



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: Lumen Technologies Government Solutions, Inc.

File: B-420945; B-420945.3; B-420945.5; B-420945.6

Date: November 16, 2022

Shelly L. Ewald, Esq., Andrew L. Balland, Esq., and Jordan A. Hutcheson, Esq., Watt Tieder Hoffar & Fitzgerald, LLP, for the protester.
Jonathan M. Baker, Esq., James G. Peyster, Esq., and Tyler S. Brown, Esq., Crowell & Moring LLP, for AT&T Corporation, the intervenor.
Christian Jordan, Esq., Kimberly M. Shackelford, Esq., and Christopher J. Curry, Esq., Department of Homeland Security, for the agency.
Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging awardee's eligibility for task order award based on alleged compliance errors with the terms and requirements of the relevant governmentwide acquisition contract is dismissed where the allegations concern matters of contract administration or are untimely filed.
2. Protest challenging agency's evaluation of proposals under the performance management factor is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
3. Protest arguing that agency's discussions were not meaningful is denied where the agency provided the offeror with all required information during discussions.
4. Protest challenging the agency's failure to amend the solicitation to account for a 6-month reduction in the base period of performance is denied where the protester did not establish that it was prejudiced by the agency's actions.
5. Protest challenging the agency's best-value tradeoff is denied where the agency's best-value tradeoff was reasonable, adequately documented, and consistent with the terms of the solicitation.

DECISION

Lumen Technologies Government Solutions, Inc., of Monroe, Louisiana, protests the issuance of a task order to AT&T Corporation, of Oakton, Virginia, under request for proposals (RFP) No. 70T03021R7667N003, issued by the Department of Homeland Security, Transportation Security Administration (TSA), for data network and voice transmission services. The protester challenges AT&T's eligibility for award, the agency's evaluation of proposals, the agency's conduct of discussions, and the agency's best-value tradeoff and award decision.

We deny the protest.

BACKGROUND

On January 12, 2022, TSA issued the solicitation to holders of General Service Administration's (GSA's) Enterprise Infrastructure Solutions (EIS) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) governmentwide acquisition contracts, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.¹ Agency Report (AR), Tab 4, RFP, amend. 0003 at 014872, 014952;² Contracting Officer's Statement (COS) at 2. The solicitation contemplated the issuance of a single task order consisting of fixed-price with economic price adjustment and time-and-materials contract line items, for a base year with ten 1-year option periods, to provide data network and voice transmission services for TSA's IT infrastructure. RFP at 014881-014892; COS at 1.

¹ GSA's EIS is a multiple-award IDIQ contract awarded on July 31, 2017, to provide agencies with comprehensive information technology (IT) telecommunications infrastructure and services. *Enterprise Infrastructure Solutions*, TELECOMMUNICATIONS AND NETWORK SERVICES, <https://www.gsa.gov/technology/technology-purchasing-programs/telecommunications-and-network-services/enterprise-infrastructure-solutions> (last visited October 31, 2022). 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. AR, Tab 35, AT&T EIS Contract § C.1.3. The EIS contract includes more than 900 CBSAs, and each CBSA includes numerous mandatory and optional services. *Id.* at §§ C.1.3, B.1.2.1.1, 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; see also *CenturyLink QGS*, B-418556.3, Sept. 8, 2020, 2020 CPD ¶ 293 at 2 n. 2.

² The agency amended the solicitation four times. Unless otherwise noted, citations to the solicitation in this decision are to the version issued by the agency as amendment 0003. Amendment 0004 only revised the deadline for receipt of proposals. AR, Tab 5, RFP amend. 0004 at 1. The agency used a Bates numbering system to provide page numbers in its exhibits. Citations to agency report exhibits in this decision refer to the Bates numbers assigned by the agency.

The RFP advised that the task order would be issued to the offeror whose proposal represented the best value to the agency, considering price and the following non-price factors, in descending order of importance: (1) technical approach; (2) performance management; and (3) past experience. *Id.* at 014952. The solicitation provided that, when combined, the non-price factors were more important than price. *Id.*

As relevant here, the agency was to evaluate proposals under the performance management factor to determine the level of confidence that the offeror would successfully perform the solicitation's requirements. *Id.* at 014955. The solicitation noted that offerors "who propose an effective and executable" transition plan may receive a higher confidence assessment rating. *Id.* The agency was to evaluate performance management proposals in relation to the requirements described in sections C and L of the solicitation. *Id.*

Section L.5.3 of the solicitation required offerors to submit a transition-in plan that complied with section C.7 of the solicitation, and provided the offeror's capacity for transitioning TSA sites per month. *Id.* at 014944. As specifically relevant here, section C.7.2 of the solicitation required the transition-in plan to include a detailed work breakdown structure (WBS) with intermediate and major milestones. *Id.* at 014916-014917.

The RFP advised that the agency could make its source selection decision without exchanges or negotiations, but stated that if "a successful awardee is not apparent and the Government finds that additional communications are warranted, it may conduct them." RFP at 014953-014954. Section M.1.3 of the solicitation specifically provided that the agency could, after the evaluation of all proposals, identify a best-qualified offeror and conduct exchanges with only the best-qualified offeror "to address any remaining issues, if necessary, and finalize a [task order]." *Id.*

The terms of the underlying EIS IDIQ contract precluded a contract holder from accepting orders for services not on its IDIQ contract, but permitted a contract holder to respond to solicitations that included missing service(s) if it submitted a modification request to GSA for the missing service(s) and notified the agency of the pending modification(s) in its proposal submission.³ AR, Tab 35, AT&T EIS Contract § G.3.2.5. The solicitation required offerors to comply with section G.3.2.5 of the EIS contract, and specifically mandated that offerors submit a "notice of pending modifications that address missing CBSAs and/or services" with their proposals. RFP at 014949.

³ In guidance on the use of EIS IDIQ contracts, GSA further explained that an ordering agency "may not award a task order" to a contract holder if the firm's contract was missing service(s) required by the agency's solicitation until GSA approved any pending modification(s) submitted by the contractor for the missing service(s). AR, Tab 36, EIS Fair Opportunity and Ordering Guide, Ver. 5.2 at 18.

The agency received four timely proposals in response to the solicitation, including proposals from Lumen and AT&T. AR, Tab 10, Source Selection Evaluation Board (SSEB) Tradeoff Analysis at 105400. Upon initial evaluation, the agency found that each of the four proposals were in some ways non-compliant with the solicitation's requirements. *Id.* The agency conducted exchanges and requested that offerors "[c]omplete all of the corrections requested and resubmit your Pricing Workbooks (and the compliance sheets) once they are fully compliant." See, e.g., AR, Tab 21, Emails Regarding Lumen Corrections and Clarifications to Pricing Workbook at 015482; see also COS at 8. All offerors submitted timely responses to the agency's exchanges. AR, Tab 10, SSEB Tradeoff Analysis at 105400.

The Technical Evaluation Team (TET) and price evaluation team evaluated Lumen and AT&T's proposals as follows:

	Lumen	AT&T
Technical Approach	Good	Good
Performance Management	Good	Outstanding
Past Experience	High Confidence	High Confidence
Price	\$233,966,311	\$294,277,352

Id. at 015401.

The agency evaluators recommended that AT&T be issued the task order because its proposal presented the best value. *Id.* at 015423. The evaluators noted that AT&T's proposal was evaluated as superior in all three non-price factors, and that the price difference between Lumen and AT&T's proposals was reflective of the lower bandwidth solutions proposed by Lumen. *Id.*

On June 16, the source selection authority (SSA) informed the evaluators that he agreed with their trade-off recommendation that the task order be issued to AT&T. AR, Tab 31, SSA June 16 Email at 1. The agency subsequently conducted exchanges solely with AT&T. AR, Tab 26, AT&T July 8 Response to Exchanges at 1. On July 8, in response to the agency's exchanges, AT&T submitted revised proposed pricing for certain CLINs and advised that it had submitted proposed modifications to GSA to add required CLINs to its EIS IDIQ contract.⁴ *Id.* After receiving AT&T's July 8 response to exchanges, the SSA formalized the source selection decision, concluding that AT&T presented the best value to the government. AR, Tab 11, Source Selection Decision (SSD) at 6-7. The SSA found that AT&T's proposal offered a superior technical approach compared to Lumen's, specifically noting AT&T's proposed transition plan would allow the agency to complete services with its incumbent contractor before the incumbent contract's end date. *Id.*

⁴ AT&T's email noted that the changes to certain CLIN prices were made to "be at or below [AT&T's] EIS [c]ontract [p]rices." AR, Tab 26, AT&T July 8 Response to Exchanges at 1.

On July 20, the agency requested that AT&T agree to a shortened base year period of performance. AR, Tab 32, July Emails Between AT&T and TSA at 015544-015545. The parties ultimately agreed upon a revised price to account for the reduction in the base period of performance from one year to 6 months. *Id.* at 015541-015545.

On July 28, GSA made the last of the EIS IDIQ contract modifications requested by AT&T for this task order. AR, Tab 13, AT&T EIS IDIQ Modification P01275. On August 1, the agency issued the task order to AT&T. AR, Tab 22, EIS IDIQ Task Order No. 70T03022F7667N027. On the same date, the agency notified Lumen that it had not been selected for award. AR, Tab 14, Lumen Unsuccessful Offeror Notice. The agency provided a debriefing that concluded on August 3, and this protest followed.⁵

DISCUSSION

Lumen challenges AT&T's eligibility for award, the agency's evaluation of offerors' proposals, the agency's conduct of discussions, and the agency's best-value tradeoff and award decision. We note that the protester raises several collateral arguments. While our decision does not specifically address every argument, we have reviewed each argument and conclude that none provides a basis to sustain the protest.⁶ We discuss several representative examples below.

Challenges to AT&T's Eligibility for Award

Lumen contends that AT&T's proposal failed to identify all its EIS contract modifications that would be required to perform the challenged task order and that the agency unreasonably allowed AT&T to submit EIS contract modifications to GSA after proposals were due. Comments & Supp. Protest at 3-6; 2nd Comments & Supp. Protest at 2-4. The protester avers that section G.3.2.5 of the EIS contract required AT&T to identify, in its proposal, all EIS contract modifications it needed to be eligible for award. Second Comments & Supp. Protest at 3. Lumen further argues that the terms of the

⁵ The task order at issue is valued in excess of \$10 million, and was issued under an IDIQ contract established by GSA. Accordingly, our Office has jurisdiction to consider Lumen's protest. 41 U.S.C. § 4106(f)(1)(B).

⁶ For example, Lumen contends that the agency should have assessed AT&T's proposal a deficiency under the technical approach factor because Lumen "firmly believes that AT&T's secondary solutions were inferior to Lumen's." Protest at 21. Lumen does not provide any detail regarding AT&T's secondary solutions or otherwise explain why AT&T's technical approach warranted a deficiency. *Id.* We dismiss this challenge to the evaluation of AT&T's technical approach because it is based on unsupported factual assumptions regarding the contents of AT&T's proposal and therefore fails to state a valid basis for protest. 4 C.F.R. § 21.1(c)(4); see also *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3 (dismissing allegation as speculative because the allegation was unsupported by any factual evidence).

solicitation specifically required compliance with section G.3.2.5 and separately required offerors to submit a notice of all required EIS contract modifications. Comments & Supp. Protest at 3 (*citing* RFP at 014949). According to Lumen, AT&T's failure to timely submit certain required modifications to its EIS contract and disclose all required EIS modifications in its proposal rendered the proposal unacceptable. *Id.*

Our Office has explained that the submission of requests to modify EIS contracts after proposals are due, for the purpose of meeting the requirements of a task order solicitation, contravenes section G.3.2.5 of the EIS contract. *CenturyLink QGS, supra.* at 5. However, we have also explained that this error does not concern the competition for the task order, rather, it concerns the administration of the EIS contract, as section G.3.2.5 directly pertains to the terms of an offeror's EIS contract and the late submission of a request to modify an EIS contract does not automatically necessitate a proposal revision. *Id.* Therefore, to the extent the protester challenges whether the timing of AT&T's EIS contract modification requests complies with section G.3.2.5 of the EIS contract, we will not consider these arguments because they concern matters of contract administration that are beyond the scope of our bid protest jurisdiction. See 4 C.F.R. § 21.5(a).

Lumen maintains that AT&T was ineligible for award because it failed to identify all necessary EIS contract modifications in its proposal as required by the solicitation and section G.3.2.5 of the EIS contract. 2nd Comments & Supp. Protest at 2-3. The agency responds that nothing in the language of the solicitation or section G.3.2.5 rendered a proposal ineligible for award for failing to disclose all required EIS contract modifications at the time of proposal submission. See 2nd Supp. COS/Memorandum of Law (MOL) at 3.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4. Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by assessing whether each posited interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6.

As noted above, the solicitation specifically mandated that offerors submit a "notice of pending modifications that address missing CBSAs and/or services" with their proposals. RFP at 014949. The solicitation also stated that offerors shall comply with section G.3.2.5 of the EIS contract, which provides that in the case of either a missing CBSA or a missing service on an EIS contract, "the contractor shall include a clear notice of the pending modification in its response to the solicitation." AR, Tab 35, AT&T EIS Contract § G.3.2.5.

We find that the plain language of the solicitation and section G.3.2.5 of the EIS contract, when read as a whole, only specifies that offerors' proposals include the

identification of “pending modifications” to EIS contracts. Further, our review of the EIS contract and the solicitation’s terms does not reveal, and the protester has not pointed to, any requirement for the agency to evaluate proposals for whether they identified, or made all required EIS contract modifications, at the time of proposal submission, as opposed to before award is made.⁷ Accordingly we find reasonable the agency’s view that nothing in the language of the solicitation or section G.3.2.5 rendered a proposal ineligible for award where the offeror failed to disclose all required EIS contract modifications at the time of proposal submission.

Here, the record shows that AT&T submitted a list of pending EIS contract modifications as part of its proposal. AR, Tab 18, AT&T Proposal Cover Letter at 015470. Further, the protester does not demonstrate, and our review of the record does not reveal, any pending modifications that AT&T failed to disclose at the time of proposal submission.⁸ On this record, we find to be reasonable both the agency’s interpretation of the solicitation’s submission requirements for pending EIS contract modifications and its assessment that AT&T could properly submit EIS proposal modifications that were not pending as of the time AT&T submitted its proposal. We therefore deny this basis of protest.

Lumen also contends that AT&T was ineligible for award because its EIS contract was missing a CLIN required to perform the task order at the time of award. Protest at 15-17; Comments & Supp. Protest at 7-8; 2nd Comments & Supp. Protest at 4-5; 3rd Comments & Supp. Protest at 1-3; Supp. Comments at 1-3. In support of this argument, Lumen contends that information from GSA’s EIS public pricer⁹ demonstrates that AT&T’s EIS contract was missing a single required CLIN for access arrangements within the Washington, D.C. metro area at the time of award.¹⁰ Comments & Supp. Protest at 7-8.

⁷ This is unlike the EIS contract’s strict prohibition on the award of a task order that contains a service or CLIN not on the awardee’s EIS contract. AR, Tab 35, AT&T EIS Contract § G.3.2.5 (“contractor shall not accept a [task order] or service order or provision services not on its [EIS] contract”).

⁸ To the contrary, the record shows that the EIS contract modifications that Lumen points to in its pleadings were submitted to GSA on or after July 6 and therefore were not pending at the time of proposal submission. AR, Tab 13, AT&T EIS Contract Modification P01275 at 015434; AR, Tab 26, AT&T July 8 Email to TSA at 015499.

⁹ The EIS public pricer is a publicly-accessible online system that “allows users to price all [CLINs] for all services and their features, for current and previous years, for all EIS vendors.” EIS Public Pricer User Guide, June 13, 2022, at 1, <https://eis-public-pricer.eos.gsa.gov/> (last visited November 14, 2022).

¹⁰ Lumen specifies that the relevant CLIN is denoted as “AA AA00307 Dedicated Ethernet 20 Mbps, MRC, CIRCUIT, Origin: ELWDVAAD.” Comments & Supp. Protest at 7-8.

Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2). Our regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *22nd Century Technologies, Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 9.

Although Lumen's initial protest generally asserts that AT&T's EIS contract was missing multiple required CLINs "as demonstrated by the EIS system," the protester did not identify which CLIN, or CLINs, were missing from AT&T's EIS contract. Protest at 15-17. Instead, the protester waited until its comments to cite specific publically-available information from GSA's EIS public pricer to support its assertion that AT&T's EIS contract was missing a single required CLIN. Comments & Supp. Protest at 7-8. The record demonstrates that the information regarding this allegedly missing CLIN was available on the EIS public pricer no later than August 1, 2022. Supp. Comments at 3. We find that the protester's failure to raise these specific allegations until it filed its comments on September 19 constitutes the piecemeal presentation of protest issues. Accordingly, we dismiss as untimely Lumen's challenge to whether AT&T possessed all required CLINs on its EIS contract at the time of award.

Performance Management Evaluation

Lumen challenges a weakness assessed to its proposal under the performance management factor. Protest at 17-19; Comments & Supp. Protest at 8-9. In this regard, Lumen's proposal was assessed a weakness for proposing a site transition capacity that was inconsistent with Lumen's proposed WBS. *Id.* Lumen argues that language in its proposal stating it had the ability to "augment its implementation capacity by using contract labor resources to scale as needed to fit the transition schedule" demonstrates that it had the ability to meet its proposed transition deadline. Protest at 18. The agency responds that the weakness was reasonably assessed because the inconsistency in the two aspects of the proposed transition-in plan "decreases the likelihood of successful contract performance." MOL at 5.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, 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. *URS Fed. Servs., Inc.*, B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. In reviewing protests of an agency's evaluation and source selection decision in a task or delivery order competition, we do not reevaluate proposals; rather, we review 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. *Sapient Gov't Servs., Inc.*, B-412163.2, Jan. 4, 2016, 2016 CPD ¶ 11 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted

unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. Further, it is an offeror's responsibility to submit a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5.

As noted above, the agency was to evaluate performance management proposals in relation to the requirements described in sections C and L of the solicitation. RFP at 014955. Section L.5.3 of the solicitation provided that offerors would submit a transition-in plan that included the offeror's capacity for transitioning TSA sites per month and section C.7.2 of the solicitation required the transition-in plan to include a detailed WBS with intermediate and major milestones. *Id.* at 014917, 014944.

Here, the record reflects that the agency assessed the weakness at issue based on Lumen's proposal to support up to [DELETED] TSA site transitions each day which "appears to contradict [Lumen's] work breakdown statement (WBS)." AR, Tab 9, Lumen Evaluation Summary at 015395; AR, Tab 11, SSD at 015430. The agency found that Lumen's proposal "doesn't indicate how many [transitions] they can support realistically based on their proposed WBS." AR, Tab 9, Lumen Evaluation Summary at 015395. The agency explains that this inconsistency is revealed in portions of Lumen's proposed WBS, which propose to accomplish more than [DELETED] site transitions per day. TET Chairperson Decl. at ¶ 5. The TET concludes that, because Lumen only firmly proposed to support up to [DELETED] site transitions per day, it would likely need more time than it had proposed to accomplish the above-referenced sections of the WBS. *Id.*

We have reviewed the evaluation record and find no basis to question the agency's assessment of an inconsistency between Lumen's proposed rate of site transition and its proposed site transition schedule in its WBS. The record demonstrates Lumen's proposed rate of site transitions was "up to [DELETED] activations a day." AR, Tab 7, Lumen Proposal at 015261. Further, Lumen's WBS contains several tasks where Lumen proposes to conduct more than [DELETED] activations per day. *See, e.g., Id.* at 015268 (Line 166 of Lumen's WBS which proposes to accomplish [DELETED] circuit transitions in [DELETED] days, or more than [DELETED] per day). While Lumen broadly stated in its proposal that it "can augment its implementation capacity" through contract labor "[a]s required," Lumen's proposal did not provide a specific explanation of Lumen's capacity to perform in excess of [DELETED] site transitions a day when using this proposed contract labor. *Id.* at 015261.

Accordingly, on this record, we find nothing unreasonable in the agency's conclusion that Lumen's proposal did not contain sufficient information to support Lumen's capacity for transitioning TSA sites at a rate consistent with Lumen's proposed WBS.¹¹ Lumen

¹¹ Notably, the TET recognized that the risks presented by this weakness "could be mitigated through minimal oversight" from the agency and that, despite the weakness

was required to provide sufficient detail so that the agency could properly evaluate this aspect of Lumen's proposal. See *CACI Techs., Inc.*, *supra*, at 5. Lumen's disagreement with the agency's judgments do not provide a basis to sustain the protest.

Discussions with Lumen

The protester next contends that the agency failed to conduct meaningful discussions by failing to raise the above-discussed weakness with Lumen.¹² Protest at 24-25; Comments & Supp. Protest at 13-14. Lumen argues that the agency's decision to limit discussions with Lumen to issues related to pricing denied Lumen the chance to clarify the transition capacity ambiguity or, alternatively, amplify its proposal to address the weakness. Protest at 24-25. The agency responds that, to the extent the communications with Lumen constitute discussions, they were meaningful because the agency was not required to advise Lumen of a weakness that was not considered significant. MOL at 9-11.

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 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, they must be fair and not misleading. *Id.*; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 7. Where, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

When holding exchanges, 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

"Lumen's performance management approach contains very low risk of unsuccessful performance." AR, Tab 9, Lumen Evaluation Summary at 015395.

¹² Lumen also initially raised, but subsequently abandoned, arguments that certain agency exchanges with AT&T were contrary to the terms of section M.1.3 of the solicitation, which governed exchanges with the best qualified offeror. Comments & Supp. Protest at 6-7, 16-18. The agency responded to the protester's arguments. Supp. COS/MOL at 12-13. In its subsequent comments, Lumen failed to rebut or substantively address the agency's arguments, instead objecting to the scope of the agency's document production in response to these protest grounds and raising a supplemental protest ground regarding the agency's compliance with FAR section 15.206. 2nd Comments & Supp. Protest at 5-8. Accordingly, we dismiss the protest grounds on which Lumen did not comment as abandoned. See *Tec-Masters, Inc.*, B-416235, July 12, 2018, 2018 CPD ¶ 241 at 6.

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 find that TSA's exchanges with Lumen were meaningful, because the agency provided the offeror with all the information that was required to be disclosed. In this regard, the record reflects that the agency found no deficiencies, significant weaknesses, or adverse past performance information to which the offeror had not previously had an opportunity to respond in Lumen's proposal. Nor has the protester alleged that there were any such significant weaknesses or deficiencies. Further, the record demonstrates that the weakness Lumen complains about was not a significant weakness. AR, Tab 9, Lumen Evaluation Summary at 015395. As noted above, the agency found this weakness "could be mitigated through minimal oversight." *Id.* In sum, although the contracting officer could have discussed other aspects of Lumen's proposal--including the weakness assessed under the performance management factor--there was no requirement that he do so, and we will not substitute our views for matters within the contracting officer's judgment. See *Engility Corp.*, B-413120.3, *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 9. We deny this ground of protest.¹³

Changed Period of Performance

The protester next argues that the agency improperly shortened the contract's base period of performance from 1 year to 6 months without amending the RFP. 2nd Comments & Supp. Protest at 6-8; 3rd Comments & Supp. Protest at 3-6. In this regard, the protester argues that the agency was required to amend the solicitation to account for the shortened base period and obtain revised proposals for all offerors, not just the best-qualified offeror. *Id.*

Where an agency's requirements change in a material way after a solicitation has been issued, the agency must generally issue an amendment and afford all offerors an opportunity to compete for its changed requirements. *Qwest Gov't Servs., Inc. d/b/a*

¹³ The agency maintains that the exchanges with Lumen were not discussions. See, e.g., MOL at 9. However, the "acid test" for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify or revise its proposal. *Colson Servs. Corp.*, B-310971 *et al.*, Mar. 21, 2008, 2008 CPD ¶ 85 at 13; *Computer Scis. Corp., et al.*, B-298494.2 *et al.*, May 10, 2007, 2007 CPD ¶ 103 at 9-10. The record demonstrates, and the agency concedes, that the exchanges at issue, which the agency terms "compliance checks," allowed Lumen to "correct their pricing workbooks and compliance sheets." AR, Tab 20, Compliance Check Emails at 015475; see *also*, MOL at 9. In our view, this exchange clearly constituted discussions because Lumen was given the opportunity to revise its proposal.

CenturyLink QGS, B-419597, B-419597.2, 2021 CPD ¶ 217 at 10 (*citing Occam Sols., Inc.*, B-415422, B-415422.2, Jan. 9, 2018, 2018 CPD ¶ 22 at 4); *see also* FAR 15.206(a).¹⁴ Moreover, a contract's period of performance is generally considered to be a material solicitation requirement. *See, e.g., Integrated Business Solutions, Inc.*, B-292239, July 9, 2003, 2003 CPD ¶ 122 at 3. However, our Office will not sustain a protest of an agency's failure to modify a solicitation to incorporate a material change in solicitation requirements unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *See Triad Logistics Servs. Corp.*, B-406416, Mar. 19, 2012, 2012 CPD ¶ 118 at 3.

The protester argues it was prejudiced by the agency's actions here because, had the agency permitted revised proposals, Lumen "would have revised its transition schedule and reviewed the number of activations which the Agency identified as a potential risk to its proposal." 2nd Comments & Supp. Protest at 8. Lumen also contends that the agency's reliance on AT&T's proposed transition-in period as a discriminator in the tradeoff decision is rendered moot by the shortened base period of performance because AT&T can no longer complete the transition-in from the incumbent contractor during the base period. 3rd Comments & Supp. Protest at 4-5 (*citing* AR, Tab 11, SSD at 6).

We find the protester's claims of prejudice unpersuasive. In this regard, the protester has offered no evidence to establish that the agency's reduction of the base period of performance modified the transition-in requirements in any way.¹⁵ Accordingly, we see no basis to conclude that the shortened base period of performance would have negated AT&T's advantageously evaluated transition-in period. While the protester broadly claims it would have revised its transition schedule, Lumen has not asserted

¹⁴ Section 15.206 of the FAR requires that, "[w]hen, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation." FAR 15.206(a). The regulations governing task and delivery order competitions under FAR part 16 do not specify whether the requirements of FAR section 15.206 apply. *See* FAR 16.505. However, the FAR does require that for task order competitions in excess of \$6 million, such as the competition for the task order here, the agency provide all IDIQ awardees the fair opportunity to be considered for each order, which includes a "notice of the task or delivery order that includes a clear statement of the agency's requirements." FAR 16.505(b)(iv)(A). Our Office has previously considered challenges to whether an agency should have amended a solicitation after a change in the agency's requirements in task and delivery order competitions. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, *supra*; *Occam Sols., supra*.

¹⁵ The record indicates that the only changed terms were the updated base year period of performance and a corresponding decrease in the base year price. *See* AR, Tab 32, July Emails Between AT&T and TSA at 015541-015545.

that it would have proposed a quicker transition such that it would have overcome or equaled the awardee's evaluated advantage from proposing a faster transition-in. Further, although Lumen claims it would, if given the opportunity, "review" the portion of its proposal that was assessed a weakness, Lumen has not proffered any modifications it would have made, or even explained how it would have known to make such revisions based solely on the agency's request for a shorter base year period of performance. In sum, because the protester has offered no basis on which we could conclude that it was prejudiced by the agency's action here, we deny this ground of protest.

Best-Value Tradeoff

Finally, Lumen challenges the agency's best-value tradeoff and source selection decision. Protest at 21-24; Comments & Supp. Protest at 10-13. In this regard, Lumen argues that the source selection decision failed to adequately explain why Lumen's lower-priced proposal did not represent the best value to the government.¹⁶ Comments & Supp. Protest at 12.

Where, as here, a procurement provides for the issuance of a task order on a best-value tradeoff basis, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. See *Alliant Enter. JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. In this regard, FAR part 16 requires that agencies document the basis for award and the rationale for any tradeoffs among price and non-price considerations in making the award decision. FAR 16.505(b)(7). While there is no need for extensive documentation of every consideration factored into a source selection decision, the documentation must be sufficient to establish that the agency was aware of the relative merits and prices of the competing proposals, and that the source selection was reasonably based. *HP Enterprise Servs., LLC*, B-413888.2, *et al.*, June 21, 2017, 2017 CPD ¶ 239 at 9.

Here, the record reflects that the agency's evaluation team reviewed and documented the relative merits of the proposals. AR, Tab 10, SSEB Tradeoff Analysis; see also AR, Tab 9, Lumen Evaluation Summary. The record also demonstrates that the SSA conducted an independent assessment of the relative merits of the proposals. AR, Tab 11, SSD at 015427-015431 (noting where the SSA disagreed with the strengths or weaknesses assessed to a proposal). The SSA's comparative analysis of the proposals clearly documented the aspects of AT&T's proposal that led the SSA to conclude that AT&T's proposal was superior to Lumen's under the technical approach and performance management factors. *Id.* In the best-value tradeoff analysis, the SSA then

¹⁶ Lumen also contends that the agency's best-value tradeoff and source selection decision were unreasonable because they were based on the alleged underlying errors with the procurement discussed above. Protest at 21-23; Comments & Supp. Protest at 13. Because we find that these alleged underlying errors do not provide a basis to sustain Lumen's protest, we similarly deny this protest ground. See *Advanced Alliant Sols. Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.

concluded that the totality of advantages assessed to AT&T under the technical approach and performance management factors justified the approximately \$60 million (or 20 percent) price premium. On this record, and considering that the solicitation set forth that the non-price evaluation factors, when combined, would be more important than price, we see nothing objectionable in the SSA's conclusion that ATT's proposal provided a better value than the less-expensive, but lower-rated, Lumen proposal. See RFP at 014952.

To the extent Lumen complains that the agency failed to reasonably consider the relative merit of a "unique" strength under the technical approach factor, we do not find Lumen's argument persuasive. Comments & Supp. Protest at 13. In this regard, Lumen argues that its proposed [DELETED] under different solicitation task areas allowed Lumen the unique ability to deliver service from "[DELETED]." Protest at 20-21. However, Lumen does not meaningfully demonstrate that this aspect of its proposal was unique, nor that the agency failed to consider it.

To the contrary, the record demonstrates that the SSA assessed similar strengths, for the utilization of third party vendors, to all three firms discussed in the tradeoff analysis. AR, Tab 11, SSD at 015428. Further, the record shows that where the agency found aspects of the proposals to be uniquely advantageous or disadvantageous, it documented the discriminators in the contemporaneous evaluation and considered them in the tradeoff analysis. See, e.g., *id.* (documenting the five "unique to AT&T features" in its technical approach). Ultimately, Lumen's disagreement with the agency's conclusions regarding the relative merits of the proposals, without more, does not establish that the source selection was unreasonable. *CACI-WGI, Inc.*, B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 17.

The protest is denied.

Edda Emmanuelli Perez
General Counsel