
From: The Lab @ DOC
Subject: Monday Morning Court-erback (MMCB) Vol. 1 - Past Performance Pilot, May 2019

Introduction to the series: The Monday Morning Court-erback (MMCB) series started back in May of 2019 and has continued into 2025, as emails directly to an audience of innovation advocates. The volumes were sporadic and intended to analyze bid protest decisions coming out of the Government Accountability Office (GAO) and the Court of Federal Claims (COFC). The subject matter was and remains innovative procurement techniques, but often includes other basic procurement functions and common protest grounds. Many volumes are bolstered by stories about the actual procurement team, agency, or experience of the procurement innovation coach that worked directly with the team or with the agency in some capacity. For ease of sharing, the volumes are transitioned to PDFs but are as close to the original email volume as possible.

Original Pilot Intro from 2019: Just like the Monday Morning Quarterback segment on sports shows, we can investigate past on GAO or COFC bid protest decisions to learn forward. The series starts with Volume 1 focusing on a recent case, and what is important to share from it. Let me know your thoughts – and if this should become a routine series. I try to read the cases each weekend to prospective learning, and we can eventually rotate analyzing these decisions when one appears to be a good learning tool.



Matter of: C2G Ltd. Company
File: [B-416460.3; B-416460.5](#)
Link: <https://www.gao.gov/products/b-416460.3%2Cb-416460.5#mt=e-report>
Date: May 14, 2019

Overview: A FEMA single-award Indefinite-Delivery Indefinite-Quantity (IDIQ) contract, following the procedures of FAR Part 12 and subpart 15.3, where the incumbent lost (C2G) due to negatively evaluation aspects of the Past Performance evaluation on the incumbent contract (a traditional evaluation approach with no innovative procurement techniques covered). There were other issues, but nothing else worth noting for this volume on past performance.

	C2G	ISC
Technical Approach	Satisfactory	Satisfactory
Management Approach	Satisfactory	Satisfactory
Past Performance	Satisfactory	Satisfactory
Price	\$11,427,591	\$11,834,304

Highlights

1. **Ratings vs. Price:** Many of us understand how to justify higher technically rated proposals with higher prices, or lower technically rated proposals with lower prices...it really is not that complex of a writeup. Many of our procurement coaches teach that just because the ratings themselves appear equal in a table (like above) that it is not what is important. What is important is the substance and merit of the documented rationale in the final record. This example covers where the team justified the premium for a technically superior proposal even though the technical ratings appeared to be equal; all because their record supported the decision.
2. **Past Performance:** This approach allowed for five (5) past performance references for each offeror and the evaluation focused on the quality, however references with more technical relevance would be weighted more heavily.
 - a. **CPARS:** The FEMA team reviewed three (3) out of the five (5) Contractor Performance Assessment Reporting System (CPARS) for the references of which two (2) had Exceptional ratings. The third was the incumbent CPARS report of which the Source Selection Evaluation Board (SSEB) had concerns that arose during performance. The evaluators noted three (3) major issues in the incumbent's performance, which created risk and led to the SSEB's "*serious reservations*" about C2G's ability to be successful. C2G rebutted all issues as "*patently false*". The decision states "*An agency may base its evaluation of past performance upon its reasonable perception of inadequate past performance, regardless of whether the contractor disputes the agency's interpretation of the facts.*" The protestor's contentions only reflect continued disagreement with the agency's findings. "*Protester's different interpretation of factual circumstances leading to adverse past performance evaluation provides our Office with no basis to question the agency's evaluation*". The CPARS record reviewed for the incumbent included a mix of exceptional, good, satisfactory, and marginal.
 - i. The rationale of why this was an okay practice, at least to the GAO:
 1. The agency's evaluation and contemporaneous record details the specifics of the three (3) issues and includes **communications evidencing each perceived issue**.
 2. The agency gave appropriate consideration to both the negative and positive aspects of C2G's past performance. The SSEB's evaluation specifically noted the exceptional CPARS record but determined the rating as Satisfactory to be a reasonable result of C2G's mixed past performance ratings (two exceptional ratings and reservations on the current contract). A precedential case is mentioned: *Cf. Spinnaker JV, LLC, B-416688, Nov. 21, 2018, (finding agency's past performance evaluation unobjectionable where the record demonstrated the agency duly considered both the negative and positive aspects of protester's past performance, and reasonably concluded that the negative outweighed the positive)*. A takeaway here is that **we can rely more heavily on certain references, not just treating them all as equal, but we must clearly document both the positives and negatives (if we have them)**.
 - ii. I think we get this type of question a lot as procurement innovation coaches: "If we have a mixed CPARS record on the incumbent, but they had many issues, can we use it against them." Most Contracting Officers (COs) are deathly afraid to do so, but if they can provide evidential (even top-level) documentation, then they should feel empowered to go right ahead and document accordingly to reveal the true and meaningful rating.

*For additional reading on CPARs (specifically when the Government decides to contact the reference POC), please read this decision: [Alexandra Construction, Inc, B-417212](#). In this decision the agency wanted to contact the references by phone, but some reference points of contact did not respond. The GAO decided that the solicitation did not establish, or was silent on, a minimum number of telephone interviews to be conducted compared to the references provided, but also *“nor is there any requirement that offerors’ have the same number of references to receive equal ratings... Thus, the agency’s decision not to contact some of Alexandra’s points of contact was reasonable because the solicitation did not contain a requirement to do so.”* Please consider this when you have a team that believes contacting some, but not all, CPARS references would create risk or not appear to be equitable. If you only have a question about one or a few references, only contact those and don’t feel you need to do that for all offerors.

This volume was authored in May 2019 by Trevor Wagner, who at that time was working at the Department of Homeland Security’s Procurement Innovation Lab (PIL).

*Disclaimer: The information contained in this MMCB is merely an opinion of the author and does not constitute formal legal or policy guidance of any kind.