

M. Arsenoff



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Babcock & Wilcox Construction Co., Inc.

File: B-240334

Date: November 9, 1990

Christopher W. Geitner, Esq., for the protester.
Herman M. Braude, Esq., Braude & Margulies, P.C., for John J. Kirlin, Inc., an interested party.
Gary F. Davis, Esq., and Kathleen McCartney, Esq., General Services Administration, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee failed to literally comply with solicitation experience requirements is denied where record discloses that no proposal, including the protester's, literally met the requirements and where the agency had sufficient information from the awardee upon which it could reasonably conclude that the firm's experience was equivalent to what was required.

DECISION

Babcock & Wilcox Construction Co., Inc. (B&W) protests the award of a contract to John J. Kirlin, Inc., under request for proposals (RFP) No. GS-11P90MKC0129 "NEG," issued by the General Services Administration (GSA) for the replacement of stokers, repair of pressure parts and the installation of gas burners, a baghouse and microprocessor controls at the Central Heating Plant in Washington, D.C. The protester contends that Kirlin did not meet the general and specific experience requirements listed in the solicitation.

We deny the protest.

The RFP was issued on January 12, 1990, providing that award was to be made to the offeror whose proposal was determined to be most advantageous to the government based on an assessment by the Source Selection Evaluation Board (SSEB), in which technical quality was more important than price. Technical quality was to be measured using five listed factors of equal importance: (1) experience and qualifications; (2) proposed

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design; (3) equipment to be furnished; (4) management plans; and (5) start-up/testing, training and maintenance plans. This protest only involves the experience factor which, unlike the other technical factors, was to be evaluated on a "go, no go" basis.

Specifically, the RFP's method of award section required offerors to demonstrate "compliance" with the qualification and experience requirements. These requirements were set forth in a separate section of the RFP as follows:

"1. General Experience

The Prime Contractor shall have a minimum of seven (7) years of experience in boiler plant work with at least 5 completed projects involving boiler plants of this size range or higher.

2. Specific Experience

a. The Prime Contractor shall have specific experience with at least 3 [turnkey] projects requiring both design and construction responsibility similar in size and nature to this project. At least one of the completed installations shall have been performed as a result of the contractor's own proposal, rather than as a result of contractor meeting the requirements of a detailed specification.

b. At least one completed project involving the installation of a coal-fired stoker in a retrofit application requiring waterwall changes and refurbishing of boiler pressure parts for a boiler of this size range. The contractor shall have performed the construction work himself or supervised it as a General Contractor.

[c. Not at issue.]

d. At least one completed project involving the installation of plant wide microprocessor controls for a boiler plant of this size range. The contractor shall have either performed the work himself or supervised it as a General Contractor."

Proposals were received from B&W and Kirlin on February 26. During the initial evaluation by the SSEB, neither offer was determined to have met all of the "go, no go" experience requirements. On the other four technical factors which were point scored, Kirlin received a score of 79.8 and B&W received a technical score of 78.9. Written and oral discussions,

which included questions concerning experience, were conducted with both offerors between March 20 and March 30.

As a result of the evaluation of revised proposals, the SSEB determined that both offerors had submitted sufficient data indicating that they met the general and specific experience requirements even though neither had listed three projects for which they had design and construction responsibility; in this regard, the agency reports that the SSEB felt that the projects listed by B&W and Kirlin nonetheless were of such a nature that some design responsibility would have been required. Kirlin remained the higher rated offeror with a revised score of 89.0. B&W's technical score was raised in the final evaluation to 86.2. Best and final prices were:

Kirlin	\$ 16,889,000
B&W	\$ 17,478,534

On June 20, the SSEB recommended an award to Kirlin on the basis of its higher technical rating and lower price; award was made on June 29.

B&W contends that Kirlin's proposal did not demonstrate that the awardee had the requisite experience as set forth in the RFP and argues that GSA misevaluated the awardee's proposal.

In response, the agency argues that the SSEB carefully reviewed the material submitted by both the protester and the awardee and concluded that, while neither firm precisely met the letter of the specific experience standards listed in the RFP, they both demonstrated reasonably equivalent experience and that was all that was required for them to be determined to be acceptable. For the reasons set forth below, we agree with the agency's conclusion.

Where a protester alleges that another offeror has not met a specific experience requirement, we will review the record to ascertain whether sufficient evidence of compliance has been submitted such that the contracting officer reasonably could conclude that the requirement has been met. See Laketon Refining Corp.; Ashland Petroleum Co., B-235977.2; B-235977.3, Jan. 2, 1990, 90-1 CPD ¶ 10. In this regard, an offeror who does not meet the specific letter of the requirement, but has exhibited a level of achievement equivalent to it, may properly be considered to have satisfied it. Id. The relative quality of the evidence of compliance is a matter of judgment vested in the contracting officer as is the extent to which an investigation is necessary to verify that evidence. Allen-Sherman-Hoff Co.--Recon., B-231552.2, Sept. 1, 1988, 88-2 CPD ¶ 202. Finally, a protester's mere disagreement with the agency's evaluation, without more, does not constitute a showing that the evaluation was unreasonable.

See Morey Machinery, Inc., B-234124, May 10, 1989, 89-1 CPD ¶ 440.

The protester's first objection relates to the general experience requirement of having completed five projects concerning boiler plants of "this size range or higher," which B&W insists is comprised of boilers which meet or exceed the 175,000 pounds per hour output of the boilers at the Central Heating Plant. Based on its knowledge of the projects listed by Kirlin (Kirlin's proposal did not list the output of the projects it completed), the protester argues that the awardee has not demonstrated that it has completed projects in the appropriate size range.

GSA states that the solicitation does not define the relevant size range and says the evaluators did not consider that the boiler size of an offeror's listed projects had to equal or exceed the exact size of the boilers which were to be refurbished under the RFP. Rather, in addition to reviewing whether an offeror had completed projects of a similar dollar value--the projects listed by Kirlin ranged from \$75,000,000 to \$2,074,000--the evaluators considered the size range appropriate to this solicitation to include any "big field erected boilers" and exclude "packaged boilers," since the level of expertise required to work on the Central Heating Plant boilers was, in their view, similar to the expertise required to work on other big field erected boilers even though the boilers worked on may have had a lesser capacity.

In response, the protester does not directly respond to the agency's position regarding field erected boilers except to offer its unsupported opinion that none of Kirlin's listed projects involved such a boiler. Under these circumstances, we find that B&W has done nothing more than attempt to substitute its judgment for that of the agency in determining the parameters of the "size range" to be applied to the experience requirements and in determining whether Kirlin's experience properly fell within that range. We think that the agency's explanation makes sense and, without more from the protester, that firm's disagreement does not support the conclusion that the agency's evaluation of general experience was unreasonable. See Morey Mach., Inc., B-234124, supra.

Next, the protester submits that Kirlin's listing of the Marriott Orlando World Center Hotel project should not have served to qualify the firm as having met the specific requirement to have completed a turnkey project involving the contractor's own design rather than meeting the requirements of a detailed specification. In B&W's view the Marriott project merely involved the installation of an air conditioning system meeting the client's specification.

On the other hand, GSA reports that Kirlin described the Marriott project as a design and build project which also involved high pressure boilers, in which basic design parameters were set by the client and the firm used its own design efforts to tailor the system in accordance with those parameters. The evaluators regarded this as meeting the design and build requirement. Moreover, concerning the second portion of this requirement, that the firm have experience with three projects requiring both design and construction, GSA states that while neither offeror listed three projects, which specifically included design and construction responsibility, the evaluators gave each credit because the projects they did list involved some design. Further, the agency reports that all of the retrofit operations listed by both offerors were presumed to involve some type of design work in that they went beyond mere replacement in kind.

Again, we are presented with no basis for disturbing the evaluators' conclusions since B&W has provided no support for its view other than to assert its opinion that the Marriott project should not be regarded as sufficient.

Likewise, B&W takes issue with the evaluators' conclusion that Kirlin met the requirement for the installation of coal-fired stoker in retrofit application by listing its work at Georgetown University. The protester states that the Georgetown facility does not have a stoker, is not of the proper size range and did not undergo a retrofit application when Kirlin worked on it. The agency responds by noting that the evaluators were conversant with the Georgetown project and that they knew that it had a fluidized bed with a coal spreader in lieu of a stoker, but that they regarded the spreader work as the equivalent to the work of installing a stoker and that the project otherwise met the standards of the experience requirement. B&W disagrees that the spreader and stoker work is equivalent but provides us with no explanation of its position so that we have no basis upon which to disturb the agency's judgment, which seems reasonable on its face.

B&W also states that Kirlin did not meet the requirement of completing the installation of microprocessing controls by listing its work at Georgetown as involving "appropriate" controls. GSA reports that the evaluators questioned Kirlin about this during oral discussions and that the panel's notes indicated that they were satisfied with the awardee's response although the notes do not indicate whether or not the response made reference to the Georgetown project or to a project at the University of Virginia. Kirlin's comments to this Office unequivocally state that it installed the microprocessor controls at the University of Virginia facility. B&W's final response in this matter reiterates its view of the Georgetown

project and ignores the information concerning the University of Virginia. Accordingly, we again have no basis to disturb GSA's evaluation concerning Kirlin's experience in this regard.

Finally, B&W generally asserts that Kirlin lacks sufficient experience as a prime contractor since it only listed one project in its proposal in which it identified itself as such. However, the record discloses that Kirlin's revised technical proposal lists 21 projects in which it identified itself as the "prime contractor," including one at the Central Heating Plant, which is the subject of the RFP. In any event, as the agency correctly points out, the solicitation permits an offeror to be credited with experience for work it actually performed or for work performed by a subcontractor it supervised, whether or not the offeror was a prime contractor for the entire project. Thus, we have no basis to disturb the evaluation with regard to this allegation by B&W.

In sum, it is indeed true that in several respects Kirlin does not meet the precise letter of the RFP experience requirements. It also seems that the same is true of B&W since the agency points out at least one instance where it considers that B&W was not in literal compliance with the requirements and the protester has not contested the agency's statement. Under these circumstances, where the protester has not in our view pointed to an instance where the awardee's experience is not at least reasonably equivalent to the RFP standards, we have no legal basis to interfere with the selection.

The protest is denied.



James F. Hinchman
General Counsel