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Decision

Matter of: AllServ Inc.

File: B-402330

Date: March 9, 2010

Michael Gordon, Esq., and Fran Baskin, Esq., Michael A. Gordon PLLC, for the protester.

Tracy J. Downing, Esq., Department of Veterans Affairs, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals is denied where record shows that agency's evaluation was reasonable and consistent with terms of solicitation and applicable statutes and regulations.

DECISION

AllServ, Inc., of Chapin, South Carolina, protests the award of a contract to Walco, Inc., of Rogersville, Missouri, under request for proposals (RFP) No. VA-789-09-RP-0016, issued by the Department of Veterans Affairs (VA) for headstone raising and realignment and turf maintenance services at Fort Sam Houston National Cemetery in San Antonio, Texas. AllServ maintains that the agency misevaluated proposals in connection with its award decision.

We deny the protest.

The RFP, as amended, sought fixed-price proposals for a period of performance from November 9, 2009 (or the date of award, whichever was later) to September 30, 2010. RFP amend. 2. Award was to be made on a "best value" basis considering price, technical, and past performance.¹ The technical factor was more important than

¹ For the non-price factors, the agency assigned color/adjectival ratings of blue/excellent, green/good, yellow/acceptable, orange/marginal, or red/fails. Agency Report (AR), exh. 10, at 14.

past performance and the non-price factors were significantly more important than price. RFP at 100.

The agency received 14 proposals, including the protester's and the awardee's. The agency assigned AllServ's proposal an orange/marginal rating for the technical factor and a blue/excellent rating for past performance, and its price was \$3,750,898. AR, exh. 15, at 1. Walco's proposal was rated green/good for the technical factor and blue/excellent for past performance, and its price was \$4,194,439.² *Id.* The agency determined that Walco's proposal represented the best value and thus made award to that firm. Following a debriefing, AllServ filed this protest challenging the evaluation.

Where a protester challenges an agency's evaluation of proposals, our Office will not independently reevaluate the proposals but, rather, will examine the record to determine whether the evaluation was reasonable and consistent with the RFP and applicable statutes and regulations. Building Restoration Corp., B-402000, Dec. 29, 2009, 2010 CPD ¶ 15 at 4.

AllServ maintains that the agency unreasonably rated its proposal orange/marginal under the technical factor. The record shows that this rating was based on the evaluators' finding that a table in AllServ's proposal showed a performance schedule different from the schedule in the RFP. AR, exh. 11, at 3. Specifically, the proposal included a table entitled "Monthly Hours" that provided hours by labor category spread across a 12-month period that commenced in February and concluded in January, and included a column totaling the hours by labor category. AR, exh. 2, Technical Proposal, at 10. The evaluators downgraded the proposal because this 12-month period was at variance with the RFP's specified schedule of November 9, 2009 to September 30, 2010, a period of, at most, 10 months and 21 days.

AllServ asserts that the table was included in its proposal, not to show the period of performance for the contract, but, rather, to show its monthly staffing profile. The protester maintains that, because the table does not have a year specified, the agency should have understood that the table was not for purposes of proposing an alternate schedule. The protester also asserts that, since it acknowledged amendment No. 2 to the RFP (which included the period of performance), it was legally obligated to perform in accordance with the RFP schedule.

We find that the agency reasonably downgraded AllServ's proposal. AllServ's assertions notwithstanding, its proposal was downgraded for one simple reason—the "Monthly Hours" table indicated a 12-month schedule, with no explanation that it

² Walco's proposed price was \$4,236,807, but in making its award decision the agency considered Walco's offered 1% discount for payment made within 10 days. AR, exh. 3, at 1; exh. 15, at 2.

was not intended to establish a 12-month schedule. This being the case, while AllServ also acknowledged the amendment establishing the required period of performance, the agency determined that there was a question whether AllServ was unequivocally agreeing to perform in accordance with the required schedule. We find nothing unreasonable with this conclusion. AllServ's explanation that the "Monthly Hours" table was intended only to show its monthly staffing profile in a general manner is unpersuasive. This is because the firm's technical proposal already includes a section titled "Staffing Plan," with a table listing the various types of personnel to be used in performing the contract—[deleted] managers, [deleted] tractor operators, [deleted] pest controller, and [deleted] laborers—and showing these personnel were to be divided among [deleted] management team, [deleted] headstone crews, [deleted] turf renovation crew, and [deleted] miscellaneous crew. AR, exh. 2, Technical Proposal, at 9. Since the "Staffing Plan" table already presented the information AllServ maintains was the purpose of the "Monthly Hours" table—a staffing profile—we think the agency reasonably could find that the "Monthly Hours" table may have been intended to establish a 12-month schedule in place of the shorter schedule in the RFP.

AllServ maintains that the agency unreasonably assigned Walco the same blue/outstanding past performance rating AllServ received since, according to AllServ, Walco has not performed headstone realignment work.

This argument is without merit. The requirement here is not only for headstone raising and realignment, but also for renovation and reestablishment of some 2.8 million square feet of turf. In evaluating Walco's past performance, the agency considered two prior contracts for which past performance surveys had been provided—one for turf renovation at Houston National Cemetery, and one for turnkey full landscaping services at an 11,000 acre project in La Paz, Mexico. AR, exh. 14. Walco received consistently outstanding ratings for both contracts. *Id.* (Walco's proposal listed numerous other extensive turf renovation projects, AR, exh. 3, at 18-19, as well as a cemetery realignment and turf renovation project at Kerrville National Cemetery. *Id.*) AllServ's past performance rating likewise was based on outstanding ratings on two contracts for which past performance surveys had been provided—one for grounds maintenance at Pope Air Force Base (which did not involve headstone raising and realignment), and one for headstone raising and realignment at Mountain Home National Cemetery. AR, exh. 13. The remainder of the references in AllServ's proposal involved contracts for grounds maintenance services or irrigation system installation. AR, exh. 2, at attach. 7.

While the protester's Mountain Home contract, unlike Walco's two reference contracts, included headstone work, it involved only 4,000 headstones, versus the 54,000 headstones to be raised and realigned and the 63,000 headstones to be cleaned under the current contract. The agency ultimately determined that, while AllServ perhaps showed more past performance of headstone-related contracts than Walco, that past performance nevertheless was limited relative to the current requirement, and did not by itself warrant assigning AllServ a higher past

performance rating than Walco. Since the RFP did not specifically require that an offeror show a certain amount of headstone-related past performance in order to receive a blue/outstanding rating, there was nothing unreasonable in the agency's assigning the two offerors the same rating.³

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ AllServ asserts that Walco may improperly have been afforded an opportunity to revise its proposal after the deadline for submitting offers. This is not the case. While the record shows that Walco sent the agency a letter dated December 11 that included a proposal change page, this occurred after the November 30 award. Moreover, the change page added only an immaterial sentence relating to the type of clamp Walco would use to lift the headstones during the raising and realignment procedure. This argument thus does not provide a basis for questioning the award.