



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Caterpillar Inc.

File: B-280362; B-280362.2

Date: September 23, 1998

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C. Stanley Dees, Esq., Thomas C. Papson, Esq., and Richard P. Castiglia, Esq., McKenna & Cuneo, for Deere & Company, the intervenor.

Susan M. Lewandowski, Esq., and Vera Meza, Esq., Department of the Army, for the agency.

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DIGEST

Protest that the contracting agency unreasonably evaluated the protester's and awardee's competing proposals under certain technical evaluation factors is denied where the record shows that the evaluation was reasonable.

DECISION

Caterpillar Inc. protests an award to Deere & Company under request for proposals (RFP) No. DAAE07-97-R-X062, issued by the Department of the Army, Tank-automotive and Armaments Command (TACOM), for an estimated quantity of 135 hydraulic excavators (HYEX) of three types.¹

We deny the protest.

The RFP, issued on December 24, 1997, provided for the award of a fixed-price requirements contract for a 5-year period. The acquisition sought commercially available equipment with only minor military modifications and using existing commercial technical manuals to the maximum practical extent. Section M.1, at page 90 of the RFP, stated that award would be made to the offeror whose proposal represents the best value to the government under the stated source selection

¹HYEX Type I is used for general excavation, digging, trenching and lifting operations. A HYEX Type II is a Type I machine with a rock drill attachment used in quarry operations. A Type III is a larger, heavier machine also used in quarry operations. Contracting Officer's Statement ¶ 4, at 1.

criteria. The RFP in section M.2 provided for a two-phased evaluation under which proposals would initially be evaluated under identified pass/fail requirements and proposals that passed those requirements would be evaluated under the following areas listed in descending order of importance:

1. Logistics
2. Technical
3. Price
4. Past Performance/Small Business Participation

The RFP stated that the non-price factors are significantly more important than price, but reserved the right to award on the basis of price where two or more proposals are considered equal under the non-price areas, a superior proposal is unaffordable, or the advantages of higher-priced, higher-rated proposals are not considered to be worth the price premium. RFP § M.2(c), at 91.

The evaluation areas were sub-divided into elements and factors, and their relative weights were stated in the RFP §§ M.3-M.6, at 91-94, as follows:

Area 1: Logistics.

Element 1: Commercial Logistics Support

Factor 1: Support

Factor 2: Warranty

(Relative weight of above factors: "Support is by far the most important factor and is significantly more important than . . . Warranty.")

Element 2: Manuals

Element 3: Unique Tools

(Relative weight of above elements: Element 1 is approximately as important as the other two elements combined, and is more important than Element 2, which is significantly more important than Element 3.)

Area 2: Technical

Element 1: Type I/II Bucket and Stick Force

Element 2: Type III Bucket and Stick Force

Element 3: Rock Drill Integration

Element 4: Maintainability

(Relative weight of above elements: Element 1 is significantly more important than Element 2, which is more important than Element 3, which is more important than Element 4.)

Area 3: Price

Area 4: Past Performance/Small Business Participation

Element 1: Past Performance

Element 2: Small Business Participation

(Relative weight of above elements: Element 1 is significantly more important than Element 2.)

Detailed proposal preparation instructions were provided that informed offerors that proposals were to be divided into a written proposal and an oral presentation. RFP § L.1, at 81. The instructions addressed the information for each of the stated evaluation areas, elements and factors that should be included in a proposal, and whether such information should be included in the written proposal or the oral presentation. RFP §§ L.2-L.7, at 81-87.

The RFP at 78-79 included Federal Acquisition Regulation (FAR) § 52.212-1 (June 1997), "Instruction to Offerors--Commercial Items", which states in pertinent part:

(g) . . . The government intends to evaluate offers and award a contract without discussions with [offerors]. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

Caterpillar and Deere submitted written proposals generally offering commercial equipment, manuals, and warranties by the March 26, 1998 closing date for receipt of proposals. Caterpillar provided its oral presentation on April 21, and Deere provided its presentation on April 23.

Due to the similarity of requirements and schedules between the HYEX solicitation and another solicitation for vibratory rollers, a single source selection evaluation board (SSEB) was assembled to evaluate proposals received under both RFPs. These two procurements had nearly identical logistics requirements and the evaluation criteria for the logistics and past performance areas were identical. Evaluation of proposals under the vibratory roller procurement was completed before the HYEX evaluations were completed. The contract for vibratory rollers was awarded to Caterpillar. On May 6, TACOM debriefed Caterpillar on the agency's evaluation of Caterpillar's vibratory roller proposal. Although Caterpillar had been awarded the contract, the evaluation identified disadvantages for which Caterpillar's proposal was downgraded. Contracting Officer's Statement ¶ 11, at 3.

In particular, the agency evaluated Caterpillar's commercial warranty as "marginal" due to Caterpillar's failure to provide pass-through warranties of items used on Caterpillar's machines, which were manufactured and warranted by other manufacturers. The agency also downgraded the warranty evaluation for language which excluded most of Caterpillar's overseas dealerships from warranty coverage. Caterpillar informed TACOM in the debriefing that Caterpillar disagreed with TACOM's interpretation of the warranty, stating that pass-through warranties were not necessary because Caterpillar provided "bumper to bumper" world-wide warranty coverage, covering all components of its machine regardless of a

component's manufacturer. This warranty was identical to the one Caterpillar submitted with its HYEX proposal. Protest, June 15, 1998, at 5-6.

Subsequent to the vibratory roller award and debriefing, the SSEB completed the HYEX evaluations and on May 27 briefed the source selection authority (SSA). See Agency Report, at Tab 32. As part of this briefing, the SSA was informed of Caterpillar's assertions in the vibratory roller debriefing regarding the asserted coverage of Caterpillar's warranty. The evaluation results are synopsisized as follows:

Evaluation Area/Element/Factor	Caterpillar	Deere
Logistics	Adequate	Good
Commercial Logistics Support	Good	Excellent
Support	Excellent	Excellent
Warranty	Marginal	Excellent
Manuals	Adequate	Good
Unique Tools	Marginal	Marginal
Technical	*** ²	***
Rock Drill Integration	Excellent	Excellent

²The first two elements under the technical area--Type I/II and Type III bucket and stick force--were not adjectivally evaluated but were initially evaluated on a pass/fail basis. Both proposals passed these requirements. The evaluation results, comparing bucket and stick force and operational weight in pounds, were provided to the SSA for consideration in his source selection decision:

Element	Caterpillar	Deere
Type I/II Bucket Force	29,700	34,800
Type I/II Stick Force	25,400	25,700
Type I/II Weight	53,200	54,700
Type III Bucket Force	42,300	41,600
Type III Stick Force	37,400	37,000
Type III Weight	63,300	67,500

Maintainability	Excellent	Excellent
Past Performance/Small Business	Adequate	Excellent
Past Performance	Adequate	Excellent
Small Business Participation	Good	Good
Price	\$25,283,276	\$32,539,197

From his review of the SSEB's evaluation results, the SSA determined that Deere's proposal represented the best value to the government as follows:

Deere was evaluated as better than Caterpillar in the most heavily weighted Area, Logistics. There are significant advantages to Deere's warranty to include extended pass through warranties on major components, particularly the 24 month engine warranty, an item most likely to incur warranty claims. Their manuals are evaluated as better than Caterpillar's. This should result in less time to negotiate the supplementation after award and due to reduced effort, less risk of timely delivery of usable manuals. Under the other items evaluated in Logistics, Caterpillar offered no significant advantages over Deere. In the Technical Area, under the most important Element, Deere's Type I/II machine has a significantly higher bucket force, which will result in improved digging capability under the most extreme conditions. This is particularly significant considering that more than 87.5% of the vehicles to be purchased are Type I/II. There are no significant differences between the offerors for the bucket and stick force for Type III machines, however, the Deere machine is heavier and provides a more stable platform for digging operations. Neither offeror poses any risk with rock drill integration. Notwithstanding the Board's finding that both offerors were Excellent in Maintainability, I find that Deere's vehicles have a higher capability to accurately isolate and diagnose faults. This, together with the ease of access to problem areas, as indicated by their lower maintainability index, has the potential to significantly reduce life cycle costs. Both Caterpillar and Deere earned a Good rating for the Small Business Participation Element in the Past Performance/Small Business Participation Area. However, in Past Performance, the significantly more important Element, Deere is substantially better. Deere's record on recent and relevant contracts tells me that there is a very low performance risk under contract. Both Deere's manuals and hardware have historically been delivered in a timely manner and in accordance with contract requirements, unlike Caterpillar who has often had problems with timely delivery of manuals. Deere's commitment to customer

satisfaction is exemplary. Based on their history of cooperation with their customers, I believe that if any problems should arise during performance of this contract, Deere will be more willing to work with the government to arrive at a mutually satisfactory resolution. Additionally, historical inference is that we can anticipate the smooth and efficient negotiation of the manual supplementation and [direct vendor delivery (DVD) contract].³ Despite the \$7.3 [million] evaluated price difference, I feel that Deere's significant advantages in the other Areas, coupled with the potential cost savings over the life of the vehicles, make Deere's proposal the best value for the government. This is consistent with the evaluation criteria in the RFP, which says that the non-price Areas combined are significantly more important than Price. Therefore, I direct that award of this contract be made to Deere & Co.

Source Selection Authority Decision at 6-7, Agency Report, Tab 33.

On May 29, TACOM awarded the contract to Deere on the basis of initial proposals. Caterpillar requested and received a debriefing from TACOM. This protest followed. The agency has suspended contract performance pending resolution of the protest.

Caterpillar challenges the reasonableness of the agency's evaluation under virtually all of the areas, elements or factors and asserts that the offerors were treated unequally under the agency evaluation and source selection process. Caterpillar also contends that, as a result of the flawed evaluation upon which the selection decision rests, that decision is unreasonable.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Id. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Id.

We have reviewed all of Caterpillar's allegations and the record of the challenged evaluations. From our review, we do not find that the agency acted unreasonably

³Because the expected field life of the HYEX is 15 years, the agency intends to acquire replacement parts for the vehicles under separately awarded DVD contracts. The cover letter of the RFP, at pages 1 through 2, stated that the awardee would be required to submit a proposal for, and negotiate a DVD contract for repair parts over the term of the HYEX contract.

or treated offerors unequally, and find no basis to disturb the agency's evaluation and source selection decision.

The primary focus of Caterpillar's protests is the agency's evaluation of the offerors' warranty provisions. These were evaluated under the least important factor under the most important element of the most important area, Logistics. The RFP § M.3.1.2, at 91, informed offerors:

Your warranty will be evaluated based on length, extent of coverage, and ease of administration.

The RFP § L.3.1.2, at 82, instructed offerors to:

Provide a written copy of your warranty and any applicable pass through warranties. This warranty will be incorporated into the resultant contract. A discussion of the warranty shall not be a part of your oral presentation.

Caterpillar submitted its commercial warranty which provided coverage for 12 months/unlimited hours from the date of delivery. In pertinent part, it stated:

Caterpillar warrants [machines and attachments installed prior to delivery] sold by it and operating within the area specified under "Limitations" to be free from defects in material and workmanship. . . . An additional warranty against breakage is applicable to certain Caterpillar Ground Engaging Tools. An additional warranty against wear is also applicable to certain weld-on landfill compactor plus tips. Refer to the appropriate warranty statement for coverage detail. This warranty does not apply to Caterpillar brand batteries which are covered by a different warranty.

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Limitations

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Neither the foregoing express warranty nor any other warranty by Caterpillar, express or implied, is applicable to any item Caterpillar sells which is warranted to the user by its manufacturer.

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This warranty applies to all geographic areas worldwide. See Attachment A - Caterpillar Dealer Directory for locations of Caterpillar Dealer Facilities worldwide.

As used in this warranty, the term "Caterpillar" means Caterpillar Inc., or one of its subsidiaries, except Caterpillar Overseas S.A., Caterpillar France S.A., Caterpillar (U.K.) Limited, or Caterpillar Belgium S.A., whichever last sold the product involved.

Agency Report, Tab 9, § 1.1.2.

The SSEB noted that, although expressly requested by the RFP, Caterpillar failed to provide any pass-through warranties, *i.e.*, warranties from the original manufacturers, when other than Caterpillar, to the user of the HYEX machines. The SSEB determined this constituted a significant disadvantage because warranty coverage for components not manufactured by Caterpillar could not be assessed. The SSEB also determined that the definition of Caterpillar which excluded Caterpillar Overseas S.A. and three other foreign subsidiaries raised questions about the extent of coverage, which constituted a significant disadvantage. For these and other disadvantages, Caterpillar's warranty received a marginal rating. Agency Report, Tabs 21 and 24.

Caterpillar contends that it did not need to provide pass-through warranties because its warranty specifically covered all of the items which Caterpillar sells to the agency (except Caterpillar batteries covered under another Caterpillar warranty); that is, the warranty was a bumper-to-bumper warranty under which Caterpillar agreed to warrant all items regardless of manufacturer. Protest at 12-13; Protester's Comments, Aug. 14, 1998, at 12-13.

We find that the agency was reasonably concerned with the extent of Caterpillar's warranty coverage. Although Caterpillar's warranty states, as it asserts, that it warrants all machines and attachments sold by it, the warranty also states:

Neither the foregoing express warranty nor any other warranty by Caterpillar, express or implied, is applicable to any item Caterpillar sells which is warranted to the user by its manufacturer.

We agree with TACOM that this language indicates that the Caterpillar warranty will not apply to components covered by the pass-through warranties of component manufacturers. Since Caterpillar did not submit any pass-through warranties with its proposal, identify what components were covered by pass-through warranties, or state that no such warranties existed, we find that the agency was justifiably concerned with the extent to which the HYEX machines would be covered by Caterpillar's warranty.

Caterpillar also objects to TACOM's evaluation conclusion that Caterpillar's warranty excluded most of Caterpillar's overseas dealers, raising a serious concern regarding the extent of Caterpillar's warranty coverage. The protester asserts that its warranty provides world-wide coverage and that, to the extent its warranty excluded specific subsidiaries from the definition of "Caterpillar", that exclusion is only applicable where the excluded subsidiaries "sell" machines to TACOM under the contract. Because, the protester argues, "Caterpillar Inc." is identified as the offeror in the proposal, these subsidiaries would not be selling any machines to TACOM and the subsidiary exclusions are inapplicable here and do not limit its warranty's general world-wide coverage. Protest at 12-13; Protester's Comments at 10-12.

We do not find unreasonable TACOM's interpretation of Caterpillar's commercial warranty in this regard. The warranty language defining Caterpillar reasonably indicates that a number of Caterpillar's subsidiaries and overseas dealers were excluded from the coverage of the warranty provisions. At best, Caterpillar's asserted interpretation of the warranty provisions indicates that the language is ambiguous; that is, it is subject to two or more reasonable interpretations. See Solar Foam Insulation, B-243059, July 2, 1991, 91-2 CPD ¶ 13 at 6. Because the ambiguity creates reasonable doubt about the obligations of the excepted subsidiaries and associated dealerships to provide warranty service, the agency evaluation is reasonable.

Caterpillar argues that TACOM should have nevertheless known Caterpillar's interpretation of its warranty from the vibratory roller debriefing on May 6. Protest, at 13-15. The agency responds that Caterpillar's debriefing explanation of its warranty could not be considered in this procurement without conducting discussions with the offerors, because Caterpillar's oral explanation modified, rather than merely clarified, material terms of the proposal. Contracting Officer's Statement ¶ 12, at 3.

We agree that consideration of Caterpillar's comments in the vibratory roller debriefing to correct the ambiguity of its warranty would have constituted discussions because they would have resulted in material proposal revisions. Where, as here, a solicitation informs offerors that the agency intends to make award without conducting discussions, the agency is generally not required to conduct discussions with the offerors. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11-12. In the absence of conducting discussions with both offerors, TACOM reasonably did not consider Caterpillar's debriefing comments here.

Caterpillar next complains that its comparatively longer 12-month vehicle warranty should have been evaluated to be superior to Deere's 6-month vehicle warranty. Caterpillar argues that TACOM unreasonably focused on the length of Deere's 24-month engine warranty to the exclusion of the firms' overall warranty length.

Protest at 16; Protester's Comments at 15-17; Protester's Supplemental Comments, Aug. 31, 1998, at 13-14.

From our review of the record, we find that the agency reasonably considered the respective merits of the firms' offered warranties. Although it is true that the SSA identified the length of Deere's engine warranty as a significant advantage in his source selection decision, the record does not support Caterpillar's allegation that the overall length of the firms' respective warranties was not reasonably evaluated.

The SSEB and SSA were aware of the overall length of the warranty coverage offered by the firms and that Caterpillar had offered overall longer warranty coverage. This apparent advantage for Caterpillar, however, was mitigated by the reasonable concerns the agency had regarding exactly what was the extent of coverage offered by Caterpillar both in terms of the components covered and geographic applicability. In contrast to Caterpillar's proposed warranty, Deere offered a vehicle warranty with finitely identified limits on the applicability, from which the agency could clearly identify terms of coverage for the warranty period. Ultimately, the overall length of the firms' respective warranties was only one of a number of considerations weighed by the agency in its evaluation of the firms' proposed warranties.

Caterpillar also argues that the agency placed unreasonable emphasis upon Deere's 24-month engine warranty, which was an identified strength for Deere in the source selection decision. We disagree. The record shows that the Deere's 24-month engine warranty was only one of many factors considered by the agency in its assessment that Deere's proposed warranty should be evaluated as excellent. Although the parties disagree as to the significance of engine problems in the historical record of warranty claims, the engine is without doubt a significant component of the HYEX machine. Even accepting Caterpillar's data suggesting that hydraulic problems are more significant in terms of total warranty claims, that data shows that claims attributable to engine problems are still considerable. See Protester's Comments at 16-17; Protester's Supplemental Comments at 14. Thus, putting aside the uncertainties in Caterpillar's warranty, Deere's engine warranty provides 12 more months of warranty service on the engine than does Caterpillar's, and this could reasonably be considered by the SSA in the source selection decision.

Caterpillar also complains that TACOM's evaluation of the firms' warranties reflects an overall pattern of unfair, disparate treatment. Specifically, Caterpillar asserts that Deere's proposed warranty was similar to Caterpillar's with regard to pass-through warranties, ease of administration, and requirements for proper maintenance, but was not similarly downgraded.

Regarding pass-through warranty limitations, Caterpillar complains that Deere did not provide all applicable pass-through warranties and that the pass-through

warranties provided by Deere contained language limiting the coverage of the pass-through warranty to items manufactured by the pass-through warranty provider. Caterpillar contends that Deere should have been downgraded as Caterpillar was for its failure to provide any pass-through warranties.

Caterpillar's and Deere's proposals were not similar in this regard. Unlike Caterpillar's proposal, Deere identified the specific components for which pass-through warranties would be applicable and included pass-through warranties. Agency Report, Tab 8. Although Deere did not provide all of the pass-through warranties identified in the warranty document, the proposal left no doubt as to what parts of the vehicle were warranted by Deere, and what parts were warranted by other manufacturers. Thus, unlike Caterpillar, Deere's warranty did not contain an open-ended limitation on the application of the warranty. The agency's evaluation reasonably reflected the much greater certainty the agency had as to what warranty coverage would be received from Deere as opposed to the substantial uncertainty posed by Caterpillar's failure to provide or identify any pass-through warranties.

Caterpillar also complains that TACOM did not evaluate the firms' warranties equally with regard to ease of administration because both offerors' warranties were identical on this point, and the agency considered information from Deere's oral presentation in its evaluation which was prohibited under the RFP instructions. Supplemental Protest, July 17, 1998, at 5-6; Protester's Comments at 8-10.

We find that the offerors' warranties were not essentially identical with regard to warranty administration. As stated by Deere in its oral presentation, Deere's federal accounts manager will facilitate warranty implementation with Deere dealers on the agency's behalf, both at vehicle hand-off, and when the agency transfers a vehicle to another location. Agency Report, Tab 10; Agency Supplemental Report, Tab 46, Videotape (VT) 1. Caterpillar in its oral presentation addressed warranty implementation under vehicle hand-off procedures, by informing the agency that Caterpillar's dealers were responsible for this task. Agency Report, Tab 11, Agency Supplemental Report, Tab 47, VT 1. The agency reasonably concluded that having one person responsible for this task, as opposed to having to deal with this through many dealers, was an obvious advantage in ease of administration.

As noted above, TACOM's evaluation of this information was based on the firms' oral presentations. Although the RFP § L.3.1.2, at 82, instructs offerors not to discuss their warranties in their oral presentations, the preceding section of the RFP instructs offerors to discuss their "approach and plans for meeting the requirement for vehicle hand-off in [section] C.8." The RFP § C.8(c), at 36, (vehicle hand-off requirement), sets forth the warranty activation and administration requirement for offerors. The RFP thus separated the presentation of the terms of the warranty from the offeror's warranty administration procedures. Both offerors addressed warranty administration under vehicle hand-off procedures in their oral

presentations. We thus conclude that the agency's evaluation of ease of warranty administration based on the vehicle hand-off section of oral presentations was not prohibited by the RFP, and that the offerors were treated equally in this regard.

Caterpillar also complains that the SSEB was concerned with the proper maintenance requirements of Caterpillar's warranty, where both offerors' warranties contained express exclusions of warranty claims resulting from improper maintenance. Agency Report, Tabs 8, 9. The record shows that the agency was concerned with Caterpillar's warranty because the warranty stated that the user was responsible for use of proper oil lubricants and Caterpillar previously had expressed to TACOM its opposition to the use of a military oil lubricant in parts of Caterpillar's machines. Agency Supplemental Report, Aug. 4, 1998, Tab 51. That same lubricant is specified for use under this RFP. Accordingly, the SSEB was concerned with the scope and coverage of Caterpillar's warranty in light of the anticipated use of military oil lubricants. Contracting Officer's Supplemental Statement ¶¶ 5-9, at 1-3; see Agency Report, Tab 24. The agency did not express similar reservations with the proper maintenance requirements of Deere's warranty, because there was no indication that Deere viewed the agency's anticipated maintenance in general, or the use of military oil lubricants in particular, to be a concern. We see no evidence of unequal treatment in this regard.

In sum, we find no basis to object to the agency's evaluation of proposals under the warranty factor, which was the primary focus of Caterpillar's protest. As indicated, Caterpillar also raised numerous other objections to the agency's evaluation and source selection. We have considered all of these other issues in depth and also find that they do not provide any basis to object to the agency's evaluation and source selection.

For example, Caterpillar complains that it was unreasonable for the agency not to evaluate Caterpillar's proposal superior to Deere's under the support factor, where Caterpillar has a global network with more dealer locations than that offered by Deere. Similarly, Caterpillar alleges that the agency unreasonably failed to evaluate as a significant advantage under the unique tools element Caterpillar's proposal of fewer unique tools than Deere. Protest at 17-19; Protester's Comments at 21-22, 26-28. Here, the agency required worldwide support to ensure service in a variety of locations, and a minimum of unique tools so as not to burden the Army's logistics system. RFP §§ L.3.1.1(a), M.3.1.1, M.3.3, at 81, 91, 92.

While the RFP undisputedly provides for evaluating such differences in both instances, the protester's arguments ignore the application of reason within the confines of a best value procurement such as this. Since the overarching and obvious purpose is for the government to obtain the best value product or service, logical principles for valuing goods and services, such as the law of diminishing returns, must apply.

Specifically, Caterpillar's worldwide network has 1,217 dealer locations compared to Deere's 884. Agency Report, Tabs 10, 11. The agency evaluated both as expansive networks exceeding its needs. Contracting Officer's Statement ¶ 24, at 9; Agency Report, Tabs 14, 23. The protester does not present any evidence to show that the agency will actually benefit from Caterpillar's additional dealer locations. Moreover, the number of dealer locations was only one consideration in the agency's evaluation of the offerors' demonstrated ability to provide support. The agency found that both Caterpillar's and Deere's were excellent in their demonstrated ability to meet the support requirements.

Similarly, Caterpillar proposed 210 unique tools while Deere proposed 259. Agency Report, Tabs 16, 25. The agency found that the large number of unique tools proposed by both offerors placed "a very heavy burden" on [the agency's] logistics system" and evaluated the firms' proposals as "marginal" for this element. Id. The SSA was informed of the exact number of unique tools proposed by each offeror and was aware that Caterpillar had offered less unique tools than had Deere. Although Caterpillar proposed less unique tools than Deere, the number of tools proposed was still far more than desired. We have no basis to question the agency's conclusion that both firms' proposals were marginal under the unique tools element.

Caterpillar also complains that it was unreasonable for the agency to evaluate both firms' proposals similarly under the rock drill integration element because Caterpillar has experience successfully integrating rock drills onto excavators and Deere has no experience in this area. Protest at 19-20.

The RFP stated that this element would be evaluated by "assess[ing] the risk involved with the integration of the rock drill onto the Type II HYEX." RFP § M.4.3, at 92. Offerors were instructed to describe in their oral presentation how they would minimize risk involved with installing the rock drill by covering relevant issues, and the RFP identified four such issues. Id. § L.4.3, at 84. Deere addressed each of the issues in detail, and the agency determined that Deere's proposal provided a detailed integration plan, good quality control procedures, and use of a qualified subcontractor with a history of a sound working relationship with Deere and of performing quality modifications on Deere's products. Agency Report, Tab 17. Caterpillar, on the hand, addressed the issues identified in the RFP on a "cursory level" and the SSEB determined:

The lack of detail concerning the critical installation procedures, on its own merits, provides only a moderate degree of confidence that the risk is low. However, the fact that Caterpillar manufactures, assembles, and installs their own rock drills is a significant risk mitigator.

Id., Tab 26.

The SSEB concluded that risk under this element was very low for both proposals, albeit for different reasons, and rated both as excellent under this element. *Id.*, Tabs 17, 26. The record supports the agency's evaluation ratings. Although Caterpillar argues that experience must be a discriminator in the evaluation of risk under this element, the RFP did not identify experience in this integration procedure as either a requirement or one of the issues to be addressed in proposals. Rather, offerors were generally instructed at the pre-proposal conference that in order to perform well under the evaluation process, offerors should “specifically” explain their approaches to addressing the requirements and “not rely on [their] experience or reputation in industry to convince [the agency.]” *Id.*, Tab 6, at 64. As noted above, Deere explained its approach in detail during its oral presentation, while Caterpillar did not.⁴ Thus, Caterpillar provides no basis to object to the agency's evaluation in this regard.

Caterpillar also complains that the agency failed to distinguish between the relevancy of Deere's and Caterpillar's prior contracts in the evaluation under the past performance element. Essentially, the protester alleges that the agency should have found Caterpillar's proposal superior to Deere's under past performance because Caterpillar's contracts were allegedly more relevant to this procurement than are those identified for Deere and its subcontractors. Protest at 8-10, 22-24.

The RFP § M.6.1, at 93, stated that the past performance element would be evaluated as follows:

We will assess performance risks associated with your likelihood of success in performing the solicitation's requirements. The evaluation will consider your record of the following:

- a. Conformance to specifications and standards of good workmanship (Both hardware and data)
- b. Adherence to delivery schedules
- c. Reasonableness, cooperative behavior, and commitment to customer satisfaction

⁴Although Caterpillar states that it provided more slides for the rock drill integration portion of the presentation than did Deere, Protester's Comments at 28, the record does not support Caterpillar's suggestion that its rock drill integration presentation was as detailed as Deere's. Specifically, the agency found as a disadvantage Caterpillar's “lack of detail concerning the critical installation procedures.” Agency Report, at Tab 26. Deere asserts that, instead of addressing in detail the information actually requested by the RFP, Caterpillar spent “an inordinate amount of time during its oral presentation merely describing the individual parts, components, and operation of its rock drill and HYEX vehicles.” Intervenor's Comments, at 53 n.28; *see* Agency Supplemental Report, Tab 47 at VT 2. Caterpillar does not rebut this assertion.

d. Subcontractor management.

The RFP § L.6.1(a), at 85, instructed offerors to provide information on recent, relevant contracts and defined relevant contracts as follows:

2. Relevant contracts are those which are similar in scope to the requirements of this solicitation. Each past contract does not have to meet all of the criteria below to be considered relevant, but interested especially in those contracts that included:

- a) Similar hydraulic excavator technology (tracked or wheeled)
- b) Military unique or custom work for commercial customers
- c) Volume production
- d) Manuals, both commercial and military
- e) New Equipment Training.

Thus, the RFP provides for the evaluation of past performance based upon contracts of similar scope. The agency found that both Caterpillar and Deere presented relevant contracts for evaluation. While Caterpillar complains that its reported contracts were of greater complexity, such that it should have been entitled to a higher evaluation score, the record shows that the primary reason for the agency's differentiation between these two offerors is that Caterpillar's contract references reported instances of late performance in delivering modified user manuals, as will be required here, and some difficulty with cooperative behavior and commitment to customer satisfaction under contracts where late performance has occurred. Agency Report, Tab 29, at 6-13, 18. Although Caterpillar disagrees with the extent of its responsibility for such performance problems, it does acknowledge partial responsibility. Protester's Comments at 36.⁵ On the other hand, Deere was rated highly, without exception from any contract reference, under all four criteria stated under this evaluation element. Agency Report, Tab 20 at 10, 15-16. Although Caterpillar's problems occurred on more complex, relevant contracts than Deere has performed, the marked differences in performance histories exist, and we find that the agency's evaluation on this basis is reasonable and consistent with the stated evaluation criteria.

Caterpillar also challenges TACOM's cost/technical tradeoff decision, arguing that the decision was based upon the allegedly flawed technical evaluation and that Caterpillar's proposed price was approximately \$7.3 million lower than that of Deere. We do not find that Caterpillar's arguments provide us with any basis to

⁵Caterpillar also complains that it was not given an opportunity to comment on the reports of its adverse past performance. FAR § 15.610, as applicable to this procurement, however, did not require the agency to provide such an opportunity where the agency did not otherwise conduct discussions. International Data Prods., Corp. et al., B-274654 et al., Dec. 26, 1996, 97-1 CPD ¶ 34 at 17.

question the SSA's selection decision. As explained above, we find that the agency's technical evaluation was reasonable. Although Caterpillar proposed a lower price than Deere, the SSA considered Caterpillar's lower price and found that it was outweighed by significant advantages offered by Deere's proposal. This decision, which was well documented by the SSA, is consistent with the RFP award criteria and is reasonable. Matrix Int'l Logistics, Inc., *supra*, at 14.

In sum, we have examined the record in response to all of Caterpillar's allegations. The record shows that the agency reasonably evaluated both offerors proposals, treated both offerors equally, reasonably considered the relative value of differences in the proposal, and based its source selection decision on a reasonable best value analysis that, as evidenced by the details discussed in the source selection document quoted previously, was consistent with the stated evaluation plan. The protest provides no basis to disturb that decision.

The protest is denied.

Comptroller General
of the United States