



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: D.H. Kim Enterprises, Inc.

File: B-255124

Date: February 8, 1994

Thomas W. Vassar, Esq., Jung & Vassar, for the protester.
Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for
Capitol Contractors, Inc., an interested party.
Frank W. Miller, Esq., Department of the Air Force, for the
agency.

Franklin D. Jackson, Esq., and Barbara R. Timmerman, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that proposed awardee did not meet definitive responsibility criteria set forth in solicitation requiring 10 years general contracting experience and two projects in the last 2 years similar to the proposed project, is denied where contracting officer reasonably considered that prior experience of the firm's principal officers satisfied the experience requirement and the firm's recently completed contracts satisfied the project requirement.

DECISION

D.H. Kim Enterprises, Inc. protests the proposed award of a contract to Capitol Contracting, Inc. under invitation for bids (IFB) No. F49642-93-B-0051, issued by the Department of the Air Force for the renovation of visiting officer's quarters at Andrews Air Force Base. Kim, the third-low bidder, argues that neither Capitol nor MAS Construction, Inc., the second-low bidder, meets the experience requirements in the solicitation.

The protest is denied.

This solicitation, a small disadvantaged business set-aside, was issued on August 19, 1993. At bid opening on September 21, Capitol was the apparent low bidder, MAS Construction, Inc. the second-low bidder, and Kim the third-low bidder. After reviewing the material submitted by Capitol, the contracting officer determined that the firm was responsible and proposed that it be awarded the contract. Kim then filed this protest with our Office claiming that both Capitol and MAS are ineligible for award.

Kim asserts that neither firm has been in business long enough to establish the 10 years of general contracting experience required by the solicitation, and that neither has successfully completed two similar projects in the last 2 years. Award of the contract has been suspended pending the resolution of this protest.

The solicitation provided:

"the contractor and/or subcontractors performing each element of construction shall be experienced craftsmen in the specific trades required for that element. Types of experience required include, but are not limited to, [10] years of general contracting experience in multi-family residential and commercial projects of similar size and nature. The contractor or subcontractors shall be capable of showing successful completion of a minimum of two contracts of the same or similar scope within the past [2] years, on systems of a similar size, quantity and type as required by this contract."

Solicitation requirements, such as the above, that the prospective contractor have a specified number of years of experience in a particular area and a designated number of projects completed within a specified time period are definitive responsibility criteria. J. D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ 300; Restec Contractors, Inc., B-245862, Feb. 6, 1992, 92-1 CPD ¶ 154. Definitive responsibility criteria are specific and objective standards established by an agency for use in a particular procurement for the measurement of a bidder's ability to perform the contract. See Federal Acquisition Regulation § 9.104-2. Failure to meet a definitive responsibility criterion renders a firm nonresponsible. Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297.

Generally a contracting agency has broad discretion in making responsibility determinations, including whether bidders meet definitive responsibility criteria, since the agency must bear the brunt of any difficulties experienced in obtaining the required performance. BMV, Div. of Harsco Corp., B-233081; B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67. 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.

Given that Capitol has only been in business since 1989, Kim questions whether the firm provided sufficient evidence for the contracting officer to reasonably determine that Capitol met the 10-year experience requirement.

Although Capitol was in business for just 4 years, the resumes of its three principal officers indicate that they had a combined experience in general contracting of 39 years. The contracting officer determined that two of the principals had 17 years each of related general contracting experience, and the other principal, (who reportedly left the firm sometime after bid opening), had 5 years of related general contracting experience. In this regard, an agency may properly consider the experience of a corporation's principal officers when deciding whether a bidder has met the solicitation's experience requirement. R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220.

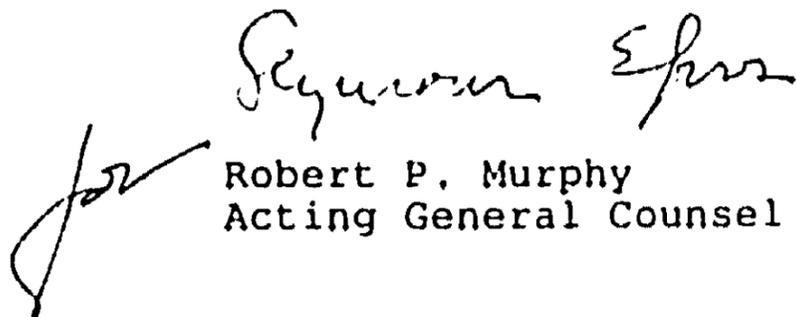
Kim admits that the experience of a firm's principals may be used to satisfy a corporate experience requirement, but argues that the principals' resumes were "devoid of information from which a reasonable determination" could be made regarding their experience. After reviewing the record, we find that the resumes and supplemental information submitted by Capitol, which showed the types of employment, dates of service, and specific projects that the principals completed, provided an adequate basis for the contracting officer to reasonably conclude that the principals' general contracting experience satisfied the definitive responsibility requirement. Although Kim questions whether Capitol still meets the experience requirement in light of the departure of one of the principals, the record shows that the experience of the two remaining principals more than satisfies the solicitation's 10-year experience requirement.

Kim further asserts that the contracting officer lacked a reasonable basis for finding that Capitol had completed two projects of similar size and type to the Andrews project. Kim argues that of the four projects cited by Capitol, two were much smaller than the Andrews project and the other two could not be used to find Capitol responsible because the firm had only served in the capacity of subcontractor on the projects.

The record indicates that the two smaller projects were only listed as references. With respect to the two larger projects, it is irrelevant that Capitol completed the work as a subcontractor. The solicitation simply requires that the bidder show that it successfully completed two projects of similar size and type to the proposed project within the last 2 years. Since Capitol's bid established that it met that requirement, we think the contracting officer

reasonably concluded that Capitol fulfilled this requirement.¹

The protest is denied.


Robert P. Murphy
Acting General Counsel

¹The protester also suggests that Capitol may not have financial resources adequate to perform the contract. This is a challenge to the contracting officer's affirmative determination of responsibility which our Office will not consider except in circumstances not present here. Facilities Mgmt., Inc., B-247698.2, Apr. 24, 1992, 92-1 CPD ¶ 394.