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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Precision Mold & Tool

File: B-400452.4; B-400452.5

Date: April 14, 2009

Steven M. Masiello, Esq., and Joseph G. Martinez, Esq., McKenna Long & Aldridge LLP, for the protester.

Katherine S. Nucci, Esq., Thompson Coburn LLP, for ATAP, Inc., an intervenor.

Tracey L. Lewis, Esq., Department of the Air Force, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of offerors' "quality" and "delivery" past performance was reasonable, where solicitation advised offerors that past performance would be evaluated based on information listed in Past Performance Information Retrieval System--Statistical Reporting (PPIRS), offerors were given an opportunity to correct inaccuracies in PPIRS records, and the agency confirmed the validity of negative past performance; agency's decision not to select protester's lower-priced proposal was reasonable given its poor record of delivery performance and the agency's rational decision that awardee's superior performance record was worth the additional cost.

DECISION

Precision Mold & Tool (PMT) of San Antonio, Texas, protests the award of a contract to ATAP, Inc., of Eastaboga, Alabama, issued by the Department of the Air Force under request for proposals (RFP) No. FA8532-08-R-22080 for tow bars for B-52 aircraft. PMT complains that the agency misevaluated both firms' past performance.

We deny the protest.

The RFP provided for the award of a fixed-price contract for eight tow bars and associated data line items, along with four options of one to seven tow bars per option. The solicitation announced that the award would be based on the evaluation of two factors--past performance and price--with past performance considered "slightly more important than" price. RFP § M, at 24.

The RFP informed offerors that the agency would evaluate past performance based on information contained in the “Past Performance information Retrieval System--Statistical Reporting” (PPIRS). The RFP advised that the “purpose” of PPIRS is to provide “quantifiable past performance information regarding delivery and quality, as collected from existing [Department of Defense] reporting systems.” The solicitation explained that PPIRS uses the past performance data collected to classify each suppliers performance by Federal Supply Classes or Federal Service Codes (FSC) to develop “quality” and “delivery” ratings. Id.

For quality past performance ratings, the RFP explained that PPIRS compared suppliers in a specific FSC group and classified them according to color ratings: dark blue (top 5 percent of suppliers in the FSC group), purple (next 10 percent of suppliers in the FSC group), green (next 70 percent),¹ yellow (next 10 percent), or red (bottom 5 percent). For delivery ratings, PPIRS classified performance based on a percentage of on-time deliveries, which was calculated using the number of line items delivered and a weighting factor that reflected the length of time a delivery was overdue. Id.

In describing the past performance evaluation, the RFP stated that “[t]he quality and delivery classifications identified for an offeror in [PPIRS] will be used in conjunction with the offeror’s references, the criteria in [Federal Acquisition Regulation (FAR) §] . . . 15.305(a)(2) (as applicable), and other provisions of the solicitation.” The solicitation also “encouraged [offerors] to review their own classifications as well as [PPIRS] reporting procedures and methodology,” and advised offerors of the PPIRS website for challenging their PPIRS ratings. Id.

Six offerors submitted proposals by the RFP closing date of April 30, 2008, including PMT and ATAP. As is relevant here, PMT received a PPIRS purple rating for quality and zero percent for delivery; ATAP received a green rating for quality and 100 percent for delivery. AR, Tab 15, PPIRS Report, at 1. Both firm’s proposals were found to be in the competitive range.

In May, the contracting officer held discussions with the offerors whose proposals were found to be in the competitive range, during which PMT was advised that, for delivery data, “[a] review of PPIRS data for this stock class indicates a 0 [percent] weighted score based on 50 line items.” The contracting officer provided PMT with a copy of the PPIRS report and requested that PMT respond if it disputed this information and provide back up for any delinquencies in dispute. AR, Tab 16, PMT Discussions, at 1. PMT responded and claimed that the data was “inaccurate” and provided “information concerning the performance data” for the contracting officer

¹ Contractors without any quality records were also assessed a green rating. Agency Report (AR), Tab 29, Reevaluation Decision Document, at 14.

to review. AR, Tab 17, PMT Response to Discussions, at 1. This information included an email from PMT to the Navy's PPIRS representative,² with a marked up copy of PMT's PPIRS profile that highlighted PMT's requested corrections and discrepancies to five contracts and eight line items. Id. at 5-19; Tab 29, Reevaluation Decision Document, at 3.

The contracting officer forwarded this information to the Air Force representative, who serves as a PPIRS liaison to the Navy, for the liaison's review and comment. Based on his review, the Air Force liaison concluded that the five contract reports challenged by PMT (some with multiple line items) all involved late deliveries, but the number of days delinquent had been overstated. AR, Tab 20, Air Force Liaison Email Report, at 1-2. The Air Force liaison forwarded his findings to both the contracting officer and PMT on June 9. Id.

The contracting officer then reviewed the contract files for the challenged contract entries "to determine the validity of the alleged discrepancies as well as the reason(s) for the delinquencies and whether the same were attributed to the Government, PMT, or both." AR, Tab 29, Reevaluation Decision Document, at 4. The contracting officer determined that, even after all of the inaccuracies were removed from PMT's PPIRS report, all of the line items challenged by PMT were delivered late. Id. In addition, the contracting officer noted that PMT was delinquent on other contracts that the firm did not challenge, and the contracting officer found that, in all cases, the delinquency was attributable to PMT. Id. at 10.

On June 10, the contracting officer requested final proposal revisions from the offerors, and, on June 12, both PMT and ATAP submitted final proposal revisions. PMT's final total evaluated price was \$2,311,854.12 and ATAP's final total evaluated price was \$2,505,725.90. Id. at 12-13. Based on her review of these submissions, the contracting officer selected ATAP's higher-priced proposal for award, finding that ATAP's superior delivery record was worth the additional cost. In support of this decision, agency personnel informed the contracting officer that "[d]elivery of the tow[]bars are crucial due to the current breakage rates, degradation of the metallurgical and mechanical problems, and [Air Force headquarter's] high visibility and therefore the higher unit price/cost is warranted to minimize risk." AR, Tab 23, Best Value Decision Email, at 1. On July 30, the agency announced award to ATAP, and PMT protested to our Office.

In its protest, PMT asserted that the agency's past performance evaluation was unreasonable and based on inaccurate information, the agency failed to hold meaningful discussions with the firm, and the best value decision was flawed. PMT supplemented the protest on September 4 to challenge other aspects of the past performance evaluation. After the supplemental protest, the agency notified our

² The Navy administers PPIRS.

Office that it was taking corrective action, which consisted of “reevaluating the past performance of both offerors and making of a new award decision.” AR, Tab 28, Notice of Corrective Action. Based on this corrective action, we dismissed the protest on October 1.

Thereafter, the contracting officer reevaluated proposals and, again, selected ATAP’s proposal for award. As explained in the agency’s reevaluation decision document, the contracting officer evaluated past performance by considering both PMT’s and ATAP’s quality and delivery ratings as reflected in PPIRS. With regard to quality, the contracting officer acknowledged that PMT’s purple rating was superior to ATAP’s green rating. The contracting officer also noted, however, that PMT’s rating referenced only one quality record (a negative report) that was 3 years old to which the agency did not have access. The contracting officer further noted that there were no other written quality records for PMT and no “reported or known negative quality issues for either PMT or ATAP.” Based on the foregoing, the contracting officer concluded that PMT’s higher purple rating for quality “did not indicate a higher degree of confidence should be afforded PMT over ATAP.” AR, Tab 29, Reevaluation Decision Document, at 14.

With regard to delivery, the PPIRS score for ATAP was 100 percent based on one line item that was timely delivered. In contrast, PMT’s delivery score was 0 percent based on multiple records, where many of those deliveries were found to be delinquent. As noted by the contracting officer, the more detailed review of the line items “overwhelmingly signified a pattern of disregard on the part of PMT in meeting their contractual obligations for delivery.” *Id.* The contracting officer concluded that PMT’s “poor delivery record” resulted in a “diminished degree of confidence in [PMT’s] ability to perform and deliver on time and thus was the determining distinction in the overall evaluation of past performance.” *Id.* at 15. In the contracting officer’s judgment, given the “critical” need for on-time delivery of tow bars, ATAP’s superior proposal was worth the additional cost. *Id.*

The contracting officer selected ATAP’s proposal for award, and PMT protested to our Office. PMT reasserts its earlier protest allegations that the agency miscalculated past performance. Although it does not challenge the agency’s use of PPIRS as a measure of past performance, it contends that the contracting officer’s interpretation of those records was unreasonable.³ PMT also asserts that the contracting officer did not give sufficient weight to PMT’s superior quality past performance in the award decision.

³ PMT also asserts that the record is not sufficiently documented, but as discussed throughout this decision, we find that the record is adequately documented and supports the agency’s evaluation judgments.

The evaluation of past performance is a matter of agency discretion, and we will review the evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. The evaluation by its very nature is subjective; the offeror's mere disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. SDV Telecomms., B-279919, July 29, 1998, 98-2 CPD ¶ 34 at 2.

PMT challenges the agency's evaluation of the PPIRS quality records for past performance. It contends that the contracting officer improperly diminished the value of PMT's purple rating and irrationally concluded that PMT's higher quality rating did not indicate a higher degree of confidence.

Regardless of the color rating assigned, such ratings are merely guides for intelligent decision-making in the procurement process; and where, as here, the agency considers the underlying basis of the ratings and rationally determines that a color rating does not provide higher confidence in performance, the actual color rating assigned is inconsequential in the analysis. Cherry Rd. Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 12. Here, the contracting officer credited PMT's purple rating under PPIRS⁴ and recognized that this rating was higher than ATAP's. The contracting officer also discounted the only written quality report for PMT, which was negative, because of its age and a lack of information about the reasons for this report. The contracting officer also acknowledged that PMT delivered 50 line items as opposed to ATAP's single line item, and found that, except for the discounted quality report for PMT mentioned above, there were no quality reports, negative or positive, about either offeror's line items. Given this absence of specific data, the contracting officer found that PMT's more numerous complaint-free deliveries did not indicate "a higher degree of confidence should be afforded PMT over ATAP" with regard to quality. Based on our review, we find that the contracting officer reasonably evaluated the offerors' respective quality past performance consistent with the RFP's evaluation scheme, and reasonably

⁴ For purposes of this decision, we accept PMT's purple quality rating. However, while the record indicates that PMT's rating was based upon only one negative report out of 50 line items, it does not clearly indicate why this would support PMT's purple quality rating. In this regard, we note that the record shows that one of the other offerors under this RFP, who had delivered more line items than PMT and had received no negative reports, only received a green rating. AR, Tab 15, PPIRS Report, at 1. While the agency states that the PPIRS evaluation criteria provides that a green quality rating should be applied if there is no existing quality information regarding the deliveries, we fail to understand why an offeror with more delivered line items and no negative (or positive) quality reports should be rated inferior (that is, green) to an offeror (rated purple), which had less delivered items and one negative and no positive reports.

determined that the quality aspect of the offerors' past performance was not a significant discriminator between proposals. In this regard, we further find that the contracting officer reasonably determined that PMT's superiority under this factor did not indicate "a higher degree of confidence" that PMT would be more likely to provide items that would meet the agency's quality standards.

PMT also challenges the agency's evaluation of delivery past performance. It complains that the contracting officer relied on PPIRS scores without considering the "currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance," as required by the FAR. PMT's Second Supplemental Comments at 7; FAR § 15.305(a)(2).

Our review of the record confirms that the contracting officer considered all of the information required by the solicitation and the FAR. In this regard, the contracting officer evaluated the available PPIRS data, consulted with the Air Force PPIRS liaison, and reviewed PMT's contract files to confirm the validity of PMT's delinquencies, and to understand the reasons for and circumstances surrounding those delinquencies. The contracting officer also provided PMT with an opportunity to correct any errors in its PPIRS data.⁵ Based on the information available, the contracting officer determined that, even after inaccuracies were corrected, PMT delivered items late 36 percent of the time and was at fault for all of those late deliveries. Air Force Response to PMT's Supplemental Comments at 7; AR, Tab 29, Reevaluation Decision Document, at 10. In fact, of 12 late deliveries associated with Air Force contracts, 8 were in excess of 60 days late. Air Force Memorandum of Law at 12. This demonstrated to the contracting officer an "overwhelming[] . . . pattern of disregard on the part of PMT in meeting their contractual obligations for delivery." AR, Tab 29, Reevaluation Decision Document, at 14. Based on our review of the record, we find the contracting officer's assessment of PMT's delivery record to be reasonable.

PMT asserts that the contracting officer's conclusion that ATAP's delivery record was superior to PMT's is unreasonable, given that ATAP's delivery score of 100 percent was based only on one line item, whereas PMT's delivery record included many line items and many on-time deliveries. The contracting officer considered the number of line items upon which PPIRS scores were based, as well

⁵ PMT asserts that discussions were inadequate because it was only allowed to correct inaccuracies in the PPIRS records, and was not permitted an opportunity to explain negative performance. However, PMT does not explain what information it would have provided during discussions, other than to state, generally, that it "could have provided information about corrective actions." PMT Comments at 16. This general allegation is not sufficient to demonstrate that PMT was prejudiced, even if discussions were inadequate. See Klinge Corp., B-309930.2, Feb. 13, 2008, 2008 CPD ¶ 102 at 7 n.2.

as PMT's on-time deliveries, but noted that PMT's significant number of late deliveries "warranted a diminished degree of confidence in their ability to perform and deliver on time." In so doing, the contracting officer did not give too much weight to the delivery aspect of past performance, but appropriately recognized it as a clear discriminator between the proposals. Given the "critical" nature of the work, we find the contracting officer's reasoning unobjectionable. AR, Tab 29, Reevaluation Decision Document, at 15.

PMT also asserts that the contracting officer evaluated proposals unequally. For example, it complains that the contracting officer only reviewed the contract files for PMT and not ATAP. However, the agency explains that the contracting officer reviewed PMT's files in response to PMT's assertion that data was inaccurate; and because there was no challenge by ATAP to its PPIRS record, the agency had no cause to review ATAP's contract files.⁶

In sum, the record confirms that the contracting officer fairly and reasonably evaluated past performance and made a reasoned best value decision that is well-documented and supports the source selection. While PMT disagrees with this analysis, it has not shown it to be unreasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ PMT's other allegations of unequal treatment are similarly without merit.