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**Comptroller General  
of the United States**

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

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## Decision

**Matter of:** Zolon Tech, Inc.

**File:** B-405869

**Date:** December 22, 2011

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J. Patrick McMahon, Esq., and William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for the protester.

Holly Emrick Svetz, Esq., James K. Kearney, Esq., and Steven W. Cave, Esq., Womble Carlyle Sandridge & Rice, for Sevatec, Inc., an intervenor.

Nathan E. Mires, Esq., and Ralph G. Bittelari, Esq., Department of Justice, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency unreasonably evaluated subcontractor's past performance because reference listed in quotation did not complete past performance survey is denied where (1) there is no indication that the person who completed the survey (the prior contracting officer's technical representative) was not cognizant of the subcontractor's past performance and (2) the listed reference served as an evaluator for this procurement who did not question the reported weaknesses.

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### DECISION

Zolon Tech, Inc., of Herndon, Virginia, protests the Bureau of Alcohol, Tobacco, Firearms and Explosives' award of a contract to Sevatec, Inc., of Falls Church, Virginia, under request for quotations (RFQ) No. ATF-DJA11RFQ0029, for information technology support services. Zolon asserts that the agency unreasonably evaluated its technical proposal and past performance.

We deny the protest.

The solicitation provided for a best value award based on an evaluation of the following factors, listed in descending order of importance: past performance; technical approach; corporate qualifications; and price. Following the evaluation of proposals, Zolon, who offered to perform for \$15,654,123, was rated marginal for past performance, acceptable for technical approach, and outstanding for corporate

qualifications.<sup>1</sup> Sevatec offered to perform for \$18,996,123, and was rated outstanding for past performance, good for technical approach, and outstanding for corporate qualifications. The agency performed a best value analysis and selected Sevatec for award. Zolon subsequently filed this protest.

In reviewing a protest against a procuring agency's evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Savannah River Tank Closure, LLC, B-400953 et al., Mar. 30, 2009, 2009 CPD ¶ 78 at 16. We have reviewed the record and, as discussed below, find that the evaluation was reasonable.

With respect to past performance, offerors were required to list up to three contracts for the offeror and its subcontractors and teaming partners that demonstrated recent and relevant past performance furnishing information analysis, software design, and development support services. RFQ, Att. 3 at 3. The offerors were also required to request references to complete a past performance survey and return it directly to the agency. Id. at 4. The agency received three surveys for Zolon's subcontractors, but no survey for Zolon. One of the subcontractors received ratings of marginal and unacceptable for quality, timeliness, business relations, and management of key personnel. Consensus Report at 12. In addition, the agency found that the protester itself failed to demonstrate strong past performance related to the agency's requirements, noting, for example, that Zolon did not demonstrate knowledge of custom application development. Id. Based on these factors, the agency rated Zolon marginal for past performance.

Zolon asserts that the evaluation is unreasonable because the person that completed the subcontractor's survey was not the person that the subcontractor listed as a reference for the referenced contract. We disagree. In this regard, the agency reports that while the listed reference was the current contracting officer's technical representative (COTR) on the referenced contract, the person who completed the survey was the prior COTR on the referenced contract. Further, the person who was listed as a reference was an evaluator for the current, protested solicitation. Thus, not only is there no indication in the record that the person who completed the survey was not familiar with the subcontractor's performance, but in addition, if the listed reference disagreed with the reference relied upon in the evaluation she had the opportunity to express that disagreement. In fact, however, the listed reference in her role as an evaluator did not question the weaknesses reported for the subcontractor. Agency Report, Marks Evaluation at 1.

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<sup>1</sup> The possible ratings for the technical proposal were outstanding, good, acceptable, and marginal. Att. 3 at 9. The possible past performance ratings were outstanding, good, acceptable, marginal, unacceptable, and neutral. Att. 3 at 8-9.

Zolon also asserts that the agency should have permitted its subcontractor, to respond to the adverse past performance information since the subcontractor had not had a previous opportunity to do so. However, where, as here, discussions are not conducted under an acquisition, an agency is not required to communicate with offerors regarding questions about adverse past performance, unless there is a clear reason to question the validity of the past performance information. Rod Robertson Enterprises, Inc., B-404476, Jan. 31, 2011, 2011 CPD ¶ 129 at 3-4.

As discussed above, the person who completed the survey was a COTR for the subcontractor's referenced contract, and there is no indication in the record that he was not familiar with the subcontractor's past performance. Further, the current COTR was on the evaluation committee and she did not question the information provided by the reference. In our view, therefore, there was no reason for the agency to question the past performance information such that the agency would be required to provide the subcontractor with the opportunity to clarify its past performance.

Zolon also challenges the evaluation of its technical proposal. In this regard, the agency rated Zolon's technical proposal acceptable, assigning seven weaknesses: the discussion of the tier 1 help desk process was not relevant to the required tier 2 help desk process; the subcontractor being used for project management assistance was unacceptable; the proposal did not demonstrate that the senior architect has an Oracle software background; the proposed subcontractors had over a turnover rate in excess of 12% in 2010<sup>2</sup>; the internet/intranet/portal services approach did not address web postings; the management plan was based on a task order contract and this is not one; and there was no mention of an Oracle software stack in the discussion. Source Selection Decision (SSD) at 21.

From our review of the record, we find that the agency has failed to rebut the protester's challenge to the first weakness cited above, that is, the discussion of the tier 2 help desk process. In addition, the agency agrees that the second and third weaknesses should not have been assigned to Zolon's proposal. Contracting Officer's Statement at 9. Our review of the record, however, furnishes no basis for concluding that Zolon was prejudiced by these errors in the evaluation.

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<sup>2</sup> According to the protester, there were three subcontractors, the most significant of which (filling 6 positions) had a turnover rate of 16.5%, while the next most significant (filling 3 positions) had a turnover rate of less than 5%. (The third subcontractor was proposed to fill only a single position). Protester Comments at 7. Considered on a weighted basis, reflecting the greater number of positions to be filled by the most significant subcontractor, the weighted average turnover rate was approximately 11%.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; in effect, a protester must show that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Here, Zolon does not timely challenge the remaining four weaknesses that the agency found in its proposal. In addition, under the terms of the solicitation, for a rating of good, the next higher rating above acceptable, an offeror was required to have one or more significant strengths in its technical proposal. Zolon's technical proposal, however, was assigned no significant strengths. In contrast, in making its best value determination, the agency found that Sevatec's proposal offered significant strengths to the government over and above the other offerors, including **[REDACTED]** SSD at 22. Zolon does not challenge any of these assigned significant strengths. In these circumstances, the errors in the evaluation of Zolon's technical proposal did not result in competitive prejudice and thus furnish no basis to sustain the protest.

The protest is denied.

Lynn H. Gibson  
General Counsel