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

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Decision

Matter of: TPL, Inc.

File: B-297136.10; B-297136.11

Date: June 29, 2006

David P. Metzger, Esq., Kristen E. Ittig, Esq., and Michele Mintz Brown, Esq., Holland & Knight LLP, for the protester.

William R. Stoughton, Esq., Kristen G. Schulz, Esq., David A. Churchill, Esq., and Kevin C. Dwyer, Esq., Jenner & Block LLP, for General Dynamics Ordnance and Tactical Systems, Inc., an intervenor.

Robert R. Fleck, Esq., Tara C. Mack, Esq., and Leslie A. Nepper, Esq., Department of the Army, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A conflict of interest does not exist merely because the same contracting agency or contracting agency employees both prepare an offeror's past performance reference and perform the evaluation of offerors' proposals.
2. Protest challenging the evaluation of the protester's past performance is denied where the record establishes that the agency's evaluation was reasonable and in accord with the stated evaluation criteria.
3. Protest challenging the evaluation of technical proposals is denied where the record establishes that the agency's evaluation was reasonable and consistent with the evaluation criteria; a source selection official's decision not to accept the findings and ratings of agency evaluators is unobjectionable if otherwise supported by the record.
4. Price/technical tradeoff was reasonable where source selection official identified technical distinctions between competing proposals and specifically determined that higher technically rated proposal represented best value despite higher cost.
5. Protest that the contracting agency was biased against the protester and conducted the procurement in bad faith is denied where the record does not contain any evidence of bias or bad faith on the part of the agency.

DECISION

TPL, Inc. protests the award of a contract to General Dynamics Ordnance and Tactical Systems (GD-OTS) under request for proposals (RFP) No. W52P1J-04-R-0179, issued by the Army Field Support Command (AFSC), Army Materiel Command, Department of the Army, for conventional ammunition demilitarization services. TPL argues that the agency's evaluation of offerors' proposals was unreasonable, and that the resulting award decision was improper. TPL also asserts that members of the agency's evaluation panel had impermissible conflicts of interest because they were also the source of a past performance reference regarding the offeror.

We deny the protest.

BACKGROUND

The RFP, issued on November 17, 2004, contemplated the award of a fixed-price contract for conventional ammunition demilitarization and disposal services for a base year and four 1-year option periods. In general terms, the statement of work required the contractor to provide all the necessary material, equipment, property, and personnel to perform demilitarization and disposal by closed disposal technologies (CDT) for six families of conventional ammunitions: bombs; cluster bomb units (CBU); separate loading propelling charges; high explosive, improved conventional munitions (ICM); high explosive D; and pyrotechnics. Statement of Work (SOW) § C.1.

The RFP set forth the following evaluation factors and subfactors:

1. Small Business Utilization	
2. Technical	
	A. Program Management
	B. Technical Approach
	C. Safety
	D. Environment
	E. Security
3. Past Performance	
	A. Program Management
	B. Schedule/Timeliness
	C. Quality
	D. Small Business Realism
4. Price	

RFP § M.2.

The solicitation stated that the small business utilization factor was the most important evaluation criterion, and would be evaluated on a pass/fail basis. The RFP also stated that the technical factor was less important than the small business utilization factor, but substantially more important than past performance, and that price was somewhat less important than past performance. All nonprice evaluation factors when combined were significantly more important than price. The RFP also established that, among the technical subfactors, program management was somewhat more important than technical approach, and that technical approach was in turn slightly more important than the safety, environment, and security subfactors, which were all equal in importance to each other. Within the past performance evaluation criterion, the program management, schedule/ timeliness, and quality subfactors were all of equal importance, and each was significantly more important than small business realism. Id. Contract award was to be made to the responsible offeror whose proposal represented the “best value” to the government, based on the consideration of all evaluation factors. Id. § M.1.

Four offerors, including GD-OTS and TPL, submitted written proposals by the February 4, 2005 closing date; oral presentations regarding each offeror’s technical approach were subsequently held. An Army technical evaluation team (TET) evaluated offerors’ proposals using an adjectival rating system: excellent, good, satisfactory, marginal, or unacceptable for the technical factor and subfactors. A separate performance risk assessment group (PRAG) evaluated offerors under the past performance evaluation factor and subfactors using the following adjectival rating system: low performance risk, moderately low performance risk, moderate performance risk, high performance risk, or neutral.¹

After the evaluation of offerors’ initial proposals, the contracting officer determined that all offers were in the competitive range. The Army then held two rounds of discussions, followed by the submission of final proposal revisions by June 15.² The final ratings for GD-OTS and TPL with regard to the evaluation factors and subfactors were as follows:

¹ The agency’s technical and past performance evaluation rating schemes, as well as narrative definitions of the ratings themselves, were set forth in the solicitation.

² The other two offerors’ proposals are not relevant to the protest here and will not be discussed further.

Factor	GD-OTS	TPL
Small Business Utilization	Pass	Pass
Technical	Good	Good
Program Management	Excellent	Excellent
Technical Approach	Good	Good
Safety	Good	Good
Environment	Good	Good
Security	Good	Good
Past Performance	Low	Moderate
Program Management	Moderately Low	Moderate
Schedule/Timeliness	Low	Moderately Low
Quality	Low	Moderately Low
Small Business Realism	Moderate	Moderately Low ³
Price	\$247,373,339	\$211,858,108

Contracting Officer's Statement, Sept. 22, 2005, at 7-8.

The source selection authority concluded that the evaluated superiority of GD-OTS's proposal under the past performance factor outweighed TPL's price advantage and, on that basis, selected GD-OTS for award; a contract was awarded to GD-OTS on August 18.

On September 2, TPL filed a protest with our Office asserting that the agency's evaluation of offerors' proposals was unreasonable and the best value tradeoff determination improper.⁴ TPL also protested that the Army had apparently relied upon biased sources of information when evaluating TPL's past performance, including the awardee GD-OTS.⁵ Protest, Sept. 2, 2005.

On October 20, the Army provided notice that it was taking corrective action in response to TPL's protest by reevaluating offerors' proposals and making a new source selection decision. Letter from Army to GAO, Oct. 20, 2005; Email from Army to GAO, Oct. 20, 2005. Based on the agency's announced corrective action, we

³ The source selection authority subsequently changed TPL's ratings under the small business realism subfactor from moderately low to neutral, and the offeror's overall past performance rating from moderate to moderately low. Contracting Officer's Statement, Sept. 22, 2005, at 9-10.

⁴ A second unsuccessful offeror also filed a protest with our Office of the original contract award to GD-OTS.

⁵ TPL was a major subcontractor to GD-OTS under the prior Army conventional ammunition demilitarization contract, commonly referred to as "ID/IQ I."

dismissed TPL's September 2 protest without rendering a decision on the protest's merits. TPL, Inc., B-297136.2, B-297136.4, Oct. 26, 2005.

The Army then reevaluated offerors' technical and past performance proposals, with final revised ratings for GD-OTS and TPL as follows:

Factor	GD-OTS	TPL
Small Business Utilization	Pass	Pass
Technical	Good	Good
Program Management	Excellent	Excellent
Technical Approach	Good	Good
Safety	Good	Good
Environment	Good	Good
Security	Good	Good
Past Performance	Low	Moderate
Program Management	Moderately Low	Moderate
Schedule/Timeliness	Low	Moderately Low
Quality	Low	Moderate
Small Business Realism	Moderate	Low
Price	\$247,373,339	\$211,858,108

Contracting Officer's Statement, Apr. 20, 2006, at 8.

The Army appointed a new agency source selection authority, and that individual subsequently determined that, notwithstanding the TET's rating of TPL's proposal as excellent under the program management (technical) subfactor, TPL's proposal only merited a rating of good.

On February 9, 2006, based upon the reevaluation of proposals, the source selection authority determined that GD-OTS's superiority under both the technical and past performance evaluation factors outweighed TPL's lower price, and that GD-OTS's proposal again represented the best value to the government. Id. at 11-12. TPL then filed a second protest with our Office, again challenging the contract award to GD-OTS. Protest, Feb. 25, 2006.

On March 1, the Army again informed our Office that it intended to take corrective action. The agency stated that the source selection authority had not been provided with certain information submitted by the offerors and would reevaluate his award decision based on review of this material. We then dismissed TPL's February 25 protest. TPL, Inc., B-297136.8, B-297136.9, Mar. 2, 2006.

On March 17, the Army announced for a third time its decision that GD-OTS's proposal was the best value to the government and, therefore, was selected for contract award: the source selection authority, having reviewed and considered all offerors' submissions, again concluded that GD-OTS's superiority under the

technical and past performance evaluation factors outweighed TPL's lower price. On March 24, TPL filed its current protest.

DISCUSSION

TPL's protest raises numerous issues that can be grouped into five categories. First, the protester alleges that the Army's use of a past performance reference for TPL prepared by the agency employees who evaluated offerors' proposals constituted an impermissible conflict of interest. Second, TPL argues that the agency's evaluation of its past performance was unreasonable. Third, TPL contends that the Army's evaluation of TPL's technical proposal was improper. Fourth, the protester alleges that the Army's best value tradeoff determination was unreasonable and not adequately documented. Lastly, TPL alleges that the Army was biased against it, and that the evaluation of proposals and source selection decision were all conducted with a predetermination to award the contract to GD-OTS.⁶ Although we do not here specifically address all of TPL's arguments about the evaluation of proposals and other agency actions, we have fully considered all of them and find that they afford no basis to sustain the protest of the selection decision here.

Conflict of Interest

TPL first argues that the procurement is fatally flawed by an impermissible conflict of interest. Specifically, TPL asserts that the same agency organization (if not the same agency employees) that provided the past performance evaluation of TPL's performance on the prior ID/IQ I contract also performed the evaluation of offerors' proposals here upon which the award decision was based. TPL argues that by providing a past performance evaluation to itself, instead of soliciting past performance references from other sources, the agency created an impermissible conflict of interest.⁷

As relevant here, the Federal Acquisition Regulation (FAR) provides as follows:

⁶ TPL's original protest also raised two additional issues: (1) that the Army never provided TPL with an adequate opportunity to address the adverse past performance references; and (2) that the Army's discussions with TPL regarding the technical aspects of its proposal were not meaningful. In a conference call conducted with all parties, TPL subsequently informed our Office that these issues had been abandoned.

⁷ TPL also alleges that the Army was motivated by bad faith and bias regarding both the past performance information furnished and the agency's evaluation of proposals. Our review of TPL's allegations of agency bias is set forth separately below.

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

FAR § 3.101-1.

The Joint Munitions Command (JMC) is the Army activity charged with producing, storing, maintaining, and demilitarizing ammunition for all military services. JMC is in turn a part of AFSC, whose contracting activity issued the solicitation here. One of JMC's subordinate organizations is the JMC Demil Team, the office responsible for the actual demilitarization and disposal of conventional ammunition. It was the JMC Demil Team that oversaw the performance of the prior demilitarization contract, ID/IQ I, and will supervise the contract to be awarded here. As mentioned above, GD-OTS was the prime contractor for ID/IQ I, while TPL was a major subcontractor to GD-OTS.

When performing the initial evaluation of past performance, the PRAG considered TPL's performance under the prior ID/IQ I contract by means of a past performance reference furnished by GD-OTS.⁸ As part of its corrective action in response to the initial protests, the Army decided not to consider past performance information from sources that were also competing offerors and, thus, potentially biased.

When reevaluating offerors' proposals, the Army employed a PRAG with a new chairperson who was not part of the initial evaluation; the new chairperson was an employee of the AFSC contracting activity, not JMC. AR, Tab 27, PRAG II Report, at 8. The new PRAG agreed that TPL's performance under the prior ID/IQ I contract was relevant to the evaluation of the offeror's past performance here.⁹ *Id.* at 11. In contrast to the original past performance evaluation, the new PRAG sought an

⁸ The PRAG was aware that GD-OTS was also a competitor here, but considered TPL's performance on ID/IQ I to be relevant to the evaluation of the offeror's past performance. We note that TPL's proposal listed GD-OTS as both its customer and point of contact for the work performed on the ID/IQ I contract. AR, Tab 7, TPL's Proposal, Vol. III, at 17.

⁹ TPL's proposal indicated the dollar value of its ID/IQ I contract to be \$23 million, while its next largest past performance reference was less than \$3 million. AR, Tab 7, TPL's Proposal, Vol. III, at 17. By contrast, TPL's proposed price under the RFP here was \$211 million.

evaluation of TPL's performance on the ID/IQ I contract from the government "customer"—the JMC Demil Team.

The agency evaluation of TPL's performance on the prior ID/IQ I contract was prepared by the JMC Demil Team leader, who was not himself a TET or PRAG evaluator. Further, while the JMC Demil Team leader was the employee designated to provide a consolidated agency reference of TPL's performance for the ID/IQ I contract, he did so by collecting information from nine JMC Demil Team employees who had worked on the ID/IQ I contract and had direct dealings with TPL and knowledge of TPL's performance. Of the nine employees, four were TET evaluators but none were past performance evaluators.¹⁰ Contracting Officer's Statement, May 19, 2006, at 1-2; AR, Tab 29b, JMC Past Performance Questionnaire for TPL.

We have recognized that an actual or apparent conflict of interest may arise when an agency employee has both an official role in the procurement process and a personal stake in the outcome. For example, we found that at least the appearance of a conflict of interest existed where, in the course of a competitive sourcing study conducted pursuant to the procedures of Office of Management and Budget Circular A-76, 14 of the 16 agency employees who were responsible for evaluating private-sector proposals also held positions that were subject to the study (and would be affected by the outcome of their evaluation). See DZS/Baker LLC; Morrison Knudsen Corp., B-281224 et al., Jan. 12, 1999, 99-1 CPD ¶ 19 at 5. We have also determined that conflicts of interest exist when the same agency employees serve both in roles that require neutrality (such as drafting the ground rules of a competition) and roles where advocacy is permissible (such as assisting one side in the ensuing competition). In Department of the Navy--Recon., B-286194.7, May 29, 2002, 2002 CPD ¶ 76 at 8, we affirmed our view that having the same agency employee write both the performance work statement (PWS) and in-house proposal created an impermissible conflict of interest. We found in this regard that where one competitor (*i.e.*, the agency) had established the ground rules applicable to all competitors by developing and drafting the PWS, there was a significant risk of at

¹⁰ TPL also originally argued that the PRAG's consideration of a past performance reference provided by the Tooele Army Depot (TEAD) constituted an impermissible conflict of interest because TEAD was an actual competitor to TPL for demilitarization work. In its report to our Office responding to the protest, the agency provided the evaluation record, indicating that the PRAG elected not to use TEAD's reference for TPL (the PRAG believed that because TEAD had been a subcontractor for GD-OTS under the ID/IQ I contract, there was a potential for bias in its rating). AR, Tab 27, PRAG II Evaluation Report, at 33. In its comments to the agency report, TPL failed to address the agency's response. As a result, we consider this issue to be abandoned and will not address it. See Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 5 n.6.

least a perception that the ground rules were written in a manner that skews the competition. Id.

Contrary to TPL's assertions, we find no conflict of interest present here. The record reflects that none of the agency personnel who provided TPL's past performance reference or who evaluated TPL's proposal held a position that would be affected by the outcome of the procurement. Additionally, while certain JMC Demil Team employees did serve in multiple roles in the procurement process here--as both sources of past performance information and technical evaluators--both roles were ones that required neutrality and precluded advocacy. TPL has simply not demonstrated that because of these multiples roles, the agency employees here were somehow unable or potentially unable to provide impartial evaluations to the government. Accordingly, there is no basis to conclude that any of the evaluators should have been precluded from participating in the evaluation on account of conflicts of interest.

The protester also contends that the proximity between the agency employees who prepared the past performance reference for the ID/IQ I contract and those who evaluated that reference as part of the contract award determination is the source of the conflict of interest. TPL argues that because JMC is the procuring activity, it cannot avoid having impaired objectivity when it evaluates its own remarks regarding TPL's past performance. We disagree.

Evaluators may consider and rely upon their personal knowledge in the course of evaluating an offeror's past performance.¹¹ See Del-Jen Int'l Corp., B-297960, May 5, 2006, 2006 CPD ¶ 81 at 7; NVT Techs., Inc., B-297524, B-297524.2, Feb. 2, 2006, 2006 CPD ¶ 36 at 5. Thus, we have found nothing improper in an agency evaluator also serving as an offeror's past performance reference where there has been no showing of improper influence on the evaluation or award determination. NVT Techs., Inc., supra. We know of no reason why an evaluator is precluded from considering past performance information whose source is another agency employee in the same organizational activity: as incumbent contractors usually submit proposals for follow-on contracts, it is quite common for one agency employee to evaluate past performance information that another agency employee in the same organization prepared. See PharmChem, Inc., B-292408.2, B-292408.3, Jan. 30, 2004, 2004 CPD ¶ 60 at 12; Prime Env'tl. Servs. Co., B-291148.3, Mar. 4, 2003, 2003 CPD ¶ 57

¹¹ Indeed, in certain circumstances we have concluded that evaluators are prohibited from ignoring past performance information of which they are personally aware. See GTS Duratek, Inc., B-280511.2, B-280511.3, Oct. 19, 1998, 98-2 CPD ¶ 130 at 14; International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5 (past performance information that was personally known to the evaluator but not within an offeror's proposal was "simply too close at hand" to be ignored in the agency's evaluation of proposals).

at 3-4. The fact that a contracting agency takes into account its own knowledge of offerors, and in effect “furnishes its own reference,” simply does not constitute a conflict of interest and is not otherwise improper, so long as the agency’s judgments are documented in sufficient detail to show that they are reasonable and not arbitrary. See Omega World Travel, Inc., B-271262.2, July 25, 1996, 96-2 CPD ¶ 44 at 4; G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4-5.

Evaluation of TPL’s Past Performance

TPL also protests that the agency’s evaluation of its past performance was unreasonable. For example, the protester contends that, in addition to the alleged conflict of interest, the Army failed to give adequate consideration to TPL’s mostly favorable past performance references in its evaluation ratings. TPL points to the fact that while there were four sources of adverse past performance information, there were nine favorable past performance references. TPL also contends that the Army failed to adequately consider the “extensive, cogent, [and] detailed” rebuttals it submitted in response to adverse past performance information. Protest, Mar. 24, 2006, at 22. The protester argues that had the agency properly considered all information, TPL should have received a past performance rating at least equal to that received by GD-OTS.

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 solicitation’s evaluation criteria and procurement statutes and regulations, since determining the relative merits of offerors’ past performance information is primarily a matter within the contracting agency’s discretion. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. A protester’s mere disagreement with the agency’s judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Our review of the record leads us to conclude that the agency’s evaluation of TPL’s past performance here was both reasonable and consistent with the RFP’s evaluation terms.

The RFP required offerors to submit past performance information as follows:

Past performance data is required for the offeror, individual team or joint venture members, and major subcontractors performing critical functions/tasks (critical functions/tasks are defined as demilitarization operations). Relevancy will be determined by contracts of similar size, scope and complexity covering resource recovery, reutilization, recycling, neutralization, incineration, or any other treatment process used for munitions, propellant, pyrotechnics, explosives, or energetics. The time standards for relevant contracts that must be included are

those 1) awarded within five years of the closing date of this solicitation, or 2) awarded more than five years ago, but completed within one year of the closing of this solicitation, and/or 3) ongoing contracts. All relevant Federal Government contracts meeting the stated time standards shall be included. State and local Government contracts and/or commercial contracts may be included if the Federal Government contracts do not demonstrate adequate relevant experience in all phases of this project.

RFP § L.5.2. Regarding the evaluation of offerors' past performance, the RFP stated:

The PRAG will assess the relative risks associated with an offeror's likelihood of success in performing the solicitation's requirements, as indicated by that offeror's record of past performance. When assessing performance risk, the PRAG will focus its inquiries on the offeror's record of performance as it relates to the performance of solicitation requirements. The Government will conduct a performance risk assessment based on the quality, relevancy and recentness of the offeror's past performance, as well as that of its major or critical subcontractors, as it relates to the probability of successful accomplishment of the required effort. . . . A negative finding under any element may result in an overall high risk rating.

Id. § M.4.2.

The revised PRAG considered a total of 21 references for TPL (13 references for TPL itself and 8 references for proposed subcontractors) when evaluating the offeror's past performance; this included additional references received from agency sources when the PRAG deemed the original past performance reference to be potentially biased. On those occasions when past performance references contained adverse information, the PRAG provided TPL with an opportunity to comment, and then took TPL's rebuttals into consideration in its evaluation. AR, Tab 27, PRAG II Report, at 26-28. The ratings that the PRAG assigned to TPL's proposal were: moderate risk as to the program management subfactor; moderately low risk as to the schedule/timeliness subfactor; moderate risk as to the quality subfactor; low risk as to the small business realism subfactor; and moderate risk overall. Id. at 28.

The PRAG prepared a detailed report with narratives for the past performance ratings it assigned. For example, with regard to the evaluation of TPL under the program management subfactor, the PRAG noted that all but one of the "good" and "excellent" ratings that TPL had received were for smaller demilitarization contracts, while the "fair" ratings which TPL had received were for its two largest referenced contracts. The PRAG found that TPL did not have experience in managing a series of projects over a period of time of the magnitude required here. This caused the evaluators some concern that TPL would have difficulty managing the scope and

complexity of the current solicitation. Id., App. C, at 125. The PRAG's report contained similar detailed narratives for its ratings of TPL under the schedule/timeliness subfactor, the quality subfactor, as well as the overall past performance factor. Id. at 126-33. We find that the agency's evaluation of TPL's past performance, under all subfactors as well as overall, was sufficiently documented to show that it was reasonable and consistent with the stated evaluation criteria.

TPL argues that the PRAG gave insufficient weight to the favorable past performance references (or conversely, excessive weight to the adverse past performance references). The protester points out that 9 of the 13 references it received provided a majority of "good" and "excellent" ratings, but that the positive references were outweighed in the agency's evaluation by sources that provided "fair" or "marginal" ratings. TPL argues that by improperly weighting the adverse references, the PRAG's rating of TPL under the past performance factor and subfactors was unreasonably low. We disagree.

It is reasonable for an agency to give differing weight to an offeror's prior contracts based upon their similarity or relevance to the required effort. See Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 6; SWR, Inc.--Protests & Costs, B-294266.2 et al., Apr. 22, 2005, 2005 CPD ¶ 94 at 6. An agency may thus reasonably give less weight to prior contracts that are found to be less relevant, and greater weight to prior contracts that are found to have greater relevance. Court Copies & Images, Inc., B-277268, B-277268.2, Sept. 24, 1997, 97-2 CPD ¶ 85 at 5.

As set forth above, the RFP established that the agency's evaluation would focus on both the quality and the relevance of an offeror's past performance as it related to the probability of successful performance of the required effort. RFP § M.4.2. The record here reflects that the PRAG considered the relevance and quality of each of TPL's references when performing its past performance evaluation. In most instances the PRAG considered TPL's prior contracts to be smaller in scope than (but nonetheless relevant to) the SOW here. By contrast, the PRAG considered TPL's largest reference--the ID/IQ I contract, valued at \$23 million--to be of the "same size, scope and complexity" as the SOW here. The PRAG also found TPL's second largest reference--contract No. N00164-98-C-0063 for the reuse of gun propellant, valued at \$2.9 million--relevant to the solicitation. The PRAG gave greater weight in its evaluation to these two references. We find nothing unreasonable about the PRAG's decision to give greater weight to the references it reasonably found more relevant.

TPL also argues that the PRAG's key conclusion, that "some doubt" existed about the offeror's ability to successfully perform project management, was erroneous. The protester contends that the record plainly demonstrated its ability to simultaneously perform multiple multi-million dollar contracts successfully. TPL essentially argues that because it had ably performed multiple, smaller contracts simultaneously, the PRAG was required to conclude that this was the same as having managed the

performance of a contract of the size, scope, and complexity of the SOW here. In our view, this amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable. Birdwell Bros. Painting & Refinishing, supra.

TPL also argues that the PRAG failed to adequately consider the rebuttals it submitted in response to adverse past performance references. The protester alleges that the rebuttals it submitted effectively and definitively addressed all the adverse past performance references. TPL contends that by failing to adequately consider its rebuttals, the PRAG's evaluation findings and ratings were unreasonable.¹²

Contracting agencies are required to provide an offeror with an opportunity to address adverse past performance information to which the offeror has not previously had an opportunity to respond. See FAR § 15.306(a)(2). There exists no requirement, however, that the agency find an offeror's rebuttals conclusive. See ACS State Healthcare, LLC et al., B-292981 et al., Jan. 9, 2004, 2004 CPD ¶ 57 at 41.

The PRAG report here indicates that, although it received many positive comments from TPL's references, it also received some negative comments demonstrating deficient performance by TPL in several functional areas required in the RFP. The past performance questionnaires from TPL's references show that TPL received a number of positive comments, which the PRAG identified as strengths in TPL's past performance. See AR, Tab 29, Past Performance Questionnaires for TPL. The PRAG also received a number of negative comments; for example, one reference stated that TPL had problems with the ability to conduct continuous improvement processes ("past experience and survey results indicates that they make improvements and then slip back, i.e., same safety findings noted on different occasions"), and another stated that "TPL appeared to experience difficulty in hiring and retaining qualified safety managers. This led to periods where little or no safety management existed at the operating location." Id., Tab 29c, Defense Contract Management Agency

¹² The protester also argues that the SSA failed to acknowledge all of its "definitive rebuttals" in the source selection decision. Protest, Mar. 24, 2006, at 22. There is no requirement, however, that an SSA restate each of an offeror's strengths or past performance rebuttals when comparing proposals and making an award determination. See SAMS El Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 18; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 22. The record here indicates that, in considering whether any of the evaluation findings and ratings of the offerors' proposals amounted to discriminators, the SSA reviewed the PRAG report, which described TPL's rebuttals. The source selection decision also evidences that the SSA was fully aware of TPL's rebuttals. Quite simply, the SSA did not fail to take this aspect of TPL's proposal into account; instead, he found it unnecessary to restate every rebuttal when accepting the PRAG's findings and ratings of TPL's past performance and making his award determination.

(Phoenix Office) Past Performance Questionnaire for TPL, Tab 29b, JMC Past Performance Questionnaire for TPL.

TPL was given an opportunity during the competition to specifically comment upon its adverse past performance information. AR, Tab 30, Clarifications of Offerors' Past Performance Information. The PRAG found that although TPL offered a number of explanations and reasons for the negative comments of its references, it did not always refute the existence of the weaknesses identified by the PRAG and in some instances the information provided by TPL actually substantiated the circumstances where TPL's past performance was less than acceptable. For example, the PRAG noted that, in response to the negative comments regarding safety manager staffing, TPL admitted that safety managers were on site "80% of the time" during the life of the contract, and that, as it was the responsibility of the prime contractor to make sure that subcontractor TPL was in compliance, it was appropriate to blame the prime and not TPL for TPL's noncompliance. AR, Tab 27, PRAG II Report, at C-126. We see no basis to object to the PRAG's conclusion that TPL's rebuttals did not refute the existence of the identified problems and, therefore, we conclude that the agency's assessment of TPL's past performance was reasonable.

Evaluation of TPL's Technical Proposal

TPL also argues that the agency's evaluation of its technical proposal was improper. For example, the protester contends that the decision by the SSA not to accept the TET's rating of TPL's proposal as excellent under the program management subfactor, and to downgrade the protester's proposal here to a rating of good, was unreasonable. TPL points to the fact that the Army did not solicit any additional technical information from offerors when performing its reevaluation of proposals, and lacking any new information, there was no basis for the new SSA to come to a different conclusion than both the technical evaluators and original SSA.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation reasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As set forth above, the RFP informed offerors of the evaluation criteria, the agency's adjectival evaluation rating scheme, and the narrative definitions of the ratings themselves. With regard to the program management (technical) subfactor, the solicitation defined the criteria for an excellent rating as follows:

The offeror's proposed program management plan thoroughly identifies how program management will integrate all processes, procedures and management tools necessary to manage risk and schedule, and perform demil of conventional ammunition in accordance with the statement of work. . . . The plan thoroughly describes technical program planning and implementation including quality programs and continuous improvement; . . . and program and process control measures and/or plans (addressing integrated program schedule, quality and performance) . . . The offeror's proposed program management system is capable of effective management as indicated by its exceptional program management experience in performing demil operations. In summary, the solicitation requirements are thoroughly addressed and the proposal exceeds specified performance or capability and offers significant strengths, innovative approaches leading to enhanced performance, or overall superior understanding and management approach; and is coupled with very little risk and no deficiencies.

RFP §M.2.2.1. By contrast, the RFP defined the criteria for a rating of good under the program management (technical) subfactor as follows:

The offeror's proposed program management plan substantially identifies how program management will integrate all processes, procedures and management tools necessary to manage risk and schedule, and perform demil of conventional ammunition in accordance with the statement of work. . . . The plan substantially describes technical program planning and implementation including quality programs and continuous improvement; . . . and program and process control measures and/or plans (addressing integrated program schedule, quality and performance) . . . The offeror's proposed program management system is capable of effective management as indicated by its superior program management experience in performing demil operations. In summary, the solicitation requirements are substantially addressed and the proposal has a high probability of meeting specified performance or capability and offers strengths, some innovative approaches leading to enhanced performance, or overall commendable understanding and management approach; and is coupled with low risk and no deficiencies.

Id. The essential distinction between the ratings here was the level of thoroughness and detail in the offeror's program management plan: an excellent rating was warranted where a proposal thoroughly identified and addressed all aspects of program management, while a good rating was warranted where an offeror's program management plan substantially identified and addressed all program management aspects.

Offerors submitted their technical proposals by means of oral presentations, which included the use and submission of slides. The TET then evaluated each offeror's proposal against the stated evaluation criteria. The TET rated TPL's proposal as excellent as to the program management subfactor, good as to the technical approach, safety, environment, and security subfactors, and good overall. AR, Tab 24, TET Report (July 2005). The original SSA accepted all of the TET's ratings here as part of his source selection decision. The agency subsequently conducted a reevaluation of offerors' technical proposals in response to earlier protests. The TET's ratings of TPL's technical proposal remained unchanged. *Id.*, TET Report (Jan. 26, 2006).

As set forth above, the agency utilized a new SSA as part of its reevaluation of offerors' proposals. The new SSA has a master's degree in procurement and acquisition management and additional post-graduate level training specifically in program management.¹³ AR, Apr. 20, 2006, at 26; Declaration of New SSA, Apr. 13, 2006, at 1. While the new SSA adopted the TET's conclusions regarding TPL's proposal under the technical approach, safety, environment, and security subfactors, he rejected the TET's views as to the program management subfactor. AR, Tab 10, Source Selection Decision, at 30. Regarding that factor, the SSA stated:

This assigned rating [of good] differs from the technical team's rating based on the limited information provided regarding program and process control measures and/or plans as well as the level to which TPL demonstrated that they were capable of effective, efficient program management. For example, TPL provided a notional Integrated Master Schedule (IMS) as part of their supplemental proposal, but did not go into detail as to its constituency, standards to which it will be developed and updated, and how it will be used as a program management tool. Furthermore, there were several discrepancies in both demil task durations and start/finish times noted between the IMS and the individual family schedules provided by TPL's subcontractors. In addition, TPL scheduled "PMRs" on the IMS, but did not indicate if these were indeed Program Management Reviews, nor did they indicate if there would be participation by the Government, nor did they provide any other detail as to what constituted the PMR and how it would be used as a program management tool. TPL made mention of a Demil data management program, however they did not go into detail as to what its capabilities are and how it will be used as a program management tool. Further, in their supplemental proposal, TPL documented that they do not yet

¹³ This individual was also certified by the Department of Defense in program management and his experience included serving as an assistant program manager for several major systems acquisitions. *Id.*

have the program in place. TPL also indicated that they will use Microsoft Project as a scheduling tool, but did not demonstrate that they, or their subcontractors, are currently capable of using it. . . . Further, while TPL addresses continual improvement, they indicated that they do not yet have Six Sigma Process Improvement plan in place. . . . In accordance with the solicitation criteria for a rating of Good, the solicitation requirements have been addressed, but not thoroughly addressed, the risks are low, any weaknesses are manageable without Government oversight, and there are no deficiencies.

Id. at 5.

In its protest TPL argues that the SSA improperly disregarded the TET's evaluation of its technical proposal and unreasonably lowered its rating under the program management subfactor. The protester contends that its numerous slides provided a detailed discussion of program and process control measures. TPL argues that the SSA's unilateral reduction of its rating here, which differed from the careful review of proposals performed by the TET, lacks a valid rationale.¹⁴

Adjectival ratings and point scores are but guides to, and not substitutes for, intelligent decision making. SAMS El Segundo, LLC, *supra*, at 17. They are tools to assist source selection officials in evaluating proposals; they do not mandate automatic selection of a particular proposal. Jacobs COGEMA, LLC, *supra*, at 31; PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12. Those officials have broad discretion in determining the manner and extent to which they will make use of, not only the adjectival ratings or point scores, but also the written narrative justification underlying those technical results, subject only to the tests of rationality and consistency with the evaluation criteria. Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 9; Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364 at 4. Where, as here, a higher-level official determines that the lower-level evaluators' ratings do not reflect the actual technical value of proposals and the selection decision is protested, the agency must show that its ultimate determination is reasonable, with sufficient detail to permit our Office to review the

¹⁴ TPL also argues that the SSA failed to credit TPL for program management strengths it shared with GD-OTS for which the awardee received recognition. In support thereof, TPL points to the SSA's recognition of GD-OTS's senior management commitment to the contract, but not that of TPL. Protest, May 1, 2006, at 22-23. We find the single instance cited by TPL here does not evidence unequal treatment such that the agency's evaluation of proposals was unreasonable.

determination for reasonableness.¹⁵ See KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13; Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6.

Contrary to the protester's assertions, we find that the SSA's decision here to rate TPL's technical proposal as good under the program management subfactor was reasonable and consistent with the stated evaluation criteria. Under most of the RFP's technical evaluation criteria, SSA determined that the TET's evaluation ratings accurately reflected the relative merits of TPL's proposal. As to the program management subfactor, the SSA provided a detailed written explanation for his decision not to accept the TET's rating of TPL's technical proposal. The SSA properly looked behind the adjectival ratings to determine whether the identified strengths reasonably supported the assigned rating, and whether the offeror's proposal reasonably supported the identified strengths. The SSA reasonably determined that TPL's proposal did not have the level of detail necessary to warrant an excellent rating. While TPL argues that its proposal did set forth the level of detail necessary to warrant an excellent rating, and that the deficiencies identified by the SSA in certain areas (e.g., its Integrated Master Schedule, PMRs, Microsoft Project capability, and lack of an existing Six Sigma Process Improvement Plan) were all insignificant ones, in our view, this amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable.¹⁶

The Best Value Determination

TPL also challenges the Army's source selection decision. The protester asserts that the agency failed to perform a meaningful price/technical tradeoff as required by the solicitation. In support of its position, TPL contends that GD-OTS's "miniscule" technical superiority over TPL, as demonstrated by the evaluation factor and subfactor ratings, failed to justify the \$35 million (or 17 percent) price advantage TPL had over GD-OTS. The protester also contends that the Army's source selection decision fails to document why the supposed technical superiority of GD-OTS's higher-priced proposal warranted the additional cost involved.

Where solicitations provide for award on a "best value" or "most advantageous to the government" basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price, and the extent to which one is sacrificed for the

¹⁵ The mere fact that a source selection official's determination is different from that of the agency evaluators (or even a prior source selection official's determination) does not by itself make it unreasonable or improper.

¹⁶ We have also considered TPL's challenges to the agency's evaluation of proposals under the other technical evaluation subfactors and find them to be without merit.

other is governed only by the test of rationality and consistency with the stated evaluation criteria. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 15; Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 8. Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with the additional costs.¹⁷ FAR §§ 15.101-1(c), 15.308; All Star-Cabaco Enter., Joint Venture, B-290133, B-290133.2, June 25, 2002, 2002 CPD ¶ 127 at 8-9.

In conducting the tradeoff here, the SSA first premised his determination upon review of the relative importance of the RFP's evaluation criteria, including that all nonprice factors, when combined, were significantly more important than price. AR, Tab 10, Source Selection Decision, at 3. The SSA then reviewed the evaluation findings and ratings of the offerors' proposals under all stated evaluation factors and subfactors. As set forth above, the SSA accepted the evaluation findings and ratings in most instances, and on certain occasions (e.g., TPL's proposal under the program management (technical) subfactor) the SSA reached a different determination. Id. at 3-29.

The SSA then performed a head-to-head comparison of the highest technically-rated proposal (GD-OTS) against each of the three other proposals. In comparing GD-OTS to TPL, the SSA found that GD-OTS's proposal went into far more detail in the program management (technical) subfactor, and demonstrated a better grasp of the tools and techniques required to manage a series of projects over time than did TPL's. Id. at 32. In terms of past performance, the SSA found that GD-OTS's proposal demonstrated the offeror's effectiveness in managing complex, multi-faceted projects over time while TPL's proposal demonstrated that it was challenged by such endeavors. Id. at 34. The SSA concluded as follows:

[T]he GD-OTS proposal was technically superior and offers less performance risk than does that of TPL. GD-OTS has a more detailed and thorough program management plan, which is of significant value in monitoring the status and health of the program in order to perform on schedule and at cost. In addition, GD-OTS has demonstrated their ability to manage a complex demil program over time with an enviable delivery record of 99.5% on time. In contrast, TPL has had problems managing some of their more complex programs in the past, and have had schedule problems caused by staffing issues. Further, they have received multiple safety and security violations at their facility. All of these are indicators that TPL may require more government oversight

¹⁷ This explanation can be given by the source selection authority in the award decision, or it can be evidenced from the documents on which the source selection decision is based. TRW, Inc., B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11 at 4.

to say on schedule and at cost, which we are not currently staffed to do. In summary, GD-OTS provides both superior program management effectiveness and efficiency as well as a much higher probability of program success as demonstrated by their past performance. In my opinion, this merits the 17% price premium over TPL's price.

Id. at 35-36.

Contrary to TPL's assertions, we find that the source selection decision adequately documented the agency's rationale for the tradeoff made, including the benefits associated with the higher price. The propriety of such a price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the source selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Remington Arms Co., Inc., supra, at 16-17; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Here, the SSA properly looked behind the evaluation ratings and considered the underlying qualitative merits that distinguished the offerors' proposals--program management ability and performance risk. Consistent with the RFP's provision that nonprice factors when combined were significantly more important than price, the SSA reasonably concluded that the price premium associated with GD-OTS's proposal was justified by its greater technical merit. Under these circumstances, we see no basis to question the agency's decision to make award to GD-OTS.

TPL's Allegations of Agency Bias

Throughout its protest TPL alleges that the Army was biased against it. In support thereof, TPL points to an internal agency email message written prior to the issuance of the RFP, where the JMC Demil Team leader set forth the problems (e.g., environmental, cash-flow, instances of non-demilitarized ammunition rounds being shipped as scrap) previously encountered by small business prime contractors, including TPL, when recommending that the procurement not include a partial small business set-aside.¹⁸ TPL Comments, May 19, 2006, exh. A, JMC Email Regarding Draft Solicitation, at 2. Based upon this email message, TPL contends the agency intentionally sought out adverse and biased sources of past performance information for TPL (and when it could not obtain them, furnished them itself), intentionally manipulated the evaluation record and evaluation ratings, intentionally created artificial distinctions between the proposals of GD-OTS and TPL in order to justify the \$35 million price premium associated with an award to GD-OTS, and undertook

¹⁸ The email message also stated, "Knowing the past, the program manager does not want to return to the situation where these small businesses with problems in the past are once again prime contractors." Id.

the reevaluation of offerors' proposal with a predetermined outcome (*i.e.*, maintaining the original award to GD-OTS). Protest at 3-4, 12, 14, 16, 28.

Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Saturn Landscape Plus, Inc., B-297450.3, Apr. 18, 2006, 2006 CPD ¶ 70 at 3; Pride Mobility Prods. Corp., B-292822.5, Dec. 6, 2004, 2005 CPD ¶ 72 at 5. Further, where a protester alleges bias, it not only must provide credible evidence clearly demonstrating a bias against the protester or for the awardee, but also must demonstrate that this bias translated into action that unfairly affected the protester's competitive position. ABIC Ltd., B-286460, Jan. 12, 2001, 2001 CPD ¶ 46 at 7-8; Advanced Scis., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17.

TPL has furnished no evidence to support its allegations; it merely infers bias based on its assumption that one agency official who disfavored small business concerns as prime contractors improperly skewed the entire procurement process against TPL based on that opinion. The record indicates that the JMC employee who authored the email upon which TPL relies entirely as its proof of bias was not a TET or PRAG evaluator (nor was he the initial or ultimate SSA) and played no part in the evaluation of TPL's proposal. Contracting Officer's Statement, May 19, 2006, at 1. The record also indicates that while the JMC employee here compiled the JMC Demil Team reference of TPL's performance on the prior ID/IQ I contract, he did so without adding or deleting any of the comments he received from those agency employees with first-hand knowledge, and did not add any comments or scores of his own. *Id.*; Declaration of JMC Demil Team Leader, May 9, 2006, at 1. We conclude that TPL has presented no evidence that the identified individual was motivated by bias against it, or that any bias was somehow translated into prejudicial action. In sum, TPL's repeated allegations of agency bad faith in the conduct of the procurement here are no more than inferences, which do not rise to the level of proof required to demonstrate that the agency was biased against it.

The protest is denied.

Anthony H. Gamboa
General Counsel