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## Decision

**Matter of:** Superlative Technologies, Inc.

**File:** B-408941

**Date:** December 30, 2013

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Kenneth D. Brody, Esq., and Thomas K. David, Esq., David, Brody & Dondershine, LLP, for the protester.

Lee Dougherty, Esq., and Katherine A. Straw, Esq., Fluet Huber & Hoang PLLC, for Phacil, Inc., the intervenor.

Major Donald Bugg, and Damon B. Richardson, Esq., Department of the Air Force, and Kenneth Roth, Esq., and Robert Bowers, Esq., United States Transportation Command, for the agency.

Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest arguing that the awardee's quotation misrepresented the awardee's relationship with the protester's employee is denied where the record does not clearly reflect a misrepresentation, and the agency's evaluation in any event did not rely on the alleged misrepresentation.

2. Protest challenging the agency's evaluation of the awardee's technical quotation and past performance is denied where the evaluation was reasonable and in accordance with the solicitation's evaluation criteria, which did not require vendors to demonstrate specialized experience, as alleged by the protester.

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### DECISION

Superlative Technologies, Inc. (SuprTEK), of Ashburn, Virginia, protests the award of a task order to Phacil, Inc., of Arlington, Virginia, issued by the United States Transportation Command (TRANSCOM) under request for quotations (RFQ) No. HTC711-13-Q-D008 for support services and related project management for the Surface Deployment and Distribution Command's electronic transportation acquisition (ETA) authentication system. The protester, who is the incumbent contractor for this requirement, alleges that the agency relied on a material misrepresentation in evaluating the acceptability of the awardee's quotation, and

unreasonably evaluated the awardee's quotation under the technical/staffing and past performance evaluation factors.

We deny the protest.

## BACKGROUND

The solicitation was issued on May 30, 2013, to small business vendors who hold contracts under General Services Administration (GSA) Federal Supply Schedule (FSS) No. 70 for information technology products and services. The RFQ contemplated the award of a task order with fixed-price and labor hour task elements, for a 1-year base period and four 1-year options. RFQ, Amend. 4.1, at Cover Memorandum.<sup>1</sup> The RFQ provided that award would be made based on the following factors: (1) technical/staffing, (2) past performance, and (3) price. Id. at 4-7.

With regard to the technical/staffing factor, the solicitation required vendors' quotations to address the following: an approach to maintain all existing ETA capabilities, as set forth in the solicitation's performance work statement (PWS) task area 2; an approach to provide information assurance support to ETA, as set forth in PWS task area 5; and a staffing matrix. Id. at 2. The solicitation stated that the agency's evaluation of vendors' questions under the technical/staffing factor would assess whether the proposed approach ensures that quality service will be provided, and whether the quotation clearly and reasonably communicates an understanding of the PWS requirements. Id. at 5. The RFQ stated that the agency would assign one of the following ratings for this factor: acceptable (quotation meets all requirements); reasonably susceptible of being made acceptable (quotation does not meet all of the requirements but there is reason to believe through revisions, an acceptable quotation could result); or unacceptable (fails to meet one or more requirements). Id.

With regard to the past performance factor, the solicitation required vendors to submit up to four recent and relevant references that address performance related to the PWS tasks. Id. at 3. While vendors were required to submit references addressing all of the past performance areas identified, each reference was not required to reflect performance in all of the performance areas. Id. at 4. Vendors were also required to submit a past performance narrative and past performance questionnaires. Id.

The solicitation stated that the agency's evaluation of a vendor's past performance would assess the vendor's ability to successfully perform the requirements of the solicitation based upon recent and relevant past performance; the agency would

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<sup>1</sup> All RFQ citations herein are to final RFQ amendment No. 4.1.

assign a confidence rating based on this analysis. Id. at 6. In this regard, the solicitation stated that relevant efforts have a logical connection to the work described in the performance areas identified. Id. at 3. The agency would assign a “very relevant” rating to an effort that involved essentially the same scope and magnitude of effort and complexities that the ETA solicitation requires; a “relevant” rating to an effort that involved similar scope and magnitude of effort and complexities; a “somewhat relevant” rating to an effort that involved some of the scope and magnitude of effort and complexities; and a “not relevant” rating to an effort that involved little or none of the scope and magnitude of effort and complexities. Id. at 6.

The solicitation stated that the agency would assign a performance confidence assessment rating based upon the agency’s analysis of the relevance of a vendor’s past performance references, its performance on previous efforts, information identified by the vendor, and any other information obtained. Id. at 6-7. As relevant here, the solicitation stated that a “substantial confidence” rating would be assigned where the agency has a high expectation that a vendor will successfully perform the required effort, and a “satisfactory confidence” rating would be assigned where the agency has a reasonable expectation that a vendor will successfully perform the required effort. Id. at 7.

For purposes of award, the solicitation stated that the agency would rank quotations by total proposed price, and make award to the vendor who submits the lowest-priced, technically acceptable quotation with a substantial confidence past performance rating. Id. at 6. If no technically acceptable quotations receive a substantial confidence rating, the solicitation advised that award would be made on a best-value basis. Id. at 7.

The agency received quotations from 10 vendors, including SuprTEK and Phacil. The agency began its evaluation by ranking the quotations based upon total proposed price. Agency Report (AR), Tab 32, Source Selection Decision, at 2-3. The agency reviewed the quotations of the three lowest-priced vendors, and concluded that each was technically unacceptable. Id. at 3. The agency then evaluated Phacil’s quotation, which was the fourth lowest-priced at \$5,037,510. Id. The agency found that Phacil’s quotation was technically acceptable for the technical/staffing factor, concluding that the quotation met the requirements identified in the PWS, ensures that a quality service will be provided, and communicated an understanding of the effort consistent with the PWS. Id.; Tab 30, Final Technical Evaluation Consensus, at 1-2.

Next, the agency evaluated Phacil’s past performance, and assigned Phacil’s quotation a substantial confidence rating based on a high expectation of successful performance. AR, Tab 32, Source Selection Decision at 4. In this regard, the agency found that Phacil’s first past performance reference involved an effort for essentially the same scope and magnitude of effort and complexities as those

required by the RFQ, and received exceptional rating overall. AR, Tab 31, Source Selection Evaluation Board Report, at 9-10. The agency also found that Phacil's second and third references involved similar scopes and magnitudes of effort and complexities as the RFQ, and that the vendor received very good and exceptional ratings for its performance. Id. at 10. The fourth reference was not considered by the agency because it concerned an indefinite-delivery/indefinite-quantity (ID/IQ) contract, rather than any task order performed under that contract. Id.

On September 12, Phacil was awarded the task order as the lowest-priced, technically acceptable vendor with a substantial confidence past performance rating.<sup>2</sup> Upon receiving a notice of the award, SuprTEK filed a protest with our Office on September 23.

## DISCUSSION

SuprTEK alleges that TRANSCOM's evaluation of Phacil's quotation relied on a material misrepresentation in the awardee's quotation concerning its relationship with a SuprTEK employee. The protester also challenges the agency's evaluation of the awardee's quotation under the technical/staffing and past performance factors. For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

### Alleged Misrepresentations in the Awardee's Quotation

SuprTEK argues that TRANSCOM's evaluation under the technical/staffing factor was flawed because, the protester contends, the agency must have relied on material misrepresentations in Phacil's quotation. The protester claims that Phacil's quotation falsely asserted that the awardee collaborated with a SuprTEK employee in preparing its quotation, and will continue to work with that employee in supporting the contract. For the reasons discussed below, we find that although the record is not clear as to whether Phacil's quotation contained a misrepresentation regarding the SuprTEK employee, the record shows that the agency did not rely upon the alleged misrepresentation. For this reason, we find no basis to sustain the protest.

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<sup>2</sup> Because Phacil provided a technically acceptable, substantial confidence quotation, the agency did not evaluate the other higher-priced quotations, including the quotation of SuprTEK, which was the 5th lowest-priced at \$5,098,170.47. Id.

An offeror's material misrepresentation in its quotation can provide a basis for disqualification of the quotation and cancellation of a contract award based upon the quotation. A misrepresentation is material where the agency relied upon it and it likely had a significant impact on the evaluation. Optical Sys. Tech., Inc., B-296516.2, B-296516.3, Mar. 17, 2006, 2006 CPD ¶ 63 at 9.

SuprTEK asserts that Phacil's quotation contained misrepresentations concerning the role of a SuprTEK employee, who is the protester's director of solution engineering, and who, the protester states, is "the most respected ETA expert working at the agency and effective leader of the incumbent staff." Protester's Comments (Nov. 27, 2013) at 3. Specifically, the protester argues that the awardee falsely stated that the SuprTEK employee provided valuable information that was used in Phacil's quotation, and the employee would be available to support Phacil's performance of the contract and transition of the incumbent staff. Protest at 14. To demonstrate Phacil's alleged misrepresentations SuprTEK points to the following portion of Phacil's quotation that states:

Phacil continues to work with current ETA Team Lead, [SuprTEK employee]. His input on the project has enabled Phacil to plan in more detail for a successful transition. [SuprTEK employee] has provided valuable information on current operations, difficulties, and procedures to enhance our service offering and understanding of USTRANSCOM needs.

Working with [SuprTEK employee], our Tiger Team will assure all employees receive frequent and open communication from Phacil.

AR, Tab 8, Phacil Technical/Staffing Volume, at 19-20.

In support of its assertions, SuprTEK also provided an affidavit from the employee named in Phacil's quotation, which spoke to the alleged misrepresentation of conversations the employee had with Phacil and misrepresentations of his commitment to work with Phacil in the future. The employee additionally contends that Phacil's quotation, as well as the awardee's response to the protest, contained various inaccuracies. See Decl. of SuprTEK Employee, at 1-9.

We find that the record does not clearly support the protester's allegations. While the protester contends that the awardee's quotation should be interpreted in a manner that reflects a misrepresentation concerning Phacil's relationship with the SuprTEK employee, we do not find the protester's arguments and affidavit to be persuasive evidence of a misrepresentation. For example, while the protester states that the awardee misrepresented that the SuprTEK employee "intended to work for Phacil following award to Phacil," Protester's Comments (Nov. 7, 2013) at 3-4, our review of the awardee's quotation shows that the document does not specifically state that the SuprTEK employee had agreed to work with Phacil. See

AR, Tab 8, Phacil Technical/Staffing Volume, at 19-20. Additionally, the protester disputes the awardee's statement that the SuprTEK employee provided "valuable information on current operations, difficulties, and procedures to enhance [Phacil's] service offering and understanding of USTRANSCOM needs." Id. The protester's employee acknowledges, however, that he did speak with Phacil representatives concerning SuprTEK's incumbent contract, including a "30k foot overview of who SuprTEK was." Decl. of SuprTEK Employee at 5.

In any event, we find no basis in the record to conclude that the agency relied upon the statements such that they had a significant impact on the evaluation. As noted by the agency, there is no suggestion that the evaluators relied on or even considered the allegedly erroneous references to SuprTEK's employee provided in Phacil's quotation in evaluating its technical acceptability. In this regard, the evaluation documents do not mention Phacil's quotation with regard to its discussion of the SuprTEK employee. Moreover, the agency submitted affidavits from its technical evaluators stating that the mention of SuprTEK's employee in Phacil's quotation did not have an influence on the technical evaluation of Phacil. AR, Tab 43 Decl. of Evaluator No. 1 (Nov. 8, 2013); Tab 44, Decl. of Evaluator No. 2 (Nov. 8, 2013); Tab 45, Decl. of Evaluator No. 3 (Nov. 8, 2013).

While the protester makes numerous assertions that the agency's evaluators "must have" and "likely" considered information regarding Phacil's discussion of SuprTEK's employee, the protester's arguments are, essentially, speculation. In this regard, the protester contends that the agency must have recognized the value of SuprTEK's employee, must have believed he was assisting with the quotation, and must have assumed that he would be hired by Phacil and would help recruit incumbent employees. See Protester's Comments (Nov. 7, 2013) at 20; Supp. Comments (Nov. 20, 2013) at 6. The record, however, does not show, nor has the protester demonstrated, that the agency relied on Phacil's representations in its evaluation or selection decision. The evaluation documentation included in the record concerning the evaluation of Phacil's quotation is simply devoid of any reference to the SuprTEK's employee. Because there is no evidence that the agency relied upon or considered the alleged misrepresentations included in Phacil's quotation, we conclude that, even if the statements were in fact false, they would not have been material. See Innovative Techs. Corp., B-401689 et al., Nov. 9, 2009, 2009 CPD ¶ 235 at 9 (no basis in the record for finding that the agency relied upon the statement regarding salaries and benefits such that they had a significant impact on the agency's evaluation). On this record, we find no basis to sustain SuprTEK's protest.

## Technical/Staffing Evaluation

Next, SuprTEK challenges TRANSCOM's evaluation of the awardee's quotation under the technical/staffing factor. SuprTEK argues that the agency's evaluation was unreasonable because, the protester asserts, Phacil could not have provided personnel in its staffing matrix who have expertise in the ETA application, as required by the solicitation. In this regard, SuprTEK argues that Phacil's quotation should have been rated unacceptable because it would be "virtually impossible" for a vendor, who did not have access to SuprTEK's uniquely experienced staff and infrastructure, to be in a position to meet the agency's requirements. Protest at 19. The protester also complains that the agency failed to adequately document or explain its evaluation.

Based upon our review of the record, we find that the agency's evaluation of Phacil's quotation under the technical/staffing factor was reasonable and in accordance with the terms of the solicitation. The solicitation required a vendor's proposed staffing approach to be reflected in a matrix that "identifies the personnel resources performing the PWS tasks," and "identify[ies] the necessary qualifications . . . it will require for each . . . labor category it identifies to perform the intended PWS tasks and subtasks beyond those qualifications already stated in the FSS category description." RFQ at 2. The RFQ also required a vendor's proposed staffing to "identify any experience as it relates to [ETA]." Id.

While the protester asserts that no vendor, aside from SuprTEK, could provide the experienced staff to meet the agency's requirements, we see nothing in the solicitation that indicates that only incumbent personnel with specific ETA experience were eligible to perform the contract. As the terms of the solicitation make clear, a vendor was only required to identify whether any of its proposed staff had ETA experience; there was no requirement for the vendor to demonstrate that every member of the staff possess ETA experience, as alleged by the protester. See RFQ at 2. Additionally, we do not agree with the protester that the general solicitation requirement for contractor employees to have "expertise in the subject matter areas to comply with the terms of this requirement," required a vendor to propose only personnel with specific ETA experience. See RFQ, PWS, at 27.

The protester also argues that the agency failed to adequately document its evaluation of Phacil's quotation. For procurements under the FSS, the FAR requires ordering agencies to document the evaluation methodology used in selecting the contractor to receive the order. FAR § 8.405-2(f). Our Office has found that agency judgments for any source selection are required to be documented in sufficient detail to show that they are reasonable. Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 8. We find that the documentation in the record satisfies the minimum documentation requirements of FAR § 8.405-2(f), and provides sufficient detail to show that the agency's evaluation was reasonable. For example, with regard to Phacil, the agency

concluded that Phacil's quotation met the requirements of the solicitation and communicated an understanding of the effort consistent with the PWS, while the agency concluded, with regard to the unacceptable vendors, that they failed to propose adequate hours and staffing, or proposed staff that did not possess required skills. AR, Tab 31, Source Selection Evaluation Report, at 8-9. Accordingly, we find that the agency reasonably assessed the awardee's quotation under the solicitation's evaluation criteria and documented a reasonable selection decision. Although SuprTEK disagrees with the agency's conclusions, this does not demonstrate that the agency's evaluation and selection decision were unreasonable.

### Past Performance Evaluation

Finally, SuprTEK challenges TRANSCOM's evaluation of the awardee's past performance. Essentially, the protester complains that Phacil's overall past performance rating of substantial confidence was too high and argues that Phacil does not have relevant experience with ETA services. The protester also complains that the agency failed to adequately document or explain its evaluation. Based on the record, we conclude that the agency reasonably considered Phacil's past performance record, in a manner consistent with the solicitation's evaluation methodology.

The solicitation stated that past performance references should address performance in four areas:

- (1) experience installing and implementing [g]overnment owned software onto consolidated staging and production environments;
- (2) experience supporting the use of Client Digital Certificates with LDAP [lightweight directory access protocol] and/or cookie encryptions authentications or security assertive markup language total service;
- (3) experience in the development and management of SCRs [software change requests] and subsequent release into a production environment; and
- (4) experience with security documentation and processes to maintain an Authority to Operate.

RFQ at 4. The agency's evaluation of Phacil's past performance considered each of these four areas, and assigned a rating for each area and overall, which was documented by a written narrative. AR, Tab 21, Past Performance Evaluation Summary, at 1. The agency found that Phacil's first reference was very relevant with regard to areas 1, 3, and 4, and relevant to area 2; the agency assigned a very relevant rating overall for this reference. Id. at 2. Phacil's second and third references were assigned relevant ratings for each of the four areas, and relevant overall ratings. Id. at 4-5. The agency found that Phacil's fourth reference was not relevant because it concerned an ID/IQ contract, rather than the task order performed under that contract. Id. at 7; Tab 31, Source Selection Evaluation Board



Report, at 10. Based on these ratings, the agency concluded that it had a high expectation of Phacil's successful performance, and assigned a substantial confidence rating.

To the extent SuprTEK argues that Phacil could not have received a substantial confidence rating because it has not previously supported ETA, we disagree because the solicitation did not require prior ETA experience. As described above, the solicitation stated that it would evaluate past performance references in four areas, none of which require specific ETA experience. See RFQ at 4. Moreover, we find that the agency's evaluation was adequately documented and supports a substantial confidence rating. For example, the agency concluded that Phacil's first reference involved essentially the same scope, magnitude of effort, and complexities as those required in the RFQ and received exceptional ratings for all areas, as well as an overall exceptional rating on the past performance questionnaire; its PPIRS<sup>3</sup> report showed exceptional ratings in all areas. AR, Tab 31, Source Selection Evaluation Board Report, at 10. The protester's disagreement with the agency's evaluation conclusions does not establish that the conclusions were unreasonable.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> The past performance information retrieval system (PPIRS) is a web-enabled, enterprise application that provides timely and pertinent contractor past performance information to the Department of Defense and federal acquisition community for use in making source selection decisions.