an agency engages in discussions with an offeror in a task order procurement, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. See, e.g., *Peraton Inc.*, B-416916.5, B-416916.7, Apr. 13, 2020, 2020 CPD ¶ 144 at 7; *Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 6. For Part 15 procurements, the FAR also states the contracting officer is encouraged, but not required, to discuss other aspects of an offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. FAR 15.306(d)(3). A contracting officer, however, is not required to discuss every area where the proposal could be improved in order for the discussions to be meaningful, and the precise content of discussions is largely a matter of the contracting officer's judgment. *Id.*; see *Skyline Ultd, Inc.*, B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6; *Engility Corp.*, *supra* at 8.

We find DHS's discussions with Verizon regarding its price provide no basis on which to sustain the protest. The record reflects that, at the time the exchange occurred, the agency was aware that Verizon's price, while less than both its initial offer and the IGCE, was still above those of the other two offerors. DHS then informed Verizon that: "the Government's review of the total evaluated price has resulted in concern that the offered price may be too high. The Government requests Verizon consider the concern and make updates, if Verizon deems them to be required and in its best interest." AR, Tab 33, DHS Exchange with Verizon, Aug. 27, 2020. In response, Verizon elected to lower its price by [DELETED]. We find these discussions to be meaningful, as they were sufficiently detailed so as to lead an offeror into the area of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. *Sabre Sys., Inc.*, *supra*. Further, the discussions did not mislead Verizon--either through the framing of a discussion question or a response to a question--into responding in a manner that did not address the agency's concern. *Raytheon Co.*, B-416211 *et al.*, July 10, 2018, 2018 CPD ¶ 262 at 19-20.

We also disagree with Verizon's assertion that our Office "has held that, when offerors submit significantly disparate prices, discussions with a higher-priced offeror are not meaningful unless the agency conveys the 'magnitude of the disparity in prices.'" Comments & Supp. Protest at 25, *citing Creative Info. Tech., Inc.*, B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110. In *Creative Info. Tech., Inc.* (CITI), the Army conducted a procurement under FAR part 15 for information technology support services. *Id.* at 1-2. The Army estimated that the work under the solicitation required

seven full-time equivalent employees (FTE), which resulted in a government-estimated price of \$13 million. *Id.* at 4. By contrast, CITI proposed to staff the effort with 37 FTEs, which resulted in a price of approximately \$110 million. *Id.* We found that the agency's discussions with CITI (*i.e.*, "it appears that CITI's total proposed price/cost is overstated") were not meaningful "given the unique circumstances of this case-- specifically, the extraordinary disparity between CITI's proposed level of effort and price as compared to the government estimate as well as the level of effort and prices of the other offerors in the competitive range." *Id.* at 7.

We find Verizon's reliance on our *CITI* decision misplaced. As a preliminary matter, *CITI* involved a FAR part 15 procurement, whose regulations concerning discussions do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. Further, in *CITI*, the offeror's price was both (1) so high as to be considered unreasonable, and (2) significantly higher than the IGCE; neither of which exist in the case at hand. More importantly, we found the discussions in *CITI* were not meaningful because the agency was not only aware of CITI's unreasonably high price, but also of the underlying cause. We explained that

by characterizing the issue simply as one of price, the agency failed to address the underlying cause of CITI's unreasonable pricing--CITI's misconception of the level of effort anticipated by the Army for the . . . requirements. As a consequence, CITI could not reasonably have understood the agency's concern with its proposal or the fact that its proposal required fundamental changes in order to have a reasonable chance of being selected for award.

*Id.* at 8-9.

In sum, the discussions in *CITI* were not meaningful, and the agency was essentially required to do more than it did, "given the unique circumstances of this case." *Id.* at 7. However, contrary to Verizon's assertion, our decision in *CITI* does not stand for the proposition that discussions with a higher-priced offeror would not be meaningful *unless* the agency conveys the magnitude of the disparity in prices. Here, by contrast, we find the agency's discussions with Verizon were meaningful and not misleading. There was simply no requirement, as the protester argues, for the agency to disclose the disparity between offerors' prices in order for the discussions to be meaningful. *Torrent Techs., Inc.*, B-419326, B-419326.2, Jan. 19, 2021, 2021 CPD ¶ 29 at 13 (finding the discussions to be meaningful and that the agency was not required to provide the protester with the magnitude of the price difference between the awardee and itself); *see Advanced Turbine Engine Co.*, B-417324, B-417324.2, May 30, 2019, 2019 CPD ¶ 204 at 30 (finding that the agency had no obligation to disclose the disparity in the offerors' proposed levels of effort as part of discussions).

Verizon also contends the agency's discussions were not meaningful by failing to include the two decreased-confidence elements identified in the offeror's transition and

modernization approach.<sup>13</sup> Protest at 29-32; Comments & Supp. Protest at 35-38. We need not decide, however, whether the agency was required to discuss any of the shortcomings identified in the offeror's technical submission, because Verizon has again failed to demonstrate that it was competitively prejudiced by the challenged agency conduct.

The protester argues that had DHS conducted discussions with it regarding the identified technical shortcomings, Verizon would have addressed these issues. Protest at 31. The protester, however, has not sufficiently demonstrated that it would have changed anything else in its proposal even if provided the opportunity to do so.<sup>14</sup> As we have found that the technical shortcomings in Verizon'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 Verizon. 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 transition and modernization approach proposal. See *Picturae Inc.*, B-419233, Dec. 30, 2020, 2021 CPD ¶ 13 at 7.

#### AT&T's Eligibility for Award

Lastly, Verizon contends that AT&T is not eligible for task order award here, because AT&T's EIS contract does not include the required SD-WAN services. Protest at 36-39; Comments & Supp. Protest at 5-12.

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 37, EIS Contract, § G.3.2.5. 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 (unless GSA has processed the EIS contract

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<sup>13</sup> Although the TET also identified a third decreased-confidence element in Verizon's proposal, under the performance management approach factor, the protester has not alleged that this negative element was required to be a subject for discussions.

<sup>14</sup> Although the protester alleges that Verizon would have "likely made other changes to its pricing and overall approach," Protest at 32, the protester fails to explain, or demonstrate, how it actually would have otherwise changed its proposal had it been afforded an opportunity to engage in discussions. *Prism Maritime, LLC*, B-409267.2, B-409267.3, Apr. 7, 2014, 2014 CPD ¶ 124 at 7 n.7; see also *Northrop Grumman Tech. Servs., Inc.*; *Raytheon Tech. Servs. Co.*, B-291506 *et al.*, Jan. 14, 2003, 2003 CPD ¶ 25 at 35.

modification(s) and added the to-be-performed services and related pricing to a firm's EIS contract).<sup>15</sup> AR, Tab 37, EIS Contract, § G.3.2.5, at 11; see also AR, Tab 22, EIS Fair Opportunity and Ordering Guide at 21.

Verizon argues that AT&T is ineligible for task order award because (unlike Verizon) AT&T's EIS contract does not include SD-WAN services. Protest at 37. In support thereof, Verizon contends that "[a]ccording to the EIS Public Pricer--a publicly available GSA database for the EIS IDIQ contract--AT&T does not offer SD-WAN services under its GSA EIS IDIQ contract."<sup>16</sup> *Id.* Additionally, the protester argues that DHS's evaluation of AT&T's approach to SD-WAN implementation (as part of the offeror's transition approach) was unreasonable because "AT&T must enter into negotiations with GSA, and then wait for GSA to issue the modifications needed to add SD-WAN services to AT&T's EIS contract" before such services can be delivered to DHS. Comments & Supp. Protest at 14; see Protest at 39-42.

The agency--as well as AT&T--does not dispute that AT&T's EIS contract does not include SD-WAN services. MOL at 28; AT&T Comments at 27. Rather, DHS argues "the solicitation simply did not require SD-WAN services," and that the agency properly differentiated between EIS's SD-WAN managed services and what was required by the solicitation here (*i.e.*, SD-WAN enabled equipment).<sup>17</sup> MOL at 28. Additionally, AT&T and DHS both argue that this aspect of Verizon's protest is untimely, as Verizon knew or should have known of its basis of protest here at the time it filed its previous protest and challenged AT&T's eligibility for task order award. AT&T Partial Dismissal Request, Feb. 5, 2021, at 1-5; Supp. MOL at 2-4. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 14. Under these rules, a protest based on other than alleged improprieties in a solicitation must generally be filed no later than 10 days after the protester knew or should have known of the basis for protest. 4 C.F.R. § 21.2(a)(2).

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<sup>15</sup> Our Office also recognized these requirements in a recent unrelated protest, finding that an offeror's proposal "could not form the basis for award at the time the agency issued the protested task orders because [the company]'s underlying EIS IDIQ contract did not include all services required by the solicitation." *Verizon Bus. Network Servs., Inc.*, B-418073 *et al.*, Dec. 26, 2019, 2020 CPD ¶ 13 at 8.

<sup>16</sup> The EIS Public Pricer is a publicly-accessible online system that "allows public users to compare prices for vendor telecommunication services provided under the EIS contract." EIS Public Pricer User Guide, Oct. 1, 2020, at 10, <https://eis-public-pricer.eos.gsa.gov> (last visited April 19, 2021).

<sup>17</sup> The agency points to the fact that, among other things, none of the CLINs within the RFP here were the SD-WAN managed services CLINs found on the EIS contract. COS at 29; Supp. MOL at 4.

Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements since our regulations do not contemplate the piecemeal presentation or development of protest issues. See, e.g., *Catalyst Sols., LLC*, B-416804.3, B-416804.4, Apr. 4, 2019, 2019 CPD ¶ 134 at 4; *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5; *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5. Also, as relevant here, protest grounds brought after corrective action and re-award of a contract or task order are untimely when the information underpinning such grounds was available to the protester as part of its earlier protest, and the protester failed to raise these grounds in a timely manner. *Catalyst Sols., LLC, supra*; *Savvee Consulting, Inc., supra*.

As set forth above, on September 28, 2020, DHS initially made task order award to AT&T. On October 6, Verizon filed a protest with our Office challenging the evaluation and award to AT&T (B-419271.2), followed by a consolidated supplemental protest on October 13 (B-419271.3). Here, Verizon argued that AT&T was ineligible for award because of AT&T's alleged failure to have all required services on its EIS contract. Protest, B-419271.3, Oct. 13, 2020, at 37. Specifically, based on information obtained from the EIS Public Pricer, Verizon alleged that AT&T had submitted two EIS contract modifications, regarding access arrangement services, which were not approved by GSA until after task order award. *Id.* at 39. Because AT&T's underlying EIS contract did not include all services required by the RFP, Verizon argued, AT&T's proposal could not form the basis for award at the time DHS issued the protested task orders. *Id.* at 39-40. Verizon's protest did not allege that AT&T failed to include any other required services on its EIS contract.

On November 9, the agency 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 Letter to GAO, B-419271.2, B-419271.3, Nov. 9, 2020, and we then dismissed the earlier Verizon protest as academic. *Verizon Bus. Network Servs., Inc.*, B-419271.2, B-419271.3, Nov. 9, 2020 (unpublished decision).

As previously stated, on January 19, 2021, Verizon filed its protest challenging the agency's reevaluation and award to AT&T. On January 21, Verizon filed the supplemental protest here and alleged--for the first time--that AT&T was ineligible for award because of AT&T's purported lack of SD-WAN services as part of its EIS contract. Protest at 36-39. Verizon also declared that a search of the EIS Public Pricer system revealed that AT&T did not offer SD-WAN services under its EIS contract. *Id.* at 37. However, in its prior protest, Verizon raised essentially the same argument, *i.e.*, AT&T's ineligibility for award because of items not part of its EIS contract, based on the same source of information, *i.e.*, the EIS Public Pricer system. Protest, B-419271.3, Oct. 13, 2020, at 37-39. We have frequently stated that we will not consider arguments that could have and should have been raised in prior protests. See, e.g., *The Arcanum Grp., Inc.*, B-413682.4, B-413682.5, Aug. 14, 2017, 2017 CPD ¶ 335 at 6 n.8; *Savvee Consulting, Inc., supra*; *Waterfront Techs., Inc.--Protest & Costs*, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 10 n.12.

Verizon does not dispute that its protest here involves essentially the same issue as its earlier protest (AT&T's award eligibility), based on essentially the same source of information (the EIS Public Pricer). See Verizon Response to AT&T Partial Dismissal Request at 1-7. Rather, the protester argues that the EIS Public Pricer, while a public source, is not an official public medium for which it is charged with constructive notice. *Id.* at 2, citing *WorldWide Language Res., Inc.; SOS Int'l Ltd.*, B-296984 *et al.*, Nov. 14, 2005, 2005 CPD ¶ 206. Verizon also contends that the information regarding AT&T's alleged lack of SD-WAN services came from a different particular webpage within the EIS Public Pricer than its prior challenge regarding AT&T's alleged lack of access arrangement services. *Id.* at 1, 5. We find these arguments unavailing.

First, we do not find that Verizon had constructive knowledge of the contents of the EIS Public Pricer. Rather, we find that Verizon knew or should have known of its basis of protest here when it previously challenged AT&T's award eligibility because the information underpinning the current protest ground was available to the protester as part of its earlier protest. *Catalyst Sols., LLC, supra*. Likewise, the fact that the information regarding AT&T's alleged lack of SD-WAN services came from a different webpage (within the same EIS Public Pricer tool) does not negate the fact that the information was just as available to Verizon before as it is now. Quite simply, as Verizon did not file its protest challenging AT&T's award eligibility (for a lack of SD-WAN services) until January 21, 2021, more than 10 days after it knew or should have known of its basis of protest, we find this to be a piecemeal presentation of issues and therefore untimely. *Savvee Consulting, Inc., supra*.

In sum, Verizon's many claims of improper agency action in the evaluation of proposals are either without merit, untimely, or fail to alter the offeror's competitive standing, and therefore provide no basis on which to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel