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Decision

Matter of: Ready Transportation, Inc.

File: B-285283.3; B-285283.4

Date: May 8, 2001

Timothy C. Riley, Esq., Riley & Riley, for the protester.
Raighne C. Delaney, Esq., and Leo S. Fisher, Esq., Bean Kinney & Korman, for Green Valley Transportation, Inc., an intervenor.
Capt. Ryan M. 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

1. 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 evaluation criteria; mere disagreement with the agency's evaluation is insufficient to show it was unreasonable.
 2. Protest that contracting agency implemented solicitation's evaluation scheme in a mechanical manner that resulted in an irrational source selection decision is denied where the record shows the allegation is without basis.
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DECISION

Ready Transportation, Inc. protests an award 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. Ready argues that the agency improperly evaluated proposals with respect to past performance and implemented the evaluation scheme in a mechanical manner that resulted in an irrational source selection decision.

We deny the protests.

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.¹ 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. After awards were made to numerous shippers, Ready protested various aspects of the procurement. MTMC took corrective action by terminating all of the awards and resoliciting for the requirements; Ready's protest was dismissed as academic. The resolicitation, issued January 25, 2000, 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.² RFP encl. 5, at 30.

Offerors were to complete a rate tender for each lane in which they were interested. The price evaluation team entered 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 available, 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." Past performance "actions" were essentially problems that had arisen during performance of prior

¹ The GT evaluation and award process is based on an adaptation of Federal Acquisition Regulation (FAR) "best value" contracting procedures. See <<http://www.mtmc.army.mil/jtmo/default.htm>>, MTMC Responses to Carrier Comments on GT FAR Transition, at 1-2. For this and other reasons, MTMC is transitioning from its GT agreements to FAR-based contracts. 65 Fed. Reg. 45,362 (2000). While the provisions of FAR Part 15, which govern contracting by negotiation, do not directly apply here, see FAR § 47.000, we analyze the protester's contentions by the standards applied to negotiated procurements. See Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 6.

² As a result, Ready's contention that MTMC was required to conduct discussions with offerors is without basis. See also FAR § 15.306(a)(3).

contracts. 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.³ The past performance subfactors were to be adjectivally rated as outstanding, excellent, good, fair, poor, or unsatisfactory. The service factor was comprised of four subfactors, including the equally important cargo liability amount, proposed on-time delivery percentage, and percentage refund subfactors. The latter two subfactors were point-scored. The ratings, and points, assigned to the technical 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 number of available 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. However, the RFP permitted the government to pay a higher price to an offeror whose performance risk and price reasonableness gave it greater confidence in that offeror's ability to keep its commitments. RFP encl. 5, at 30.

Ready was awarded a contract as the primary carrier on lane 56 and as an alternate carrier on others. Another carrier, Green Valley Transportation, Inc., filed a protest 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. 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. An Optimum Benefit Negotiation (OBN) Review Board reviewed the results and concurred with most of the past performance ratings, but revised several upward to reflect its view that the record supported higher ratings. MTMC converted these 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

³ 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.

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.

Lane 56, the only lane at issue here, connects the two major Defense Logistics Agency depots in the United States, DDJC and the Defense Distribution Depot in Susquehanna, Pennsylvania (DDS). The final relevant evaluation results for lane 56 were as follows:

	Carrier A	Green Valley	Carrier B	Ready	Carrier C
Proposed On-Time Delivery Rate [DELETED]	100% [DELETED]	97% [DELETED]	97% [DELETED]	95% [DELETED]	95% [DELETED]
Refund [DELETED]	2% [DELETED]	1% [DELETED]	1% [DELETED]	0% [DELETED]	0% [DELETED]
Liability [DELETED]	Excellent [DELETED]	Excellent [DELETED]	Excellent [DELETED]	Excellent [DELETED]	Good [DELETED]
Past Performance [DELETED]	Good [DELETED]	Good [DELETED]	Good [DELETED]	Poor [DELETED]	Fair [DELETED]
Past On-Time Delivery Rate [DELETED]	Excellent [DELETED]	Good [DELETED]	Good [DELETED]	Excellent [DELETED]	Poor [DELETED]
Estimated Price	\$1,008,000	\$820,000	\$864,000	\$705,600	\$588,960
Total Points	158.43	155.32	151.73	146.48	139.73

Although Carrier A had the highest total number of points, the Board did not make award to that firm because its superior technical advantages did not outweigh its price difference when compared with the next highest-ranked carrier, Green Valley. The Board also decided that Green Valley's proposal offered the best value when compared with the proposals of two lower-priced carriers. Green Valley's proposed price was 39.4 percent higher (or \$802 more per shipment) than that of Carrier C, but MTMC anticipated that Green Valley would provide exceptionally better service in view of its superior proposed on-time delivery rate and refund, and its superior ratings for liability coverage, past performance, and past on-time delivery rate. Ready's proposed price was approximately 20 percent lower (or \$397 less per shipment) than that of Green Valley, but MTMC concluded that its proposal offered lesser service based upon its inferior proposed on-time delivery rate, its lack of a refund, and its poor past performance rating.

Ready was displaced as the primary carrier on lane 56 by Green Valley and became the second alternate carrier for that lane. Ready's protest, limited to lane 56, alleges that MTMC improperly evaluated proposals with respect to the past performance actions subfactor and implemented the evaluation scheme in a mechanical manner that resulted in a flawed source selection decision.⁴

⁴ We denied Green Valley's protest of the reevaluation results in a separate decision. Green Valley Transp., Inc., B-285283.2, Apr. 16, 2001, 2001 CPD ¶ __.

Past Performance Evaluation

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. Green Valley Transp., Inc., *supra*, at 3; DGR Assocs., Inc., B-285428, B-285428.2, Aug. 25, 2000, 2000 CPD ¶ 145 at 11. An agency may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the facts. See Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. 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 MTMC's evaluation of proposals with respect to the past performance actions subfactor was reasonable.

Each carrier was required to submit copies of any corrective measure it had taken in response to disciplinary actions against it by government shippers or MTMC over the relevant time period in order to ensure that any actions in its performance file were satisfactorily addressed. Such disciplinary actions include the removal of a carrier from a lane due to its unsatisfactory performance; a carrier's withdrawal from a lane prior to the end of its contractual term; a letter of warning to a carrier associated with its unsatisfactory performance; and a letter of concern to a carrier associated with some aspect of its performance. The TET was to consider all performance actions over the relevant time period, looking for reasons, explanations, and clarifications for previous or current performance actions, such as withdrawals from awarded lanes as the primary carrier, and corrective actions on letters of concern, letters of warning, or suspensions. The TET was to assess the overall past performance actions, paying particular attention to those past performance actions and corrective measures that specifically pertained to DDJC. RFP encl. 6, at 32-33.

In our first decision, we concluded that MTMC's failure to fully analyze the substance of the past performance data at the agency's disposal, including the volume of freight carried, was inconsistent with the solicitation's requirement to "look for reasons, explanations and clarifications for previous or current performance actions." RFP encl. 6, at 33. During the reevaluation, MTMC provided a fully documented analysis of the information in its possession, including materials provided in proposals; materials received from DDJC such as on-time delivery statistics and assessments of offeror performance; copies of performance actions; and statistics on shipments moved by the offerors DOD-wide.

The TET analyzed the performance actions associated with DDJC and DOD-wide shipments in terms of their seriousness, factored any reasons or explanations offered by the carrier into its analysis, and considered the performance actions in the

context of the carrier's shipping volume. The TET's adjectival rating of each proposal is supported by a detailed narrative synopsis of its analysis of each carrier's past performance.

The Board reviewed the TET's evaluation results and undertook its own analysis. The Board first weighted the types of performance actions in terms of their seriousness. A letter of removal was considered to be more serious than a letter of withdrawal, but a letter of withdrawal was considered to be more serious than both a letter of warning and a letter of concern. The Board developed a spreadsheet setting forth the carriers' performance relative to their numbers of shipments as compared with their numbers of weighted performance actions to obtain a better picture of the relative quality of each carrier's past performance. The Board also reviewed letters from DDJC regarding each carrier's performance at that depot. The Board agreed with most of the TET's conclusions but decided that the record supported higher ratings in some cases.⁵ The Board found that some of the variance might be explained by the fact that the TET's analysis of DOD-wide shipping volume used tonnage carried rather than the number of shipments made; the Board believed the number of shipments made was a more accurate measure of shipping volume when considering past performance. The Board also believed that the DDJC letters should be considered as one of the more relevant measures since the RFP emphasized DDJC experience in the evaluation of this subfactor.

The TET rated Ready's proposal "poor" for this subfactor. In approximately 6,900 DDJC shipments, Ready had two letters of withdrawal, one letter of warning, and one letter of concern. In shipping approximately 77 million pounds of freight DOD-wide (excluding DDJC), Ready had one letter of removal, two letters of withdrawal, and two letters of concern. The record shows that the TET considered the substance of each performance action, along with the explanations provided in Ready's proposal, and did not consider any of the performance actions to be excusable.

The Board found that Ready had 19 weighted performance actions, the second highest number of all the carriers. In considering the firm's performance actions in the context of its shipping volume, the Board determined that Ready's DOD-wide volume (78 million pounds or 13,506 shipments) was high, but not "very high," and that while its DDJC volume was high, the letter from DDJC was not supportive. In

⁵There is no evidence to support Ready's contention that the Board "overruled" the TET's ratings in an effort to steer the award to Green Valley. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition such as that presented by Ready. See AudioCARE Sys., B-283985, Jan. 31, 2000, 2000 CPD ¶ 24 at 5. The record shows that the bases for the Board's revisions are well-documented and consistent with the evaluation criteria.

this regard, DDJC's transportation assistant responsible for monitoring carrier performance stated that the depot had had problems getting proof of delivery receipts in a timely manner from the firm; on occasion, office personnel at Ready who handled carrier performance reports had not been very cooperative and had furnished the information only after a second reminder. The Board did not revise the TET's "poor" rating for Ready's proposal.

The TET also rated Green Valley's proposal "poor" for this subfactor. In approximately 27,000 DDJC shipments, Green Valley had three letters of withdrawal, three letters of concern, and two certificates of appreciation. In shipping approximately 155 million pounds of tonnage DOD-wide (excluding DDJC), the firm had two letters of withdrawal, one letter of warning, and five letters of concern. The record shows that the TET considered the substance of each performance action, along with the explanations provided in Green Valley's proposal, and concluded that one withdrawal from DDJC and one letter of concern for another DOD entity were excusable.

The Board found that Green Valley had 21 weighted performance actions, the highest number of all the carriers, but raised its rating for two reasons. First, the Board believed it was likely that the TET's low rating stemmed from the fact that it measured DOD-wide shipping volume based on the weight of the cargo rather than the number of shipments made. Under the TET's measure, Green Valley was a high-volume shipper but not necessarily very high; the TET weighed this fact against the firm's performance action history. The Board believed, however, that using the number of shipments to measure volume was a better measure because each shipment created an additional opportunity for a negative performance action. Using this measure, Green Valley, with 39,441 shipments, was the highest-volume carrier DOD-wide. The Board acknowledged that Green Valley had the highest number of weighted negative performance actions, but believed the fact it received these in the context of its very high volume justified at least a "fair" rating since the number of negative performance actions per shipment was relatively low. Second, the Board believed that greater emphasis should be placed on the supportive letter from DDJC summarizing its experience with Green Valley. DDJC's transportation assistant stated that the firm was not always timely submitting carrier performance reports, and required a reminder from the depot, but, in such cases, Green Valley's staff had been pleasant to work with and were making an attempt to provide the information in a timely manner. The Board believed this letter was generally supportive of Green Valley's past performance, and that it was sufficient to raise Green Valley's rating from "fair" to "good" since the RFP placed an emphasis on the carrier's performance at DDJC.

Ready first contends that MTMC improperly relied upon the letter from DDJC to raise Green Valley's rating because the letter regarding Green Valley was not supportive but was, instead, similar to the letter regarding Ready, which was not considered supportive by the agency.

The letters are similar in that both carriers had problems with the timely submission of information to DDJC, but the critical distinction lies in the fact that Green Valley was apparently cooperative with DDJC when problems arose and Ready was not. The protester does not dispute the contents of the letters, but states that the letters only show that Green Valley's staff was "nicer" than its own. We agree with MTMC that the significance of the distinction is not one of courtesy. MTMC explains that a cooperative and responsive carrier in the area of contract administration provides a value to the agency in that its personnel are not wasting time and resources trying to get responses or action out of a non-cooperative carrier. Although Ready disagrees with MTMC's crediting Green Valley for its spirit of cooperation, we cannot find this action unreasonable in view of the obvious value inherent in working with a carrier with a past record of cooperation, and in view of the fact that the RFP placed an emphasis on past performance at DDJC.

Ready next argues that MTMC treated the two carriers unequally by excusing Green Valley for its withdrawal from a lane in conjunction with a 1-year extension of the contract while failing to excuse Ready from its withdrawal in a similar situation. The record shows that the situations were not similar.

In 1998, the agency asked Green Valley if it would enter into a 1-year extension of a particular GT. Green Valley completed its 1-year commitment, but declined to enter into this extension based on other business considerations. The agency correctly concluded that this was not a withdrawal from a lane prior to the end of the carrier's contractual term but was, instead, an excusable decision not to enter into an extension.

In contrast, in 1998, a depot now under DDJC asked Ready if it would enter into a 1-year extension of a GT whose base year ended September 30, 1998. Ready advised the agency that it did not intend to enter into an extension and, by letter dated August 12, the firm withdrew from the GT effective September 14, 2 weeks prior to the end of the base year. The sole reason Ready gave for this withdrawal was that it was "no longer possible to service this lane profitably due to changes in base operations." Letter from Ready to MTMC (Aug. 12, 1998). The firm's proposal stated the firm withdrew from the lane 15 days before the end of the contract because it was not willing to enter into an extension and to clear the way for the alternate carrier who was ready to extend his tender. Proposal § 3. The TET did not find this withdrawal to be excusable and found that replacing a carrier for the 2 remaining weeks of a contract created a hardship for the government.

Ready contends that personnel at the depot asked the firm to withdraw from the lane because an alternate carrier was ready to step in and perform and that, as a result, it should be excusable. The agency disputes this contention, and our Office conducted a hearing to ascertain the facts surrounding this incident.

The record shows that, in 1998, changes in base operations at the depot resulted in performance problems for Ready in the form of several failures to show up at the installation to pick up shipments. These problems were memorialized in an August 11 letter of warning from the depot to Ready, and were the subject of a discussion between depot personnel and Ready at a meeting at about that same time.

Ready's chief financial officer, who was present at the meeting, states that at some time before or during this meeting, either the then-Chief of the Shipment Planning Branch or her supervisor—he is not certain—"suggested" that the firm could let the first alternate carrier take over the lane if the firm wanted out of the contract but that it would have to submit a letter of withdrawal first. Video Transcript (VT) at 15:11-15:12, 15:16, 15:38. He stated that the firm would not have withdrawn if the government had not asked it do so. Id. at 15:39.

The then-Chief of the Shipment Planning Branch testified that, at this meeting, she told the firm to identify the problems causing the no-shows and possible ways to resolve them, and to give her a date by which the problems would be resolved. At some point, she stated, Ready advised that it did not think the problems could be resolved, and asked what would happen if the firm withdrew from the lane. She testified that she advised the firm that it would be best if it resolved the problems but that if it could not do so, a withdrawal would be better than being removed from the lane, which would be the next step she would have to take if the problems were not resolved. Id. at 14:12-14:14; 16:03-16:05. She testified that she did not ask Ready to withdraw, and that whether or not an alternate carrier was ready to take over the lane was not discussed. Id. at 14:14, 16:05. While there was an alternate carrier for the lane, she was unaware whether that alternate carrier or any other carrier was prepared to take over as the follow-on carrier for the lane. This prospect would not be raised by the depot because only MTMC has the authority to replace a carrier. Id. at 14:15, 16:06.

We do not question Ready's belief that it was advised it "could" withdraw from the lane. The testimony of the then-Chief of the Shipment Planning Branch makes it clear that she advised the firm that withdrawal was a better option for it than the letter of removal that might follow if the problems were not resolved. The weight of the evidence does not persuade us, however, that Ready was advised it "should" withdraw from the lane because another carrier was waiting to take its place.

The only evidence in support of Ready's position is the testimony of its chief financial officer, who is not certain who advised him to withdraw, and whose testimony on the matter is couched in such vague language as it was "suggested" that Ready let the alternate carrier take over. Id. at 15:11. This testimony is also unsupported by the contemporaneous written evidence.

Withdrawing from a lane has consequences. The regulations governing GT traffic require a selected carrier to honor an award until its expiration date, and carriers

with a history of withdrawals may be removed from all GT traffic and/or disqualified from participation in future solicitations. MTMC Guaranteed Traffic Rules Publication (MGTRP) No. 50, Item No. 30, e.(1), f. In view of the potential consequences, we find it implausible that a carrier withdrawing because it is told to do so by a depot would not make that fact known to MTMC. Ready did not do so. In fact, while Ready now states that it withdrew at the depot's request, it did not give this reason to its agent when it asked her to draft the letter of withdrawal; the agent testified that she always asks her clients why they are withdrawing. VT at 15:48, 15:51-15:52. As a result, despite the fact that withdrawal letters are required to contain the reasons for withdrawal, Ready's letter of withdrawal did not say that the depot told it to withdraw, and did not say that the firm was withdrawing to allow another carrier to perform. The only reason given was that it was no longer possible to service the lane profitably. Ready's account is further undercut by the fact that the regulations put the firm on notice that only MTMC, not the depot, is responsible for offering traffic to the next alternate carrier. MGTRP at Item No. 30, e.(2). There is no evidence that anyone at MTMC told Ready to withdraw in order to make way for a new carrier, and no evidence that the alternate carrier was prepared to do so. Ready has implied that the alternate carrier began making shipments on this lane immediately after its withdrawal, but the shipping records provided in the agency report show that the alternate carrier did not begin making shipments on this lane until November. Moreover, MTMC's traffic management specialist testified that a follow-on carrier was not in place prior to Ready's withdrawal. VT at 14:33-14:34.

Ready's proposal also failed to state that it withdrew from the lane at the depot's request despite the fact that the RFP put the firm on notice that its proposal was to be evaluated on its negative past performance actions, including withdrawals from a lane as the primary carrier. RFP encl. 6, at 33. In the absence of such an explanation, MTMC had no basis to raise any questions about this withdrawal. An offeror has the burden of submitting an adequately written proposal, see Caldwell Consulting Assocs., B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530 at 6, and may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the facts. See Quality Fabricators, Inc., supra. Even if this explanation had been included, however, the record shows that a withdrawal prior to the end of a contractual term does cause the agency hardship whether or not another carrier is in place. Agency personnel testified at the hearing that, when a carrier withdraws, MTMC has to go through the administrative process of entering into a new contract; the depot has to obtain information from MTMC regarding the new carrier's rates, effective date, and expiration date; and the depot has to load those new rates into its database. VT at 13:50-13:51; 14:33; 16:09-16:10. Under the circumstances, we cannot conclude that the TET unreasonably considered this withdrawal to have posed a hardship on the agency.

In any event, while Ready has attempted to distinguish the impact of this withdrawal on its rating from the impact of withdrawals on the ratings of other carriers, the

record shows that the “poor” rating given to Ready’s proposal under this subfactor was not attributable solely to this incident. The TET concluded that the other performance actions were of high significance in terms of service to the shipper and had impacts on the workload of the shipper in the sense that it had to initiate service with an alternate or new carrier when the carrier withdrew, was removed, refused shipments, or was a no-show, which affected the timely delivery of freight. In light of the firm’s medium volume and the high significance of its performance actions, both with DDJC and other DOD activities, the TET concluded that the proposal should be rated “poor.” The Board concurred, and Ready has given us no basis to find this rating unreasonable.

Source Selection Decision

Ready contends that MTMC mechanically weighted the technical factors grossly out of proportion to their impact on price in what it describes as the proposed on-time delivery rate and refund “scam.” Ready’s Mar. 14 Comments at 3.

The RFP required each carrier to provide an on-time delivery guarantee in the form of a monthly service commitment percentage. A carrier could guarantee to deliver 95 percent of its monthly shipments on time, the minimum acceptable performance standard, or a carrier could guarantee to deliver a higher percentage of its monthly shipments on time. Each carrier was also given the opportunity to propose a refund in the form of a percentage of the total revenues earned for the month from a given shipping location. This amount would be refunded to the government when the on-time performance commitment was not met. While the refund requirement was optional, carriers offering refunds would be more favorably considered during the evaluation. RFP encl. 6 at 32.

Green Valley proposed a 97 percent on-time delivery guarantee and a 1-percent refund. Since this proposed rate was substantially higher than the minimum acceptable performance standard, Green Valley’s proposal was given [DELETED] of the [DELETED] available points under this subfactor; the proposal was given [DELETED] of the [DELETED] available points under the refund subfactor. Ready proposed a 95 percent on-time delivery guarantee and no refund. Since this proposed rate was merely the minimum acceptable performance standard, Ready’s proposal was given [DELETED] of the [DELETED] available points under this subfactor; the proposal was given [DELETED] points under the refund subfactor.

Ready contends that MTMC mechanically applied the technical scores for these subfactors without considering whether the awardee’s higher technical score reflected any technical superiority that was worth the price premium. Ready contends that there is no penalty for failing to meet the proposed on-time delivery rate other than forfeiture of the refund, and further contends that the estimated amount of the refund is insufficient to make up for the price premium.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of the technical and price evaluation results in negotiated procurements. DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69 at 7-8. Since numeric point scores are merely guides to intelligent decision making, they do not necessarily establish that a particular firm is technically superior or mandate selection of a particular proposal for award. Contract Servs., Inc., B-251761.4, July 20, 1993, 93-2 CPD ¶ 40 at 6. Our review of the record affords us no basis to object to the method MTMC used to calculate total point scores, and no basis to object to MTMC's documented award decision for lane 56.

We have not objected to the formula employed here to calculate price points from total prices, where the lowest price proposed is assigned maximum price points and others are assigned points based on their closeness to the low offer, and where the total weight assigned to price is consistent with the RFP. PCL/American Bridge, B-254511.2, Feb. 24, 1994, 94-1 CPD ¶ 142 at 5-6. Moreover, in comparing the estimated amount a refund could cost a higher-priced carrier with the price differential between the proposed prices of that carrier and a lower-priced carrier, Ready overlooks the fact that the proposed on-time delivery rate and refund subfactors were not price subfactors, but technical subfactors to be considered as part of the service an offeror could provide. MTMC believes a carrier that offers a higher on-time delivery rate that is reinforced by both the traditional discipline that results from a failure to meet a service standard and a refund offers better service to the government. MTMC anticipates that such carriers will be motivated to maintain their proposed on-time rates in order to avoid the punitive refund and other disciplinary actions and, for obvious reasons, values a carrier that proposes to deliver more of its shipments on time.

Ready argues that a carrier can fail to meet its proposed high on-time delivery rate without fear of negative repercussions except the minimal monetary impact of the refund. We do not agree. Setting aside the question whether a carrier would view the monetary impact of paying a refund as "minimal," there are clearly negative repercussions to failing to meet on-time delivery commitments. Carriers awarded traffic under the GT program are required to meet certain service standards. One of these standards requires a carrier to meet the established transit times at a rate equal to the rate it proposed in its rate tender--the proposed on-time delivery percentage. MGTRP No. 50, Item No. 30, g(4). Carriers that fail to meet a service standard can be subjected to disciplinary action such as letters of warning and letters of removal. Id. at a. In addition to the consequences of service failure on a particular lane of GT traffic, our preceding discussion regarding past performance actions should make it clear that such disciplinary actions can and do affect a carrier's ability to win GT traffic lanes in subsequent procurements. As a result, a carrier that fails to meet its proposed on-time delivery rates does face potential negative repercussions.

In any event, the record shows that MTMC did not conduct a mechanical evaluation here. The agency did not award the lane to the carrier with the highest number of

points precisely because it used its judgment to analyze the technical advantages offered and determined that they were not worth the price differential. Conversely, MTMC did not award the lane to carriers offering the lowest prices because it determined that their proposals offered lesser service at a price differential that was acceptable. Ready has given us no basis to conclude that MTMC's price/technical tradeoff analyses were unreasonable or inconsistent with the solicitation's evaluation criteria. MTMC reasonably concluded that Green Valley's "good" past performance offered less performance risk than did Ready's "poor" past performance, and the RFP permitted the government to pay a higher price to an offeror whose performance risk and price reasonableness gave it greater confidence in that offeror's ability to keep its commitments. RFP encl. 5, at 30.

The protests are denied.

Anthony H. Gamboa
General Counsel