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## Decision

**Matter of:** Carter Enterprises, LLC

**File:** B-417083.2; B-417083.3

**Date:** April 19, 2019

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Marc Lamer, Esq., Kostos and Lamer, P.C., for the protester.  
Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for Bethel Industries, Inc., the intervenor.  
Allison Colsey Eck, Esq., Defense Logistics Agency, for the agency.  
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest is denied where the agency's past performance evaluation was consistent with the record and the terms of the solicitation.
  2. Protest is denied where the agency's best-value tradeoff analysis reasonably considered the features of the proposals and was made in accordance with the terms of the solicitation.
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### DECISION

Carter Enterprises, LLC, of Brooklyn, New York, protests the award of a contract to Bethel Industries, Inc., of Jersey City, New Jersey, under request for proposals (RFP) No. SPE1C1-16-R-0082, issued by the Defense Logistics Agency for Army combat uniform trousers. Carter alleges that the agency unreasonably evaluated the firm's proposal and improperly made its source selection decision.

We deny the protest.

## BACKGROUND

The RFP was issued on July 19, 2016, for delivery of Army combat uniform coats and trousers to be performed over an 18-month base period and one 1-year option period.<sup>1</sup> RFP at 1, 3. For each performance period, the RFP provided that the agency would order between 100,000 and 400,000 trousers. Id. Award would be made on a best-value tradeoff basis considering past performance, product demonstration model, and price factors. Id. at 98-101. The product demonstration model factor would be evaluated on a pass or fail basis. Id. at 101. The agency would then make its tradeoff between past performance and price. Id. at 98. The RFP specified that past performance was significantly more important than price. Id.

For the past performance factor, the RFP instructed offerors to describe their experience producing the same or similar items within the two years preceding the solicitation closing date (*i.e.*, April 16, 2018). RFP at 94; RFP, amend. 0011 at 3. The RFP required offerors to describe the quality of items delivered and address any issues with substandard quality. Id. at 94. In evaluating proposals under this factor, the solicitation provided that offerors would be assigned a performance confidence assessment rating based on two equal subfactors, performance relevancy, and quality and delivery performance. Id. at 99. For relevancy, the agency would assess whether the record of performance involved similar scope, magnitude, and complexities as the instant requirement. RFP at 100. For quality and delivery performance, the agency would assess each offeror's quality of performance and delivery performance separately. Id. at 100-101. The solicitation advised that both quality and delivery performance would be based on how well the offeror performed on its prior contracts, and also, as part of the instructions, provided that delivery performance would be assessed using the Past Performance Information Retrieval System--Statistical Reporting (PPIRS-SR) score. Id. at 94, 100.

Twelve offerors submitted proposals prior to the close of the solicitation period. Combined Contracting Officer's Statement of Facts and Memorandum of Law (COS/MOL) at 6. The agency's evaluation produced the following relevant results:

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<sup>1</sup> The RFP contemplated the award of two contracts. RFP at 3. Lot 0001 (*i.e.*, the coats) would be made on an unrestricted basis, and Lot 0002 (*i.e.*, the trousers) was restricted to small businesses. Id. This protest concerns only the agency's award of a contract to provide Lot 0002. Protest at 2.

	<b>Carter</b>	<b>Bethel</b>
<b>Past Performance</b>	Satisfactory Confidence	Substantial Confidence
<b>-- Relevancy</b>	Relevant	Very Relevant
<b>-- Quality and Delivery Performance</b>	Good / Outstanding	Acceptable / Outstanding
<b>Price</b>	\$61,800,000	\$65,320,000

Agency Report (AR), Exhibit 11, Source Selection Decision Document (SSDD) at 2.

After comparing proposals, the source selection authority (SSA) selected Bethel's proposal as offering the best value. AR, Exhibit 11, SSDD at 2. When comparing Carter's and Bethel's proposals directly, the SSA considered Bethel's proposal as superior. Id. at 12. The SSA specifically noted Bethel's more relevant past performance; Bethel's past performance involved delivery of [DELETED] coats and trousers per month (compared to the instant requirement of approximately 44,445 trousers per month), while Carter's past performance involved monthly delivery of [DELETED] relevant items, and [DELETED] items that were not as relevant. AR, Exhibit 14, SSDD Addendum at 1. The SSA also noted that any advantage Carter had for its higher quality of performance rating was offset by Bethel's slightly higher PPIRS-SR delivery score (i.e., 96 versus 93), and by the fact that Bethel's record of performance involved more technically complex garments. Id. at 4. The SSA further noted that, while Carter's proposal was lower priced, Bethel's proposal was worth the 5.7 percent price premium because Bethel offered greater experience producing trousers of the same scope, magnitude, and complexity as the instant requirement. Therefore, the SSA concluded that Bethel's proposal provided much greater confidence in its likelihood of successful performance. Id.

## DISCUSSION

Carter challenges the agency's evaluation of its past performance, arguing that the agency should have assigned it a "Substantial Confidence" rating under the past performance factor.<sup>2</sup> In support of its contention, the firm asserts that it should have received an "Outstanding" as opposed to a "Good" rating for the quality of performance subfactor because its performance record demonstrated that it had only one waiver on all of its prior contracts. Protester's Supp. Comments at 2; Protester's Comments at 7-9. Thus, according to Carter, because it should have received a higher rating under the quality of performance subfactor, it should also have received a higher rating under the performance confidence assessment. Protester's Supp. Comments at 3. The

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<sup>2</sup> Carter's protest raised numerous protest allegations. We have considered all of the allegations and do not find that any provides us with a basis to sustain the protest. Our decision only discusses Carter's chief allegations.

agency responds that its evaluation is supported by the record and that Carter's argument constitutes mere disagreement with the evaluation. Supp. COS/MOL at 3-6.

Where, as here, a solicitation requires the evaluation of past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. Spinnaker JV, LLC, B-416688, Nov. 21, 2018, 2018 CPD ¶ 398 at 8. An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Id.

Contrary to the protester's position, we find the agency's evaluation to be unobjectionable.<sup>3</sup> The record shows that the agency accurately understood that Carter's performance record exhibited only one waiver. AR, Exhibit 14, SSDD Addendum at 3-4. Nevertheless, the agency determined that Carter had accumulated that record by mostly producing technically inferior garments and contracts requiring lower quantities (*i.e.*, had performed contracts not requiring the same degree of complexity). Id. Indeed, the record shows that the agency concluded that Carter's high-quality performance was not a definitive indicator of success on the instant contract because Carter will be required to produce more complex garments and at higher quantities than it is accustomed to producing. Id. In our view, that evaluation is reasonable because it is consistent with the record and combines the subfactor ratings as required under the terms of the solicitation. See RFP at 99 (the performance confidence rating would be "arrived at by combining and applying equal weight to the [Past Performance Relevancy subfactor] and Past Performance Quality and Delivery Performance subfactor"); cf. Clark Constr. Grp., LLC, B-407334.2, B-407334.3, Dec. 18, 2012, 2013 CPD ¶ 12 at 5 (evaluation was reasonable when it considered both relevancy and quality as required by the terms of the solicitation). While Carter may disagree with the assessment, it has not shown the agency's judgment was unreasonable.<sup>4</sup>

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<sup>3</sup> In its protest, Carter alleged that the agency unreasonably evaluated its past performance because it received a higher performance confidence assessment in another procurement conducted by the agency. In its COS/MOL, the agency responded that the allegation did not provide a basis of protest because the evaluation results from a separate procurement do not demonstrate that the agency's evaluation here was unreasonable. COS/MOL at 13. The protester did not respond to the agency's position in its comments. Accordingly, we dismiss this allegation as abandoned. Elevator Service, Inc., B-416258.2, B-416258.3, Sept. 13, 2018, 2018 CPD ¶ 319 at 3 n.3

<sup>4</sup> To the extent Carter asserts that the agency unreasonably evaluated Bethel's past performance, we dismiss that allegation as failing to state a valid basis of protest. Our decisions explain that disagreement with an agency's evaluation, without more, does not provide a valid basis of protest. See, e.g., Interactive Government Holdings, Inc., B-417133, Jan. 24, 2019, 2019 CPD ¶ 68 at 5. In its supplemental protest, Carter only argues that Bethel's quality of performance record does not demonstrate a high level of quality. Protester's Comments at 5-7. In our view, that argument simply shows

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Moreover, although Carter argues that the agency improperly downgraded its rating under the quality of performance subfactor based on the lack of relevance, we do not find that the agency's action rendered the evaluation unreasonable. See Protester's Supp. Comments at 2-3. As noted above, the solicitation required the agency to assign the overall past performance rating based on an integrated analysis between the various subfactors. RFP at 99. Thus, even if the agency's subfactor evaluation included some overlap between the quality and relevancy subfactors, we do not find that action objectionable because the solicitation provided that past performance would be ultimately evaluated on that basis. Accordingly, we deny this protest allegation.<sup>5</sup>

As a final matter, Carter challenges the agency's source selection decision as unreasonable. The protester asserts that the SSA conducted a mechanical comparison of the evaluated performance confidence ratings and did not meaningfully consider price. Protester's Supp. Comments at 10. In response, the agency argues that the SSA's tradeoff analysis was reasonable because it was based on Bethel's superior record of past performance. Supp. COS/MOL at 9.

Source selection officials enjoy broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results. Sierra Cybernetics, Inc., B-259055, B-259055.2, Apr. 5, 1995, 95-1 CPD ¶ 249 at 5. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Id. Here, the record shows that the SSA considered Carter's lower price, but determined that Bethel's superior record of

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disagreement with the agency's judgment of Bethel's performance record. Accordingly, we dismiss this allegation as failing to state a valid basis of protest.

<sup>5</sup> As a derivative argument, Carter asserts that it should have received award because, with an "Outstanding" quality of performance subfactor rating, it would have been entitled to a "Substantial Confidence" rating and therefore would have been considered equivalent to Bethel's proposal but lower-priced. Protester's Comments at 3-7. We dismiss this allegation because it does not provide a valid basis of protest. Even if Carter received an equivalent performance confidence assessment rating, this would not have meant that Carter was entitled to award because an agency is required to perform a qualitative comparison of the proposals' features when conducting its best-value tradeoff analysis. In other words, adjectival ratings, in and of themselves, are not determinative and merely demonstrating equivalency in ratings does not render the agency's analysis unreasonable. See AlliedSignal, Inc., B-272290, B-272290.2, Sept. 13, 1996, 96-2 CPD ¶ 121 at 7 ("Finally, we note that even if, as the protester argues, both firms should have received identical adjectival ratings in all technical areas, this would not necessarily mean that the agency had to view the offerors as essentially technically equal and award to the low offeror."). Accordingly, we dismiss this protest allegation.

past performance, including more relevant contracts and a better delivery score, was worth the price premium. AR, Exhibit 14, SSDD Addendum at 4. The record also shows that the SSA based her conclusion on the fact that the past performance factor was more important than price under the RFP. Id. Thus, we think that the SSA's tradeoff analysis was reasonable because she considered the merits of the proposals in accordance with the RFP's evaluation scheme. Accordingly, we deny the protest allegation.

The protest is denied.

Thomas H. Armstrong  
General Counsel