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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: PHT Corporation

File: B-297313

Date: December 8, 2005

Cyrus E. Phillips IV, Esq., for the protester.

Garry S. Grossman, Esq., and Aaron M. Forester, Esq., SchiffHardin, for Airtronic Services, Inc., an intervenor.

Victor G. Vogel, Esq., and Joseph M. Picchiotti, Esq., Army Materiel Command, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation defined relevant past performance as performance on contracts with a value over \$500,000 that demonstrates the successful manufacture of M9 magazine cartridge or similar item, award to offeror with no relevant past performance was reasonable where source selection authority recognized the awardee's lack of relevant past performance, but nonetheless reasonably concluded, consistent with the solicitation, that the awardee's overall past performance record justified a "moderate" risk rating.

DECISION

PHT Corporation protests the award of a contract to Airtronic Services, Inc. under request for proposals (RFP) No. W52H09-04-R-0119, issued by the Army Materiel Command for M9 magazine cartridges. PHT maintains that the agency improperly evaluated the past performance record of Airtronic and that Airtronic's price is unreasonably low.¹

¹ In its protest, PHT also objected to the agency's evaluation of PHT's past performance and contended that PHT's risk rating should have been more favorable. In its report to our Office responding to the protest, the agency provided its evaluation record, including the agency's basis for the rating. In its comments to the agency report, PHT failed to address the agency's response. As a result, we consider this issue to be abandoned and will not address it. Datum Timing, Div. of Datum, Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328 at 5.

We deny the protest.

The RFP, issued on April 26, 2005, as a 100-percent small business set-aside, contemplated the award of a fixed-price contract for a guaranteed minimum quantity of 900,000 M9 magazine cartridges. The RFP provided that award would be made to the offeror whose proposal represented the “best value” based on an evaluation of past performance/risk and price. The RFP stated that past performance was slightly more important than price. Past performance was to be rated adjectively as follows:

Very Low Risk: Based on the offeror’s past performance, very little doubt exists that the offeror will successfully perform the required effort.

Low Risk: Based on the offeror’s past performance, little doubt exists that the offeror will successfully perform the required effort.

Moderate Risk: Based on the offeror’s past performance, some doubt exists that the offeror will successfully perform the required effort.

High Risk: Based on the offeror’s past performance, significant doubt exists that the offeror will successfully perform the required effort.

Unknown Risk: The offeror had little or no recent/relevant past performance upon which to base a meaningful performance risk prediction.

RFP § M.2.a.

Under the past performance evaluation factor, the RFP stated that the government could consider the currency, degree of relevance, source, and context of the offeror’s past performance information, as well as general trends in the offeror’s performance, and the firm’s demonstrated corrective actions, and could use information obtained from other sources in addition to references furnished by the offeror. The RFP required an offeror to submit contract references representing its recent, relevant performance. RFP § L.5. The RFP defined “recent” as any contract under which any performance, delivery, or corrective action had occurred within the last 3 years of the issuance of the subject RFP. The RFP defined “relevant” as “performance on contracts with a contract value over \$500,000 that demonstrates the offeror has successfully manufactured or provided M9 Magazine Cartridge or similar items.” Id.

The agency received five proposals. After evaluating these proposals, the agency established a competitive range of three proposals, including the proposals of PHT and Airtronic. Discussions were conducted with these three offerors.

To address the past performance evaluation factor, Airtronic initially submitted information for 10 contracts. Agency Report (AR), Tab 4, Source Selection Decision, at 3. During discussions, the agency notified Airtronic that it had determined that none of the 10 referenced contracts met the RFP definition of relevant, and requested that Airtronic identify relevant contracts. In response, Airtronic acknowledged that most of its government contract references only provided evidence of either Airtronic's machining capabilities or its ability to deliver on time. AR, Tab 7, Airtronic's Response to Discussions. Airtronic identified several additional contracts, but these contracts did not meet the relevance requirement.

While the agency recognized that Airtronic's references did not meet the relevance definition in the RFP, the agency concluded that Airtronic's references showed general performance trends for manufacturing and production of military items, including components for the Abrams tank. AR, Tab 4, Source Selection Decision, at 4. The contracting officer, who served as the source selection authority, noted Airtronic's delivery on three government contracts with no delinquencies. The contracting officer further noted that in the past 12 months, Airtronic delivered on [deleted] contracts with [deleted] line items, with just [deleted] of these line items being delinquent (less than 30 days). The contracting officer also reviewed the Product Quality Deficiency Reports issued to Airtronic and noted that Airtronic had a [deleted] percent past performance rating for the Federal Stock Classification most relevant to the current solicitation. While the contracting officer specifically recognized that Airtronic's contract references "failed to meet the \$500,000 threshold to be considered relevant, which might suggest that the offeror merit[ed] an Unknown Risk rating" for the past performance evaluation factor, the contracting officer nevertheless concluded that in assessing Airtronic's overall general past performance history, a moderate risk rating was appropriate. Id.

PHT was initially rated high risk under the past performance evaluation factor. In its original proposal, PHT indicated that it would manufacture the cartridge using Triple K Manufacturing as a consultant. To demonstrate its past performance, PHT provided only one reference to demonstrate its own past performance record; however, that reference did not satisfy the \$500,000 threshold. PHT provided four references for Triple K that demonstrated that Triple K had supplied similar items; however, these references showed that there were some problems both with the quality of some of Triple K's items and with the timeliness of delivery by Triple K. AR, Tab 30, Initial Evaluation of PHT. Following discussions, PHT proposed Triple K as a subcontractor to PHT, rather than as a consultant, and provided additional information concerning the quality and timeliness of Triple K's past performance, which included an explanation of why some of Triple K's magazines supplied under a previous contract did not function properly. As a result, PHT's past performance risk rating was changed to moderate. AR, Tab 31, Final Evaluation of PHT.

Upon completion of the agency's review, the total evaluated prices and past performance ratings for the three offerors were as follows:

Offeror	Past Performance	Evaluated Price
Airtronic	Moderate Risk	\$22,471,600]
PHT	Moderate Risk	#[deleted]
Third Offeror	Very Low Risk	#[deleted]

AR, Tab 4, Source Selection Decision, at 9.

Based on the evaluation results, the contracting officer concluded that since Airtronic and PHT received the same past performance rating of moderate risk and since Airtronic proposed a lower price, award to Airtronic represented the best value to the government. This protest followed.

PHT contends that, since Airtronic provided no relevant past performance references because none of Airtronic’s references satisfied the \$500,000 threshold, Airtronic should have received an “unknown risk” rating, instead of a moderate risk rating. As a result, PHT argues that the agency’s tradeoff decision was flawed. Based on our review of the record, the agency’s evaluation and selection decision were reasonable and supported by the record.

Here, as explained above, the record shows that the source selection decision was based upon a detailed evaluation of Airtronic’s past performance record. In the source selection document, the contracting officer clearly acknowledged that Airtronic had no relevant contracts as defined under the RFP and that, in accordance with the solicitation, Airtronic could have received an unknown risk rating. AR, Tab 4, Source Selection Decision, at 4, 9. Nonetheless, the contracting officer, consistent with the past performance evaluation factor, which permitted consideration of the offeror’s overall general past performance history, concluded that Airtronic’s past performance history of manufacturing military components indicated an acceptable level of performance risk that justified award to Airtronic at its lower price. *Id.*² We see nothing improper in this conclusion.

PHT also argues that Airtronic’s price is unreasonably low. With respect to a fixed-price award, a protester’s claim that an offeror submitted an “unreasonably” low price—even that the price is below the cost of performance—is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. *Diemaster Tool, Inc.*, B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375 at 2. An agency decision that the firm can perform the contract at the

² We note that PHT’s past performance rating of moderate risk also was based on the agency’s evaluation of the overall past performance of PHT and its subcontractor, Triple K.

offered price is an affirmative determination of responsibility, which we will not review except in circumstances not alleged here. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2005).

The protest is denied.

Anthony H. Gamboa
General Counsel