



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Western Roofing Service

File: B-232666.3

Date: April 11, 1989

DIGEST

1. Protest that awardee's subcontractor failed to meet definitive responsibility criteria concerning experience in performing similar services is denied where record indicates that awardee submitted adequate objective evidence of its subcontractor's past experience from which the contracting officer could reasonably conclude that the criteria were met.
2. Protest that firm did not meet 3 years experience requirement set forth in solicitation is denied where contracting officer reasonably considered that the prior experience of the corporation's principal officers satisfied the requirement.

DECISION

Western Roofing Service protests the decision to reopen negotiations and request a best and final offer under request for proposals (RFP) No. GS-09P-88-KTC-0225 issued by the General Services Administration (GSA) for the re-roofing and repair of the Federal Supply warehouse, 1070 San Mateo Ave., South San Francisco, California.

We deny the protest.

This solicitation was initially issued on July 15, 1988, as a two-step procurement. The solicitation required the submission of two packages, a qualifications package and a price package. Award was to be made to the lowest, responsive, responsible bidder who met the minimum qualifications. Of the five proposals received, four were determined to meet the minimum qualifications. On September 2, 1988, price packages were opened and only one bidder, Bryant, the high bidder, was found responsive. At this time the contracting officer determined that the government's

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estimate, which was almost \$300,000 higher than Bryant's price of \$2,245,699, was unreliable and could not be used to determine if bid prices were reasonable. The solicitation was then converted by amendments 0003 and 0004 to a negotiated procurement and the RFP was issued to the four offerors which GSA had found to have met the minimum qualifications.

Western then protested GSA's consideration of American's offer on the basis that American was not a responsible offeror, but Western withdrew its protest on being informed by GSA that it would receive the award. After award to Western, GSA decided to reopen discussions with the offerors, including American, and Western filed this protest.

Western contends that American is ineligible to participate in the negotiated procurement because American should have been determined nonresponsible in the original two-step procurement. Western contends that when the contracting officer converted the procurement from sealed bidding to negotiated, negotiations should only have been held with "each responsible bidder that submitted a bid in response to the invitation for bids," Federal Acquisition Regulation (FAR) § 15.103(a) (FAC 84-5), and that a nonresponsible bidders should have been precluded from participating in the converted procurement. See M.C. Dean Electrical Contracting, Inc., B-228542, Dec. 21, 1987, 87-2 CPD ¶ 613.

Western contends that American was nonresponsible because American's proposed subcontractor, Asbestos Technicians (AT), failed to meet definitive responsibility criteria in the solicitation. Western alleges that AT did not have 3 years experience in asbestos removal as required by the solicitation. Western also contends that the information in American's offer failed to demonstrate that AT had "qualifications and experience on asbestos abatement projects of a minimum size of 50,000 square feet and of similar scope to the project" as also required by the solicitation.

We generally do not review affirmative responsibility determinations since a contracting agency's determination that a particular bidder or offeror is responsible is based in large measure on subjective judgments. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988). One exception to this rule is where a solicitation contains definitive responsibility criteria, which are specific and objective standards established by an agency to measure a bidder's or offeror's ability to perform the contract. Calculus, Inc., B-228377.2, Dec. 7, 1987, 87-2 CPD ¶ 558. These special

standards put firms on notice that the class of prospective contractors is limited to those who meet qualitative or quantitative criteria deemed necessary for adequate performance. Antenna Products Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297.

Here, the solicitation required the offeror to provide:

"A statement which demonstrates the Offeror's qualifications and experience on asbestos abatement projects of a minimum size of 50,000 square feet and of similar scope to the project covered by this solicitation. Demonstration that the firm has been engaged in asbestos removal for a minimum of three years and has completed at least one asbestos abatement project within the last year."

A solicitation requirement, such as the above, that the prospective contractor have a specified number of years of experience in a particular area is a definitive responsibility criterion. Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. Where an allegation is made that definitive responsibility criteria have not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive criteria have been met. BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309. However, the relative quality of the evidence is a matter for the judgment of the contracting officer. Allen-Sherman-Hoff Co.--Request for Reconsideration, B-231552.2, Sept. 1, 1988, 88-2 CPD ¶ 202. Further, the extent to which investigation may be required is a matter for the contracting officer to determine, not this Office. DJ Enterprises, Inc., B-233410, Jan. 23, 1989, 89-1 CPD ¶ 59.

Western questions whether AT met the requirement for experience on asbestos abatement projects of a minimum size of 50,000 square feet and of similar scope to this project. AT submitted information showing performance of two projects in progress, a contract with the University of California for \$627,752 and a contract with Westgate Shopping Center, San Jose, California, price not given. AT also listed numerous other projects including the renovation of five 550 foot. long baking ovens for a contract amount of \$500,000. Western claims that this fails to show compliance with the requirement for experience with 50,000 square feet projects.

As stated above, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive criteria have been met. We believe that the evidence submitted concerning AT's experience was sufficient to show the type of experience required. We also that the contracting officer could have determined from the dollar size of AT's completed and in-process contracts that it did have the experience necessary. In this connection, we note that Western's price for the asbestos removal portion of its bid under the subject procurement is substantially lower than the \$627,752 project it had in process at the time of American's proposal submission. Although Western claims AT's experience is insufficient, the decision that AT's project were sufficiently comparable to the requirement in the solicitation was essentially within the agency's discretion. Tama Kensetsu Co., Ltd., and Nippon Hodo, B-233118, Feb. 8, 1989, 89-1 CPD ¶ ____.

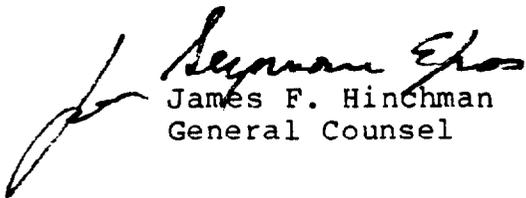
While definitive responsibility criteria establish a minimum standard which is a prerequisite to an affirmative determination of responsibility, we have recognized that there are situations where an offeror may not meet the specific letter of such criteria, but has clearly exhibited a level of achievement either equivalent to or in excess of the specified criteria, and thus properly may be considered to have satisfied the definitive responsibility criteria. Unison Transformer Services, Inc., B-232434, Nov. 10, 1988, 68 Comp. Gen. ____, 88-2 CPD ¶ 471. In this regard, we have held that it is not improper for an agency to consider the experience of a corporation's principal officers which was obtained prior to the date the bidder was incorporated. R.R. Mongeau Engineers, Inc., B-213330, Mar. 20, 1984, 84-1 CPD ¶ 333; R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220. Here, although AT was in business as a partnership for just over 2 years, the resumes of its principal officers show that they were both involved in asbestos removal in superintendent and project manager positions from 1979 and 1983, respectively. We view this as sufficient for the contracting officer to have found that AT met the 3 years experience requirement.

Western cites Scientific Industries, Inc., B-208307, Apr. 5, 1983, 83-1 CPD ¶ 361, for the proposition that an individual's experience cannot be used to evaluate corporate experience due to the critical need for organizational experience where health concerns are immediate. Western states that the asbestos abatement field is a critical health area. The latter case dealt with a challenge to the experience requirements of a contract for cleaning of critical areas of hospitals such as surgery, labor and

delivery, newborn nursery, and recovery, as being too restrictive. We held that because of crucial health concerns, a requirement for 2 years of organizational as opposed to individual employee experience was not unreasonable.

However, we view this case as no different from those decisions cited above in which we found that individual experience can be sufficient to meet a requirement for corporate experience. In this connection, we have recently held with respect to experience requirements on an asbestos removal contract that literal compliance with definitive responsibility criteria is not required as long as a level of achievement either equivalent to or in excess of the specified criteria is exhibited. Tama Kensetsu Co., Ltd., and Nippon Hodo, B-233118, supra.

The protest is denied.


James F. Hinchman
General Counsel