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

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## Decision

**Matter of:** United Concordia Companies, Inc.

**File:** B-404740

**Date:** April 27, 2011

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### DIGEST

1. Agency reasonably considered proposal risk in connection with its evaluation of the offerors' technical proposals, and reasonably determined that awardee's larger existing provider network was superior to the protester's smaller provider network.
2. Agency's determinations regarding the relevance of offerors' prior contracts were reasonable where the agency's consideration of the magnitude and scope of the services previously performed included consideration of a numerical claims processing threshold to distinguish between prior contracts considered to be relevant and those that were considered to be less relevant.
3. Agency was not required to perform a realism assessment regarding the components of the awardee's proposed price where the solicitation provided for award of a fixed price contract and stated that offerors' proposed prices would be evaluated to determine whether they were fair and reasonable.

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## DECISION

United Concordia Companies, Inc. (UCCI) of Harrisburg, Pennsylvania, protests the award of a contract by the Department of Defense, TRICARE Management Activity, to Metropolitan Life Insurance Company (MLIC) in connection with the TRICARE Dental Program (TDP) pursuant to request for proposals (RFP) No. H94002-10-R-0001. UCCI challenges various aspects of the agency's source selection decision, including the agency's evaluation of proposals under the technical, past performance, and price evaluation factors.

We deny the protest.

## BACKGROUND

The solicitation at issue here was published in December 2009, and contemplated award of a fixed price incentive contract to provide a comprehensive worldwide dental healthcare insurance program for eligible family members of military personnel for a 12-month base period,<sup>1</sup> and five 1-year option periods. RFP at 32, 60.<sup>2</sup> The contractor will be required to establish and maintain a dental care provider network for locations within the continental United States; maintain an online non-network dentist directory for specified locations outside the continental United States; and provide various administrative, customer support, and educational services. Contracting Officer's Statement at 2. UCCI is the incumbent contractor for these requirements.

The solicitation provided for award on a best value basis and established three evaluation factors, listed in descending order of importance: technical, past performance, and price. Offerors were advised that if two proposals were determined essentially equal under the non-price factors, price could become the determining factor for award. RFP at 111-12.

Under the technical evaluation factor, the solicitation established three equally weighted subfactors: network development/maintenance; beneficiary/provider services and satisfaction; and management approach. *Id.* at 111-12. The solicitation provided that, in addition to the evaluation of technical merit, proposals would be evaluated for proposal risk under each of the technical subfactors.<sup>3</sup> *Id.* at 112.

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<sup>1</sup> The solicitation also refers to the base period as the transition-in period. RFP at 60.

<sup>2</sup> The page numbers referenced in this decision refer to the page numbering the agency created in producing its report responding to UCCI's protest.

<sup>3</sup> In evaluating proposal risk, the agency assigned ratings of low, moderate or high risk. The ratings corresponded to the agency's judgments that little doubt, some

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With regard to past performance, offerors were directed to identify the three largest prior contracts they considered to be relevant to this solicitation. Id. at 106. The solicitation provided that the agency would make relevancy assessments for each of the identified contracts based on the scope and magnitude of services that had been performed,<sup>4</sup> and would also assign performance ratings for each contract.<sup>5</sup> Id. at 113. Based on those relevancy assessments and performance ratings, the solicitation provided that the agency would assign each offeror's proposal an overall performance confidence rating.<sup>6</sup> Id.

With regard to price, the solicitation provided that each offeror's price would be evaluated to determine whether it was fair and reasonable, further providing that "[t]he techniques and procedures described under FAR [Federal Acquisition Regulation] 15.404-1(b) Price Analysis will be the primary means of assessing price reasonableness." Id. at 114.

In February 2010, initial proposals were submitted by five offerors, including UCCI and MLIC. Thereafter, the agency evaluated the proposals<sup>7</sup> and conducted discussions. In October 2010, final revised proposals were submitted and thereafter

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doubt, or significant doubt existed with regard to whether the offeror will be able to execute the contract requirements using the methods and/or techniques proposed. Agency Report (AR), Tab 5, Source Selection Evaluation Guide (SSEG), at 14. In evaluating technical merit, the agency assigned adjectival ratings of exceptional, acceptable, marginal, or unacceptable. These ratings corresponded to agency judgments regarding the degree to which proposals met or exceeded solicitation requirements in a manner beneficial to the government. Id. at 12.

<sup>4</sup> For each identified contract, the agency made relevancy assessments of relevant, somewhat relevant, or not relevant. AR, Tab 5, SSEG, at 16.

<sup>5</sup> For each identified contract, the agency assigned performance ratings of exceptional, very good, satisfactory, marginal, or unsatisfactory. AR, Tab 5, SSEG, at 17.

<sup>6</sup> In evaluating overall confidence, the agency assigned ratings of high confidence, confidence, neutral, little confidence, or no confidence. AR, Tab 5, SSEG, at 21. Of relevance to this protest, an overall rating of high confidence was defined as, "virtually no doubt exists that the offeror will successfully perform the required effort." Id.

<sup>7</sup> The proposals were evaluated by a source selection evaluation board (SSEB) made up of three teams: the technical evaluation team (TET), the performance assessment group (PAG), and the price team (PT). AR, Tab 8, SSEB Report, at 1.

evaluated. Following the final evaluation, the SSEB chairman prepared a report which, among other things, summarized UCCI's and MLIC's ratings as follows:

	<b>UCCI</b>	<b>MLIC</b>
<b>Technical Approach</b>		
<b>Network Development/ Maintenance</b>	Exceptional/ Low Proposal Risk	Exceptional/ Low Proposal Risk
<b>Provider/Beneficiary Services and Satisfaction</b>	Exceptional/ Low Proposal Risk	Exceptional/ Low Proposal Risk
<b>Management Approach</b>	Exceptional/ Low Proposal Risk	Exceptional/ Low Proposal Risk
<b>Past Performance</b>	High Confidence	High Confidence
<b>Price</b>	\$3.225 Billion	\$3.091 Billion

AR, Tab 8, SSEB Report, at 51.

The SSEB report discussed the bases for the various ratings, addressing particular aspects of each offeror's proposal under each of the evaluation factors and subfactors. With regard to the first technical subfactor, network development/maintenance, the SSEB concluded that "MLIC [is] ranked slightly ahead of UCCI . . . based on [deleted]." *Id.* at 49. With regard to the second technical subfactor, provider/beneficiary services and satisfaction, the SSEB concluded that "UCCI is slightly ahead of MLIC based on [deleted]." *Id.* With regard to the third technical subfactor, management approach, the SSEB concluded that the proposals were essentially equal based on the offerors' comparable quality control programs and similar strengths. *Id.* at 50.

With regard to past performance, the SSEB report discussed the underlying bases for the agency's relevancy assessments and performance ratings, concluding that high confidence ratings for both offerors' proposals were appropriate, noting that "there is virtually no doubt of their ability to perform." *Id.* With regard to price, the SSEB noted that five proposals had been submitted; that all five offerors were determined to be financially viable; and that four of the five proposed prices, including MLIC's and UCCI's, were within a reasonable range of one another and the independent government cost estimate (IGCE).<sup>8</sup> Accordingly, the SSEB concluded that adequate price competition had been obtained and that the prices submitted by MLIC and UCCI were fair and reasonable. *Id.* at 41. Overall, the SSEB concluded that the proposals submitted by UCCI and MLIC were essentially equal with regard to the non-price evaluation factors and that MLIC had proposed the lower price; accordingly, the SSEB recommended award to MLIC. *Id.* at 52.

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<sup>8</sup> The SSEB noted that there was only a 4.3 percent difference between MLIC's and UCCI's proposed prices. AR, Tab 8, SSEB Report, at 42.

The source selection authority (SSA) thereafter reviewed the procurement record and prepared a source selection decision stating, among other things:

I have reviewed the SSP [source selection plan], solicitation, SSEG, all of the offerors' final proposal revisions, and the evaluation reports from the following sources: SSAC [source selection advisory council], SSEB Chairperson, TET, PAG and PT. . . . I based my source selection decision on an integrated assessment of the evaluation criteria, evaluation reports, and an assessment of which offeror presented the overall best value to the Government.

\* \* \* \* \*

I have determined that the technical proposal by MLIC along with their high confidence past performance rating, and lowest total evaluated price are the best overall value to the Government. Accordingly, I select the proposal by [MLIC] for award.

AR, Tab 6, Source Selection Decision, at 3, 11.

On January 7, 2011, UCCI was notified of MLIC's selection for award. This protest followed.

#### DISCUSSION

UCCI primarily challenges the reasonableness of the agency's determination that UCCI's and MLIC's proposals were equal under the non-price evaluation factors, accusing the agency of having "manufactured and engineered an artificial equivalency."<sup>9</sup> Protest, Jan. 18, 2011, at 2. More specifically, UCCI challenges particular aspects of the agency's evaluation under the technical and past performance factors, and also challenges the agency's price evaluation. As discussed below, we find no merit in UCCI's protest.

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<sup>9</sup> To the extent UCCI's protest asserts bad faith on the part of agency personnel, neither its protest nor the agency's evaluation record provide a scintilla of support for such an attack. To the contrary, the agency's record reveals a comprehensive, objective, and well-documented evaluation.

## Technical Evaluation

In challenging the agency's evaluation under the technical factor, UCCI asserts that the agency failed to properly consider proposal risk and/or various weaknesses associated with MLIC's proposal.<sup>10</sup> Among other things, UCCI complains that the agency did not properly consider UCCI's incumbent advantage, MLIC's ability to meet certain certification requirements, and MLIC's contract performance outside the United States.

In reviewing a protest challenging the agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Smiths Detection, Inc.; Amer. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's evaluation judgments does not render those judgments unreasonable. Smiths Detection, Inc.; Amer. Sci. and Eng'g, Inc., supra.

In challenging the agency's assessments of equal ratings for UCCI's and MLIC's proposals under the non-price factors, UCCI makes various arguments reflecting its view that MLIC's status as a non-incumbent offeror, as compared to UCCI's status as the incumbent contractor, required the agency to assess weaknesses and higher proposal risk to MLIC's proposal.<sup>11</sup> For example, with regard to the evaluation of the offerors' respective provider networks, UCCI maintains that "a change in contractors may require beneficiaries to change [dental care] providers." Protest, Jan. 18, 2011, at 40. UCCI also asserts that "UCCI, the proven incumbent[,] faced no transition (phase-in) risk," while MLIC "faces an uphill battle in developing its network during the transition." Id. at 41. On these bases, UCCI asserts that such potential provider changes "should have translated into evaluated risk." Id. Similarly, UCCI asserts that, while MLIC proposed "to deliver in the future, a functional network which would meet all of the Solicitation requirements, UCCI's TDP network is already in place."<sup>12</sup> Id. at 32.

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<sup>10</sup> As noted above, the solicitation provided that, in addition to evaluation of technical merit, the agency would assign proposal risk ratings under the technical evaluation subfactors. RFP at 112.

<sup>11</sup> Among other things, UCCI's protest complains: "Inexplicably, the Agency simply ignored UCCI's incumbent advantage." Protest, Jan. 18, 2011, at 32.

<sup>12</sup> Throughout its pursuit of this protest, UCCI repeatedly recites variations of its theme that UCCI's incumbency and its "in place" provider network was a mandatory  
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In responding to UCCI's various submissions reflecting UCCI's view of a mandatory incumbent advantage, the agency first notes that the solicitation's evaluation criteria did not contemplate the assignment of evaluation credit based on UCCI's status as the incumbent contractor. To the contrary, the agency maintains that the agency consciously drafted its solicitation to create a level playing field upon which all competitors in the dental insurance industry could fairly compete. Agency's First Memorandum of Law, Feb. 14, 2011, at 1.

The agency further notes that UCCI's assertions regarding the status of MLIC's provider network are factually, and fundamentally, inaccurate. In contrast to UCCI's assertion that "MLIC is merely promising to build and develop a network," the record shows that MLIC already has an existing, established dental care provider network and, further, that MLIC's existing network is larger than UCCI's own incumbent network. See SSEB Report at 2, 10 (stating, "MLIC proposes to meet all network accessibility standards using their existing network, with over [deleted] unique dentists and over [deleted] access points," and "UCCI's existing provider network of over [deleted] providers . . . in [deleted] locations will meet the requirements of this solicitation").

Here, we have reviewed the record, including the solicitation's evaluation criteria, and agree with the agency's assertion that the solicitation did not contemplate the assignment of evaluation credit based on UCCI's status as the incumbent. Similarly, under the provisions of this solicitation, there was no basis to, in effect, penalize MLIC for its status as a non-incumbent offeror. Further, we find no basis to question the agency's determination that MLIC's proposal of a larger, existing network of dental care providers was superior to UCCI's proposal of a smaller, existing network. UCCI's various arguments reflecting ongoing disagreement with the agency's judgments regarding proposal risk and/or technical merit provide no basis for sustaining its protest.<sup>13</sup>

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discriminator that the agency was required to apply in UCCI's favor. For example, following receipt of the agency report, UCCI's comments/supplemental protest filing complains that the agency's SSEB report failed to specifically acknowledge that "UCCI is a 14-year incumbent, proposing to use an existing network, while MLIC is merely promising to build and develop a network." UCCI Comments/Supp. Protest, Feb. 24, 2011, at 13-14. Similarly, following receipt of the agency's response to its supplemental protest, UCCI again asserts that "UCCI's TDP network exists as proposed whereas MLIC must develop its TDP network." UCCI Supp. Comments, Mar. 28, 2011, at 4.

<sup>13</sup> In addition to the specific assertions discussed above and elsewhere in this decision, UCCI's various protest submissions raise a variety of arguments challenging the agency's assessment of proposal risk and/or technical merit. Among  
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In a variation of UCCI's theme that it was entitled to an incumbent advantage, UCCI maintains that the agency improperly failed to consider the risks and weaknesses in MLIC's proposal related to the requirement that, during the 12-month base/transition period, MLIC is expected to obtain certification and accreditation under the Department of Defense (DOD) Information Assurance Certification and Accreditation Process (DIACAP).<sup>14</sup> Protest, Jan. 18, 2011, at 35. In this regard, UCCI refers to section C.8 of the solicitation's statement of work, which states:

The Contractor shall acquire, develop and maintain the [DIACAP] documentation to ensure both initial and continued DIACAP Certification and Accreditation (C&A) for all Contractor/subcontractor systems/networks that store, process or access Government sensitive information (SI) in accordance with TSM [TRICARE Systems Manual], Chapter 1. . . . DIACAP certification generally takes 6 to 9 months to achieve.

RFP at 55-56.

Although MLIC addressed its approach to obtaining DIACAP certification in both its technical and price proposals, stating that it expects to obtain certification within [deleted] months after contract award, AR, Tab 11, MLIC Technical Proposal, at 152; AR, Tab 13, MLIC Price Proposal, at 518-35, UCCI protests that the agency should have concluded that MLIC will fail to achieve timely certification.<sup>15</sup> UCCI

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other things, UCCI asserts that the agency should have distinguished between UCCI's and MLIC's proposals on the basis of the relative experience of their proposed staff, [deleted], and what UCCI characterizes as its [deleted]. UCCI also complains that the agency's evaluation failed to recognize various technical "strengths" in its proposal. UCCI Comments/Supp. Protest, Feb. 24, 2011 at 24-74. We have considered all of these various allegations, and find that they provide no basis for sustaining the protest.

<sup>14</sup> DIACAP is the standard DOD approach to ensuring that information systems operate at an acceptable level of risk. DIACAP standardizes and consolidates activities leading to the security certification and accreditation of Information Technology (IT), including automated information systems, networks, and sites in the DOD. The primary purpose of DIACAP is to protect and secure information systems that make up the Defense Information Infrastructure. See [www.dodea.edu/offices/it/dodea.cfm?cID=ditscap&sid=3](http://www.dodea.edu/offices/it/dodea.cfm?cID=ditscap&sid=3).

<sup>15</sup> Among other things, UCCI specifically asserts: "The agency should have concluded that MLIC cannot obtain a DIACAP IATO [interim authority to operate] or ATO [authority to operate] within the required timeframe." UCCI Comments/Supp. Protest, Feb. 24, 2011, at 133.



Comments/Supp. Protest, Feb. 24, 2011, at 124-47. More specifically, UCCI refers to its own prior struggles in obtaining DIACAP certification,<sup>16</sup> speculates that MLIC will similarly struggle and fail, and concludes that such projected failure will disrupt contract performance. *Id.* Echoing its arguments regarding a perceived incumbent advantage, UCCI summarizes its DIACAP arguments, stating, “UCCI presently complies with the DIACAP requirement and MLIC does not,” maintaining that “[t]his was a material discriminator in favor of UCCI that the Agency unreasonably overlooked.” *Id.* at 124-25.

In response to the protest, the agency explains, and the record shows, that MLIC’s proposal, in fact, devoted a significant amount of detail, in both its technical and cost proposals, to meeting the DIACAP requirements. In this regard, its proposal stated that MLIC had retained a highly qualified and experienced subcontractor, [deleted], to assist in its efforts,<sup>17</sup> and the proposal described various activities that had already been performed in preparing to meet those requirements. AR, Tab 11, MLIC Technical Proposal, at 151-52. More significantly, MLIC’s proposal contained the statement of work from its contract with [deleted], providing details about the steps to be taken in meeting the DIACAP requirements. AR, Tab 13, MLIC Price Proposal, at 518-35. Finally, MLIC’s proposal provided information regarding the costs associated with the proposed DIACAP compliance. *Id.* at 420-39.

The agency also states that it did not view compliance with the DIACAP requirements as reflecting high risk for either offeror;<sup>18</sup> accordingly, neither section L

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<sup>16</sup> UCCI states, “UCCI’s first certification took [deleted] months, its second a total of [deleted] months, and its third a total of [deleted] months.” UCCI Comments/Supp. Protest, Feb. 24, 2011, at 142-43. Since the solicitation, as quoted above, clearly provides that “DIACAP certification generally takes 6 to 9 months” (a solicitation provision that UCCI did not contest), it appears that UCCI’s prior experiences were unusual.

<sup>17</sup> In addition to providing information regarding its proposed approach, MLIC’s proposal provided the agency with information regarding the specific DIACAP experience of [deleted], stating: [deleted]. AR, Tab 11, MLIC Technical Proposal, at 152.

<sup>18</sup> As the agency notes, the solicitation provides that the DIACAP requirements are continuous and ongoing throughout the contract performance period. *See* RFP at 55. Thus, notwithstanding UCCI’s status as the incumbent contractor, the solicitation required UCCI to comply with various ongoing DIACAP certification requirements. Indeed, UCCI, itself, acknowledges that the DIACAP process “is continuous,” noting that the process “begins anew with an Annual Review and an ATO [authorization to operate] assessment every three years.” UCCI Comments/Supp. Protest, exh. 5, Declaration of UCCI Vice President ¶ 8. Accordingly, if the solicitation required risk assessments regarding an offeror’s proposed compliance with the DIACAP

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nor section M of the solicitation mandated submission of specific information, nor provided for specific evaluation of this matter. In this context, the agency states that it properly considered MLIC's proposal, and its commitment of resources to this endeavor, as a matter within the scope of the contracting officer's affirmative responsibility determination. The agency further maintains that whether MLIC succeeds in its efforts is a matter of contract administration beyond the scope of this Office's bid protest jurisdiction. Agency's Second Memorandum of Law, Mar. 21, 2011, at 55, 61-63.

Based on our review of the record, including the specific information provided in MLIC's proposal regarding compliance with the DIACAP requirements, we find no basis to question the agency's determination that MLIC's proposed DIACAP compliance did not require the agency to assess increased proposal risk to MLIC's proposal under the technical evaluation factor. Further, whether MLIC achieves compliance as it has proposed constitutes a matter of contract administration, which is not for our consideration. 4 C.F.R. § 21.5(a) (2010). UCCI's assertions regarding MLIC's proposed DIACAP compliance provide no basis for sustaining the protest.

Next, in yet another challenge to the agency's technical evaluation, UCCI notes that MLIC's proposal contemplated the performance of certain contract requirements outside the United States.<sup>19</sup> UCCI complains that MLIC did not submit DD Form 2139, Report of Contract Performance Outside the United States, and that the omission of this form constituted a material deficiency in MLIC's proposal. UCCI Comments/Supp. Protest, Feb. 24, 2011, at 145-46. We disagree.

Here, the solicitation incorporated Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7003. RFP at 85. That clause provides that an offeror must submit, with its offer, a report of intended performance outside the United States. The clause further states:

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requirements, as UCCI asserts, UCCI's own proposal should have similarly addressed how it intended to meet those requirements--particularly in light of its prior experiences with DIACAP certification. However, the agency states--and UCCI does not dispute--that UCCI's own proposal contained virtually no information regarding compliance with the ongoing DIACAP requirements. See Agency's Second Memorandum of Law, Mar. 21, 2011, at 59-61. The agency notes that UCCI's failure to submit such information is inconsistent with its protest assertions that proposal risk for DIACAP compliance was to be assessed under the technical evaluation factor. *Id.* at 60.

<sup>19</sup> MLIC's proposal states that certain IT and call center functions will be performed in [deleted]. AR, Tab 13, MLIC Price Proposal, at 326, 574-90.

The offeror shall submit the report using--

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

DFARS 252.225-7003.

As noted above, the applicable DFARS clause expressly authorizes offerors to provide the information required by DD Form 2139 in an alternative format. In somewhat similar situations, our Office has declined to elevate form over substance in the context of requirements to submit information. See, e.g., Jettison Contractors, Inc., B-242792, June 5, 1991, 91-1 CPD ¶ 532 at 2 (failure to include standard representations/certifications and to provide lobbying activity information did not render bid nonresponsive); Graves Constr., Inc., B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3 (protester not prejudiced by the agency's failure to verify whether the awardee had registered in the central contractor registration database prior to award).

Here, the record shows that MLIC's proposal did, in fact, disclose both the specific functions that it intends to perform outside the United States, as well as the costs associated with that performance. AR, Tab 13, MLIC Price Proposal, at 326, 574-90. While UCCI speculates that MLIC's disclosure may not be comprehensive, UCCI Comments on Supp. AR, Mar. 28, 2011, at 37, UCCI has not identified any undisclosed portion of the contract requirements that are likely to be performed overseas. In light of MLIC's disclosure of the substantive information sought by DD Form 2139, and considering the nature of the services to be provided under this contract, we reject UCCI's assertion that MLIC's failure to submit DD Form 2139 constitutes a material deficiency. UCCI's protest in this regard is without merit.<sup>20</sup>

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<sup>20</sup> UCCI's protest alternatively argues that MLIC's proposed performance outside the United States created a "grave failure of analysis" by the agency. UCCI Comments/Supp. Protest, Feb. 24, 2011, at 146. We have considered this alternative argument and conclude that it provides no basis for sustaining the protest.

## Past Performance Evaluation

Next, UCCI challenges the agency's evaluation of MLIC's and UCCI's proposals under the past performance factor, arguing that the agency improperly found the proposals to be equal under this factor. UCCI primarily complains that the agency's assessments regarding the relevance of the offerors' prior contracts were unreasonable, arguing that its own prior contracts—particularly the incumbent contract—should have been considered more relevant and, thus, given greater weight. UCCI Comments/Supp. Protest, Feb. 24, 2011, at 77-105. Among other things, UCCI challenges the agency's reliance on the number of claims processed under prior contracts as a benchmark for distinguishing between contracts that were considered relevant and those that were considered only somewhat relevant, arguing that the agency improperly based its relevancy assessments "solely" on this criterion. *Id.* at 84; UCCI Comments on Supp. AR, Mar. 28, 2011 at 6-15. In summary, UCCI asserts that the agency's relevancy assessments of the offerors' prior contracts employed an "arbitrary, mechanical scheme" due to the agency's "myopic focus on the number of claims processed [under prior contracts]." UCCI Comments/Supp. Protest, Feb. 24, 2011, 77, 83.

The evaluation of past performance, including the agency's determination of the relevance and scope of an offeror's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4. A protester's mere disagreement with the agency's evaluation does not provide a basis for sustaining a protest. Command Enters., Inc., *supra*.

As discussed above, offerors were directed to identify three contracts for the agency to review for purposes of making relevancy assessments and performance ratings; these relevancy assessments and performance ratings led to the agency's assignment of overall performance confidence ratings. The solicitation advised offerors that the agency would make relevancy assessments based on the scope and magnitude of the prior contracts. RFP at 113.

Here, the agency's contemporaneous evaluation record establishes that, in making its relevancy assessments, the agency considered a significant amount of information regarding the offerors' prior contracts, and that this information related to both the scope and the magnitude of the services that had been performed. Among other things, in assessing the magnitude of similar claims processing contracts, the agency considered whether the number of claims processed was greater than, or less than, 800,000, concluding that an otherwise relevant contract that involved fewer than

800,000 claims would be considered less relevant.<sup>21</sup> AR, Tab 5, SSEG, at 16. The following summarizes a portion of the information the agency considered, and shows the ratings assigned:

**MLIC’s Prior Contracts**

	<b>Covered Lives</b>	<b>Annual Dollar Value</b>	<b>Annual Claims Volume</b>	<b>Relevancy Assessment</b>	<b>Performance Rating</b>
<b>FEDVIP</b> <sup>22</sup>	[deleted]	[deleted]	[deleted]	Relevant	Exceptional
<b>IBM</b> <sup>23</sup>	[deleted]	[deleted]	[deleted]	Relevant	Very Good
<b>GE</b> <sup>24</sup>	[deleted]	[deleted]	[deleted]	Somewhat Relevant	Exceptional

AR, Tab 35, PAG Report for MLIC, at 1, 2, 5, 8.

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<sup>21</sup> The agency states that the 800,000 claims threshold constitutes approximately 25 percent of the effort anticipated under the TDP contract. Agency’s Second Memorandum of Law, Mar. 21, 2011, at 41.

<sup>22</sup> Federal Employee Dental and Vision Insurance Program. The agency describes this contract as “a nationwide, voluntary, fully insured, comprehensive dental health plan” that “provides supplemental dental coverage to eligible beneficiaries of the Federal Government and their dependents.” The agency further states that the contract “is similar in scope (e.g. claims processing operations, network access/management, customer service requirements, enrollment processing, program oversight, and reporting activities) to the TDP solicitation.” AR, Tab 35, PAG Report for MLIC, at 2.

<sup>23</sup> International Business Machines Corporation. The agency describes this contract as “IBM provides a self-insured, multi-tiered . . . dental plan to both active and retired employees as well as their eligible dependents.” The agency further describes the scope of services provided under this contract as “development and maintenance of networks, customer service call centers, claim adjudication systems, operations management and account management activities which are similar to the current TDP solicitation.” AR, Tab 35, PAG Report for MLIC, at 5-6.

<sup>24</sup> General Electric Company. The agency describes this contract as “GE provides a self-insured, two-tiered . . . dental health plan to employees and their dependents.” The agency further describes the scope of services provided under this contract as “developing and maintaining networks, customer service call centers, claim adjudication systems, operations management, and account management activities similar to the current TDP solicitation.” AR, Tab 35, PAG Report for MLIC, at 8.

## UCCI's Prior Contracts

	<b>Covered Lives</b>	<b>Annual Dollar Value</b>	<b>Annual Claims Volume</b>	<b>Relevancy Assessment</b>	<b>Performance Rating</b>
<b>TDP</b> <sup>25</sup>	[deleted]	[deleted]	[deleted]	Relevant	Exceptional
<b>FEDVIP</b> <sup>26</sup>	[deleted]	[deleted]	[deleted]	Somewhat Relevant	Very Good
<b>ADDP</b> <sup>27</sup>	[deleted]	[deleted]	[deleted]	Somewhat Relevant	Very Good

AR, Tab 36, PAG Report for UCCI, at 1, 2, 4, 6.

We have reviewed the agency's entire past performance evaluation record, a portion of which is summarized above, and we reject UCCI's assertions that the agency relied "solely" on the 800,000 claim criterion for its relevancy assessments, or that the agency employed an "arbitrary, mechanical scheme." To the contrary, the record is clear that the agency considered various differing informational aspects regarding the magnitude of the prior contracts, including, as shown above, the number of "covered lives," the annual dollar value, and the annual claims volume of each contract.<sup>28</sup> In this context, we find nothing unreasonable in the agency's establishment of an 800,000 claim threshold for distinguishing between relevant and

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<sup>25</sup> TRICARE Dental Program. This is the incumbent contract, which the agency describes as "essentially the same scope of services . . . and magnitude of effort as that which is required under the TDP solicitation." AR, Tab 36, PAG Report for UCCI, at 2.

<sup>26</sup> This is UCCI's contract under the same program described above in connection with MLIC's FEDVIP contract.

<sup>27</sup> Active Duty Dental Program. The agency describes this contract as "a benefits administration program for active duty uniformed service members . . . [which] services the active duty member in a manner similar in scope to the requirement of the TDP solicitation." The agency also notes that "the contract has not been in effect long enough to establish practices under this contract." AR, Tab 36, PAG Report for UCCI, at 6-7.

<sup>28</sup> As noted above, the agency's relevancy determinations also reflected its consideration of the nature and scope of the services that were performed under the prior contracts.

less relevant contracts. UCCI's protest challenging the agency's past performance evaluation is without merit.<sup>29</sup>

### Price Evaluation

Finally, UCCI challenges the agency's price evaluation, arguing that certain components of MLIC's lower price—for example, [deleted]—are unrealistic. UCCI Comments/Supp. Protest, Feb. 24, 2011, at 108-24. In this regard, UCCI argues that the agency was required to perform a realism analysis regarding the various components of MLIC's proposed price. For example, UCCI asserts that the agency was required to assess the [deleted], on which MLIC's price is based, to determine if those [deleted] are “sustainable” and will [deleted]. *Id.* at 118. UCCI concludes that, in the absence of such analysis, “the [a]gency's confidence in MLIC's ability to build the network it proposed was unwarranted.”<sup>30</sup> *Id.*

Before awarding a fixed-price contract, an agency is required to determine whether the price offered is fair and reasonable. FAR § 15.402(a). An agency's concern in making this determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. *Sterling Servs., Inc.*, B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Although an agency may choose to provide for a price realism analysis in connection with a solicitation for a fixed-price contract, there is no requirement that it do so. *See, e.g., CSE Constr.*, B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4.

Here, it is clear that the solicitation did not provide for a realism assessment. As noted above, the solicitation stated that each offeror's price would be evaluated to determine whether it was fair and reasonable, further advising offerors that “[t]he techniques and procedures described under FAR 15.404-1(b) Price Analysis will be the primary means of assessing price reasonableness.” RFP at 114.

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<sup>29</sup> UCCI also challenges the agency's past performance evaluation on the basis that the agency did not obtain past performance information regarding an MLIC subcontractor that will be performing mail handling and data entry services. UCCI Comments/Supp. Protest, Feb. 24, 2011, at 105-08. We have considered UCCI's arguments regarding this matter, including its assertion that past performance information was required because the subcontractor will be performing services that should be characterized as claims processing, and find no basis to sustain the protest.

<sup>30</sup> As discussed above, to the extent UCCI's protest is based on an assertion that MLIC does not currently have an existing provider network, the assertions are factually inaccurate.

In this regard, the record also shows that, in evaluating offerors' prices, the agency performed an extensive comparison of the offerors' proposed prices and made a reasonable determination that proposed prices were fair and reasonable. In performing its evaluation, the agency compared the offerors' proposed prices to each other by CLIN, by contract period, and by total evaluated price. AR, Tab 37 PT Report, at 6-21. The record further shows that the agency compared the offerors' total evaluated prices to the price of the current contract, as well as to the agency's IGCE. *Id.* at 9, 11. On this record, we find no merit to UCCI's protest challenging the agency' price evaluation.<sup>31</sup>

The protest is denied.<sup>32</sup>

Lynn H. Gibson  
General Counsel

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<sup>31</sup> In challenging the agency's price evaluation, UCCI also complains that "the Agency simply accepted MLIC's proposed price at face value [and] never adjusted it." Protest at 42. As noted above, the solicitation stated that the agency would award a fixed price contract. RFP at 32. In evaluating an offeror's fixed price proposal, an agency is not permitted to adjust an offeror's proposed price. FAR § 15.404-1(d)(3); All Phase Environmental, Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 8. To the extent UCCI's protest is based on the assertion that the agency should have adjusted MLIC's price, the protest fails to state a valid basis. *Id.*

<sup>32</sup> In its various protest submissions, UCCI has raised arguments in addition to, or that are variations of, the arguments discussed above. We have considered all of UCCI's arguments and find no basis to sustain its protest.