



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

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

**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:** CMJR, LLC d/b/a Mokatron

**File:** B-405170

**Date:** September 7, 2011

---

David A. Rose, Esq., The Rose Consulting Law Firm, LLC, for the protester.  
Christopher S. Cole, Esq., Department of the Air Force, for the agency.  
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

## **DIGEST**

In a negotiated procurement that provided for an acceptable/unacceptable technical evaluation and a tradeoff between past performance and price, with past performance being equally as important as price, agency reasonably awarded a contract to the offeror with higher-priced proposal where the agency found that the protester's proposal presented more performance risk than the awardee's proposal.

---

## **DECISION**

CMJR, LLC d/b/a Mokatron (Mokatron), of North Las Vegas, Nevada, protests the award of a contract to Aero Tech Services Associates, Inc., (Aero Tech) of Oklahoma City, Oklahoma, under request for proposals (RFP) No. FA8773-10R-0051, issued by the Department of the Air Force for the operation and maintenance of the March Air Reserve Base telecommunication system. Mokatron alleges that the agency improperly evaluated its proposal under the past performance evaluation factor and reached an improper source selection decision.

We deny the protest.

## **BACKGROUND**

The Air Force published the solicitation at issue on August 30, 2010, seeking proposals to provide operation and maintenance for the telecommunication system

at March Air Reserve Base.<sup>1</sup> RFP at 1. The RFP, which was set aside for service-disabled veteran-owned small businesses, provided for the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a 5-month base period and up to 5 years of performance, including options. RFP at 1, 2, 76-77, 117; RFP amend. 4, at 1.

The RFP established three evaluation factors: technical, present/past performance, and price. RFP at 129. The solicitation stated that the technical factor would be evaluated on an acceptable/unacceptable basis.<sup>2</sup> Id. For those proposals that were technically acceptable, the source selection decision would be based on a tradeoff between present/past performance and price, with those two factors being of approximately equal importance. Id.

With respect to the present/past performance factor, the RFP required offerors to provide past performance information on up to 10 recent contracts (those that were currently being performed or had been performed within 3 years of the date the solicitation was issued) that demonstrated the offeror's ability to perform under the proposed contract. RFP at 122; RFP amend. 3, at 5. The RFP also provided that a new corporate entity could submit data on prior contracts involving its officers, employees, and key personnel who have relevant experience. RFP at 121; RFP amend. 3, at 5.

The RFP provided that each present/past performance proposal would receive an integrated performance confidence assessment, which reflected the degree of confidence the agency had in the offeror's ability to perform the required services to meet the agency's needs. RFP at 131. In this regard, the solicitation specified that the agency would assign proposals a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.<sup>3</sup> Id.

---

<sup>1</sup> The solicitation provided contract line item numbers for special projects, work orders, installation, equipment purchases, relocating equipment, and removing equipment. RFP at 3-54.

<sup>2</sup> Technical proposals were to address five subfactors: maintenance and workload practices, work orders, company resources, quality control, and security and safety. RFP at 121, 129-130. The RFP stated that a failure in any technical subfactor would result in an unacceptable rating for the technical factor. Id. at 129.

<sup>3</sup> As relevant here, the RFP defined a substantial confidence rating as, "[b]ased on the Offeror's performance record, the Government has a high expectation that the offeror will successfully perform the required effort," and defined a limited confidence rating as, "[b]ased on the Offeror's performance record, the Government has a low expectation that the offeror will successfully perform the required effort." RFP at 132-133.

at 132-33. The solicitation stated that the confidence assessment would be based on the recency,<sup>4</sup> relevancy,<sup>5</sup> and quality of the past performance,<sup>6</sup> and it took into account information provided by offerors and other sources, including pre-award surveys and contractor performance evaluations (such as contractor performance assessment reports (CPAR)). Id. at 131-133.

In October 2010, five offerors submitted initial proposals, including Mokatron and Aero Tech. Contracting Officer's Statement at 10. After discussions were conducted with the offerors, final proposal revisions were submitted by March 18, 2011. Id. The Air Force determined that all final proposals were acceptable under the technical factor of the RFP and, accordingly, the agency conducted performance confidence assessments for each of the offerors.

In its proposal, Mokatron stated that it was founded in November 2009, and that it consisted of three members: the president of a company called Newcom Telephone Company (NTC); the owner of another company, Definitive Voice and Data, Inc. (Definitive); and the president of a construction firm, Harris and Associates.<sup>7</sup> AR, Tab 24, Technical Proposal, at 1. Mokatron identified seven contracts for review, three performed by NTC and four performed by Definitive. AR, Tab 25, Past Performance Proposal, at 1-17; Contracting Officer's Statement at 16. With regard to one of the NTC contracts, Mokatron's proposal noted that NTC had received a contract discrepancy report for failing to complete a project on time. AR, Tab 25, Past Performance Proposal, at 3.

A performance confidence assessment group (PCAG) reviewed the seven contracts submitted by Mokatron and determined that only two of the NTC contracts and two of the Definitive contracts were recent. AR, Tab 8, Performance Confidence

---

<sup>4</sup> As noted above, recency was defined as those contracts performed within the three years of the solicitation's issuance. RFP amend. 3, at 5.

<sup>5</sup> The relevancy evaluation was to determine whether the contracts identified in the proposal were relevant, somewhat relevant, or not relevant to the technical factors stated in the solicitation. RFP at 131.

<sup>6</sup> The solicitation provided that the agency would assign a performance quality rating of either exceptional, very good, satisfactory, marginal, unsatisfactory, or not applicable. RFP at 132. As is relevant here, the RFP defined a satisfactory rating as, "Performance meets contractual requirements. Performance was accomplished with some minor problems, for which corrective actions taken by the contractor were satisfactory." Id.

<sup>7</sup> The protester asserts that the three owners "pooled their resources, years of experience, and good reputations" to form Mokatron. AR, Tab 24, Technical Proposal, at 1.

Assessment, at 28. Of those four, the agency concluded that neither of the Definitive contracts were relevant, that only one of the NTC contracts was relevant, and that the other NTC contract was somewhat relevant--determinations to which Mokatron has not objected in this protest.<sup>8</sup> Id.

Next, the PCAG assessed Mokatron's quality of performance by reviewing the CPARs for the two recent, relevant/somewhat relevant NTC contracts. AR, Tab 8, Performance Confidence Assessment, at 32-33; see RFP at 131-132. In performing this review, the PCAG concluded that the specific narrative description of NTC's past performance in the CPARs reflected greater risk, and lower adjectival ratings than was reflected in the ratings assigned by the initial assessing official. Among other things, the CPARs stated that NTC "should establish a self inspection checklist to evaluate the work," "should evaluate how they determine the Estimated Period of Performance (EPOP) for each work order," that NCT "needs some improvements" with regard to meeting its schedules, and "needs to monitor its subcontractors more closely." AR, Tab 14, CPARS at 2-5. The PCAG also reviewed the contract discrepancy report NTC received in connection with its failure to complete work on time on the relevant contract. Id.; see also AR, Tab 25, Past Performance Proposal, at 3.

The PCAG further reviewed the pre-award surveys that had been performed for Mokatron, NTC, and Definitive as part of its confidence assessment. Id. at 34. The surveys focused on the technical and financial aspects of the firms. AR, Tab 15, Mokatron Pre-award Survey, at 1-2; AR, Tab 16, NTC Pre-award Survey, at 1-2; AR, Tab 17, Definitive Pre-award Survey, at 1-2. Mokatron's pre-award survey noted that the overall viability of the firm was high risk because it was a "start-up" company, with no historical financial statements, no performance history, and no production activity." AR, Tab 15, Mokatron Pre-award Survey, at 13. The survey concluded that "a start-up company carries an inherently higher risk of experiencing potential difficulties than other more established companies." Id. at 13-14. The pre-award survey nevertheless recommended award to Mokatron because NTC provided a corporate guarantee agreement on behalf of Mokatron. Id. at 14; see AR, Tab 18, NTC Corporate Guarantee Agreement.

---

<sup>8</sup> The relevant NTC contract was for telecommunications system services at Holloman Air Force Base in New Mexico. See AR, Tab 8, Performance Confidence Assessment, at 28-32; see also AR, Tab 14, Contractor Performance Assessment Report, at 1. The somewhat relevant NTC contract was for administration and maintenance of the intrusion detection system and automated entry control system at Buckley Air Force Base in Colorado. See AR, Tab 8, Performance Confidence Assessment, at 28-32; see also AR, Tab 14a, Contractor Performance Assessment Report, at 1.

Based on its evaluation discussed above, the PCAG rated Mokatron's proposal as limited confidence under the present/past performance factor. AR, Tab 8, Performance Confidence Assessment, at 35. In reaching this conclusion, the PCAG stated that it had a low expectation that Mokatron would successfully perform the required work. Id.

The source selection authority (SSA), who was also the contracting officer, reviewed each offeror's performance information, including the past performance proposals, the CPARs, the pre-award surveys, and the PCAG assessment. See AR, Tab 23, Source Selection Decision Document, at 4, 6-9. With regard to Mokatron, the SSA reviewed the CPARs from the two NTC contracts, specifically noting the initial assessing official's ratings, the recommendations for performance improvement, NTC's failure to timely complete a prior project leading to a contract discrepancy report, and the corrective actions NTC had undertaken. Id. at 8-9. The SSA also considered the pre-award surveys, noting in the SSDD that Mokatron's financial viability was high risk because it was a start-up company. Id. at 8.

Based on this review, the SSA summarized her conclusions stating:

Based on the adverse quality of performance demonstrated on the referenced contracts, Mokatron carries an inherently higher risk of experiencing potential difficulties than a company with a higher quality of performance rating with no performance issues and higher confidence rating. Although NTC has taken corrective action for unacceptable performance, as indicated above, I'm not willing to assume any potential risk in disruption of the schedule, increased cost or degradation of performance, as a result of a persistent pattern of need for costly and burdensome Government assistance (e.g., inspection and administrative oversight) that will be provided in the Government's interest but not contractually required. At this time I cannot determine whether the corrective action was sufficient to prevent recurrence. The proposed teaming arrangement involves several layers, again it is my opinion that, the facts stated above cause[] some concern and would tend to indicate a higher risk of experiencing potential difficulties. Based on the above, the PCAG assigned an overall quality rating of Marginal to Satisfactory.

Based upon the Contractors Performance Assessment Reports (CPARs) using the Past Performance Information Retrieval System (PPIRS), Pre-Award Surveys, [and] information provided by the Offeror's, the Government has a Low expectation that the offeror will successfully perform the required effort. Mokatron's past/present performance demonstrated efforts involving all of the magnitude of effort and complexities required by the PWS Appendix 5.2, but their quality of performance and results of the Preaward Survey created

doubt of successful performance. Mokatron has been rated with a confidence level of Limited Confidence.

Id. at 9.

With regard to the awardee, the SSA assigned Aero Tech's present/past performance proposal a substantial confidence rating. AR, Tab 23, Source Selection Decision Document, at 5. Aero Tech's proposed price was \$3,706,837.32; Mokatron's price was \$3,199,890.33. AR, Tab 7, Price Competition Memorandum, at 2. The SSA conducted a performance/price tradeoff and selected Aero Tech's higher-rated, higher-priced proposal for award. AR, Tab 23, Source Selection Decision Document, at 1, 23. The SSA concluded, "The benefits of having a contractor with a 'Substantial [C]onfidence' performance rating outweighs the minor price differential between the lower priced proposals with a[n] 'Unknown Confidence' or 'Limited Confidence' performance rating." AR, Tab 23, Source Selection Decision Document, at 23.

On May 24, the agency awarded the contract to Aero Tech. AR, Tab 11, Contract Award, at 1. After requesting and receiving a debriefing, Mokatron filed this protest with our Office.

## DISCUSSION

The protester challenges the agency's evaluation under the present/past performance factor. Protest at 1. More specifically, Mokatron contends that the Air Force unfairly discounted its status as a new corporate entity, failed to properly evaluate its CPARs, and failed to consider the corrective action it had undertaken. Protest at 8.

Our Office will examine an agency's past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. E.g., Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. Further, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether that contractor, or another offeror, disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. E.g., L-3 Sys. Co., B-404671.2, B-404671.4, April 8, 2011, 2011 CPD ¶ 93 at 3. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. E.g., Ready Transp. Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 4.

Mokatron first contends that it was unreasonable for the Air Force to assign its proposal a limited confidence rating under the present/past performance factor

“based on the sole fact” that Mokatron is a newly formed entity. Comments at 3. Mokatron further complains that the agency “entirely discounted” the performance history of its key personnel. Protest at 8.

Here, contrary to Mokatron’s assertion that the rating was “based on the sole fact” that Mokatron is a newly formed entity, the record shows the agency based its final assessment on multiple sources of information, including the offeror’s present/past performance proposal, the CPARs, the PCAG evaluation, and the pre-award surveys. AR, Tab 23, Source Selection Decision Document, at 4. In this regard, the record reflects the SSA’s specific consideration of the prior contracts performed by Mokatron’s key personnel. AR, Tab 23, Source Selection Decision Document, at 6-9. As discussed above, the SSA reviewed NTC’s performance under the two recent, relevant/somewhat relevant contracts, considered both the CPAR adjectival ratings and the substantive narrative contained in the CPARs, considered NTC’s corrective actions undertaken to address its prior performance problems, and acknowledged that Mokatron’s performance record “demonstrated efforts involving all of the magnitude of effort and complexities required by the [performance work statement].” Id. at 9. Additionally, although Mokatron did not have any financial history, the agency accepted NTC’s corporate guarantee. Id. at 8.

Nonetheless, after reviewing the entire record discussed above, the SSA had “some concern” regarding a “higher risk of [Mokatron] experiencing potential difficulties” in performing the contract requirements. The SSA concluded that “[Mokatron’s] quality of performance and results of the Preaward Survey created doubt of successful performance.” Id. at 9. (Underlining added.) The SSA therefore concluded “Mokatron has been rated with a confidence level of Limited Confidence.” Id.

Based on our review of the record, we reject the protester’s assertion that the Air Force based Mokatron’s past performance rating on the “sole fact” that Mokatron was a newly formed entity, or that it “entirely discounted” the performance history of its key personnel. To the contrary, the bulk of Mokatron’s evaluation related to NTC’s prior contracts, showing that the agency gave Mokatron credit for its members’ performance despite being a new corporate entity. Similarly, the record shows that in reaching the limited confidence rating decision, the SSA considered multiple sources of information. Mokatron’s assertions in this regard are without merit.

Next, Mokatron complains that the agency failed to take into account the most recent CPAR regarding its prior performance. In this regard, Mokatron asserts that, had the agency considered this CPAR, it would have determined that “all those perceived deficiencies were not only resolved but Mokatron was performing . . . well.” Protest at 8.

Here, the record shows that the agency’s past performance reviews for all offerors were conducted from October 19, 2010, to January 25, 2011. AR, Tab 31,

Statement from Contract Specialist. The CPAR Mokatron asserts the agency should have reviewed was completed on March 9, 2011. AR, Tab 28, CPAR (March 9, 2011), at 3. We find nothing objectionable in the agency's failure to consider a document that was not available to it at the time it performed the past performance evaluation. See Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 6.

In any event, although the agency did not review the more recent CPAR, the SSA was aware of corrective action that NTC had taken, noting in the SSDD that "NTC has taken corrective action for unacceptable performance." AR, Tab 23, Source Selection Decision Document, at 9. It is within the agency's discretion to consider the significance of an offeror's prior performance in the context of, among other things, the contractor's actions to address prior problems. See e.g., L-3 Sys. Co., supra, at 6. In this regard, the SSA wrote, "At this time I cannot determine whether the corrective action was sufficient to prevent recurrence," and concluded, "I'm not willing to assume any potential risk in disruption of the schedule, increased cost or degradation of performance." AR, Tab 23, Source Selection Decision Document, at 9. On this record, we reject Mokatron's assertion that we should sustain its protest because the agency did not consider the most recent CPAR.

Finally, Mokatron argues that the PCAG's present/past performance evaluation was improper for failing to accept the adjectival ratings contained in the CPARS that were reviewed. Protest at 1. Mokatron further contends that the PCAG's evaluation unfairly emphasized negative past performance, did not reflect an "independent investigation," and was otherwise "arbitrary and capricious." Comments at 1-2; see also Protest at 2, 8..

An evaluating official may properly look behind an adjectival rating to determine the relative strengths or weaknesses that the rating reflects. See generally Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6; ATA Def. Indus., Inc., B-282511, B-282511.2, July 21, 1999, 99-2 CPD ¶ 33 at 12. Further, an agency has broad discretion to determine the manner and extent to which it will rely on summary ratings and the written narratives underlying such ratings. Id.

As noted above, the PCAG concluded that the CPARs' narrative descriptions of NTC's past performance properly reflected greater risk and lower adjectival ratings than the ratings assigned by the initial assessing official. AR, Tab 8, Performance Confidence Assessment, at 32-33. In this regard, the PCAG relied on specifically identified aspects of NTC's prior performance that were discussed in the CPARs. Based on our review of the record, we find no basis to question the reasonableness of the PCAG's evaluation.

In any event, as discussed above, SSA's ultimate assessment of limited confidence under the past/present performance factor reflected consideration of multiple



sources of information, including Mokatron's past performance proposal, the CPARs, the PCAG assessment, and the pre-award surveys. See AR, Tab 23, Source Selection Decision Document, at 4, 6-9. In this regard, the SSA specifically reviewed the CPARs from the two NTC contracts, noting the initial assessing official's ratings, NTC's prior failure to timely complete a project leading to a contract deficiency report, the recommendations for performance improvement, and the corrective actions NTC had undertaken, as well as the financial viability assessment contained in the pre-award surveys. Id. at 8. Based on this comprehensive review, the SSA made the final confidence assessment based on her consideration of the entire record. On this record, we reject Mokatron's assertion that the protest should be sustained because the PCAG evaluation did not accept the adjectival ratings contained in the CPARS that were reviewed.

In summary, Mokatron's protest does not present any basis for us to question the Air Force's evaluation of the firm's proposal under the present/past performance factor. Further, based on our review of the record, the SSA reasonably concluded that Aero Tech's higher present/past performance proposal rating outweighed the price difference between its proposal and Mokatron's lower-rated, lower-priced proposal.

The protest is denied.

Lynn H. Gibson  
General Counsel