



**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:** Byrd Enterprises Unlimited, Inc.

**File:** B-421462

**Date:** May 9, 2023

---

Edward J. Tolchin, Esq., Offit Kurman, P.A., for the protester.

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq.; John M. Mattox II, Esq., Ian P. Patterson, Esq., and Timothy Laughlin, Esq., Schoonover & Moriarty LLC, for AllServ, Inc., the intervenor.

Erika Whelan Retta, Esq., and Isabelle P. Cutting, Esq., Department of the Air Force, for the agency.

Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest challenging the agency's decision to make award before resolving the protester's alleged agency-level protest is denied where the record does not show that the protester submitted a protest to the agency.
  2. Protest challenging the agency's evaluation of the awardee's past performance and the agency's source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
- 

## DECISION

Byrd Enterprises Unlimited, Inc., a service-disabled veteran-owned small business (SDVOSB) of Lynchburg, Virginia, protests the award of a contract to AllServ, Inc., of Chapin, South Carolina, under request for quotations (RFQ) No. FA4626-23-Q-0001, issued by the Department of the Air Force for ground maintenance services. The protester contends that the agency unreasonably evaluated the awardee's proposal<sup>1</sup> and made an improper source selection decision.

---

<sup>1</sup> Although issued as an RFQ for the acquisition of commercial products and services under Federal Acquisition Regulation (FAR) part 12 and the simplified acquisition procedures of FAR part 13, the solicitation refers to firms as "offerors," and the responses submitted as "quotations." For the sake of consistency, and because the

We deny the protest.

## BACKGROUND

The solicitation, issued on January 3, 2023, sought grounds maintenance services for Malmstrom Air Force Base (AFB) in Cascade County, Montana. Agency Report (AR), Tab 3, RFQ at 1, 21; AR, Tab 13, System for Award Management (SAM) Posting at 2. Tasks included mowing improved and semi-improved grounds, trimming trees and shrubs, controlling weeds, and maintaining irrigation systems. RFQ at 21-27. The agency issued the solicitation as an SDVOSB set-aside and contemplated the award of a fixed-price indefinite-delivery requirements contract for a 5-year ordering period. *Id.* at 1; Memorandum of Law (MOL) at 1.

Award was to be made to the offeror whose proposal represented the best value to the government, with the following evaluation factors considered: past performance, technical approach, and price. RFQ at 4. Past performance would be evaluated based on the information offerors provided in a past performance questionnaire (PPQ), and would be rated on an acceptable/unacceptable basis. *Id.* Offerors with acceptable past performance would proceed to be “comparatively rated amongst all acceptable offerors on technical approach.” *Id.* Technical ranking would be “based upon identified weaknesses, deficiencies, and/or non-compliance.” *Id.*

The Air Force awarded the contract to AllServ on February 1, 2023, and posted the notice of award on SAM.gov on February 7, with the final evaluation ratings and prices of AllServ and Byrd as follows:

	<b>Byrd</b>	<b>AllServ</b>
<b>Past Performance</b>	Acceptable	Acceptable
<b>Technical Approach Ranking</b>	1	2
<b>Price</b>	\$5,287,861.90	\$4,448,994.80

AR, Tab 12, Source Selection Decision (SSD) at 9; AR, Tab 13, SAM Posting at 33, 35. The Air Force concluded that AllServ represented the best value to the government after considering both offerors’ technical approaches and finding that none of AllServ’s technical weaknesses, solely or cumulatively, weighed heavily enough to justify the price premium of selecting Byrd for award. AR, Tab 12, SSD at 9-10. After receiving an in-person post-award debriefing on February 9, Byrd filed this protest with our Office on February 14. AR, Tab 14, Email Confirmation of In-Person Debrief.

## DISCUSSION

---

result of the competition is an award of a contract from which orders will be placed, we refer to firms that competed here as offerors who submitted proposals for award of a contract.

The protester alleges that the agency violated section 33.103 of the FAR when it made award to AllServ without first resolving the protester's agency-level protest. Protest at 3-4. Byrd also contends that the agency unreasonably evaluated the awardee's past performance and, as a result, made an improper source selection decision. *Id.* at 4-5. We have reviewed all of the protester's arguments and find no basis to sustain the protest.<sup>2</sup>

### Agency-Level Protest

As an initial matter, the protester asserts that the Air Force violated FAR section 33.103(f) when the agency made award to AllServ before resolving Byrd's agency-level protest. Protest at 3-4. According to the protester, Byrd submitted an agency-level protest to the Air Force on January 17, 2023. *Id.* at 4. The agency responds that no agency-level protest was filed by the protester, and thus, the agency did not violate FAR section 33.103 in making award to AllServ. Req. for Dismissal at 4.

Section 33.103 of the FAR describes the process for offerors to file protests directly with an agency. Protests based on alleged improprieties in a solicitation must be filed before the closing date for receipt of proposals. FAR 33.103(e). To be considered a protest before the agency, the FAR requires the protest include, among other things, a request for a ruling by the agency and a statement requesting some form of relief. FAR 33.103(d)(2)(v)-(vi). If an agency-level protest is filed prior to an agency's award determination, a contract may not be awarded pending the agency's resolution of the agency-level protest, unless the contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the government. FAR 33.103(f)(1).

Our Office has consistently explained that, although a letter or email does not need to explicitly state that the letter or email is intended as a protest for it to be considered an agency-level protest, a written statement must--at least--convey the intent to protest by a specific expression of dissatisfaction with the agency's actions and a request for relief. *Western Star Hosp. Auth., Inc.*, B-414198.2, B-414198.3, June 7, 2017, 2017 CPD ¶ 183 at 6; *Masai Techs. Corp.*, B-400106, May 27, 2008, 2008 CPD ¶ 100 at 3; *ILC Dover, Inc.*, B-244389, Aug. 22, 1991, 91-2 CPD ¶ 188 at 2. A letter that expresses only a suggestion, hope, or expectation of corrective action, does not constitute an agency-level protest. *Masai Techs. Corp.*, *supra*.

Relevant here, the solicitation had a closing date of January 24, 2023, but allowed for the submission of questions from offerors up until January 20. RFQ at 16. Byrd

---

<sup>2</sup> In its initial protest, Byrd also challenged the agency's evaluation of the awardee's technical approach and price. Protest at 4. Our Office dismissed those claims, in accordance with 4 C.F.R. § 21.5(f), finding that the protester's assumptions regarding the awardee's proposal amounted to speculation that, without more, did not provide sufficient information to establish the likelihood that the agency violated any applicable procurement law or regulation. GAO Notice of Ruling on Req. for Dismissal at 1-2.

submitted three emails to the agency prior to this deadline, on January 16 and January 17, with the subject line of the string of emails titled: "RFQ FA4626-23-Q-0001-Malmstrom AFB Ground Maintenance\_ BEU Questions." Req. for Dismissal, attach. 7, Byrd Emails.

The protester's first email, sent on January 16, included an Adobe PDF document with questions for the agency to answer, with the body of the email reading: "Please find attached initial questions for RFQ FA4626-23-Q-0001." Req. for Dismissal, attach. 7, Byrd Emails at 3. The second email was sent at 10:23 a.m. on January 17. *Id.* at 2. In this email--which the protester claims is an agency-level protest--Byrd states that some tasks listed in the performance work statement (PWS) are not included on the pricing sheet. *Id.* The entirety of Byrd's 10:23 a.m. email reads:

Appendix A and Att 1 Bid Schedule shows CLIN 002 as (PWS 1.1 thru 1.1.4), however this means the bid sheet is missing 1.1.5/.1 "TRIM" and 1.1.6 'WEED CONTROL' from the PWS

I am running through the rest and will send more questions but wanted to bring this to your attention sooner than later so that it doesn't cause issues after the fact if those were meant to be included. Thank you sirs

*Id.* The third email was sent, also on January 17, at 12:35 p.m. In that email, the protester simply stated: "Additional questions below for RFQ FA4626-23-Q-0001" and listed five questions, which are not relevant to the decision. *Id.* at 1.

We find that--even if all three individual emails are considered together--the protester's correspondence presenting questions to the agency does not constitute an agency-level protest. While a protester's correspondence need not be labeled a protest to be considered a protest to the agency, there does need to be a sufficient showing of the protester's intent that its email be considered a protest to the agency through a specific expression of dissatisfaction with the agency's actions and a request for relief. See *Ulysses Grp., LLC*, B-420566, June 7, 2022, 2022 CPD ¶ 123 at 6.

Here, in the 10:23 a.m. email, the protester does not state it was displeased with the agency's decision to leave certain tasks off of the pricing sheet, or that the protester believed the agency had done anything improper by doing so. Req. for Dismissal, attach. 7, Byrd Emails at 2. Rather, the protester simply indicated a desire to "bring this to [the agency's] attention . . . so that it doesn't cause issues after the fact *if* those were meant to be included." *Id.* (emphasis added). Such questioning does not rise to the level of a specific expression of dissatisfaction. *Cf. Science & Tech. Corp.*, B-420216, January 3, 2022, 2022 CPD ¶ 1 at 5 (finding the letter to be an agency-level protest where protester expressly disagreed with the number of key personnel the agency designated for the requirement).

Moreover, even if we were to assume, for the sake of argument, that the protester's 10:23 a.m. email establishes some form of dissatisfaction with the agency's failure to include certain items on the pricing sheet, Byrd does not specifically request any relief

from the agency. At most, this email--sent between two other emails directing questions to the agency--reveals the protester's hope or expectation that the agency would clarify the alleged solicitation discrepancy in the solicitation. The fact that the protester "wanted to bring this [alleged discrepancy] to [the agency's] attention," does not amount to a specific request that the agency take any particular action, such as issuing an amendment to the RFQ to update the bid pricing sheet. *Compare Ulysses Grp., LLC, supra* (finding email was not an agency-level protest when the protester simply "wanted to inform [the agency]" of an issue in hopes for corrective action without specifically requesting such), and *ILC Dover, Inc., supra* (finding letter was not an agency-level protest when the protester's letter did not "rise above the expression of hope or expectation" that the agency take corrective action), *with American Material Handling, Inc.*, B-250936, March 1, 1993, 93-1 CPD ¶ 183 at 3 (finding letter to be an agency-level protest when the protester made recommendations to solve alleged solicitation defect and specifically requested agency to "please advise [protester]" of agency's response), and *Science & Tech. Corp., supra* (finding email to be an agency-level protest when the protester made a specific request that the agency take corrective action by amending the solicitation).

In sum, the record does not establish that the protester's email at 10:23 a.m. on January 17 was a protest to the agency. As such, the agency did not violate section 33.103 of the FAR in making award to AllServ.

#### Past Performance Evaluation

The protester also argues that the evaluation of the awardee's past performance was unreasonable, because the awardee has not shown that it has experience mowing grass on semi-improved grounds at a height of 7 to 14 inches. Protest at 4. The agency defends that it evaluated past performance consistent with the terms of the RFQ. MOL at 4.

The solicitation instructed offerors to submit a completed PPQ with their proposals. The PPQ required offerors to: answer a set of questions related to the work to be performed on the current contract; list relevant past performance references; and provide contact information for the cited references. RFQ at 68. As discussed, past performance was evaluated on an acceptable/unacceptable basis. To be found acceptable, an offeror had to show that it had successfully completed concurrent work across four disciplines highlighted in the PPQ. *Id.* at 4. The disciplines were represented in the form of four questions on the PPQ. Relevant here, the second PPQ question asked: "Has your company successfully maintained semi-improved grounds defined by 7-14 cut?" *Id.* at 68. In responding to that question, AllServ answered "Yes," indicated its period of performance on a recent contract at Offut AFB from April 2016 to March 2021, and provided contact information for its reference. AR, Tab 9, AllServ PPQ.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable

or inconsistent with the solicitation criteria. *Gulf Civilization Gen. Trading & Contracting Co.*, B-417586, Aug. 23, 2019, 2019 CPD ¶ 300 at 6. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. *Navarre Corp.*, B-419088.2, March 4, 2021, 2021 CPD ¶ 113 at 3. The fact that a protester disagrees with the agency's evaluation, without more, is not sufficient to sustain a protest. *Virgo Med. Servs., Inc.*, B-420462.3, B-420462.4, Aug. 5, 2022, 2022 CPD ¶ 208 at 7-8.

Byrd takes issue with the awardee's use of the Offut AFB contract to demonstrate its relevant past performance. Specifically, the protester points to the PWS from the Offut contract and notes that for that contract, semi-improved grounds were required to have grass "maintained between 4 to 10 inches." Protest, Exh. 2, Offut AFB Contract at 14. Byrd contends that the agency should have found the awardee's past performance unacceptable because the height requirement for the cut on the Offut contract is not identical to the height requirement here. Comments at 2 ("AllServ's lack of experience maintaining semi improve grounds across the required spectrum, up to 14 inches means that [AllServ] has no experience above 10", which the solicitation stated, unmistakably, renders AllServ's proposal unacceptable, because it has not 'successfully maintained . . . 7-14" cut' areas."). We disagree.

Where a protester and agency disagree over the meaning of solicitation language, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

With respect to the evaluation of past performance--in particular here, question two of the PPQ--the agency was simply tasked with determining whether an offeror had previous experience with maintaining a grass cut range between 7 and 14 inches for semi-improved grounds. See RFQ at 4, 68. Nothing in the RFQ indicates, as the protester suggests, that an offeror was required to demonstrate experience cutting grass at every inch between 7 and 14 inches. Rather, the requirement, on its face, only requires offerors to list any experience with cutting/maintaining grass on semi-improved grounds within the range of 7-14 inches. This is even more apparent when the solicitation is read as a whole. For instance, section 1.2 of the PWS indicates that, for semi-improved grounds, the contractor "shall maintain grass height *between* 7 and 14 inches." *Id.* at 27 (emphasis added). The 7-14 inch description is further defined in PWS section 1.3, which describes mowing requirements of the bird area strike hazard (BASH) locations. To maintain BASH locations, the PWS requires:

Grass, weeds and vegetation shall be maintained between 7 to 14 inches. The grass shall not be shorter than 7 inches in height to prevent dust and debris on the airfield and never be more than 14 inches in height to prevent bird habitation.

*Id.* at 28. Reading the solicitation as a whole, it becomes clear that the grass height requirement is simply a range.

The fact that the referenced Offut AFB PWS required the contractor to maintain semi-improved grounds at a grass cut range of 4-10 inches does not indicate that the awardee has no experience maintaining grass on semi-improved grounds with a cut range between 7-14 inches.<sup>3</sup> The two ranges overlap, with the awardee being able to show acceptable past performance here if the awardee had previously cut grass at a height of 7, 8, 9, or 10 inches.

The RFQ indicated that the agency could verify successful past performance by any means available. *Id.* at 4. Here, the contracting officer called the reference the awardee listed for the Offut contract. That reference confirmed that AllServ had experience maintaining semi-improved grounds, defined by a 7-14 inch cut – *i.e.*, that the awardee's past performance included cutting grass for semi-improved grounds between 7 and 14 inches. AR, Tab 11, Past Performance Memorandum at 1. Thus, we find nothing objectionable with the agency's conclusion that the awardee had successfully maintained semi-improved grounds, defined by a 7-14 inch cut, and had acceptable past performance. See *Navarre Corp.*, *supra*.

Lastly, the protester claims that as a result of the agency's allegedly improper evaluation, the agency's best-value determination is also flawed. Protest at 5. As we have denied Byrd's challenges to the agency's evaluation, this derivative challenge to the best-value determination does not afford a basis to sustain the protest. *ERP Servs., Inc.*, B-419315, Feb. 24, 2021, 2021 CPD ¶ 85 at 3 n.4.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

---

<sup>3</sup> Appendix E to the Offut contract contains a map of all the regions on Offut AFB to be cut/maintained and the associated grass height range for those regions. See Protest Exh. 2, Offut AFB Contract at 37. To further support the agency's position, the intervenor notes that although it was not specifically delineated in the terms of the PWS, the legend to the map at Appendix E identifies that the contractor was similarly required to maintain a cut of 7-14 inches for the BASH zones at Offut AFB, in addition to the requirement of a 4-10 inch cut for other semi-improved grounds areas on Offut AFB. See Intervenor Comments at 3. Thus, even under the protester's own restrictive reading of the RFQ, AllServ would have had acceptable past performance based on the Offut contract. *Id.*