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# Decision

**Matter of:** CenturyLink QGS

**File:** B-418556.3

**Date:** September 8, 2020

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## DIGEST

Protest challenging agency’s corrective action is denied where the agency’s corrective action does not permit any offeror to revise its proposal, and thus, does not treat offerors unequally.

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## DECISION

Qwest Government Services, Inc., d/b/a CenturyLink QGS (CenturyLink), of Monroe, Louisiana, protests the scope of the agency’s corrective action, following its prior protest of the issuance of a task order to Manhattan Telecommunications, Inc. (MetTel), of New York, New York, under request for task order proposals (RFTOP) No. 3610A19R0003, issued by the Department of Veterans Affairs (VA), for voice services. The protester argues that the VA’s planned corrective action would result in the disparate and unequal treatment of offerors.

We deny the protest.

## BACKGROUND

On June 19, 2019, the agency issued the RFTOP to holders of the General Services Administration’s (GSA) Enterprise Infrastructure Solutions (EIS) multiple-award indefinite-delivery indefinite-quantity (IDIQ) government-wide acquisition contract, for the delivery of “voice (telephone), transport, and associated supporting services that include installation and maintenance across multiple sites in the United States and its territories.” Contracting Officer’s Statement (COS) at 1. The solicitation contemplated

the issuance of a single, fixed-price with economic price adjustment task order, with a four-month base period of performance, and multiple option periods that could extend performance through the year 2032. Agency Report (AR), Tab 5O, Amended RFTOP, Jan. 3, 2020, at 66, 104. The solicitation advised that award would be made to the offeror whose proposal represented the best value to the agency, considering price and other factors. *Id.* at 114. In addition to price, proposals were to be evaluated based on the following factors: technical; oral presentation; past performance; and veterans involvement. *Id.*

As relevant to the issues raised, the VA's RFTOP required proposals to comply with provisions found in GSA's EIS contract, to include section G.3.2.5, concerning the authorization of orders. *Id.* at 111. This section 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.<sup>1</sup> See GSA EIS IDIQ Contract No. GS00Q17NSD3009 (EIS Contract), at 10-11, § 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 (*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.* ("The contractor shall not accept a [task order] or service order or provision services not on its contract.").

The agency received multiple proposals by the submission due date, to include proposals from MetTel and CenturyLink. On February 25, 2020, the agency made award to MetTel. COS at 1. CenturyLink timely filed a protest with our Office on March 9, challenging the agency's award decision. CenturyLink contended that MetTel was ineligible for award because it did not have the necessary modifications to its EIS contract for services to be provided under the VA's task order procurement, in violation of the RFTOP, the EIS contract, and other governing GSA guidance. CenturyLink also

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<sup>1</sup> GSA's EIS contract was awarded on July 31, 2017, to provide agencies with telecommunications services on a global basis. See 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. GSA has interpreted the requirements of section G.3.2.5 to apply to all CLINs, that is, applying to all types of services that can be ordered under the EIS contract, including mandatory and optional services within CBSAs. See EIS Fair Opportunity and Ordering Guide, Ver. 4.0, GSA, June 5, 2018, at 14-17; GSA EIS Bulletin, Volume 5, July 30, 2019, at 3; GSA EIS Bulletin, Volume 8, October 8, 2019, at 1.

argued that the VA failed to properly evaluate CenturyLink's oral presentation, and that the agency's best value decision was flawed.

Following full development of the record, to include a response by GSA concerning its interpretation of section G.3.2.5 of the EIS contract, on May 29, the GAO attorney assigned to the protest held a teleconference call with the parties to discuss the merits of the protest. The GAO attorney informed the parties that the only protest argument that appeared meritorious concerned MetTel's failure to have the necessary modifications to its EIS contract. The GAO attorney advised that because there remained task order services that were not yet added or priced on its EIS contract, MetTel was not permitted to receive the task order award, absent the required modifications.

That same day, the VA notified our Office of its intent to take corrective action. The VA advised that it would cancel the task order issued to MetTel, and confirm whether MetTel's EIS contract included all of the RFTOP's service requirements. The agency further stated that it planned to re-issue the order to MetTel, if MetTel's EIS contract included all of the services. If MetTel's EIS contract did not include all of the required services, the agency would issue a new selection decision, or conduct additional rounds of discussions, if the VA deemed it necessary. Our Office dismissed CenturyLink's protest as academic on June 3. *CenturyLink QGS, B-418556, June 3, 2020* (unpublished decision). On June 5, CenturyLink filed the instant protest, challenging the scope of the agency's corrective action.<sup>2</sup>

## DISCUSSION

The protester argues that the agency's corrective action would result in disparate and unequal treatment of offerors. Protest at 5-9. According to CenturyLink, MetTel should have been eliminated from the competition because it did not submit the necessary modifications to its EIS contract at the time it submitted its proposal for the task order. By continuing to consider MetTel's proposal for the task order, the agency has, CenturyLink contends, effectively allowed MetTel to revise its task order proposal without affording other firms the same opportunity. *Id.*; Comments at 8-12. Given its perceived unequal treatment, CenturyLink argues that the agency should now reopen the competition and provide all offerors with a chance to revise their price proposals. Comments at 12. While we do not address every argument raised by CenturyLink, we have reviewed them all and find that none provides a basis to sustain the protest.

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. *Northrop Grumman Sys. Corp.*, B-410990.3,

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<sup>2</sup> The estimated value of the underlying task order exceeds \$127 million; thus, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

Oct. 5, 2015, 2015 CPD ¶ 309 at 8. The details of a corrective action are within the sound discretion and judgment of the contracting 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.

CenturyLink marshals a number of challenges to the agency's proposed corrective action. The protester primarily contends that by allowing one firm to belatedly meet the solicitation's requirements--that is, by allowing MetTel to submit its EIS contract modifications after the proposal due date--the agency is unreasonably permitting only one firm to revise its proposal, while not giving other offerors the same opportunity. Protest at 6-8. As a basis for asserting that MetTel has revised its proposal, CenturyLink argues that the proposal MetTel submitted differs from the one the agency would evaluate following its corrective action. That is, as submitted, MetTel's proposal was ineligible for award because it did not comply with section G.3.2.5 of the EIS contract, whereas now, its proposal includes the necessary modifications, making MetTel eligible for award.<sup>3</sup> Comments at 8-10; Protester's Reply at 5-6. CenturyLink concludes that allowing only MetTel to submit revisions to its proposal, in order to make it compliant with the solicitation, constitutes disparate and unequal treatment of offerors. Comments at 12.

The agency, in response, argues that CenturyLink's allegation of unequal treatment rests on the flawed premise that MetTel has modified its proposal. Memorandum of Law (MOL) at 2-7; Supp. MOL at 4-7. The VA contends that MetTel's proposal remains unaltered from what it submitted, and specifically, that MetTel's offered prices for all the RFTOP's services have not changed. Supp. MOL at 4-5 ("While MetTel may now have all relevant CLINs on its basic EIS Contract (*i.e.*, as a result of the GSA modification process), its proposal for this Task Order included prices for all VA required services and CLINs [...]; MetTel will not be allowed to alter those proposed prices, and if it is awarded the Task Order, will be contractually bound to those proposed prices."). Accordingly, the agency contends that its corrective action is not unfair and will not result in disparate treatment because it does not permit any offeror to modify its submitted proposal, to include MetTel. Instead, in an effort to ensure compliance with section G.3.2.5 of the EIS contract, the VA argues that its corrective action merely

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<sup>3</sup> The record developed pursuant to CenturyLink's protest of the agency's award to MetTel revealed that MetTel submitted modifications to GSA for the VA-specific services missing on its EIS contract after the award date. Based on the record developed in this protest, while MetTel has GSA-approved modifications for some of the RFTOP services, the agency has not yet been able to verify with GSA if, in fact, MetTel has all the required services on its EIS contract. See Agency Supp. Response, July 22, 2020 (noting that after gathering information from GSA, it is unclear whether MetTel (or other offerors) have all the required services and locations priced on their EIS contracts).

seeks to address a flaw in the procurement by confirming whether MetTel, and potentially other offerors, have the required EIS contract modifications.<sup>4</sup>

We find no basis to conclude that the agency's proposed corrective action constitutes disparate or unequal treatment of offerors because the record establishes that the agency has not allowed MetTel to alter its proposal for the task order award. The record reflects that, as a consequence of the protest filed by CenturyLink, the agency learned that MetTel may not have been eligible for award because the VA had not confirmed that MetTel had all of the task order required services on its EIS contract, as required by section G.3.2.5 of the EIS contract. To correct this issue, the agency's corrective action seeks merely to confirm whether MetTel, or another offeror, has all of the required services included and priced on its EIS contract; the proposed corrective action does not require (or allow) proposal revisions. We find the agency's approach unobjectionable.

At the core of CenturyLink's protest is its contention that the agency effectively allowed MetTel to modify its proposal when it allowed MetTel to submit its EIS contract modifications to GSA after proposals were due, in contravention of section G.3.2.5 of the EIS contract. Comments at 5. According to the protester, by failing to timely submit the modifications to its EIS contract, MetTel's proposal for the task order was unacceptable and should have been summarily rejected by the agency. By continuing to ignore MetTel's failure to seek modification of its EIS contract at the time MetTel submitted its proposal, CenturyLink maintains that the agency has effectively allowed MetTel to amend its proposal. We disagree.

To be clear, the record reflects that MetTel submitted requests to modify its EIS contract after proposals were due, in contravention of section G.3.2.5. This error, however, does not concern the competition for the task order; rather it concerns the administration of MetTel's EIS contract, as section G.3.2.5 directly pertains to the terms of an offeror's EIS contract. That is, the EIS contract modification submission requirements enable GSA to process necessary modifications before issuance of a task order, ensuring that all of the agency's task order requirements are within the scope of the offeror's EIS contract. And, for the agency, the EIS contract modification requirement allows the 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 modification process does

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<sup>4</sup> During the pendency of this protest, the VA received information from GSA that called into question whether offerors have all the RFTOP's services added and priced on their EIS contract. See Agency Supp. Response, July 22, 2020, attach. 1-3. The agency provides, "In light of this new information, and consistent with the Agency's corrective action notice, it is now the Agency's intent to conduct limited communications (not formal discussions) with all offerors only to address their missing CLINs, locations, and/or pending modifications related to their GSA EIS basic contracts. This action intends to settle any basic contract eligibility issues once and for all. The VA does not intend to allow any offerors to change or modify their task order proposals in any way." *Id.* at 4.

not otherwise affect the agency's evaluation of the task order proposals, or impact the task order competition in any way.

In reaching this conclusion, we note that MetTel could not have gained a competitive advantage in delaying the submission of its EIS contract modifications to GSA because MetTel, like CenturyLink, priced all the services to be provided under the VA's solicitation in its task order proposal, as required by the solicitation. The changes at issue pertain solely to MetTel's EIS contract, not its task order proposal. In addition, no offeror, to include CenturyLink, was disadvantaged by MetTel's failure to timely submit the modifications to its EIS contract. Section G.3.2.5 only requires firms to submit their EIS modifications/pricing with their task order proposals; it does not require that they be approved by GSA (at which point they would become publicly available) prior to proposal submission. Thus, notwithstanding CenturyLink's assertions to the contrary, the protester would not have been able to view MetTel's pricing, and adjust its own pricing in response, even if MetTel had timely submitted its modifications to GSA with its task order proposal.

Because section G.3.2.5 solely pertains to modifications related to an offeror's EIS contract, any harm resulting from the failure of an EIS contractor to timely submit a modification to its EIS contract would be to the procuring agency, or the delinquent EIS contractor. Specifically, a procuring agency could be delayed in its ability to issue a task order to a selected contractor, since the agency would be precluded by section G.3.2.5 of the EIS contract to issue a task order before GSA had processed any necessary modifications to an offeror's EIS contract. Similarly, an EIS contractor's failure to timely request a contract modification has the potential to injure the EIS contractor, itself. Without a timely modified EIS contract, the procuring agency may decide not to wait for GSA to process the modification, and instead select another offeror with all of the task order requirements on its EIS contract. *See, e.g., Verizon Business Network Servs., Inc., B-418073, et al., Dec. 26, 2019, 2020 CPD ¶ 13 at 9 (Dec. 26, 2019) (finding that agency was not required to delay award while protester sought required modifications of its EIS contract).* Because MetTel's proposal, to include its pricing for all required services under the RFTOP, has not changed, we cannot conclude that the agency's corrective action permits any offeror the opportunity to revise its task order proposal or otherwise gain an unfair competitive advantage, as CenturyLink has alleged.<sup>5</sup>

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<sup>5</sup> To the extent the protester argues that the VA's attempts to determine if MetTel had the required modifications constitute discussions, we disagree. 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. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6.* Having concluded that MetTel has not been permitted to modify or revise its proposal, we cannot agree with CenturyLink that the agency engaged in discussions with MetTel.

We also find CenturyLink's remaining arguments unpersuasive. For example, the protester asserts that the agency's removal of a deficiency--based on information supplied by MetTel concerning missing CBSAs on its EIS contract--in response to an item for negotiation (IFN), demonstrates that MetTel's proposal changed from its earlier submission. While we disagree with the protester's contention that MetTel provided inaccurate information in its IFN response,<sup>6</sup> we fail to see how MetTel's response, or the agency's determination that a deficiency was not warranted, demonstrates a proposal revision.

Similarly unavailing is CenturyLink's argument that a reevaluation of MetTel's pricing is required. Comments at 12-14. CenturyLink contends that because the RFTOP requires prices to be at or below an offeror's EIS contract price, once MetTel has the task order services added to its contract, the agency would be required to undertake a new evaluation of MetTel's price to ensure compliance with this requirement. See Tab 5O, Amended RFTOP at 79. The protester posits that "[t]he very nature of the re-evaluation showcases the Agency's unequal and disparate treatment towards MetTel." Comments at 14. However, having already concluded that MetTel is not modifying its proposal, to include the prices it offered for all of VA's required services, we disagree that the agency would need to conduct another price evaluation. The comparison of MetTel's previously offered prices against its EIS contract prices does not constitute a price evaluation, nor does it reflect unequal treatment of offerors. See Tab 5O, Amended RFTOP at 116-117 (describing the agency's price evaluation methodology). Given the above analysis, we cannot conclude that the agency's corrective action results in disparate or unequal treatment of offerors.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>6</sup> CenturyLink argues that MetTel provided inaccurate information to the VA when it asserted that it had all CBSAs on its EIS contract. However, MetTel did, in fact, have all CBSAs on its EIS contract; what MetTel lacked was all the services for those CBSAs on its EIS contract.