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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:** Total Health Resources

**File:** B-403209

**Date:** October 4, 2010

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Kristen E. Ittig, Esq., Arnold & Porter LLP, for the protester.  
Gary R. Allen, Esq., and Maj. Heidi L. Osterhout, Department of the Air Force, for the agency.  
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Solicitation requirement that the prime contractor itself have 2 years of family advocacy program experience is unduly restrictive, where the agency does not show that its needs could not be satisfied by a subcontractor with the requisite experience.

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### **DECISION**

Total Health Resources, of Silver Spring, Maryland, protests the terms of request for proposals (RFP) No. FA7014-10-R-0020 issued by the Department of the Air Force for family advocacy program (FAP) services. The solicitation, as amended, requires that the prime contractor itself have 2 years of FAP experience.

We sustain the protest.

### **BACKGROUND**

The RFP, issued as a commercial item acquisition set aside for section 8(a) small business firms, provided for the award of a fixed-price contract for family and community health services, including education, awareness, identification and treatment of family maltreatment incidents and non-violence advocacy, at 21 Air Force bases across the western and southwestern United States. See Performance Work Statement at 2. Offerors were informed that award would be made on a best value basis, considering technical capability and price. In this regard, the RFP stated that offerors must show 2 years of experience providing FAP services to be technically acceptable. RFP at 51. In response to offerors' questions, the agency amended the solicitation to require that, where an offeror proposes a

prime/subcontractor teaming arrangement, the prime contractor itself must have 2 years of FAP experience. See RFP amend. 2, at 3; RFP amend. 3, at 3.

## DISCUSSION

Total Health protests that the RFP's requirement for 2 years of experience providing FAP services at the prime contractor level unduly restricts competition, particularly among section 8(a) firms. See Protest; Response to Second Motion for Dismissal at 2; Comments at 3. Specifically, Total Health contends that it has provided similar family health services but does not satisfy the requirement for 2 years of experience of providing FAP services to military communities. The protester does not challenge the 2-year requirement for FAP experience, but argues that the agency's requirement for a contractor with specific FAP experience can be met through the proposal of an experienced subcontractor.

The Air Force responds that FAP services are different from health care services in a civilian community because an FAP contractor must work closely with military commanders to assure military readiness while providing clinical interventions.<sup>1</sup> Legal Memorandum at 8. According to the agency, to deliver services immediately, the vendor must have an understanding of military protocol and procedures and challenges unique to providing support services for military families. The agency also states that the vendor must have experience such as working on a military base and with multiple military organizations; addressing security issues; and navigating installation and personnel support systems. For example, the contractor must know procedures for hiring and replacing applicants in a timely manner, such as obtaining Common Access Cards and security clearances, while maintaining support during military deployments. In this regard, the chief of the FAP states that a contractor with only one year's experience would not have observed the effect of the full deployment cycle on individuals, families, and communities. The agency further states that, to ensure uninterrupted service, the "vendor must hit the ground running at the time of award" and "there can be no 'on-the-job training'." Contracting Officer's Statement at 3. According to the contracting officer, "[i]f the vendor does not have the required 2 years of [FAP] experience as a prime, then they are encouraged to become a subcontractor under a vendor that does." Id. at 4.

In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent necessary to satisfy the agency's legitimate needs.

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<sup>1</sup> The agency states that the FAP is a highly-visible, congressionally-appropriated mission requiring frequent reports to Congress and the Office of the Secretary of Defense and that "serious family maltreatment allegations receive exceptional media attention impacting the public's perception" of the military. See Agency Report, Tab 10, FAP Chief's Statement, at 1-2.

10 U.S.C. § 2305(a)(1) (2006); Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3. As a general matter, the experience of a technically qualified subcontractor may be used to satisfy experience requirements for a prospective prime contractor. However, consistent with its solicitation, an agency may consider only the offeror's experience, and not that of its proposed subcontractors, if the agency has legitimate reasons for concluding that the successful offeror itself must possess the relevant experience in order to ensure successful performance of the contract. *See, e.g., Technology & Mgmt. Servs., Inc.*, B-240351, B-240351.2, Nov. 7, 1990, 90-2 CPD ¶ 375 at 3 (agency had legitimate need for contractor with extensive corporate experience in nuclear energy research and nuclear and hazardous waste to assure adequate performance of contract where lack of experience would impair ability to perform, oversee, and manage complex tasks if subcontractor were unavailable).

Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. We will examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *See SMARTnet, Inc.*, B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7.

Here, despite specific inquiry from our Office,<sup>2</sup> the agency does not address why the 2-year, FAP experience requirement cannot be satisfied by proposing a subcontractor or other teaming member. Instead, the agency's arguments and explanation address only the importance of the FAP program and the need for an experience requirement. Thus, for example, the agency does not address why, in the context of this commercial item acquisition, a prime contractor, which like the protester has experience providing commercial family health services, could not satisfy the agency's needs by proposing a subcontractor with experience providing military FAP services. Furthermore, the Air Force's statement that it is aware of at least [Deleted] 8(a) small business concerns that can satisfy the RFP's experience requirement does not demonstrate that this requirement is not unduly restrictive, given that this does not show that all eligible 8(a) firms will have an opportunity to submit offers in response to a competitive 8(a) solicitation. *See* 13 C.F.R. § 124.507(c)(3) (2010); *see also Harris Enters., Inc.*, B-311143, Mar. 27, 2008, 2008 CPD ¶ 60 at 1.

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<sup>2</sup> Following the submission of the agency's report and the protester's comments, we submitted an interrogatory to the agency requesting that the Air Force specifically address the protester's arguments as to why a subcontractor's specific experience could not satisfy the agency's requirements. *See* Email from GAO to Air Force Counsel, Sept. 7, 2010.

In sum, given the agency's failure to explain why its experience requirements cannot be satisfied by a subcontractor or other teaming partner, we find that the RFP's requirement that the prime contractor have 2 years of FAP experience is unduly restrictive of competition. Navajo Nation Oil & Gas Co., B-261329, Sept. 14, 1995, 95-2 CPD ¶ 133 at 6-8 (solicitation clause requiring specific experience applicable only to fuel dealers, and not refiners or manufacturers, unduly restricts competition, where agency makes no showing and record provides no reasonable basis for agency's determination that the restriction reflects agency's minimum needs); Keeson, Inc.; Ingram Demolition, Inc., B-245625; B-245655, Jan. 24, 1992, 92-1 CPD ¶ 108 at 5-6 (solicitation provision requiring offeror to have completed five asbestos abatement projects within last 3 years but also have 5 years experience as an established asbestos abatement business was unduly restrictive where the agency did not explain or address its need for the provision).

#### RECOMMENDATION

We recommend that the Air Force amend the solicitation in accordance with this decision. We also find that the protester is entitled to the costs of filing and pursuing its protests, including reasonable attorneys' fees. Total Health should submit its claim for protest costs directly to the Air Force within 60 days of receipt of this decision.

The protest is sustained.

Lynn H. Gibson  
Acting General Counsel