



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Innovative Technology Systems, Inc.

**File:** B-260074

**Date:** May 24, 1995

Kenneth A. Martin, Esq., and Kurt M. Rylander, Esq., Riley & Artabane, for the protester.  
David Turner, Esq., Department of the Navy, for the agency.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency may properly limit extent to which it will consider subcontractors' experience in lieu of prime offeror's experience under corporate experience technical factor where: (1) agency is conducting procurement as competitive 8(a) set-aside; (2) solicitation contemplates award of a services contract; and (3) solicitation incorporates Federal Acquisition Regulation § 52.219-14, "Limitations on Subcontracting," requiring successful offeror to expend at least 50 percent of the labor costs under the contract for its own employees.

### DECISION

Innovative Technology Systems, Inc. (ITS) protests the agency's evaluation of its technical proposal under request for proposals (RFP) No. N00140-94-R-0017, issued by the Department of the Navy for management and operations support services for various computer data processing facilities located throughout the Reserve Command Management Information Strategy network. ITS contends that the agency is improperly refusing to consider ITS' proposed subcontractors' management experience under the "Corporate Resources" technical factor of the RFP; consequently, ITS maintains that its proposal is being improperly downgraded under this factor.

We deny the protest.

## BACKGROUND

The RFP was issued as a competitive 8(a) set-aside under the Small Business Act, 15 U.S.C. § 637(a) (Supp. V 1993),<sup>1</sup> and contemplated the award of a cost-plus-fixed-fee indefinite delivery contract. Under the RFP, offerors were required to submit both a technical and cost proposal; of significance here, the RFP provided that technical proposals would be evaluated under the following four technical factors, in descending order of importance: Corporate Resources; Personnel Resources; Technical Approach; and Management Plan Approach. The RFP advised offerors that contract award would be made to the offeror submitting the most advantageous offer, and that the Navy's evaluation of proposals would deem technical considerations to be more important than cost.

As of the June 20, 1994, closing date, eight proposals --including that of ITS--were received. On July 7, the contracting officer forwarded the technical proposals to the technical evaluation team (TET) for review. On August 30, the TET advised the contracting officer that one offeror's proposal was acceptable; that the offers of ITS and another firm were technically unacceptable but capable of being made acceptable through discussions; and that the remaining five offers were unacceptable.

Based on these findings, the contracting officer excluded the last five offers from further consideration, and established a competitive range which included the acceptable offer, and the offers of ITS and the other firm identified by the TET as technically unacceptable but capable of being made acceptable through discussions.

On November 7, the contracting officer issued discussion letters to the three competitive range offerors. In her letter to ITS, the contracting officer identified 10 of ITS' proposed key personnel which the agency deemed technically unacceptable under the personnel requirements of the RFP, as

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<sup>1</sup>Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1995) provide for and govern competitively awarded contracts set aside for section 8(a) qualified concerns. Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.

well as several cost proposal questions. Of relevance to this protest, the contracting officer also advised ITS as follows:

"[y]ou have been rated technically unacceptable in the Corporate Resources factor because your proposal fails to describe similar and related work experience within the past five years of the scope, magnitude, and complexity of work identified in the solicitation. For example, the proposal includes only one contract performed by ITS while including three contracts from the team members."

In this regard, the RFP's "Corporate Resources" evaluation factor provided:

"The offeror shall describe similar or directly related work experience within the past five years of similar scope, magnitude and complexity of that detailed in the Statement of Work (SOW). The experience should include a detailed description of the work performed including level of effort delivered, subcontractors utilized, dates of performance and how the experience is directly related and/or similar to the SOW, the client's technical manager for each project including telephone number, as well as anything else relevant to the Statement of Work."

On November 21, ITS submitted a best and final offer (BAFO) to the agency. On December 2, after completing its evaluation of ITS' technical proposal, the TET recommended that ITS' proposal be excluded from the competitive range based primarily on its conclusion that ITS' proposal remained technically deficient under the Corporate Resources factor. Specifically, the TET determined that the additional information ITS had submitted regarding its own experience "included corporate contracts which represent less than seventeen (17) percent of the contract size requirements in the solicitation." Additionally, the TET found that ITS had failed to describe in-house corporate experience that was similar or directly related to numerous task areas specified in the SOW--particularly for the tasks of facilities operation and management; life cycle management; documentation requirements; economic analysis; quality assurance; technological research; and security/data integrity requirements.

To the extent ITS relied on its two subcontractors' experience as addressing the Corporate Resources technical factor, the TET determined that it would only credit this subcontractor experience towards 50 percent of ITS' compliance with this technical factor; that is, the TET determined that ITS should demonstrate at least 50 percent of the required corporate experience based on past in-house performance of similar tasks. The TET's determination in this regard was based on the fact that the RFP incorporated FAR § 52.219-14, "Limitations on Subcontracting," which requires the successful offeror to expend at least 50 percent of the labor costs under the contract for its own employees.

By letter dated December 7, the contracting officer notified ITS and the unsuccessful firm that their proposals had been excluded from the competitive range. By letter to the contracting officer dated December 8, ITS requested reconsideration of the agency's exclusion decision. On December 14, prior to receiving a response on its agency-level protest, ITS filed a protest at the General Services Administration Board of Contract Appeals (GSBCA), challenging the Navy's technical evaluation and subsequent exclusion of ITS' proposal from the competitive range.

Rather than delaying the procurement while the GSBCA considered ITS' protest, the contracting officer decided to readmit ITS' proposal to the competitive range. By letter dated December 15, the Navy advised ITS as follows:

"Although the [c]ontracting [o]fficer believes, based on ITS' submissions to date, that ITS does not have a reasonable chance for award, your client, through its [GSBCA] [p]rotest, has indicated that it believes it can improve its proposal and become eligible for award. Accordingly, the [c]ontracting [o]fficer has agreed to return your client to the competitive range contingent upon withdrawal of the referenced protest . . . ."

On December 19, in response to the Navy's offer of readmission to the competitive range, ITS withdrew its protest to the GSBCA.

By letter dated January 6, 1995, the Navy requested a second BAFO from ITS as well as the other two offerors whose proposals were in the initial competitive range. In her letter to ITS, the contracting officer stated as follows

regarding deficiencies in ITS' proposal under the Corporate Resources factor:<sup>2</sup>

"1. Your technical proposal has been determined to be technically unacceptable. Specifically, in the technical factor of Corporate Resources, your proposal fails to describe similar or directly related work experience within the past five years of similar scope, magnitude and complexity to that described in the [SOW]. We have considered the experience you have described for ITS and its subcontractors, considering the restrictions set forth in solicitation clause FAR [S] 52.219-14 "Limitations on Subcontracting" (provided here as Enclosure 1). In doing so, I have determined that the contracts you cite for ITS demonstrate experience approaching the magnitude of effort that would be required of ITS by the [SOW]. However, the contracts cited as demonstrating ITS' experience do not show, either in scope or complexity, experience that is directly related or sufficiently similar to the effort required by the [SOW]. For example, you have not demonstrated direct or sufficiently related experience in the task areas of facilities operation, life cycle management documentation, economic analysis, quality assurance, technological research, or security/data integrity requirements . . . . "

On January 19, 1 day prior to the scheduled second BAFO closing date, ITS submitted this protest to our Office.

#### PROTEST OVERVIEW

In its revised proposal--on which the agency's January 6 discussion questions were based--ITS addressed the Corporate Resources factor primarily by means of its two primary subcontractors, which--according to ITS--held 20 and 6 years

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<sup>2</sup>The contracting officer also advised ITS that two of its key personnel resumes remained technically deficient, and that the agency had questions about several of the items in its cost proposal. These areas are not at issue in this protest.

of applicable experience, respectively. ITS also provided detailed descriptions of two government contracts which ITS had successfully performed in 1990 and 1992 which purported to demonstrate some of ITS' direct experience in the task areas specified in the Corporate Resources technical factor. As noted above, the TET refused to consider ITS' subcontractor experience toward more than 50 percent of its compliance with this factor, and otherwise determined that ITS' own in-house corporate experience was not with contracts of similar scope or complexity.

The protester maintains that the Navy has improperly failed to evaluate ITS' proposal under the Corporate Resources factor by failing to fully consider its subcontractors' experience. First, ITS maintains that the Navy has improperly interpreted FAR § 52.219-14, "Limitations on Subcontracting," as precluding the agency from considering more than 50 percent of ITS' proposed subcontractors' experience under the Corporate Resources factor. ITS also maintains that because the solicitation did not advise offerors that subcontractors' experience would be evaluated in accordance with FAR § 52.219-14, the agency deviated from the solicitation's stated evaluation criteria by limiting the extent to which subcontractor experience would be considered in evaluating the Corporate Resources factor.

As discussed below, we think that the Navy properly evaluated ITS' subcontractor experience under the Corporate Resource technical factor and did not deviate from the terms of the RFP.

#### ANALYSIS

In reviewing protests against the propriety of an agency's technical evaluation, it is not the function of our Office to independently evaluate those proposals. Rather, the determination of the technical adequacy and relative desirability of the proposal is primarily a matter of agency discretion which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251. A protester's mere disagreement with the agency does not in itself render the evaluation unreasonable. Seair Transport, Servs. Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458.

With respect to the technical evaluation of an offeror's experience, we have consistently held that agencies may consider an offeror's subcontractor's experience under relevant evaluation factors where the RFP allows for the use of subcontractors to perform the contract and does not prohibit consideration of subcontractors' experience in the

evaluation of proposals. See Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298; George A. and Peter A. Palivos, B-245878.2; B-245878.3, Mar. 16, 1992, 92-1 CPD ¶ 286; Commercial Bldg. Serv., Inc., B-237865.2, B-237865.3, May 16, 1990, 90-1 CPD ¶ 473. On the other hand, where an agency has legitimate reasons for limiting consideration of a subcontractor's experience, it may, consistent with the RFP, consider only the offeror's experience in the evaluation of proposals, and not that of its proposed subcontractors. See Technology and Management Servs., Inc., 70 Comp. Gen. 58 (1990), 90-2 CPD ¶ 375; Jim Welbourn Co., Inc., B-233925.2, July 12, 1989, 89-2 CPD ¶ 34.

In this case, the parties agree that the RFP does not prohibit consideration of subcontractors' experience under the Corporate Resources technical factor;<sup>3</sup> the only dispute is whether the agency may properly limit the extent to which it will consider a subcontractor's experience for purposes of evaluating the prime offeror's proposal under the Corporate Resources technical factor.

As noted above, in accordance with FAR § 19.805,<sup>4</sup> the RFP incorporated by reference FAR § 52.219-14, "Limitations on Subcontracting," which requires that at least 50 percent of the cost of contract performance incurred for personnel be expended for employees of the small business offeror. Because this procurement calls for personnel services, the agency explains, it would be inconsistent with FAR § 52.219-14 to consider the experience of ITS' proposed subcontractors--both of which are large businesses--for more than half of the experience called for under the Corporate Resources factor.

We agree. We think it is clearly reasonable for the Navy to decide that an offeror under a services contract may not rely entirely on its subcontractor's experience when, given the restriction on subcontractor participation in performance of the contract under FAR § 52.219-14, the offeror itself will be required to expend at least 50 percent of the labor costs under the contract for its own employees. Even without regard to FAR § 52.219-14, where, as here, the procuring agency is requiring the successful offeror to operate and maintain a computer network, and otherwise assume ultimate responsibility for the management

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<sup>3</sup>We agree that this factor suggests the possibility of relying to some extent on subcontractor experience by describing how offerors' detailed description of any past work experience should include "subcontractors utilized."

<sup>4</sup>FAR 19.805 requires all 8(a) procurements to include the Limitations on Subcontracting clause.

and performance of an entire computer system, we think it is reasonable for the agency to require the successful offeror to possess its own, in-house corporate experience instead of relying on its subcontractor's experience to prove its ability under a corporate experience technical factor. See Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., B-257186; et al.; Sept. 7, 1994, 94-2 CPD ¶ 167. (computer operation and maintenance services provided legitimate reason for agency's refusal to allow offeror to rely on its subcontractor's experience under solicitation's past performance technical factor).

ITS argues that if the Navy insists on this evaluation approach towards subcontractor experience, the agency is deviating from the stated evaluation criteria in the RFP since, according to ITS, the RFP does not explicitly state that the agency's consideration of a subcontractor's experience will be limited as a result of either FAR § 52.219-14 or the agency's preference for in-house corporate experience. We find this argument unpersuasive.

Offerors are expected to read the entire solicitation and to do so in a reasonable manner. Id.; Jedco, B-223579, Aug. 26, 1986, 86-2 CPD ¶ 228. Where a dispute exists as to the meaning of a solicitation provision--here, ITS' contention that the language of this RFP's Corporate Resources technical evaluation factor precludes the agency's subcontractor experience evaluation approach--our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with the solicitation when read as a whole. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379; Canadian Commercial Corp./Andrew Canada, Inc., B-257367.2, Nov. 23, 1994, 94-2 CPD ¶ 200.

ITS' argument that the RFP fails to advise offerors that only 50 percent of its subcontractor's corporate experience will be considered under the Corporate Resources technical factor is based on an interpretation of the solicitation which ignores the RFP's explicit incorporation of FAR § 52.219-14. Although the RFP incorporates this provision by reference instead of setting out the clause in full, the incorporation by reference of material solicitation provisions is sufficient to put offerors on notice of their contents. Composix Co., B-257551, Oct. 17, 1994, 94-2 CPD ¶ 144. Considered in the context of FAR § 52.219-14, we think the evaluation of a subcontractor's experience under the Corporate Resources factor can only reasonably be considered to mean that the agency might not consider more than 50 percent of the subcontractor's experience in connection with this factor. ITS' interpretation to the



contrary is unreasonable as it is based on an interpretation of the RFP which reads out the FAR § 52.219-14 clause. Accordingly, we do not agree that the terms of the RFP precluded the agency from limiting the extent to which it would consider a subcontractor's experience under the Corporate Resources factor.<sup>3</sup> See Stabro Labs., Inc., B-256921, Aug. 8, 1994, 94-2 CPD ¶ 66.

The protest is denied.

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for Robert P. Murphy  
General Counsel

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<sup>3</sup>ITS also alleges that because the agency's approach to evaluating subcontractor experience was not apparent from the RFP, the agency failed to hold adequate discussions with ITS regarding this issue. Given our conclusion that the agency properly evaluated subcontractor experience within the scope of the RFP, as well as the two discussion letters in the record wherein the Navy clearly apprised ITS that the firm could not rely solely on its proposed subcontractors' experience under the Corporate Resources technical factor, we find this contention without merit. To the extent ITS suggests, based on our holding in PHE/Maser, Inc., 70 Comp. Gen. 689 (1991), 91-2 CPD ¶ 210, that it cannot be downgraded under the Corporate Resources factor without referral of the matter to the SBA, we note that this analysis is not applicable where, as here, the responsibility-type factor of experience properly is being considered by the agency only in the context of a comparative technical evaluation. See Modern Sanitation Sys., Corp., B-245469, Jan. 2, 1992, 92-1 CPD ¶ 9.