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## Decision

**Matter of:** Mil-Mar Century Corporation  
**File:** B-407644; B-407644.2; B-407644.3  
**Date:** January 17, 2013

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Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging agency's evaluation of experience is denied where the evaluation was reasonable and supported by the record.
  2. Under solicitation contemplating award of a fixed-price contract, protest challenging agency's price realism analysis is denied where the contracting officer reasonably evaluated the awardee's lower price.
  3. Protest challenging evaluation of awardee's proposals as technically acceptable where it failed to demonstrate compliance with agency requirements as set forth in statement of work is denied where the solicitation did not provide for evaluating technical compliance with statement of work.
  4. Allegation of unequal discussions is denied where record does not demonstrate that the protester suffered prejudice in connection with the agency's failure to conduct discussions with the protester.
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### DECISION

Mil-Mar Century Corporation, of Miamisburg, Ohio, protests the award of a contract to The Entwistle Company, of Hudson, Massachusetts, by the Department of the Army, Army Contracting Command Warren, under request for proposals (RFP)

No. W56HZV-11-R-0171, to provide “Load Handling System Compatible Water Tank-Rack Systems,” commonly referred to as “hippos.” Mil-Mar challenges the agency’s evaluation of Entwistle’s proposal.

We deny the protest.

## BACKGROUND

Issued on March 20, 2012, the RFP is the first competitive procurement for the hippo system<sup>1</sup> following three non-competitive awards directed to Mil-Mar. The RFP anticipated the award of a single fixed-price, three-year, indefinite-delivery/indefinite-quantity contract for a maximum quantity of 845 hippo units, and an additional 6 units for first article testing (FAT) purposes. The RFP also required delivery of support kits, such as a cleaning and authorized stockage kit, prescribed load list kit, and basic issue items kit, in support of initial fielding.

The RFP set forth a best value evaluation scheme considering three factors: (1) production capability; (2) experience; and (3) price.<sup>2</sup> The production capability factor was the most important factor and was slightly more important than the experience factor, which was slightly more important than the price factor. The RFP further advised that “notwithstanding the relative order of importance of the evaluation factors as stated, price may be controlling” when “[p]roposals are considered approximately equal in non-price factors; or . . . [a]n otherwise superior proposal is unaffordable; or . . . [t]he advantage of a higher rated, higher price proposal are not considered to be worth the price premium.” RFP §§ M.3.4-M.3.4.3. Finally, the RFP advised that the agency intended to make the award without conducting discussions. RFP § M.1.4.

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<sup>1</sup> According to the relevant Automotive Tank Purchase Description (ATPD), the hippo system is a 2,000 gallon stainless steel potable water tank in a steel frame, with an integrated pump, engine, alternator, hose reel, heater, and fill stand, capable of receiving, storing, and distributing water. The system must be compatible with multiple types of vehicles, must be capable of operating in ambient temperatures as low as minus-25 degrees Fahrenheit, and must have a maximum weight including full water payload of less than 26,000 pounds.

<sup>2</sup> The record includes a determination and findings waiving evaluation of past performance. The determination states that while experience will be considered, the evaluation will not consider “the quality of past performance on prior offeror efforts,” because “Past Performance is not expected to surface any meaningful discrimination among offerors.” Past Performance Waiver, at 2.

Under production capacity, the RFP provided for assessing each offeror's capacity to provide for timely delivery of the required hippos based on a consideration of five areas: (1) manufacturing facilities; (2) key tooling and equipment; (3) production approach; (4) time phased critical path; and (5) letters of commitment. RFP §§ L.4.1, M.5.1.

Regarding the experience factor, the RFP advised that the agency would assess risk based on offerors' experience with performance of work that is "recent and relevant to the scopes of works" specified in five specific areas:

Comparable Items: Supply of sanitary liquid handling and storage systems of a complexity comparable to the Hippo.

Technical Manuals: Supply of Technical Manuals of a complexity comparable to the Technical Manuals required in this RFP.

Delivery: Delivery of sanitary liquid handling and storage systems of complexity comparable to the Hippo, at a production rate comparable to the maximum monthly production rate identified in paragraph 52.242-4457, Delivery Schedule for Delivery Orders.

[Low Temperature:] Producing sanitary liquid handling and storage systems capable of meeting the low-temperature requirements of ATPD 2319D.

[Welding:] Welding stainless steel in accordance with American Welding Society AWS D18.3/18.3M - Specification for Welding of tanks, Vessels, and Other Equipment in Sanitary (Hygienic) Applications.

RFP §§ L.5.3.1-L.5.3.5, M.6.1.1-M.6.1.5. For the purpose of demonstrating experience in the five areas described above, offerors were required to identify up to five recent and relevant contracts. The RFP defined "recent" experience as contracts or orders performed within "approximately three years" of the date of issuance of the RFP, and defined "relevant" as those contracts which are comparable in scope to the requirements of the RFP. RFP §§ L.5.1-L.5.3.

As to price, the RFP provided that the agency would assess total evaluated price for reasonableness and indicated that a proposal may be rejected if it is "not realistic, or not reasonable, as to price." RFP § M.7.1. For the purpose of evaluating price, offerors were to provide "estimated direct costs" for the test units, production units, and technical manual. Specifically, the RFP required offerors to provide information concerning direct labor hours by labor category, direct labor rates, direct labor cost,

direct material cost, other direct costs, and subcontracting costs. RFP § L.6.4. Moreover, the RFP provided that “the Government reserves the right, as a clarification under FAR 15.306(a), to request additional or more detailed price breakdown data to support its determination of price reasonableness.” RFP § L.6.6.

As a general matter, the RFP also provided for rejection of a proposal where

The proposal reflects an inherent lack of technical competence or a failure to comprehend the complexity and risks required to perform the solicitation requirements due to submission of a proposal which is unrealistically high or low in price and/or unrealistic in terms of technical or schedule commitments.

RFP § M.2.1(b).

The agency received seven proposals in response to the RFP, including the proposals of Mil-Mar and Entwistle. After evaluation of the proposals, the agency determined that Mil-Mar’s proposal had the highest non-price ratings, earning an “outstanding” rating under the production capability factor, and a “very relevant/very low risk” rating under the experience factor, with an evaluated price of [DELETED].<sup>3</sup> Source Selection Decision (SSD) at 2. Entwistle’s proposal was lower rated, earning a “good” rating under the production capability factor, and a “relevant/low risk” rating under the experience factor, but had the lowest total evaluated price of \$69,063,943. Id.

Due to Entwistle’s significantly lower price, the contracting officer conducted a price realism analysis, employing cost analysis techniques “to determine whether it is reasonable to conclude that Entwistle can perform the requirements of the contract based on its offered price.” Id. at 29. During this review, the agency engaged in four exchanges with Entwistle, requesting supplemental price breakdown data for the costs of its tank and diesel engine, and for fabricating its proposed frame, as well as addressing an apparent clerical error in which a figure appeared to be transposed, and requesting explanation of proposed labor hours. With the additional price breakdown data supplied by Entwistle, the contracting officer determined that the proposed prices for the tank and diesel engine were appropriate based on market research, that the price to fabricate the frame was acceptable based on input from the production capability evaluator and an engineer from the Army’s Tank Automotive Research, Development and Engineering Center (TARDEC), and that Entwistle’s remaining line items were acceptable in comparison

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<sup>3</sup> The record reflects that the agency rated the production capability factor using an adjectival scale of outstanding, good, acceptable, marginal, and unacceptable, and the experience factor on a scale of very relevant/very low risk, relevant/low risk, somewhat relevant/moderate risk, and not relevant/high risk.

to other offerors' proposals. Based on this review of the major cost elements of Entwistle's proposal, the contracting officer concluded that the proposed price did not appear to be unrealistically low.

In the SSD the contracting officer conducted a tradeoff between Mil-Mar and Entwistle, ultimately concluding that "[t]he advantages provided by the Mil-Mar proposal in the Production Capability factor and in the Experience factor are not enough to overcome the \$33,761,275 in savings to the Government available from Entwistle's proposal, which is still a low risk proposal." SSD at 24. The CO also noted that "[w]hile the Entwistle proposal has more risk than Mil-Mar's and fewer advantages with respect to the Non-Price Factors, Entwistle still gives the Government confidence that it has the capacity to provide for timely delivery of supplies in satisfaction of contract requirements and that it will successfully meet contract requirements based on its prior experience." Id. The agency made award to Entwistle on September 28. Mil-Mar timely requested a debriefing, which the agency provided on October 4. This protest followed on October 9.

## DISCUSSION

Mil-Mar alleges numerous improprieties in the agency's conduct of this procurement, including errors in the agency's evaluation under the experience and price factors. Concerning the experience factor, Mil-Mar asserts that the agency's evaluation of Entwistle's experience as relevant/low risk was unreasonable. Concerning the price factor, Mil-Mar asserts that the agency failed to conduct a reasonable price realism analysis and that Entwistle's price was unrealistically low. Additionally, Mil-Mar alleges that Entwistle's proposal did not demonstrate compliance with the ATPD and the RFP's statement of work (SOW), and that the agency improperly conducted discussions only with Entwistle.<sup>4</sup>

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<sup>4</sup> Mil-Mar presented a wide range of allegations during the development of this protest. We discuss a number of these claims herein. To the extent that claims, or portions of claims presented by the protester are not discussed in this decision, we consider them to be without merit or non-prejudicial to the protester. For example, Mil-Mar alleges in its protest that the agency failed to consider the possible impact of alleged patent infringement in Entwistle's hippo design. A potential claim for patent infringement does not provide a basis for sustaining a protest. Odetics, Inc., B-246008, Feb. 13, 1992, 92-1 CPD ¶ 185 at 3-4. The exclusive remedy for a patent holder who claims patent infringement by the government, or by a government contractor who acts with the authorization or consent of the government, is a suit against the government in the United States Court of Federal Claims. Lab Prods., Inc., B-252452, Mar. 19, 1993, 93-1 CPD ¶ 250 at 4.

## Experience Evaluation

Mil-Mar alleges that the agency's evaluation of Entwistle's experience as relevant/low risk was unreasonable because Entwistle has never constructed a hippo system and does not have recent, relevant experience with many aspects of hippo manufacture as set forth in the SOW and the ATPD. Mil-Mar argues that the evaluation demonstrates that the agency did not consider Entwistle's experience with respect to the full requirements of the SOW and ATPD, and "clearly limited its consideration only to those aspects of performance identified in [RFP] Section M.6.1.1 to M.6.1.5." Protest at 14. Additionally, Mil-Mar alleges that the agency's evaluation of experience was unreasonable under the comparable items criteria, where Mil-Mar's and Entwistle's proposals were both rated very relevant/very low risk, despite Entwistle's failure to earn an very relevant/very low risk rating on any of its individual experience reference contracts.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. The evaluation of experience, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

Here, based on our review of the record, we conclude that the agency's evaluation was consistent with the evaluation criteria set forth in the RFP and not without a reasonable basis. As noted above, the RFP established five areas of experience that would be considered in assigning an overall experience/risk rating. RFP §§ L.5.3.1-L.5.3.5, M.6.1.1-M.6.1.5. The RFP did not, as Mil-Mar suggests, require offerors to demonstrate experience in all areas of performance required by the ATPD and SOW. Thus, where Mil-Mar challenges the agency's failure to assess Entwistle's experience in all such areas, by arguing, for example, that the agency failed to consider "whether Entwistle has any experience building ISO tank containers with [DELETED]," protest at 13, the protest has no basis in the RFP's evaluation terms.

We also find no merit in Mil-Mar's challenges to the agency's evaluation of Entwistle's experience with respect to the "comparable items" criteria. The record reflects that pursuant to section L of the RFP, Entwistle submitted five contract references for evaluation, including two references pertaining to its subcontractor,

[DELETED].<sup>5</sup> Entwistle's contract references included: (1) a contract for Air Force Fuels Operational Readiness Capability Equipment (FORCE) systems (a hydrant fuel delivery system consisting of pumping units, filters, and plumbing assemblies, with technical manuals and cold weather requirements); (2) a Navy/Defense Logistics Agency contract for tank cleaning vacuum systems (consisting of a base, two 1,000-gallon tanks, piping systems and a control box); (3) a commercial contract for ship-based fire fighting vehicles (a diesel engine vehicle including a 750-gallon water tank, 50-gallon foam tank, and low-temperature operation requirements); (4) a General Services Administration contract performed by [DELETED] for potable water tanker trucks (covering three models of tanker truck ranging from 1,500 to 3,000 gallons, with complete plumbing systems); and (5) an Army contract performed by [DELETED] for 1,100 gallon potable water tanks (with anti-surge baffles, a manhole, a water-level indicator, and an electric pump).<sup>6</sup> Agency Report (AR), Tab G-2, Entwistle Experience Evaluation at 1-2.

Under the comparable items experience criteria of RFP § M.6.1.1, the agency rated Entwistle's contract reference for a tank cleaning vacuum system as relevant/low risk, and all other contract references as somewhat relevant/moderate risk. Id. at 4. However, overall, the agency rated Entwistle's experience with comparable items as very relevant/very low risk, a higher rating than Entwistle received for any individual contract reference evaluated. As justification, the agency explained that:

Collectively, the offeror's cited experience is considered very comparable because it involves the major elements of a sanitary

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<sup>5</sup> Mil-Mar argues that the agency improperly considered the experience of [DELETED] since [DELETED] was merely an Entwistle "supplier." This argument is without merit. First, the RFP provided for the evaluation of subcontractor experience references subject only to the agency's consideration of whether the benefits of such experience would be realized. As the supplier of the stainless steel tank for Entwistle's proposed hippo, the agency concluded that the benefit of [DELETED]'s experience was likely to be realized. Mil-Mar's contention that [DELETED] is not a "subcontractor" to Entwistle is refuted by Federal Acquisition Regulation (FAR) subpart 44 (Subcontracting Policies and Procedures), which defines the term "subcontractor" to include "any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor." FAR § 44.101.

<sup>6</sup> Mil-Mar argues that Entwistle's proposal failed to provide all of the experience references documentation required by section L of the RFP and should have been rejected. The RFP states that "a proposal [that] fails to provide any of the data required in Section L," "may lead to the rejection of a proposal." RFP § M.2.1. Here, the agency acted within its discretion in declining to reject Entwistle's proposal where it obtained sufficient information on Entwistle's experience, from its proposal and from outside sources, to complete its evaluation.

liquid handling and storage system similar to those required by the Hippo, including stainless steel potable water tanks, skid based platform with frame, as well as plumbing systems comprising of tanks, pumps, hoses, valves, fittings, etc., designed for the conveyance of both potable water and other liquids.

VERY LOW risk is appropriate because the offeror's experience illustrates it can supply comparable systems involving essentially the same scope and magnitude of effort and complexities required by this solicitation.

Id.

Mil-Mar essentially argues that it is per se unreasonable for the agency to have rated Entwistle's experience as very relevant/very low risk under the comparable items experience criteria, where none of Entwistle's experience references earned that highest-possible rating under the criteria. Mil-Mar also asserts that the rating was unreasonable since it was equal to the rating assigned to Mil-Mar, the only incumbent contractor for this requirement. These challenges do not provide a basis to sustain Mil-Mar's protest.

The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. It is well established that ratings, be they numerical, adjectival, color, are mere guides for intelligent decision making in the procurement process. Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5.

As noted above, the agency rated Entwistle's experience references individually for relevance under the comparable items criteria, and found them to be relevant to somewhat relevant. Notwithstanding these individual adjectival ratings, the Army also considered Entwistle's collective experience, and determined that it warranted a very relevant/very low risk overall rating for comparable items experience because, although no single contract reference demonstrated experience highly comparable to the hippo requirement, when considered in the aggregate, the references reflected experience with "the major elements of a sanitary liquid handling and storage system similar to those required by the Hippo." AR, Tab G-2, Entwistle Experience Evaluation at 4. Additionally, in the SSD, the contracting officer explained that, "I further agree with this very low risk assessment [of Entwistle's experience] because experience with the major elements of a HIPPO system is a larger risk mitigator than the experience with integration of the elements into a complete system." SSD at 22. We see nothing in our review of the RFP to prohibit the agency from considering Entwistle's experience contract references in the aggregate and making an overall risk assessment based on the firm's collective experience. Thus, Mil-Mar's challenge, which is rooted in the individual adjectival

ratings assigned Entwistle's contracts, as opposed to the collective experience assessment performed by the agency, fails to demonstrate that the agency's evaluation of Entwistle's experience was unreasonable.<sup>7</sup>

With regard to Mil-Mar's argument that it was unreasonable for the agency to assign Entwistle the same, highest-possible rating under the comparable items criteria that Mil-Mar received as the incumbent contractor, we note that the contracting officer did not consider Entwistle's experience equal to Mil-Mar's. Rather, the SSD demonstrates that while the contracting officer agreed with the assessment of Entwistle's experience as representing very low risk, he found the "Mil-Mar proposal to be slightly more advantageous where its experience is essentially identical to the HIPPO." *Id.* Additionally, where the RFP did not limit relevance of experience references to the hippo system, we see no basis for Mil-Mar to argue that only the incumbent experience result in a very relevant/very low risk rating under the comparable items experience criteria. Pinnacle Solutions, Inc., B-406998.2, Oct. 16, 2012, 2012 CPD ¶ 338 at 11.

In sum, the record here demonstrates that the agency justified its overall rating of Entwistle's experience as very relevant/very low risk under the comparable items criteria based on its assessment of Entwistle's collective experience, and that the contracting officer went beyond the evaluation ratings to independently assess the risk represented by the offeror's experience in this regard. In such a case, it is not our role to second-guess the agency's judgment, even if we might have reached a different conclusion, so long as the agency's conclusion is not inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., *supra*; Medical Staffing Joint Venture, LLC, B-400705.2, B-400705.3, March 13, 2009, 2009 CPD ¶ 71 at 6.<sup>8</sup>

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<sup>7</sup> Mil-Mar also challenges the agency's evaluation of Entwistle's proposal with respect to the four other areas of evaluation under the experience factor. These allegations largely mirror those raised by Mil-Mar in challenging the agency's evaluation of Entwistle's "comparable" experience. We conclude that they are similarly without merit.

<sup>8</sup> Mil-Mar argues that the agency treated Entwistle's proposal more favorably than the proposals of other offerors, not involved in this protest, under each of the five areas for evaluation under the experience factor. Mil-Mar is not, however, an interested party to assert what amount to protest allegations on behalf of other offerors. See KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 11 n.4.

## Price Evaluation

Mil-Mar next alleges that Entwistle's proposal should have been rejected as unrealistically priced, and that the agency conducted a flawed and inadequate price realism analysis.

While agencies are required to perform some sort of price analysis or cost analysis on negotiated contracts to ensure that the agreed-upon price is fair and reasonable, where the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. However, an agency may, as here, provide for price realism analysis in the solicitation for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit. See The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. The nature and extent of an agency's price realism analysis are matters within the sound exercise of the agency's discretion.<sup>9</sup> Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 5.

The record shows that the agency conducted a reasonable price realism analysis. In the SDD, the contracting officer acknowledged that a price realism analysis is not usually required in a competitive fixed-price procurement, but that based on Entwistle's significantly lower price in comparison to the second lowest-priced offeror, he conducted a "comparison of cost elements, and a review of Entwistle's labor hours and material type(s) to determine risk of successful performance at the offered price." SSD at 29. More specifically, the contracting officer analyzed Entwistle's line item prices relating to materials over \$500--including the 2,000 gallon tank, diesel engine, and frame--other parts below \$500, labor hours, other direct costs, and other costs including overhead, general and administrative and profit.

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<sup>9</sup> Mil-Mar refers to Entwistle's price as both "unreasonably" and "unrealistically" low. These terms are not interchangeable. A price reasonableness analysis concerns whether prices are too high and is required in all negotiated contracts. A price realism analysis concerns whether prices are too low, and, as discussed, is not generally required in a fixed-price context, though the agency conducted one in this case per the terms of the solicitation.

Following several exchanges with Entwistle, the contracting officer determined that the proposed prices for the tank and diesel engine were appropriate based on market research, that the price to fabricate the frame was acceptable based on input from the production capability evaluator and an Army TARDEC engineer, and that Entwistle's remaining line items were acceptable based on comparison to other offerors proposals. On this review of the major cost elements of Entwistle's proposal, the CO concluded that the proposed price did not appear to be unrealistically low.

In challenging the agency's price evaluation, Mil-Mar essentially disagrees with the CO's use of market research to assess Entwistle's pricing for larger line items, and comparing Entwistle's pricing with that of other offerors for smaller line items. Mil-Mar also asserts that the CO's market research and coordination with TARDEC was inadequate, given the complexity of the hippo unit. As explained above, the extent and nature of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., supra. In the context of the fixed-price award here, the agency's sole concern in conducting a price realism analysis was to assess the risk that Entwistle will not be able to offer acceptable performance at the offered price. Based on our review of the record, we conclude that the CO's analysis was thorough, and provided a sound basis on which to conclude that Entwistle's price was not unrealistic.<sup>10</sup>

#### RFP Requirements

Mil-Mar also argues that Entwistle's proposal should have been rejected because it did not demonstrate compliance with SOW requirements, such as the 26,000 pound maximum weight requirement for a hippo system with a full water payload. Specifically, Mil-Mar points to the shipping characteristics of Entwistle's proposal, which indicates the "gross weight of container and contents" as 10,000 pounds. AR, Tab E-1, Contract Volume, at 1. Using this 10,000 pound figure, Mil-Mar argues that Entwistle's hippo system cannot meet the weight maximum, where the weight of a full water payload is 16,600 pounds, yielding a total of 26,600 pounds--600 pounds above the maximum. This argument is misplaced.

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<sup>10</sup> The record also reflects that the Defense Contract Management Agency (DCMA) performed a pre-award survey on Entwistle and investigated its technical, quality, financial, accounting, and physical plant capabilities. DCMA deemed each area satisfactory and made a complete award recommendation. DCMA assessed Entwistle as having the financial resources to support their operational needs, and determined that Entwistle had consistently maintained financial health and demonstrated profitability for fiscal years 2009, 2010, 2011, and the pre-survey portion of 2012. AR, Tab Q, Pre-Award Survey, at 2.

First, the RFP did not provide for evaluation of compliance with SOW or ATPD requirements. Rather, the RFP required offerors to submit “[a]n affirmative statement [that] the Offeror proposes to meet all the requirements of the Scope of Work in Section C and Purchase Description.” RFP § L.3.3. Entwistle’s proposal included such an affirmative statement. AR, Tab E-1, Contract Volume, at 1. Second, the 10,000 pound value associated with the shipping characteristics provision cited by Mil-Mar expressly indicates that it is for the purposes of determining transportation costs, not describing the technical characteristics of the offeror’s proposed hippo system.<sup>11</sup>

### Improper Discussions

Finally, Mil-Mar alleges that the agency’s exchanges with Entwistle concerning additional price data constituted improper discussions with a single offeror. The agency maintains that the exchanges with Entwistle were mere clarifications, and did not constitute discussions.

“Clarifications” are limited exchanges between the government and offerors that may occur when award without discussions is contemplated. FAR § 15.306(a). Such communications with offerors are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. FAR § 15.306(b)(2). Requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61. Discussions, on the other hand, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. FAR § 15.306(d). Accordingly, our Office has confirmed that where communications do not permit an offeror to revise or modify its proposal, but rather request that the offeror clarify and confirm what the offeror has already committed to do, those communications are clarifications and not discussions. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4-5.

As an initial matter, we note that the exchanges conducted by the agency were of a type expressly anticipated by the RFP, which provided that “the Government

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<sup>11</sup> The RFP requires the contractor to provide for delivery of support kits, such as a cleaning and authorized stockage kit, a prescribed load list kit, and a basic issue items kit, in support of the initial fielding of the hippos, as well as training materials, technical manuals, provisioning data, FAT spare parts and tools support package, packaging data and safety plan, all of which could affect the shipping characteristics under the contract. RFP at 2. The RFP required each hippo to be “over packed” with the prescribed load list kit and basic issue items kit. Id.

reserves the right, as a clarification under FAR 15.306(a), to request additional or more detailed price breakdown data.” RFP § L.6.6. We also note that the exchanges sought information that Entwistle was not otherwise required to provide under the terms of the solicitation. Specifically, the first, second, and third exchanges with Entwistle addressed submission of additional price breakdown data and the correction of a clerical error in the price proposal. These exchanges clearly constituted the type of clarification expressly anticipated by the RFP and were within the scope of clarifications as set forth in FAR § 15.306(a). The agency’s fourth exchange, however, requested an explanation of how Entwistle would utilize its proposed labor hours, and presents a closer call as to whether the exchange constituted clarifications or discussions. Nonetheless, we ultimately conclude that the agency’s fourth exchange with Entwistle did not constitute discussions.

The agency’s fourth exchange asked Entwistle to “clarify how your proposed labor hours are adequate to carry out the steps necessary for production of the First Article Test items and production quantities.” Question 0004 at 2. Entwistle provided a two-sentence response, generally indicating that its labor hours were based on its understanding of the requirements and experience with design programs. Although the agency’s question sought additional narrative information, it is apparent that the exchange was intended to facilitate the agency’s understanding of the underlying components of Entwistle’s price proposal, and that Entwistle was not provided with an opportunity to revise its proposal. Such an exchange does not trigger an obligation to initiate discussions, since Entwistle’s response clarified, but did not modify, its proposal. See Career Training Concepts, Inc.--Advisory Opinion, B-311429.1, B-311429.2, June 27, 2008, 2008 CPD ¶ 231 at 6.

## CONCLUSION

In sum, we determine that the agency’s evaluation of Entwistle and best value decision are reasonable. Concerning Entwistle’s experience, the agency had wide discretion to determine “comparable” prior experience, and we cannot find the agency’s determination that Entwistle’s experience was relevant and low risk unreasonable, where the determination was documented and justified. Further, while Mil-Mar argues that Entwistle’s experience ratings should not have been so high in comparison to Mil-Mar’s own ratings as the incumbent, the SSD’s trade-off discussion went beyond the evaluation ratings and clearly acknowledged the many advantages of Mil-Mar’s proposal, before concluding that the substantial advantages were simply not worth the associated price premium. We further conclude that the agency’s price realism analysis was reasonable, that Entwistle’s proposal did not contradict the requirements of the ATPD or SOW, and that although the agency’s exchanges with Entwistle may have constituted discussions, Mil-Mar has failed to establish how it was prejudiced in this case.

We deny the protest.

Susan A. Poling  
General Counsel