



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** United Materials, Inc.

**File:** B-243669

**Date:** August 16, 1991

Judith Ward Mattox, Esq., Mattox & Associates, P.C., for the protester.  
Robert C. MacKichan, Esq., General Services Administration, for the agency.  
David Schnabel, David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that awardee did not meet definitive responsibility criterion requiring installer to possess not less than 3 years experience specializing in installing type of waterproofing required for project is sustained where agency did not possess objective evidence upon which it could reasonably determine that the awardee satisfied the experience requirement.

## DECISION

United Materials, Inc. protests the General Services Administration's (GSA) award of a contract to Blazer Waterproofing Systems, Inc. under invitation for bids (IFB) No. GS-07P-90-JXC-0079, for the replacement of a patio deck at the Denver Federal Center, Lakewood, Colorado. United alleges that GSA erroneously determined that Blazer satisfied a definitive responsibility criterion in the IFB.

We sustain the protest.

The IFB, issued on June 27, 1990, called for replacement of a patio deck, including the installation of a fluid-applied waterproofing membrane. The solicitation required the apparent low bidder, within 2 weeks after bid opening, to submit the name of the manufacturer and installer of the fluid applied waterproofing, the name, date, location and owner's project manager for the "last five similar projects," and the name and project experience of the installer's superintendent or foreman. With respect to the installer, the solicitation

contained the following requirement; "Installer Qualifications: A firm which has specialized in installation of types of waterproofing required for project for not less than 3 years. . . ." GSA received 10 bids in response to the solicitation; Blazer submitted the low bid and United submitted the second-low bid. On April 1, GSA made award to Blazer.

United contends that the solicitation requirement for installation experience established a definitive responsibility criterion, and that the contracting officer possessed insufficient objective evidence to support his determination that Blazer had the requisite experience to satisfy the criterion. United concludes that the determination therefore was unreasonable, and that the award to Blazer was improper.

Our Office generally does not review affirmative determinations that a bidder is responsible, that is, capable of performing the contract. Such determinations are based in large measure on subjective judgments. 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 an offeror's ability to perform a particular 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 Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Although not every experience requirement in a solicitation constitutes a definitive criterion of responsibility, see, e.g., Power Testing Inc., B-197190, July 28, 1980, 80-2 CPD ¶ 72 (5-year experience requirements for the electricians and foreman to be used on the job), a solicitation requirement 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. Here, while the experience requirement was stated in terms of the "installer," the requirement was clearly understood by the agency and the bidders to be a definitive criterion applicable to the bidders (as indicated below, Blazer intends to install the waterproofing). See Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. Thus, the requirement that the waterproofing installer have at least 3 years of "specialized" experience in the installation of fluid-applied waterproofing is a definitive responsibility criterion.

Evidence that a bidder meets a definitive responsibility criterion must be obtained by the agency so that compliance with the requirement, which is a prerequisite to award, can be

determined. Prime Mortgage Corp., 69 Comp. Gen. 618 (1990), 90-2 CPD ¶ 48. Where an allegation is made that a definitive criterion has 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 criterion has been met, BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309; although the relative quality of the evidence regarding responsibility is a matter for the judgment of the agency, the contracting officer may only find compliance with the definitive responsibility criterion based upon objective evidence. Vulcan Eng'g Co., B-214595, Oct. 12, 1984, 84-2 CPD ¶ 403.

After bid opening, Blazer: (1) informed the agency that it would install the waterproofing membrane; (2) named Jeffrey Mosser as its project manager and Lawrence Holland as its project waterproofing foreman; and (3) listed as its experience three projects performed by Messrs. Mosser and Holland while employed by another firm, Premier Specialty Contractors. Blazer also submitted a copy of Mr. Mosser's resume and a general description of Mr. Holland's previous experience with fluid-applied waterproofing. GSA also contacted Premier, which reportedly confirmed the length and dates of Mr. Mosser's employment, and two of the three project references in Mr. Mosser's resume, which confirmed Mr. Mosser's work on the projects. The agency's project manager then "exercised her discretion to determine that the employee's experience was sufficiently comparable to that required by the solicitation." (In determining compliance with a corporate experience requirement, an agency generally may consider the experience of a bidder's employees. See R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220.)

Although GSA maintains that its actions more than fulfilled its obligation to investigate Blazer's compliance, we find that the evidence of Blazer's waterproofing experience is insufficient to demonstrate compliance with the 3-year specialization requirement. The only three projects listed as experience by Blazer were performed by Mr. Mosser during his employment at Premier, which, as indicated by Mr. Mosser's resume, extended only from March 1988 to March 1990, a 2-year period. Although Mr. Mosser's resume also generally states that he performed "waterproofing of horizontal and vertical surfaces" while working for Blazer (from March 1990 on), it neither cites specific projects nor describes the types of waterproofing installed. Indeed, nowhere in the resume is there any indication that Mr. Mosser's experience, either at Premier or with Blazer, involved the fluid-applied-type waterproofing involved in this project, for which evidence of installation experience was required.

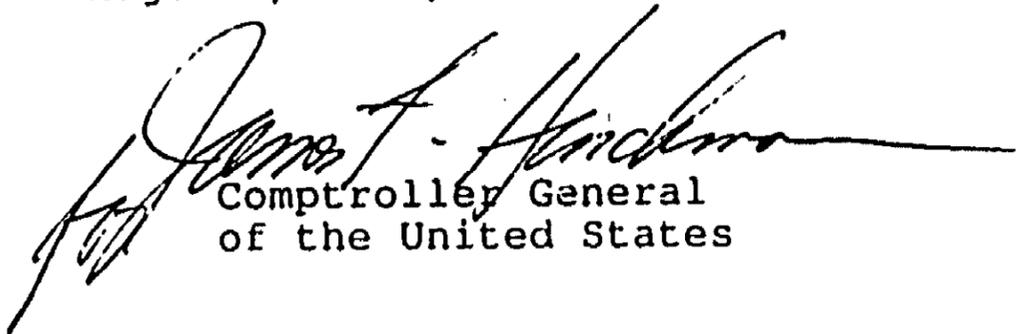
Notwithstanding that the contracting officer checked the dates Mr. Mosser worked with Premier, and also contacted the listed references for two of Mr. Mosser's three waterproofing projects, the agency does not state that any of those sources advised that Mr. Mosser's work involved installation of fluid-applied waterproofing. Even after the award to Blazer was protested by United, we note, Blazer generally claimed to possess the required experience, stating that it began specializing in fluid-applied waterproofing in 1987, but did not identify any specific projects in which it or Mr. Mosser installed fluid-applied waterproofing.

It does appear from the partial biographical statement submitted for Mr. Holland that, for one of the three listed projects upon which Messrs. Mosser and Holland worked while employed by Premier, Mr. Holland was involved in the installation of fluid-applied waterproofing. Mr. Holland's resume also refers to another specific project upon which he worked, not one of the three projects cited by Blazer as evidence of the required experience, and several unspecified projects, all of which the statement indicates involved fluid-applied waterproofing. For none of these projects, however, did Mr. Holland's biographical statement include any information as to the dates or duration of the projects, or to references who might be contacted by the agency for further information. Nor did the statement indicate the dates or length of his employment at Premier. Neither is there any indication that GSA ever sought the relevant information regarding Mr. Holland; rather, the agency states that it determined Blazer's compliance with the 3-year specialization requirement from Mr. Mosser's qualifications.

GSA argues that nothing on the face of the information submitted to the contracting officer called into question the correctness of Blazer's claim to the required installation experience, and that therefore the contracting officer was not obligated to conduct an independent investigation into the firm's compliance with the 3-year specialization requirement. See generally Apex Envtl., Inc., B-241750, Feb. 25, 1991, 91-1 CPD ¶ 209 (an agency has no obligation to investigate compliance with a definitive criterion where the information furnished evidences compliance, and nothing on the face of the information calls its verity into question). As we have found above, however, the agency had no objective evidence upon which to conclude that Blazer, on its own or through Mr. Mosser or Mr. Holland, satisfied the 3-year specialization requirement. Rather, GSA used "discretion" in determining from the information furnished that the very specific requirements of the definitive criterion here had been met, when in fact the information came up somewhat short. While agencies certainly have discretion in generally determining a prospective contractor responsible, as explained above, in the

absence of objective evidence showing compliance with a definitive responsibility criterion, an agency may not find that a firm meets such a requirement.

We conclude that there is not sufficient evidence from which GSA reasonably could have concluded that Blazer satisfied the 3-year specialization requirement for fluid-applied waterproofing, and sustain the protest on this basis. While it appears from the present record that Blazer does not possess the requisite installation experience, there is no conclusive evidence to that effect, and the agency apparently did not inquire as to the precise nature of Mr. Mosser's and Blazer's waterproofing experience. Accordingly, by letter of today to the Administrator, we are recommending that the agency now ascertain whether Blazer satisfied the 3-year specialization requirement at the time of award. We are further recommending that if GSA finds that Blazer lacked the requisite experience, Blazer's contract be terminated and a contract be awarded to United, as the second-low bidder, if otherwise appropriate. Further, we find that United is entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees. 56 Fed. Reg. 3,759 (to be codified at 4 C.F.R. § 21.6(d)(1)); Westinghouse Elec. Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145.



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