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**Comptroller General
of the United States**

**United States General Accounting Office
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Decision

Matter of: Green Valley Transportation, Inc.

File: B-285283.2

Date: April 16, 2001

Raighne C. Delaney, Esq., and Leo S. Fisher, Esq., Bean, Kinney, & Korman, for the protester.

Capt. Ryan Zipf, and Col. Michael R. Neds, Department of the Army, for the agency. Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly evaluated proposals with respect to past performance is denied where the record shows the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria; mere disagreement with the agency's evaluation is insufficient to show it was unreasonable.

DECISION

Green Valley Transportation, Inc. protests awards made under request for proposals (RFP) No. JD-5252-SH, issued by the Department of the Army, Military Traffic Management Command (MTMC), for guaranteed traffic (GT) freight transportation. Green Valley argues that the agency improperly evaluated proposals with respect to past performance.

We deny the protest.

The GT program is a transportation management tool under which MTMC issues a request for rate tenders for all the traffic for particular routes for a specific period of time and awards what are, in effect, requirements contracts to the successful carriers. Allstates Air Cargo, Inc., B-261266, B-261266.2, Feb. 29, 1996, 96-1 CPD ¶ 138 at 2 n.3. This solicitation concerns the movement of freight traffic from the Defense Distribution Depot in San Joaquin, California (DDJC) to various destinations within the United States. The procurement of these services has been the subject of prior protests.

MTMC initially solicited for these requirements in 1999. In response to a post-award protest by another carrier, MTMC terminated all awards and resolicited for the

requirements. The resolicitation anticipated the award of 56 contracts, one for each lane of traffic. Traffic was to be awarded to one primary carrier for each lane, with the possibility that alternate carrier selections might be made for each lane. Each offeror could be selected as a primary carrier or as an alternate for multiple lanes. Awards were to be made to the firms whose proposals were most advantageous to the government, considering equally important price and technical factors. The RFP set forth two technical factors, past performance and service; past performance was more important than service. MTMC reserved the right to award on the basis of initial proposals, without conducting discussions.

Offerors were to complete a rate tender for each lane in which they were interested. The price evaluation team input the rates into MTMC's automated system and arrived at total prices for each offeror for each lane. For each lane, the low-price offeror received the maximum number of price points and all other offerors received prorated points. Since prices varied from lane to lane, the points awarded for price varied for each offeror from lane to lane.

The past performance factor was comprised of two equally important subfactors, past percent on-time delivery and past performance "actions." The technical evaluation team (TET) was to consider an offeror's past performance activity in MTMC and other Department of Defense (DOD) movements over the last 24 months. All performance actions were to be considered for the term of the current GT contracts, to include extensions. If the current GT contracts were shorter than 12 months, performance actions on the prior contracts were to be considered.¹ The past performance subfactors were to be adjectivally rated as outstanding, excellent, good, fair, poor, or unsatisfactory, and the ratings converted into points. The ratings, and points, assigned to the past performance subfactors remained constant for each offeror from lane to lane.

For each proposal, the technical subfactor points were totaled, and the total was weighted by assigning the maximum points to the offeror with the most technical points and prorating the points for the remaining offerors. The weighted technical ratio was added to the total price points to determine the total points for each offeror in each lane. The offeror with the most total points was ranked as the potential prime carrier, and alternate positions were identified for those offerors with the next highest totals. Awards were generally to be made on that basis.²

¹ Since the current GT contracts were shorter than 12 months, the TET considered performance actions and on-time delivery reports dating back to the previously awarded contract, or 1997.

² The RFP stated that the government might choose to pay a higher price to an offeror whose performance risk and price reasonableness gave the government greater confidence in that offeror's ability to keep its commitments. RFP encl. 5, at 30.

Green Valley was awarded contracts as the primary carrier on multiple lanes and as an alternate carrier on others. Green Valley filed a protest, limited to six lanes, in which it argued that MTMC improperly failed to consider all of the information available to it when evaluating proposals under the past performance subfactors.

Our Office sustained Green Valley's protest, finding that the agency's evaluation of past performance was unreasonable. With respect to the past percent on-time delivery subfactor, at issue here, we concluded that MTMC failed to consider the wide variance in the offerors' shipping volume over the relevant period. Green Valley Transp., Inc., B-285283, Aug. 9, 2000, 2000 CPD ¶ 133. We recommended that MTMC reevaluate the proposals with respect to past performance and make appropriate award decisions in view of the results of that reevaluation.

The TET reevaluated proposals in view of our decision and an Optimum Benefit Negotiation (OBN) Review Board reviewed the results, concurred with most of the ratings, and revised other ratings. MTMC converted the resulting ratings to points by dividing the total points allocated for each technical factor by six to allow a specific point for each grade level from outstanding to satisfactory. As explained above, the weighted technical ratio was added to the total price points to determine the total points for each offeror in each lane. The offeror with the most total points was ranked as the potential prime carrier and alternate positions were identified for those offerors with the next highest totals.

As a result of the reevaluation, Green Valley was awarded the position as the primary carrier on lanes 51 and 56 and as the first alternate carrier on lanes 35 and 50. Green Valley subsequently filed this protest, limited to lanes 35 and 50, in which it alleges that MTMC improperly evaluated the proposals of itself and the primary carrier, Covenant Transport, with respect to the past percent on-time delivery subfactor by failing to consider all available information.³

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11. We conclude that the past performance evaluation challenged by Green Valley was reasonable.

The past percent on-time delivery subfactor measured each offeror's rate of timely delivery. Offerors were to submit summaries of their DDJC delivery reports showing

³ Another carrier has also filed protests in this matter, which we plan to address in a separate decision.

their on-time rates; offerors without prior DDJC shipments could submit summaries of their delivery reports for other customers. The minimum required on-time delivery rate for these services is 95 percent. The TET was to evaluate proposals “based on all available information,” giving emphasis to the performance achieved specifically at DDJC.

In our prior decision, we concluded that MTMC improperly failed to consider each offeror’s shipping volume in evaluating proposals under this subfactor. The agency reviewed shipping volume to ensure that an offeror had made enough shipments to show regular service, but did not consider the implications of shipping volume for the past percent on-time delivery rate. Given the RFP’s explicit instruction to consider “all available information,” we found the agency’s failure to consider these implications unreasonable and stated that consideration of the relative volume of freight carried could become particularly important when the vast difference between the numbers of shipments made by some offerors might suggest a difference in the reliability of their past on-time delivery rates. We stated that we did not know if a consideration of such matters would have made a difference here, or even if, as a general matter, an on-time percent delivery rate for an offeror that has shipped a large volume of freight should be given more credence than the rate of an offeror that has shipped considerably less freight. Green Valley Transp., Inc., supra, at 11. Our decision left this determination to the agency.

The record shows that MTMC made this determination during the reevaluation and, in the process, considered various pieces of information in evaluating proposals under this subfactor.

The TET considered the subjective statements in Green Valley’s proposal regarding its performance at DDJC and its status as one of the top tonnage and revenue carriers with DOD for the past 5 years. The TET also considered objective information from DDJC regarding Green Valley’s performance. DDJC’s statistics showed that Green Valley’s annual average on-time statistics were [DELETED] percent in 1997, [DELETED] percent in 1998, and [DELETED] percent in 1999. A letter from DDJC stated that Green Valley had a [DELETED]-percent on-time delivery rate with velocity management loads⁴ and maintained a rate of [DELETED] percent and above in four regional lanes of traffic. The letter also stated that the firm was not always submitting carrier performance reports on a weekly basis, but that the staff had been pleasant to work with and was attempting to provide the information in a timely manner. Finally, the TET considered that Green Valley had made 27,184 DDJC shipments over the relevant period of time and had a high shipping volume DOD-wide. The TET rated Green Valley’s proposal “good” under

⁴ Velocity lanes are those where shipments are made directly from the depot to an Army installation and must be delivered immediately.

this subfactor, a rating reserved for instances where better than acceptable performance could be expected.

The TET considered the subjective statements in Covenant's proposal regarding the firm's performance, including the assertion that the firm provided a [DELETED]-percent on-time performance rate under the previous GT. The TET also considered objective information from the DDJC regarding Covenant's performance. DDJC's statistics showed that Covenant's annual average on-time statistics were [DELETED] percent for 1997, [DELETED] percent for 1998, and [DELETED] percent for 1999. The TET noted that the DDJC believed Covenant's low rate for 1997 was attributable to the fact that a humanitarian project that year increased the volume carried by the firm to an extent that Covenant was not prepared to meet, and that the DDJC believed the firm would have exceeded the standards absent these humanitarian shipments. A letter from the DDJC confirmed Covenant's statement that it provided [DELETED] percent on-time delivery performance under the prior GT, and stated that, under the current DDJC GT, the firm was providing [DELETED] percent on-time performance. Finally, the TET considered that Covenant had made 1,077 DDJC shipments in the relevant period, and considered its relatively low volume DOD-wide. The TET rated the firm's proposal "excellent" under this subfactor, a rating reserved for instances where high quality is likely but not assured.

The Board reviewed the TET's findings and undertook the following additional analysis in response to our concerns expressed in the prior decision.

The Board addressed our concern regarding Covenant's 1997 humanitarian project. In our prior decision, we stated that MTMC properly considered the effect of the humanitarian project on Covenant's past on-time delivery rate, and that its effort to avoid penalizing the offeror for an unexpected surge in its requirements that was beyond its control was reasonable. We noted, however, that the humanitarian project was not the sole reason for the low rate. Green Valley Transp., Inc., supra, at 10. In what appears to be an acknowledgment of this fact, the Board calculated Covenant's 1997 on-time rate absent the figures for the months in which humanitarian shipments caused delays. The resulting on-time rate for 1997 was [DELETED] percent, for a 3-year average of 97 percent.⁵ The Board concluded that this level of performance was consistent with the TET's rating of "excellent."

The Board also addressed our concern that the agency had not considered the relationship between an offeror's shipping volume and its on-time delivery percentages. The Board expressed its view that the role of volume in evaluating an offeror's past percent on-time delivery rate was twofold. First, the volume must be sufficient to ensure regular service because the agency would not want a carrier that

⁵ MTMC made this same calculation during the prior protest and arrived at a lower rate; the record shows that this lower rate was the result of a mathematical error.

handled only a few shipments being assigned a high rating, even if the carrier handled those shipments well. The Board considered that a minimum of 100 shipments per year indicated regular service; Covenant's shipping volume exceeded this level. Second, the Board explained that it used shipping volume as an indicator of the reliability of a carrier's on-time performance. According to the Board, while a higher number of shipments gives the agency greater confidence that the carrier will keep delivering at its past on-time delivery rate, it does not give the agency any indication that the carrier will deliver at a better on-time rate in the future. As a result, the Board believed it reasonable to rate a carrier with a lower volume but a higher on-time rate--such as Covenant--higher than a carrier with a greater volume but a lower on-time rate--such as Green Valley. In agreeing with the TET's ratings, the Board's comments focused on the statistics provided by the DDJC. The Board noted that Green Valley's 3-year DDJC average was 96 percent, which exceeded the minimum requirement by just 1 point and received a "good" rating. In contrast, Covenant's 3-year DDJC average was 97 percent, which exceeded the minimum requirement by 2 points and received an "excellent" rating, one step up from the "good" rating.

As this discussion makes clear, Green Valley is incorrect when it contends that MTMC based its ratings solely on the average statistics provided by DDJC. The record reflects that MTMC reviewed a range of available information in evaluating proposals under this subfactor, including statements made in proposals, DDJC statistics and commentary, and shipping volume at DDJC and DOD-wide. That the agency gave more weight to the DDJC statistics and commentary is consistent with the RFP's instruction to give emphasis to the performance achieved at DDJC.

The record also shows that MTMC did not, as Green Valley asserts, fail to consider carriers' relative shipping volumes or decide that there was no relationship between the on-time rates and the number of shipments made by carriers. The agency found that two such relationships were relevant here. First, MTMC reviewed whether a carrier had made enough shipments to ensure that the on-time rates resulting from those shipments were meaningful. Green Valley apparently finds MTMC's baseline measure, 100 shipments per year, inadequate, but we have no basis to find it unreasonable. Second, MTMC used shipping volume to test the reliability of a carrier's on-time statistics. The greater the number of shipments, the more confident the agency was that the carrier would continue delivering at the rate it had delivered in the past.

Our prior decision did not, as the protester suggests, direct the agency to find a qualitative distinction between carriers that have shipped a large volume of freight and carriers that have shipped considerably less freight. To the contrary, we specifically stated that we did not know if there should be any such distinction. Our underlying concern, expressed in the decision, was that the agency did not consider the volume of freight carried by the various offerors at all when the solicitation required it to consider "all available information." Green Valley Transp., Inc., supra,

at 11. It was left to the agency to decide how to use this piece of available information during the reevaluation, since the agency is responsible for defining its needs and the best method of accommodating them. Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 7.

Green Valley has not persuaded us that it should receive an “excellent” rating because it had substantially more shipments over the period than did Covenant, because the number of shipments it made does not overcome the fact that the most reliable information available to the agency showed that the firm’s on-time percentage rate was just a point above the minimum requirement. To the extent that it has attempted to do so, Green Valley has also not persuaded us that Covenant should receive a “good” or lower rating because it had relatively few shipments over the period. We have no basis to question the agency’s conclusion that Covenant had a sufficient number of shipments to render its performance statistics meaningful, and the most reliable information available to the agency showed that the firm’s on-time percentage rate was higher than Green Valley’s. While the reliability of these on-time statistics may be compromised as the number of shipments transported by a carrier moves closer to MTMC’s baseline of 100 per year, we cannot say that Covenant’s shipping volume was insufficient to prove reliable.

The firms’ average on-time rates at DDJC were also not, as the protester asserts, “roughly the same,” and we do not agree that the distinction between a 96-percent on-time rate and a 97-percent on-time rate (and a “good” and an “excellent” rating) was an arbitrary “cut-off.” These distinctions were linked to the minimum 95-percent on-time requirement and reflected the agency’s reasoned judgment that there is a relationship between the amount by which a carrier exceeds the minimum requirement and its adjectival rating. See OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83 at 8.

Green Valley also argues that MTMC has penalized high-volume carriers because none of the carriers in the top quarter of carriers by volume were rated “excellent” but two of the carriers in the bottom quarter were rated “excellent.” Green Valley omits to say that the record shows that there are underlying reasons for these ratings. The agency found that there was no support for the claims made by most carriers in the top quarter, and the two carriers in the bottom quarter had on-time rates in excess of 97 or 98 percent. Green Valley also fails to recognize that if the agency did what it suggested, and assigned higher ratings to high-volume carriers and lower ratings to low-volume carriers on a per se basis, it would be penalizing small-volume carriers.

Finally, Green Valley complains that Covenant was given undue credit for its 1997 humanitarian shipments when its performance on the lane at issue was “abysmal” even prior to the humanitarian shipments. As discussed above, MTMC deleted the data for the months when these humanitarian shipments were made from the 1997 data to arrive at a [DELETED]-percent on-time rating for 1997. The late deliveries

for the lane at issue that were not related to the humanitarian project are incorporated into this percentage. While Green Valley complains that it is not clear if all of the shipments in the deleted months were related to the humanitarian project, the fact that the humanitarian shipments increased the volume carried by Covenant to an extent the firm was not prepared to meet would naturally have an effect on its non-humanitarian shipments. As we stated in our prior decision, MTMC's effort to avoid penalizing the offeror for an unexpected surge in its requirements that was beyond its control was reasonable.⁶

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ Green Valley's complaint that it was not given credit for humanitarian activities under this subfactor misses the point. Covenant was not "given credit" for humanitarian activities here. Instead, the agency tried to avoid penalizing it for such activities based upon its on-time delivery rate. The agency's consideration of the information in its possession regarding Green Valley's humanitarian efforts was given appropriate credit under the past performance actions subfactor.