



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** CenturyLink QGS

**File:** B-408384

**Date:** August 27, 2013

---

Thomas O. Mason, Esq., David E. Fletcher, Esq., Christopher J. Kimball, Esq., and Francis E. Purcell, Jr., Esq., Cooley LLP, for the protester.

Shelly L. Ewald, Esq., and Sheila U. Sears, Esq., Watt, Tieder, Hoffar & Fitzgerald, LLP, for the intervenor.

Brenda Oswalt, Esq., Administrative Office of the United States Courts, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging the agency's price evaluation is denied where the evaluation was reasonably based, consistent with the solicitation criteria, and treated the offerors equally. The protester's argument that the agency should have interpreted its pricing notes in a manner that would have resulted in a lower evaluated price has no merit where the protester's notes, in effect, took exception to the requirements of the solicitation.

---

### DECISION

Qwest Government Services, Inc., doing business as CenturyLink QGS, of Fairfax, Virginia, protests award of a task order to Level 3 Communications, LLC, of Broomfield, Colorado, under request for task order proposals (RFTOP) No. USCA-13-R-0037, issued by the Administrative Office of the United States Courts (AOUSC), for the installation of a secondary wide area network (WAN) to serve as an emergency backup to federal courthouse locations. The protester argues that the agency's price evaluation was unreasonable because it failed to recognize cost savings proposed by CenturyLink, and that the agency treated the offerors unequally in the price evaluation.

We deny the protest.

## BACKGROUND

On February 6, 2013, the agency issued the RFTOP for network installation and services relating to the WAN Diversity project under the General Services Administration's multiple-award indefinite-delivery, indefinite-quantity Network Enterprise contract.<sup>1</sup> This project will involve the installation of a secondary WAN Ethernet infrastructure to serve as an emergency backup to the U.S. Courts Data Communication Network, the nationwide telecommunications network that connects to all U.S. court sites. The RFTOP anticipated the award of a task order for a base year with four 1-year options to the technically-acceptable offeror with the lowest price.

The RFTOP advised that the project involved two phases: phase 1, which included installation at five designated sites, out of the 177 sites identified in the RFTOP, with a completion date of September 30, 2013; and phase 2, which included a to-be-determined portion of the remaining locations. RFTOP, Statement of Work (SOW) at 3, 5. Phase 2 would begin upon successful completion of phase 1, assuming funding was available. Contracting Officer (CO) Statement at 2. The solicitation stated that "[e]ach site not included in Phase 1 shall be considered an option" and that "no guarantee is made that all of the [sites] set forth in the solicitation shall be ordered and/or awarded." RFTOP, SOW at 5. Accordingly, the RFTOP's minimum guarantee included the five sites designated for phase 1. Id.

The RFTOP required offerors to submit a technical proposal and a price proposal. RFTOP, Instructions to Offerors ¶ E. As part of their technical proposals, offerors were required to provide a number of deliverables with their proposal, which were distinct from the deliverables required during contract performance. RFTOP, SOW at 8-11. With regard to the proposal deliverables, the RFTOP required offerors to provide various items, including a proposed project schedule for both phase 1 and phase 2 of the contract. The RFTOP stated, however, that, with the exception of pricing templates, the deliverables would not be "strictly evaluated." Id. at 8. The solicitation further explained that the actual "project schedule [would] be updated post award with actual start dates, finalized and accepted by the [AOUSC] prior to starting any work." Id.

As relevant here, the solicitation required offerors to submit their price proposals based on a pricing template which was attached to the RFTOP. Id., Instructions to

---

<sup>1</sup> Although the solicitation anticipated the issuance of a task order under an ID/IQ contract, the evaluation record here refers to "offerors" and "proposals." For the sake of consistency, and because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, we adopt the usage of the terms offerors and proposals in this decision.

Offerors ¶ G. The pricing template consisted of a spreadsheet which contained the following separate tabbed sheets:

1. Instructions: how to use the template
2. Sites: lists all sites, address and criticality of site
3. Base Year (Award to September 30, 2013).
4. Option Period 1 (October 1, 2013 to September 30, 2014)
5. Option Period 2 (October 1, 2014 to September 30, 2015)
6. Option Period 3 (October 1, 2015 to September 30, 2016)
7. Option Period 4 (October 1, 2016 to September 30, 2017)

RFTOP, attach. 3, Pricing Template, Tab 1.

The template required offerors “to input pricing per site for the services they [would] be providing.” Id. The solicitation required offerors to submit their pricing templates in the Excel format provided by the agency, which calculates the overall price. RFTOP, Instructions to Offerors ¶ G; RFTOP amend. 0002. The RFTOP stated that “[a]ll pricing information requested in the [pricing template] must be entered,” and required that offerors indicate a fee or a waived fee in every cell of tabs 3 through 7, which encompassed pricing for the base year and all option years. Id.; RFTOP, attach. 3, Pricing Template, Tab 1. The RFTOP required offerors to identify waived fees in the template with the number zero in the applicable spreadsheet cell. Id. For purposes of award, the RFTOP advised offerors that the total of the fees (which included the base period and each option period) for each of the 177 sites in tabs 3 through 7 of the pricing template would be evaluated to determine the “comparison price” for the offerors, and thus the lowest price offeror. Id.

### Proposal Submissions and Award

The AOUSC received proposals from five offerors, including CenturyLink and Level 3, by the closing date of March 26. As relevant here, the protester’s price proposal included fees in every cell of tabs 3 through 7 of the pricing template, which resulted in a total price for each tabbed sheet (i.e., a price for the base and each option year). See AR, Tab 8.1, CenturyLink’s Price Proposal Tabs; Protest at 6 ¶ 14. In its proposal, CenturyLink explained in notes to its price proposal that although the RFTOP’s pricing template required full-year fees for each of the 177 sites for the base and each option year, the protester wanted to provide partial-year service at some of the sites to reflect the notional installation schedule it submitted with its technical proposal.<sup>2</sup> The protester’s explanatory notes were included at the bottom of the tabbed spreadsheet pages of its pricing template, and

---

<sup>2</sup> These notional schedules were one of the proposal deliverables which, as discussed above, were not to be evaluated. RFTOP, SOW at 8-9.

discussed the protester's proposed transition plan and potential unassessed fees for partial-year service. For example, one of CenturyLink's pricing notes stated:

CenturyLink understands that Phase 2 sites are not to commence implementation until after Phase 1 is complete . . . . According to CenturyLink's implementation schedule in our Technical Proposal, there are [DELETED] sites that will not be implemented until beginning of [DELETED]. Therefore [monthly recurring costs] MRC [fees] for these sites are unassessed for [DELETED]. These unassessed [fees] reflect costs which will not be realized until actual implementation and acceptance according to the transition schedule. There will be additional unassessed [fees] for Phase 2 sites that will be implemented in [DELETED], but for less than a full year. The pricing model does not allow for partial year incurrence of MRC [fees].

AR, Tab 8.1, CenturyLink, Pricing Template Tabs.

The AOUSC concluded that Level 3's and CenturyLink's proposals were technically acceptable. Agency Report (AR), Tab 10, Source Selection Determination (SSD) at 3. The agency evaluated Level 3's proposed price to be approximately \$24 million and the lowest price overall; Level 3's evaluated price was \$10 million lower than CenturyLink's evaluated price. Id. The agency therefore selected Level 3 for award. Id.

#### Agency Protest

CenturyLink requested a debriefing, which it received on April 4. On April 15, CenturyLink filed a protest with the AOUSC, challenging the agency's price evaluation and decision to award the contract to Level 3. The protester asserted that the agency's price evaluation failed to analyze cost savings that were contained in pricing notes at the bottom of the tabbed sheets of its pricing template. The protester argued that if the agency had applied the cost savings contained in these pricing notes during the price evaluation, its evaluated proposed price would have been lower than Level 3's.

In response to the protest, the agency reviewed its price evaluation and found that its evaluation of Level 3's pricing proposal was not conducted in accordance with the RFTOP's pricing template. AR, Tab 12, Agency Response to Protest at 1. As explained in detail below, the agency found that its initial evaluation of Level 3's proposal had improperly used the prices listed in the offeror's pricing summary page to calculate its comparison price, rather than the total of the fees listed in each of

Level 3's tabbed sheets.<sup>3</sup> Id. As the agency found, reliance on Level 3's summary sheet was improper because that summary included two assumptions concerning partial-year fees, and resulted in a lower price than the individually-tabbed sheets, which contained full-year fees as required by the RFTOP. CO Statement at 6.

Accordingly, the agency took corrective action with respect to the price evaluation, which was explained to CenturyLink as follows:

During [our] review, [we] identified the fact that CenturyLink's failure to provide a summary of the totals resulted in a price evaluation that evaluated totals from the summary for some of the offerors and from the Pricing Template for CenturyLink. To be fair to all offerors, [we have] taken limited corrective action with respect to the price evaluation by recalculating the summary totals submitted in the pricing templates. These totals were summed to arrive at the total comparison price for each offeror. The result is CenturyLink's re-evaluated price remains \$34,022,668, and the awardee's re-evaluated price is \$28,775,494.

AR, Tab 12, Agency Response to Protest at 2.

Because Level 3's proposal remained the lowest-priced, technically-acceptable offer after the reevaluation, the agency denied CenturyLink's protest. Id. This protest followed.<sup>4</sup>

## DISCUSSION

CenturyLink argues that the AOUSC's price evaluation was unreasonable, and that the agency's corrective action conducted in response to CenturyLink's agency level protest failed to correct the flawed evaluation. Specifically, the protester argues that the agency failed to recognize cost savings proposed in the notes at the bottom of the protester's pricing template. The protester also contends that the agency failed to treat the offerors equally during the price evaluation because it considered notes in Level 3's price summary, but did not similarly consider CenturyLink's pricing notes. Protester's Comments at 4. As discussed below, we find that the agency

---

<sup>3</sup> CenturyLink's price proposal did not include a summary of the totals presented in pricing template tabs as requested by the RFTOP. AR, Tab 8.1, CenturyLink, Pricing Template.

<sup>4</sup> As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

reasonably evaluated the price proposals, in a manner consistent with the solicitation criteria, and treated the offerors equally.

The evaluation of an offeror's proposal is a matter within the agency's discretion.

IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

### Price Evaluation

CenturyLink argues that the AOUSC's price evaluation should have interpreted various pricing notes included at the bottom of its tabbed sheets as reducing its proposed price. The protester asserts that the agency erred by not using these notes to discern the difference between the price it proposed, under the limitations of the RFTOP, and the discounted price it wanted to propose. We find no merit to this argument.

The AOUSC contends that the assumptions and recommendations in the protester's pricing notes constitute objections to the RFTOP's stated evaluation methodology, and that the agency's consideration of the notes would have been improper and would have constituted unequal treatment of the offerors. We agree with the agency that the protester's pricing notes effectively take exception to the solicitation's evaluation criteria, and find that the agency's price evaluation of CenturyLink's pricing template, without consideration of the pricing notes, was reasonable.

As discussed above, the RFTOP specified how offerors' price proposals would be evaluated. The proposal instructions required offerors to insert their pricing into the government-provided pricing template, stating that "[a]ll pricing information requested in the [pricing template] must be entered," and also required offerors to indicate either a fee or a waived fee in every cell of tabs 3 through 7 (for the base and all option years). RFTOP, attach. 3, Pricing Template, Tab 1. In this regard, the RFTOP prohibited offerors from proposing partial-year fees, thus requiring offerors to either propose a fee for a full year or waive the fee in its entirety. Id. CenturyLink does not dispute this requirement, and in fact, concedes that its pricing template complied with this requirement by including full-year fees for each cell in its pricing spreadsheet. Protest at 6; see Agency Report (AR), Tab 8.1, CenturyLink's Price Proposal, Worksheet Tabs (showing fee or waiver in every cell).

The AOUSC acknowledges that the solicitation required offerors to propose fees for the maximum amount of sites identified in the RFTOP (177) for the maximum period

of performance possible (base year, plus all option years), and also acknowledges that the agency would not in fact require the contractor to provide this level of service, in light of the two-phase performance structure, described above. RFTOP, SOW at 8-9. The agency explains, however, that this price evaluation scheme was used to standardize the price evaluation for all offerors. CO Statement at 2; Legal Memorandum at 4. The agency further explains that this evaluation approach was necessary because the agency was uncertain as to which of the 177 sites would ultimately be installed, and because it had not established an installation schedule.<sup>5</sup> Legal Memorandum at 4. The agency therefore structured the pricing template to create a common, uniform basis to evaluate all offerors' prices--which required the agency to prohibit offerors from including partial-year fees based on their individual proposed installation schedules. Id.

The agency's evaluation of CenturyLink's price proposal was based on the total of the fees listed in the tabbed sheets of the protester's pricing template; it did not make adjustments based on the pricing notes included at the bottom of the tabbed sheets. AR, Tab 13, Price Evaluation Summary Spreadsheet; see also Contracting Officer (CO) Statement at 3-4. Specifically, the contracting officer explains his calculation of CenturyLink's comparison price as follows:

I calculated CenturyLink's comparison price by adding the grand total in each of the five Pricing Template tabs representing the Base Period and four Option Periods. The grand total of each Base period or Option Period tab is the sum of the 177 lines of pricing in the "Total Costs" column in the tab, and is located at the bottom right corner of each spreadsheet tab. In CenturyLink's Pricing Template, the sum of the grand totals of the five tabs is \$34,022,668 . . . . This method of calculation complies with the terms stated in the solicitation.

CO Statement at 3-4.

The protester explains that although it submitted a pricing template that complied with the solicitation's requirements, and understood that the RFTOP precluded offerors from proposing partial-year fees, it nonetheless included the partial-year fees in its pricing notes "to explain to [the agency] that certain of the [fees] in its proposal were not applicable to performance and therefore should not be evaluated in CenturyLink's 'comparison price.'" Protest at 6. As discussed above, CenturyLink's pricing notes stated, for example, that certain fees "will not be realized until actual implementation and acceptance according to the transition

---

<sup>5</sup> As the solicitation advised the offerors, the "project schedule [would] be updated post award with actual start dates, finalized and accepted by the [AOUSC] prior to starting any work." RFTOP, SOW at 9.

schedule” and that other fees for Phase 2 cites “will be implemented [in the future], but for less than a year.” AR, Tab 8.1, CenturyLink, Pricing Template Tabs.

It is a fundamental principle of government procurement 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. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6.

Here, CenturyLink acknowledges that the RFTOP prohibited partial-year fees--”[t]he pricing model does not allow for partial-year incurrence of MRC [fees],” id. --yet, in effect, argues that the agency should waive this solicitation requirement by accepting deviations to this requirement. On this record, we conclude that it would have been improper for the agency to consider adjustments to the protester’s proposed price based on partial-year incurrence of fees, without providing the same opportunity to the other offerors.<sup>6</sup> We further conclude that the agency reasonably evaluated CenturyLink’s price proposal, without consideration of its pricing notes, in accordance with the RFTOP’s stated evaluation criteria.<sup>7</sup>

#### Unequal Treatment of the Offerors

Next, CenturyLink argues that in reevaluating the price proposals, the AOUSC engaged in improper disparate treatment of the offerors because it considered pricing assumptions in Level 3’s pricing notes, but refused to similarly consider CenturyLink’s pricing notes. We find no merit to this argument.

As the contracting officer explains, the agency realized during its review of the protester’s agency-level protest that it had improperly evaluated Level 3’s price based on its pricing summary, rather than the total of the fees listed in each of Level 3’s tabbed sheets (for the base and option years). CO Statement at 1-2;

---

<sup>6</sup> The agency also notes that the protester’s pricing notes consisted merely of undefined adjustment recommendations, which lacked specific dollar figures. CO Statement at 5. For this reason, there was no basis for the agency to understand or calculate any particular adjustments to the protester’s price.

<sup>7</sup> To the extent the protester disagrees with the evaluation criteria in the RFTOP, this argument is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals).



AR, Tab 12, Agency Response to Protest at 1. The agency concluded that this was improper because the summary sheet contained two partial-year adjustments, and did not reflect the totals of the individually-tabbed sheets. Id. The agency's revised price evaluation of Level 3 was based on the totals for the base period and four option periods provided in Level 3's pricing template tabs--as required by the solicitation. CO Statement at 6; AR, Tab 13, Price Evaluation Summary Spreadsheet.

CenturyLink contends that "[d]uring corrective action, the Agency . . . considered Level 3's pricing notes and determined that Level 3's underlying assumptions were untenable," and that "[b]ased on this conclusion, the Agency determined that Level 3's initial comparison price . . . was not supported by Level 3's pricing notes." Protester's Comments at 5-6 (emphasis in original). The protester, however, provides no citation to the record for its argument that the agency's reevaluation substantively considered Level 3's pricing notes and discounts, and rejected them as "untenable." Instead, we find nothing in the record that shows that the agency's reevaluation of Level 3's proposal substantively considered Level 3's pricing summary page, or any notes on that page. Id. In fact, the agency's corrective action resulted in the wholesale rejection of the awardee's attempt to modify--through the notes on its pricing summary--the full-year fees reflected in its pricing template tabs.

In sum, there is no merit to the protester's argument that the agency considered, but rejected, the awardee's pricing assumptions as "untenable," or that the failure to consider the protester's pricing assumptions constituted unequal treatment. The record shows that the agency treated all offerors equally by considering only the bottom-line prices in the pricing templates, in accordance with the terms of the solicitation, and by rejecting the protester's attempts to improperly modify the fees in its price proposal. On this record, there is no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
General Counsel