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## Decision

**Matter of:** Beretta USA Corporation

**File:** B-406376.2; B-406376.3

**Date:** July 12, 2013

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Joseph D. West, Esq., Lindsay M. Paulin, Esq., and Owen E. Whitehurst, Esq., Gibson, Dunn & Crutcher LLP, for the protester.

Holly Emrick Svetz, Esq., James K. Kearney, Esq., James Patrick Scholtes, Esq., and Steven W. Cave, Esq., Womble Carlyle Sandridge & Rice LLP, for Remington Arms Company, Inc., the intervenor.

Capt. Bertha A. Diaz and Maj. Troy D. Hammon, Department of the Air Force, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and its exclusion from the competitive range is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the agency reasonably determined the proposal was not among the most highly rated proposals.

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### DECISION

Beretta USA Corporation, of Accokeek, Maryland, protests the exclusion of its proposal from the competitive range by the United States Special Operations Command (USSOCOM) under request for proposals (RFP) No. H92222-12-R-0011 for precision sniper rifles, ammunition, accessories, and replacement parts. Beretta argues that the USSOCOM miscalculated proposals and made an unreasonable competitive range determination.

We deny the protest.

### BACKGROUND

The USSOCOM issued the RFP on November 4, 2011, seeking commercial item proposals to supply up to 5,150 precision sniper rifles and up to 4.7 million rounds of ammunition, in addition to accessories, parts, training, engineering, and technical

data. The RFP contemplated award of one or more fixed-price indefinite-delivery/indefinite-quantity contracts for a 10-year ordering period. RFP at 3-12, 68. The procurement was conducted under commercial item and negotiated contracting procedures of Federal Acquisition Regulation (FAR) Parts 12 and 15. Contracting Officer's Statement at 2.

The RFP required offerors to submit samples of their rifles and ammunition, as well as written proposals. Each proposal was to be evaluated first with respect to a set of go/no-go criteria, and then evaluated qualitatively both by assessing the operation of sample rifles and ammunition, and by evaluating the written proposal. Award was to be made to one or more offerors whose proposals passed the go/no-go criteria and provided the best value based on three areas: technical/management, past performance, and price. RFP, amend. 1, at 8-9. The technical/management area was significantly more important than past performance, which was significantly more important than price; the first two areas when combined were significantly more important than price. Id. at 9.

The technical/management area had three factors, listed in descending order of importance: operational suitability and effectiveness, technical approach, and management approach. Id. at 10-11. The management approach factor was comprised of two subfactors. The first--facilities/production capacity and capability, supply chain management, quality assurance, and teaming arrangements--was significantly more important than the second, subcontracting approach. Id. at 9-11. The technical management area and its factors were adjectivally rated as blue/outstanding, green/acceptable, yellow/marginal, or red/unacceptable.

In the past performance area, offerors were required to submit information on past performance information sheets for contracts considered most relevant to demonstrating their ability to perform the effort. Id. at 7. The RFP advised offerors that the agency would conduct its evaluation using data from such sources as these information sheets, questionnaires, and from the Past Performance Retrieval System (PPIRS). Id. at 12. The agency was to evaluate the offeror's record of performance in providing services and products, and its record of subcontracting to small businesses. The resulting confidence ratings were to reflect the agency's overall level of confidence in the offeror's ability to successfully perform the required effort. Id. The adjectival ratings for past performance included substantial confidence, satisfactory confidence, and limited confidence.

The price evaluation was to assess the completeness, balance, and reasonableness of each offeror's prices, and to arrive at a total evaluated price based on estimated total order quantities of each contract line item. Offerors were advised that any pricing that was "excessively high or extremely low" could be a basis to reject the proposal. Id. at 12. Among the specific instructions was a requirement to propose range/stepladder pricing for applicable contract line items to maximize economies of scale. Id. at 8.

Written proposals were due on January 6, 2012. Beretta, Remington, and at least three other offerors submitted samples for go/no-go testing, as well as written proposals. Both Beretta and Remington submitted multiple independent proposals consisting of the same rifle but different ammunition. Contracting Officer’s Statement at 9. After completion of the go/no-go testing, Beretta was evaluated as “go” for its rifle with one type of ammunition (referred to as [DELETED]). Id. Remington was evaluated as “go” for its rifle with two types of ammunition, provided by different manufacturers (one proposal is thus referred to as Remington-[DELETED], and the other as Remington-Barnes). AR, Tab 9, Source Selection Evaluation Board (SSEB) Final Evaluation Report, at 5.<sup>1</sup>

The agency then evaluated the rifles, ammunition, and accessories through an operational assessment, and evaluated each offeror’s corresponding written proposal. Overall, the evaluators identified six strengths, six weaknesses, five significant weaknesses, and one deficiency for Beretta’s rifle and written proposal. Id. at 47. The Remington-Barnes rifle and proposal were evaluated as having 15 strengths, five weaknesses, and one significant weakness. The Remington-[DELETED] rifle and proposal received 15 strengths, seven weaknesses, and one significant weakness. The evaluation results were as follows<sup>2</sup>:

	<b>Beretta</b>	<b>Remington-Barnes</b>	<b>Remington-[DELETED]</b>
<b>Overall Technical</b>	Yellow Marginal	Blue Outstanding	Blue Outstanding
Operational Suitability	Green Acceptable	Blue Outstanding	Blue Outstanding
Technical Approach	Yellow Marginal	Blue Outstanding	Blue Outstanding
Management Approach	Red Unacceptable	Yellow Marginal	Yellow Marginal
<b>Past Performance</b>	Limited Confidence	Substantial Confidence	Satisfactory Confidence
<b>Evaluated Price</b>	\$72.3 million	\$99.4 million	\$99.4 million

Id. at 8.

In assessing which proposals to include in the competitive range, the contracting officer summarized the SSEB’s findings. In the technical/management area, she

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<sup>1</sup> Although designated a “final” report, this document reflects the evaluation of proposals before the establishment of the competitive range. We subsequently refer to the document as the SSEB Report.

<sup>2</sup> The evaluation ratings of three other offerors--all rated lower than Beretta and either Remington proposal--are omitted as not relevant to the protest issues.

noted that Beretta's proposal was rated acceptable under the operational suitability and effectiveness factor, but had a marginal rating under the technical approach factor related to its provision of incorrect ammunition information for the rifle that was fired by the agency, and its failure to provide required cartridge case data. The firm also had an unacceptable rating under the management approach factor related to its failure to provide supply agreements demonstrating supplier commitments. Id. at 9. The contracting officer also noted that Beretta's past performance merited a limited confidence rating because its references could not be verified using the contact information in the proposal, and because both Beretta and its ammunition supplier had a history of late deliveries. Id. at 10. Finally, the contracting officer concluded that Beretta's prices were not complete, balanced, or reasonable. Among other things, the proposal did not include the required range/stepladder pricing, and failed to provide a fixed price for a portion of the proposal. Id.

The contracting officer determined that Remington's proposals should be included in the competitive range because they were the most highly rated proposals. AR, Tab 11, Competitive Range Determination Memorandum, at 15. She concluded that Beretta's offer was among those that had not demonstrated an adequate approach and understanding of the requirements, and that posed a high risk of unsuccessful performance. As a result, the contracting officer excluded these proposals from the competitive range. Id. Beretta filed this protest after its debriefing.<sup>3</sup>

## ANALYSIS

Beretta's protest of its exclusion from the competitive range challenges every aspect of the evaluation that identified a weakness, significant weakness, or deficiency in its proposal. Although our decision does not specifically address every one of Beretta's challenges, we have fully considered them and have concluded either that they do not provide a basis to sustain the protest, or that the firm was not prejudiced by the alleged errors.<sup>4</sup> We discuss below a selection of Beretta's challenges.

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<sup>3</sup> On March 7, 2013, USSOCOM awarded a contract to Remington based on its proposal under which ammunition would be supplied by Barnes, at an evaluated price of \$86 million. Contracting Officer's Statement at 1-2.

<sup>4</sup> For example, Beretta argues that its rifle was misevaluated under the operational suitability and effectiveness factor. The record shows, however, that the weaknesses here did not significantly affect the decision to eliminate Beretta's proposal from the competitive range. See AR, Tab 9, SSEB Final Report, at 133; Tab 11, Competitive Range Determination Memorandum, at 15-16. Beretta has not shown that the alleged misevaluation here was prejudicial, and we do not discuss that or other similarly immaterial challenges further in this decision.

Where a protest challenges an agency's evaluation, and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the agency's competitive range determination. Gov't Telecomm., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4. In doing so, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. All Phase Servs., Inc., B-406856, Aug. 17, 2012, 2012 CPD ¶ 274 at 4. A protester's mere disagreement with the agency's evaluation conclusions does not provide a basis for our Office to object to the evaluation. GHG Corp., B-407949, Apr. 12, 2013, 2013 CPD ¶ 102 at 2.

### Management Approach Evaluation

Beretta argues that USSOCOM unreasonably assessed a deficiency in the firm's proposal under the first management approach subfactor--facilities/production capacity and capability, supply chain management, quality assurance, and teaming arrangements. The evaluators assessed this deficiency because Beretta's proposal did not include the supply agreements required by the solicitation. As a result, the evaluators concluded that they could not determine whether Beretta could supply its rifle, accessories, and ammunition in accordance with the firm's proposed delivery schedule. AR, Tab 9, SSEB Report, at 53. Our review of the record provides no basis to find the evaluation unreasonable.

In connection with the supply chain management aspect of the subfactor, offerors were required to submit copies of supply agreements with key suppliers. The RFP stated that the agency was to evaluate proposals to "determine the commitments with key suppliers and how each offeror has sourced or will source said key suppliers for vital and/or long lead components that are not manufactured by the offeror." RFP, amend. 1, at 11. The evaluation was to be conducted in order to assess the offeror's ability to meet the proposed delivery schedule. Id.

Beretta's proposal included copies of two documents entitled "TEAMING AGREEMENT," one with its rifle supplier and one with its ammunition supplier.<sup>5</sup> AR, Tab 24, Beretta Proposal, vol. I, attach. 2. The proposal included no documents entitled "supply agreements." In evaluating the proposal, the agency considered that supply agreements were vital to Beretta's ability to meet the contract's requirements because Beretta's proposal stated that the firm itself would not be manufacturing any

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<sup>5</sup> A separate aspect of the subfactor required offerors to submit teaming arrangements with its rifle manufacturer and with its ammunition manufacturer in order for the agency to determine the extent to which the offeror demonstrated a team for successful completion of the contract. RFP, amend. 1, at 6, 11.

of the system's components. Instead, Beretta proposed to be a "kitter" by receiving manufactured items from the suppliers, assembling them, and then providing the assembled system to the government. See id., vol. I, at 6. Since Beretta's proposal did not include any supply agreements, the evaluators found that they could not determine the commitments from the firm's key suppliers to provide the required items or, by extension, whether Beretta could actually provide the system in accordance with its proposed delivery schedule. AR, Tab 9, SSEB Report, at 53.

Beretta argues that the agency ignored its teaming agreements in evaluating its supply chain management, and that the information addressing both aspects of the subfactor could be in one document. Even if true, the agency did not ignore the teaming agreements but expressly found that the agreement between Beretta and its ammunition supplier did not provide a "level of commitment to verify delivery." Id. The agency is correct that the teaming agreements are in the nature of agreements to agree with respect to such things as delivery schedule. This lack of information to enable the agency to verify supplier commitments and, hence, Beretta's ability to meet its delivery schedule, is underscored by Beretta's statements elsewhere in its proposal. In this regard, the firm states that its ammunition and accessory suppliers "have not provided the monthly rate at which they would make deliveries," and that "[m]onthly rates of delivery for these items could thus have to be set by mutual agreement between [the agency], Beretta U.S.A. and its respective subcontractors." AR, Tab 24, Beretta Proposal, vol. I, at 5. Since Beretta's approach amplified the importance of supply agreements, and since it did not provide supply agreements or other information to permit the evaluation of its ability to meet its delivery schedule, we find the assignment of a deficiency unobjectionable. See Data Solutions & Tech., Inc., B-405077.2, Oct. 12, 2011, 2011 CPD ¶ 215 at 5.

Beretta argues that its proposal was evaluated unequally as compared to Remington's because the supply agreements in Remington's proposals were only brief statements from four suppliers that the particular supplier was "committed to providing a component to Remington Arms drawing specification and within the stated delivery time," and a statement from a fifth supplier that it was giving "support and commitment" to manufacturing the barrel of the rifle. Beretta's Supplemental Comments at 21 (quoting AR, Tab 25, Remington-[DELETED] Proposal, vol. I, attach. 3). Beretta complains that the agency evaluated Remington's submissions merely as a weakness despite its observation that the statements did not show commitments with the suppliers and how they will meet the delivery requirements.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. Beretta has not made this showing. Beretta's proposal included no supply agreements or information that the agency could use to verify that its suppliers had even been engaged concerning their delivery commitments. In contrast, while Remington's supply agreements lacked detail, they

showed that Remington had at least engaged the key suppliers and received delivery commitments. The proposals' respective contents reasonably warranted their differing evaluations.

Beretta next challenges the assignment of a significant weakness to its proposal under the subcontracting approach subfactor. The agency assigned this significant weakness because Beretta did not meet the minimum requirements for small business participation as specified in the RFP. Beretta argues that the agency unreasonably failed to consider the statement in its proposal that its selection of its suppliers was influenced first by the quality of its product, followed by the ability of the suppliers to perform as needed, and by their small or small disadvantaged business status. Beretta Comments at 39.

The evaluators were to assess the offeror's small business subcontracting plan and the extent to which it would achieve the agency's 2012 small business goals. RFP, amend. 1, at 6-7, 11. The RFP described those goals as a "minimum goal requirement" of 29.22 percent to small businesses, 5 percent to small disadvantaged businesses, 3 percent to service-disabled veteran-owned small businesses, 2 percent to woman-owned small businesses, and 1 percent to historically underutilized business zone (HUBZone) small businesses. Id. at 7.

Although Beretta argues that the small business subcontracting goals stated in the RFP were unachievable,<sup>6</sup> Beretta does not dispute that it proposed significantly lower goals than those specified in the RFP. More specifically, in comparison to the RFP goals, quoted above, Beretta proposed to achieve small business subcontracting of [DELETED] percent, and veteran-owned small business subcontracting of [DELETED] percent; its goals were zero percent for the other categories. The evaluators found that these low goals warranted a significant weakness because they did not support the RFP's requirements, and because Beretta would require submission updates and surveillance if awarded the contract. AR, Tab 9, SSEB Report, at 54. Beretta has given us no reason to find the agency's evaluation unreasonable.<sup>7</sup>

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<sup>6</sup> Beretta did not challenge the express terms of the RFP before the closing date for submission of proposals, and any such challenge now would be untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013).

<sup>7</sup> All three proposals were assessed significant weaknesses associated with their failure to satisfy the minimum requirements for small business categories in fiscal year 2012. AR, Tab 9, SSEB Report, at 16-17, 35-36, 54. Beretta's allegations of unequal treatment in this regard are not borne out by the record.

## Technical Approach Evaluation

Beretta argues that USSOCOM should not have assigned its proposal two significant weaknesses under the technical approach factor, one concerning its failure to provide precision data for its proposed ammunition, and one concerning its failure to provide required cartridge case data. We address each in turn.

Under the technical approach factor, offerors were directed to provide a complete response to each element of a critical threshold matrix. The agency was to evaluate the responses to determine the extent to which the proposal demonstrated meeting all requirements. One requirement concerned the precision of the ammunition at 1,500 meters. The matrix required each offeror to describe the ability of its ammunition to meet the precision requirement, to provide test methodology and data, and to provide test results. AR, Tab 8, RFP Critical Threshold Matrix, at 4.

Although Beretta submitted multiple proposals, as noted above, only Beretta's [DELETED] ammunition qualified for further evaluation after the initial go/no-go assessment. The agency assessed as a significant weakness in Beretta's [DELETED] proposal the erroneous inclusion of precision data for [DELETED] ammunition (which was not being evaluated). The proposal appeared to have no data for the [DELETED] ammunition, which made it impossible for the agency to compare Beretta's data with the results of the agency's tests. AR, Tab 9, SSEB Report, at 51.

Beretta admits that it erroneously provided precision data for the [DELETED] ammunition in its [DELETED] proposal. Nonetheless, Beretta argues that the agency could have addressed the issue through clarifications, or otherwise considered the information since Beretta had informed the contracting officer that it had mistakenly submitted the [DELETED] precision data in an alternate proposal. We disagree.

First, where an agency establishes a competitive range to conduct discussions, the agency may communicate with an offeror to facilitate the agency's understanding and evaluation of the offeror's proposal, or for the purpose of exploring whether a proposal should be included in the competitive range. See FAR § 15.306(b)(2). However, such communications cannot "be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal." Int'l Medical Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 9-10. The significant weakness in Beretta's proposal could not properly be the subject of either clarifications or communications before the establishment of the competitive range, as this would have required a material revision to its proposal.

Second, Beretta's argument that the information was "too close at hand" for the agency to ignore because it was in an alternate proposal is simply misguided. We



have held that, in certain circumstances when evaluating past performance, evaluators cannot ignore information of which they are personally aware, even if that information is not included in the offeror's proposal. See, e.g., Int'l Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. This principle does not apply here because the information at issue does not concern Beretta's past performance. Instead, the information relates to an RFP requirement for technical acceptability. Moreover, an offeror's technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal downgraded. See Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7. We see no basis to conclude that the too-close-at-hand principle applies here.

Beretta next challenges the significant weakness associated with its proposal's failure to include required cartridge case data. The solicitation stated that the external dimensions of the cartridge case shall be "as specified in the applicable manufacturer's technical drawing." AR, Tab 5, Performance Specification at 13. The RFP stated that offerors "shall provide" the data required by this performance specification, to include details in regards to dimensional tolerances and cartridge case acceptance criteria. AR, Tab 8, Critical Threshold Matrix, at 3.

Beretta's proposal stated that its ammunition supplier currently used purchased brass cases from a specific source, but that "[i]n-house manufacturing capability for [the] . . . brass is underway and cartridge case drawings will be available upon completion." AR, Tab 24, Beretta Proposal, vol. I, at 37. The proposal also stated that cartridge case dimensional tolerances were included in an accompanying appendix in engineering drawings. Id. Those drawings and other information in the proposal concerned the purchased brass cases, and not those that Beretta's supplier intended to reproduce in-house to meet the solicitation requirement.

The agency evaluated the proposal as having a significant weakness because it stated that "cartridge case drawings will be available upon completion," which did not meet the requirement that the proposal "shall provide" cartridge data. AR, Tab 9, SSEB Report, at 51. The agency found that the lack of drawings posed a serious risk that the ammunition tested by the agency would not be reproduced accurately. Id.

While Beretta argues that the agency ignored drawings and other information in its proposal concerning the cartridge cases **[DELETED]**, the fact that Beretta provided drawings from the original source does not demonstrate that the agency's evaluation was unreasonable. As the agency explains, the lack of drawings raised a concern as to whether the production ammunition would be the same as the test ammunition (**[DELETED]**), which translated into a concern about whether the accuracy achieved with the test ammunition would be repeatable with the reproduction ammunition. AR at 14-15. On this record, we have no basis to find the evaluation unreasonable.

## Past Performance Area Evaluation

Beretta argues that the agency unreasonably assigned its past performance proposal a limited confidence rating. Beretta contends that the agency unreasonably assessed its proposal a weakness because it lacked sufficient contact information for its past performance references, and unreasonably assessed its proposal a significant weakness because both Beretta and its ammunition supplier had a record of late deliveries.

The evaluation of past performance, including the agency's determination of the relevance and scope of a firm's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. In our view, the evaluation of Beretta's proposal and its overall confidence rating is reasonably supported by the record.

Offerors were required to submit information on three to six recent and relevant contracts to demonstrate their ability to perform the proposed effort. The specified format for this information--past performance information sheets--mandated the inclusion of details about each contract, such as its value and quantities delivered, as well as contact and alternate contact information for each reference.

The agency found that none of the information sheets Beretta submitted contained all of the required information, and some had significant omissions, including a lack of complete contact information. Even though the RFP required detailed past performance information, Beretta's proposal stated that the contracts for one of its team members were considered confidential by its customers, and only certain information could be provided. AR, Tab 24, Beretta Proposal, vol. II, at 8. The agency sent questionnaires using the limited contact information Beretta provided, but received just one response, from an entity stating that it never dealt with Beretta.<sup>8</sup> AR, Tab 9, SSEB Report, at 55. The agency assessed a weakness to Beretta's proposal because its references could not be verified using the contact information in the proposal. Id. at 59. The agency also noted that Beretta failed to provide details concerning the contracts, which hindered the agency's ability to even ascertain whether the contracts were relevant. Id. at 54-59.

Beretta acknowledges that its proposal omitted information, but argues that the agency should have recognized that privacy and security concerns justified not

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<sup>8</sup> It appears that this contract was one awarded to the [DELETED] supplier, not to Beretta, but the past performance sheet did not list the name of the contractor.

providing complete contact information. Protest at 32-33. However, the RFP clearly stated its requirements and the reasons for those requirements--to ascertain the relevance of the contracts and to obtain information on their performance. Beretta chose to provide such limited information on its contracts that the agency could not ascertain their relevance. Beretta also chose not to provide all of the required contact information. As a result of the omissions in its proposal, Beretta hampered the agency's ability to assess its past performance. We have no basis to find the evaluation unreasonable. See Propper Int'l, Inc., B-297950.3 et al., Mar. 19, 2007, 2007 CPD ¶ 79 at 5.

The agency also reviewed PPIRS reports that identified a trend of late delivery problems and marginal ratings for compliance with schedules. For Beretta, the agency identified four pistol contracts--considered somewhat relevant--where the firm was rated marginal for schedule. For Beretta's ammunition subcontractor, [DELETED], the agency identified two contracts with very good ratings on quality and cost, but marginal ratings for schedule, and satisfactory and marginal ratings for business relations. AR, Tab 9, SSEB Report, at 56. The agency also reviewed a Defense Contract Management Agency (DCMA) pre-award survey indicating that Beretta's on-time delivery rates had been unsatisfactory, and DCMA information concerning the ammunition supplier's schedule delays. Id. at 58-59. The agency assigned the proposal a significant weakness because "[b]oth Beretta and [DELETED] have past performance history of late deliveries. This history greatly increases the risk of late delivery."<sup>9</sup> Id. at 59.

Beretta contends that the information from PPIRS should not have been considered because the late deliveries were "virtually all" related to "good faith agreements" with government customers to meet accelerated delivery schedules and increased requirements. Protest at 33. We have reviewed the PPIRS reports and find that they do not support this claim. Although Beretta believes that the problems should have been excused, or were not as significant as contracts with positive reports, those arguments reflect mere disagreement with the evaluators. They do not show that the assessment of a significant weakness here was unreasonable.

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<sup>9</sup> Beretta argues that the agency treated the proposals of Beretta and Remington-[DELETED] unequally because, while they both utilized the same [DELETED] subcontractor with a history of late deliveries, Remington-[DELETED]'s proposal was assigned only a weakness, rather than a significant weakness. Our review shows that Beretta has distorted the underlying record. The significant weakness in its proposal was due to the fact that both Beretta and [DELETED] had a past performance history of late deliveries. Remington-[DELETED], on the other hand, was assessed a weakness based on the delivery problems of [DELETED] alone.

## Price Evaluation

Beretta finally challenges the reasonableness of the weaknesses and significant weakness assigned to its price proposal. For example, the agency assigned a significant weakness to Beretta's price proposal because it included a pricing contingency rendering its price "not firm" for a portion of the proposal, and a weakness because the firm did not comply with the RFP's requirement to propose range/stepladder order quantities and unit prices to show economies of scale.

The RFP stated that offerors "shall propose range/stepladder order quantities and unit pricing" for applicable line items to maximize economies of scale, and that this information "shall be reviewed" to determine the extent to which economies of scale were maximized. RFP, amend. 1, at 8. More broadly, proposals were to be evaluated to determine completeness and balanced pricing. The agency was to calculate a total evaluated price and to conduct a reasonableness analysis. Pricing that was excessively high or extremely low could provide a basis to reject the proposal. Id.

Beretta's proposal did not include range/stepladder order quantities and unit pricing for the applicable line items. The evaluators found that the single unit price Beretta proposed for each line item was for the maximum quantity rather than range/stepladder pricing, and concluded that if Beretta intended to propose the same unit price for all quantity ranges, it should have clearly stated so in its proposal. Its failure to do so was identified as a weakness. AR, Tab 9, SSEB Report, at 64.

Beretta concedes that it did not propose range/stepladder pricing as required by the solicitation. Protest at 35. The firm argues that the single low unit price it proposed for each line item was sufficient and that it did not need to provide range/stepladder pricing. Id. In our view, Beretta's failure to explain why it was not adhering to the RFP requirement reasonably led to the agency's finding of a weakness. The firm's silence left the agency no way to be sure whether Beretta's omission was intentional. Moreover, in view of the agency's expectation that economies of scale could be achieved, Beretta's low unit pricing for the maximum quantity of rifles gave rise to a concern that the firm's price would be unreasonably low if substantially lower quantities were ordered.<sup>10</sup> See Contracting Officer's Statement at 25-26.

The agency was also concerned that Beretta's proposal stated that the firm chose to pass on the pricing for ammunition and accessories without markup, but included a condition that if the government used the contract to buy **[DELETED]** without

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<sup>10</sup> As noted above, the RFP expressly stated that prices considered "excessively low" might be grounds for eliminating proposals from consideration for award. Beretta concedes that its prices were "extremely low." Protest at 35.

purchasing a “comparable quantity” of [DELETED], the firm reserved the right to charge a markup of [DELETED] percent on such purchases. The agency found that this pricing contingency meant that the price was not firm for a portion of the proposal, and that the full impact of the risk that pricing for [DELETED] might rise was not clear because Beretta did not define “comparable quantity” and did not define what it meant by “[DELETED].” AR, Tab 9, SSEB Report, at 60, 64. The agency adjusted Beretta’s total evaluated price upward, but recognized that the potential impact of the contingency might be larger. This pricing contingency was identified as a significant weakness and a basis for finding Beretta’s price unreasonable.

Beretta does not contest that its proposal included this pricing contingency. The firm argues that this pricing approach should have been seen as advantageous, but does not meaningfully challenge the agency’s conclusion that its ammunition and accessories prices were not fixed prices. Once again, we have no basis to question the evaluation. As the agency explains, since the pricing for undefined items could fluctuate depending on whether the agency purchased a disproportionate quantity of rifles, the agency had reasonable doubts about Beretta’s ability or willingness to supply products at fixed prices.<sup>11</sup>

#### Competitive Range Determination

Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or those that the agency otherwise concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); D&J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2000 CPD ¶ 7 at 6-7. It is the offeror’s obligation to include sufficient information in its proposal for the agency to determine whether the proposal will meet its needs; offerors who fail to do so risk rejection of their proposals. Hamilton Sundstrand Power Sys., B-298757, Dec. 8, 2006, 2006 CPD ¶ 194 at 6.

Our review of the record shows that the evaluation of Beretta’s proposal was reasonable and that there is no evidence of unequal treatment. In light of the evaluation record, including the significant qualitative differences between the

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<sup>11</sup> Beretta makes various allegations with respect to the evaluation of Remington’s price proposals; our review of the allegations and the record shows that any differing treatment of the proposals was grounded in differences in the proposals.

Remington proposals and Beretta's, we have no basis to question the contracting officer's decision to exclude Beretta's proposal from the competitive range.

The protest is denied.

Susan A. Poling  
General Counsel