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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: SuccessTech Management & Services

File: B-294174

Date: July 6, 2004

Sheila Pannell for the protester.

Mark R. Gleeman, Esq., Winthrop & Weinstine, for DECO, Inc., an intervenor.

Damon Martin, Esq., Naval Facilities Engineering Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposed 30-day transition period was inconsistent with material solicitation requirement for contract performance to begin within 15 days of notice of award, and thus rendered proposal unacceptable; remaining protest arguments challenging evaluation of proposal therefore are academic.

DECISION

SuccessTech Management & Services protests the elimination of its proposal from the competition under request for proposals (RFP) No. N62470-03-R-2083, issued by the Department of the Navy for guard services. SuccessTech asserts that the agency's evaluation was flawed.

We deny the protest.

The RFP, a 100-percent section 8(a) small business set-aside, sought proposals to provide security guard services at the Norfolk Naval Shipyard and other Navy installations. Proposals were to be evaluated under three technical factors--management/organization, past performance, and financial capability--and price. The RFP contemplated a "best value" award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year, with 4 option years.

After an initial evaluation, the agency conducted discussions with SuccessTech; it subsequently found that the firm's revised proposal did not fully correct the identified deficiencies. In the final evaluation, the agency rated SuccessTech's proposal as marginal under the management/organization factor due to the firm's

lack of contracts for similar work requirements and due to its proposal of a 30-day phase-in plan, which was inconsistent with the RFP's requirement for a maximum 15-day startup. The agency also rated SuccessTech's proposal as poor under the financial capability factor because the firm's credit report did not contain a credit rating and it failed to produce evidence of a current line of credit, both requirements under the RFP. The agency eliminated SuccessTech's proposal from the competition and the firm then filed this protest.

SuccessTech asserts that the evaluation under the management/organization factor was flawed because its proposal and discussion responses were sufficient based on the experience of its key personnel and that of its subcontractor, the incumbent. In addition, it asserts that the RFP did not require phase-in and full operation within 15 days of award. With regard to the financial capability factor, SuccessTech asserts that it submitted all the information it could and that the RFP's requirements for a credit rating and letter of credit represented bias against small businesses (like SuccessTech) that have not been in business long enough to obtain them.

In reviewing a protest of an agency's evaluation of proposals, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

Here, SuccessTech's proposal failed to meet a material RFP requirement, and therefore was unacceptable. A firm delivery or service commencement date set forth in a solicitation is a material requirement, precluding acceptance of any proposal not offering to meet that date. Hawaiian Tel. Co., B-187871, May 2, 1977, 77-1 CPD ¶ 298 at 9. In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for an award. Plessey Elec. Sys. Corp., B-236494, Sept. 11, 1989, 89-2 CPD ¶ 226 at 2; Telenet Communications Corp., B-224561, Feb. 18, 1987, 87-1 CPD ¶ 181 at 3. The RFP stated that the performance period (contract term) "shall be for a period of 12 months commencing or within 15 days after notice/date of award." RFP § F.2. The RFP's statement of work provided that within "15 calendar days after award, the Contractor shall begin work for the Contract period." RFP § C.9.b. SuccessTech's initial startup plan did not include any identifiable time frames or schedule. When permitted to supplement its plan in discussions, SuccessTech stated that it assumed "at least thirty days advanced notice of contract award" and provided a 30-day transition schedule leading up to a start date when transition was to be completed and the firm would "assume all duties." Protest attach. 9, at 2-3. Since SuccessTech's plan did not call for contract performance to begin within the required 15 days of award, it could not be accepted for award.

SuccessTech does not claim that its phase-in plan meets the 15-day requirement. Rather, it asserts that the RFP "does not firmly state that contractor will phase in and be fully operational within 15 days notice of award." Protest at 5. However, this assertion ignores the plain language of the RFP, quoted above, which clearly

required the successful contractor to commence work not later than 15 days after the notice of award. SuccessTech asserts that the issue is moot because its proposed subcontractor is the incumbent, so that its workforce would be on site within the required 15 days. Comments at 2. However, notwithstanding that its workforce may be on site, SuccessTech's proposal, as modified by its discussion responses, made clear that the firm was not offering to be contractually bound to perform all duties until 30 days after notice of award. In this regard, SuccessTech claims that "[e]ven with [its incumbent subcontractor] already in place new weapon qualifications, uniform exchanges, vehicle acquisition/up-fitting, new equipment purchase and training take time to ensure compliance with all federal, state, and local regulations," and make a 15-day phase-in impractical. Protest at 6.

We do not reach the merits of SuccessTech's remaining protest grounds concerning the evaluation, because its failure to meet a material RFP requirement rendered its proposal ineligible for award, notwithstanding any errors in the evaluation. Since SuccessTech thus would not have received the award even if we agreed that the evaluation was flawed, this aspect of the protest is academic. Galen Med. Assocs., Inc., B-288661.4, B-288661.5, Feb. 25, 2002, 2002 CPD ¶ 44 at 4.

The protest is denied.

Anthony H. Gamboa
General Counsel