



Comptroller General
of the United States

629139

Washington, D.C. 20548

Decision

Matter of: Gelco Services, Inc.

File: B-253376

Date: September 14, 1993

Wade R. Dann, Esq., and Kell E. Bodholt, Esq., Dann, Greenberg & Radder, for the protester.
Virginia A. Cahill, Esq., McDonough, Holland & Allen, and Paul R. Meyer, Esq., P.C., for Mocon Corporation, an interested party.

Richard D. Vergas, Esq., and Robert Walsh, Department of Energy; and Shyamala T. Rajender, Esq., University of California, 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

Protest that awardee fails to comply with solicitation's definitive responsibility criterion requiring bidders to submit a list of "five successfully completed sewer relining projects within the last [3] years that are of similar size, design and complexity" to one of two patented sewer relining rehabilitation processes specified in the solicitation is denied where: (1) the awardee holds extensive project experience in a similar sewer rehabilitation technique and is licensed and trained to perform one of the patented methods; and (2) the awardee has submitted evidence--in the form of contractual agreements--from one of the solicitation's specified sewer rehabilitation method licensors--who has completed five identical sewer relining projects to that required under the solicitation--demonstrating that the licensor will supervise and provide other requested technical support to the awardee for the duration of the required sewer relining project.

DECISION

Gelco Services, Inc. protests the award of a contract to Mocon Corporation under invitation for bids (IFB) No. B198949, issued by the Regents of the University of California (University) for sanitary sewer pipeline rehabilitation at the Department of Energy (DOE) Lawrence Livermore National Laboratory (LLNL) research facility located in Livermore, California. The University conducted the procurement by or for DOE in its capacity as an LLNL

site management and operations (M&O) contractor.¹ In its protest, Gelco contends that Mocon failed to comply with the solicitation's project experience definitive responsibility criterion.

We deny the protest.

BACKGROUND

The solicitation was issued in late December 1992 with a March 16, 1993, bid opening date. In addition to a pricing schedule, bidders were required to complete and submit a "List of Sub-Subcontractors," identifying each sub-subcontractor and the corresponding "Sub-Subcontracted Portion of the Work (Base Bid)."

Within the scope of work, the solicitation set forth the following experience requirement, Specification PCS-1030, Section 01210, paragraph 1.03A, entitled "Qualifications," which provides in relevant part:

"[t]he [s]ubcontractor shall show evidence of having adequate experience in the relining of sanitary sewer systems. The [s]ubcontractor shall submit a list of five successfully completed sewer relining projects within the last [3] years that are of similar size, design, and complexity to include: relining, video inspection [of] sanitary sewer systems, and required cleaning. Within these five submitted projects, three shall include work on projects involving relining of sanitary sewer systems with at least 4,000 feet of pipe from 4 to 12 inches in diameter."

To demonstrate compliance with this project experience specification, bidders were directed to complete and submit a "Bidder's Statement of Experience" form which contained five "project" blanks, and which required bidders to

¹The University is subject to our bid protest jurisdiction as an M&O contractor that effectively awards subcontracts "by or for" the government since DOE's regulations specifically provide for our Office to consider protests involving acquisitions by M&O contractors such as the University. See 4 C.F.R. § 21.3(m)(10) (1993); AT&T, B-250516.3, Mar. 30, 1993, 93-1 CPD ¶ 276. We review subcontract awards by prime M&O contractors under a "federal norm" standard, i.e., to determine whether the procurements and subsequent awards are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements. Elma Eng'g, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390.

indicate the project name, location, contract amount, client name, current address, phone number, architect name (if applicable), and corresponding architect address and telephone number.

The solicitation advised all bidders that an early determination of eligibility under paragraph 1.03A could be obtained prior to bid opening by submitting the "Statement of Experience" form. On March 2, Gelco submitted this form; on March 9, the University "prequalified" Gelco as an eligible bidder under this experience specification, based on the University's knowledge that Gelco had successfully performed over five Insituform² sewer relining projects at various sites throughout California.³ VT at 14:18:51.⁴ No other bidder requested prequalification.

At the March 16 bid opening date, three bids were received as follows:

| | |
|----------------------|-------------|
| Spiniello | \$1,938,350 |
| Mocon Corporation | 2,272,650 |
| Gelco Services, Inc. | 2,317,250 |

Shortly after bid opening, the University Subcontracts Administrator--a position which, for purposes of this discussion, is analogous to a contracting officer--submitted the bids to the project engineer for technical evaluation.

As noted above, because Gelco had been prequalified on March 9, its bid was determined acceptable under the "Qualifications" specification. However, after evaluating both Spiniello's and Mocon's "Statement of Experience" sheet, the project engineer determined that "it was not obvious on the face of the documents [they] . . . submitted

²The solicitation required bidders to use one of two specified patented sewer relining methods to perform the LLNL project: the Insituform method--which was bid by Gelco--and the Inliner method--which was bid by Mocon.

³On its "Bidder's Statement of Experience Sheet," Gelco had listed five of these projects.

⁴A hearing was conducted pursuant to 4 C.F.R. § 21.5 to receive testimony regarding: (1) the technical differences between the sliplining, Insituform, and Inliner sewer rehabilitation methods; (2) the project experience of Gelco, Mocon, and Inliner; (3) the steps of the University's project experience evaluation; and (4) whether the March 3 amendment materially modified the solicitation. References to the hearing transcript are identified by "VT" (videotape).

whether they met the ["Qualifications," paragraph 1.03A definitive] responsibility criteri[on]."

With respect to Mocon's "Bidder's Statement of Experience," Mocon had listed five Inliner projects and indicated that:

"[a]bove projects were performed by Inliner USA who will supervise and assist Mocon on this project."

After contacting each of Mocon's listed project references, the project engineer determined that each of the Inliner projects satisfied the definitive responsibility criterion set forth at paragraph 1.03A; in fact, the project engineer determined that several were more technically difficult than the performance required at the LLNL site. VT at 14:06:47. However, because Inliner had performed these projects, and because none of the listed project references could address Mocon's sewer relining project experience, the project engineer determined that Mocon had not adequately demonstrated its experience with any relining sewer method as required by the solicitation and that further evidence of a direct relationship between Mocon and Inliner was required. VT at 10:13:16; 14:07:10.

By letter dated April 13, the Subcontracts Administrator advised both Spiniello and Mocon that their bids would be rejected since:

"the . . . Statement of Experience submitted with your bid[s] . . . shows that [the bidder] does not meet the minimum experience (qualification) set forth in the Specification PCS-1030, Section 01210-1.03A."

While Spiniello apparently objected to this determination, the company never submitted any further documentation to demonstrate its compliance with the Qualifications specification, and was therefore eliminated from the competition.

By letter dated April 15, Mocon filed a protest with the University challenging the determination regarding its experience. With its protest letter, Mocon submitted several pieces of additional information to demonstrate its compliance with the "Qualifications" project experience specification, which consisted of: (1) a handwritten 6-page submission explaining the contractual relationship between Mocon and Inliner, and listing numerous sewer rehabilitation projects completed by both entities; (2) a copy of the Inliner/Mocon licensing agreement; and (3) an addendum to that agreement wherein Inliner agreed to provide Mocon with technical support and supervision for the duration of its

performance on the LLNL project. To further substantiate Mocon's April 15 explanation, Inliner itself submitted a letter to the University--dated April 22--which generally referenced Inliner's product and technology success as well as the extensive training process which all Inliner licensees are required to complete before being licensed to perform the Inliner sewer relining process.

Based on these additional submissions, the project engineer determined that the Mocon-Inliner contracts "provided adequate reassurances of Inliner's backing" and that such supervision/assistance--when combined with Mocon's own sliplining experience--satisfied the "Qualifications" project experience requirement. VT at 10:15:20; 10:53:00; 14:12:18. As a result, on April 28, the University awarded the contract to Mocon as the lowest-priced, responsible, responsive bidder. On April 30, Gelco filed a protest with the University, challenging the award as improper. On May 10, apparently after receiving a denial of its protest to the University, Gelco filed this protest with our Office.

PROTESTER'S CONTENTIONS

Gelco contends that Mocon was improperly determined acceptable under the "Qualifications" project experience requirement set forth at paragraph 1.03A. Gelco contends that the terms of the solicitation specifically require those entities bidding directly to the University to demonstrate that they have in-house--or without the assistance of a sub-subcontractor or third party--the exact project experience required under paragraph 1.03A. Alternatively, Gelco contends that Mocon cannot rely on the project experience of its licensor, Inliner, to meet the project experience requirement since Mocon did not list Inliner as a sub-subcontractor on the solicitation's "List of Sub-Subcontractors." Gelco also argues that because Inliner's role during performance of the contract will be limited to supervising and assisting Mocon's performance of the work, and because this project requires the use of a unique cured-in-place-pipe (CIPP) process which Mocon has not performed as part of its "sliplining" sewer relining repairs, Inliner's experience cannot properly be applied to qualify Mocon under paragraph 1.03A.

As discussed below, we find that the University properly determined Mocon to be qualified under the solicitation's project experience requirement.

DISCUSSION

Standard of Review

Since paragraph 1.03A, "Qualifications," concerns bidder experience, it pertains to bidder responsibility. See Teltara, Inc., B-245806.2, Apr. 14, 1992, 92-1 CPD ¶ 363. Our Office will review an agency's affirmative determination of responsibility only if possible bad faith or fraud on the part of contracting officials is shown or if the solicitation contains definitive responsibility criteria which allegedly have not been met. Prime Mortgage Corp., 69 Comp. Gen. 618 (1990), 90-2 CPD ¶ 48.

Definitive responsibility criteria are specific and objective standards established by an agency as a precondition to award that are designed to measure a prospective contractor's ability to perform the contract; the criteria limit the class of contractors to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance, e.g., unusual expertise or specialized facilities. Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. Here, there is no dispute by any of the parties that paragraph 1.03A, "Qualifications," constitutes a definitive responsibility criterion since it establishes a specific and objective standard--"five successfully completed sewer relining projects within the last [3] years that are of similar size, design, and complexity" to the Inliner/Insituform method specified in the solicitation, three of which involve 4,000 foot sewer relining projects--from which the University could measure a bidder's ability to perform this sewer contract.

Where an allegation is made that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting official reasonably could conclude that the criterion has been met; generally, a contracting agency has broad discretion in determining whether bidders meet definitive responsibility criteria since the agency must bear the burden of any difficulties experienced in obtaining the required performance. Prime Mortgage Co., supra. The relative quality of the evidence is a matter within the contracting official's judgment; however, the official may only find compliance with the definitive responsibility criterion based upon adequate, objective evidence. T. Warehouse Corp., B-248951, Oct. 9, 1992, 92-2 CPD ¶ 235.

Solicitation's Definition of Subcontractor

Gelco first argues that the solicitation itself defines the term "subcontractor" to prohibit a bidder from utilizing a sub-subcontractor's or third party's project experience to comply with the requirements of paragraph 1.03A. In making this argument, Gelco relies on the first sentence of the solicitation's definition of "subcontractor," which is set forth in the solicitation's "Definition of Terms and Responsibilities" segment, section 01010-1, paragraph 1.02.A.2, and which provides:

"Subcontractor: The person, company, or corporation responsible for the execution of a construction subcontract, or any portion thereof, that has been awarded by the University."

Apparently, based on this sentence, Gelco believes that only the bidder itself can be construed as the subcontractor to whom the project experience requirement applies.

Gelco ignores the remaining definition of "Subcontractor" set forth at paragraph 1.02.A.2 which, following the sentence set forth above, provides:

"This term shall include the general or prime Subcontractor, all lower tier subcontractors and suppliers. The term 'Subcontractor' may refer to any lower tier subcontractor concerned with the section or division of the subcontract specifications in which the term is used. This in no way relieves the 'Subcontractor' from sole responsibility for completing the entire work as required by the subcontract."

To be reasonable, an interpretation of solicitation language must be consistent with the solicitation when read as a whole and in a reasonable manner. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Here, we conclude that the only reasonable interpretation of the term "subcontractor" in light of the full text of the solicitation's paragraph 1.02.A.2 definition set forth above is that the term is to be interpreted broadly to include third party entities committed by the bid documents to assist the prime bidder in its performance of the sub-contract.

List of Sub-Subcontractors

As noted above, bidders were required to complete and submit a "List of Sub-Subcontractors" indicating the name of all sub-subcontractors, and the percentage of contract work which each identified sub-subcontractor would provide.

In its bid, Mocon left this form blank. Gelco argues that Mocon's failure to list Inliner on its sub-subcontractor list renders its bid nonresponsive. Gelco further asserts that because Mocon failed to list Inliner on this form, Inliner's project experience cannot be applied to qualify Mocon under the solicitation's paragraph 1.03A.

The purpose of the sub-subcontractor list is to assist the University in determining whether a prospective bidder is capable of performing the contract work. As such, completion of the sub-subcontractor list involves an issue pertaining to Mocon's responsibility. Since it is an issue of bidder responsibility, information pertaining to the identity of proposed sub-subcontractors may be submitted any time prior to award. See John Short & Assocs., Inc.; Comprehensive Health Servs., Inc., B-236266; B-236266.4, Nov. 9, 1989, 89-2 CPD ¶ 448. Accordingly, the fact that Mocon submitted a blank sub-subcontractor list form does not render its bid nonresponsive or preclude the University from considering Inliner's project experience to qualify Mocon under the project experience requirement.⁵ See BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 471.

Generally, the experience of a technically qualified subcontractor may be used to satisfy definitive responsibility criteria relating to experience for a prime contractor.⁶ Tama Kensetsu Co., Ltd., and Nippon Hodo, B-233118, Feb. 8, 1989, 89-1 CPD ¶ 128; BBC Brown Boveri, Inc., supra. The classification of the third party contractor as a "subcontractor" is not required. Rather, so long as the assisting third party's participation has been sufficiently identified

⁵While Mocon did not identify Inliner on the sub-subcontractors list, Mocon did reference Inliner in its "Bidder's Statement of Experience" sheet. Specifically, as noted above, Mocon's statement of experience form clearly stated that "Inliner . . . will supervise and assist Mocon on this project"; Mocon's statement of experience sheet also listed five Inliner sewer relining projects.

⁶An exception is where a solicitation contains an express clause which prohibits satisfying a particular experience requirement through the experience of the offeror's subcontractor; such a provision limits a prime contractor's reliance on a subcontractor. See Allen-Sherman-Hoff Co., B-231552, Aug. 4, 1988, 88-2 CPD ¶ 116. Here, there is no clause in the solicitation prohibiting bidders from applying a sub-subcontractor's or third party's experience to qualify under paragraph 1.03A.

in the bid documents, its experience may properly be considered. See Hardie-Tynes Mfg. Co., 69 Comp. Gen. 359 (1990), 90-1 CPD ¶ 347, aff'd, B-237938.2, June 25, 1990, 90-2 CPD ¶ 587.

Regardless of how the Mocon-Inliner contractual relationship is characterized--i.e., regardless of whether Inliner legally constitutes a consultant, licensor, sub-subcontractor or supplier in relation to Mocon as the bidder on this contract--Mocon's bid clearly indicates that Inliner would be supervising and assisting Mocon in its performance of the sub-contract. Since Mocon's bid unquestionably established Inliner's supervision and assistance role, the University could properly consider Inliner's project experience in evaluating whether Mocon was qualified under the "Qualifications" definitive responsibility criterion set forth at paragraph 1.03A. Id.

We now turn to the question of whether it was reasonable, in light of the supervision/assistance role of Inliner and the CIPP procedure required in performing this project, for the University to qualify Mocon based on Inliner's project performance experience.

Application of Inliner's Project Experience

In advancing its argument that Inliner's experience should not be applied to qualify Mocon, Gelco relies heavily on our decision in Townsko Contracting Co., Inc., B-240289, Oct. 18, 1990, 90-2 CPD ¶ 313, aff'd, B-240289.2, Mar. 15, 1991, 91-1 CPD ¶ 290. In Townsko, the bidder did not have sufficient experience in airfield pavement work to qualify under the solicitation's experience definitive responsibility criterion and sought to qualify for the procurement by means of a subcontractor's experience. In sustaining the protest, we concluded that because the contracting officer lacked any objective evidence from which he could reasonably determine that the subcontractor's experience was directly applicable to the bidder, the subcontractor's paving experience could not be applied to qualify the bidder under the definitive responsibility criterion. The case at hand is distinguishable from Townsko.

First, in this case, Mocon clearly identified Inliner as a "supervising" and "assist[ing]" entity in its bid; in Townsko, the bidder had failed to submit any information concerning proposed subcontractors in its bid. Next, unlike Townsko--where the awardee's intended subcontractor contacted the procuring agency directly and made it clear that there was only a remote possibility that the subcontractor would perform work on the project--here there is no question about the nexus between Inliner and Mocon or the commitment by Inliner to its supervision/assistance role.

Although evidence of a firm commitment is not a prerequisite to considering the subcontractor's experience in determining that a prime contractor is responsible under a definitive responsibility criterion,⁷ in this case Mocon submitted two contractual agreements which substantiate its representations that Inliner will perform the supervision and assistance referenced in Mocon's bid. The first agreement, a March 1, 1993, "Sublicense Agreement," establishes a direct relationship between Mocon and Inliner; in this agreement, Inliner grants Mocon an "EXCLUSIVE license to use Inliner USA Intellectual Property and Inliner USA Technology." From this agreement, it is also clear that Mocon is only authorized to use materials, equipment, and technology which are approved by Inliner in its performance of the Inliner sewer rehabilitation method. Finally, the March 1 agreement demonstrates that Inliner is obligated to "provide initial training to Mocon in the practice of Inliner" and that "subject to availability, [Inliner] will provide a technician to assist [Mocon] and to render advice."

The second agreement, which is identified as a March 15 "Addendum to Sublicense Agreement," becomes effective "if [Mocon] is the successful bidder for [the] LLNL Project" and provides in relevant part:

"ARTICLE A. SUPPORT

"A.1 [Inliner] shall provide to [Mocon], at fair and customary rates (through Cat Contracting, Inc.),¹⁸¹ any and all equipment and materials required to complete the LLNL Project or until [Mocon] has taken delivery of its own equipment and materials currently being designed or procured.

"A.2 [Inliner] shall provide to [Mocon], at fair and customary rates, an experienced technical advisor, engineer or expert knowledgeable in Inliner USA Technology throughout the duration of the LLNL Project."

⁷See Hardie-Tynes Mfg. Co., supra.

⁸Under a January 1, 1991, agency agreement between Inliner and Cat Contracting, Inc.--which this Office has reviewed--Cat Contracting is obligated to provide "at the request of Inliner . . . personnel and equipment necessary to demonstrate the Inliner process, train Inliner licensees and their employees and provide technical support for such licensees." Gelco does not dispute that Cat holds the requisite Inliner project experience required by the definitive responsibility criterion here. VT at 9:10:31.

Thus, Inliner is committed to provide the supervision and assistance referenced by Mocon in its bid.

Finally, unlike Townsko--where the contracting officer's determination expressly contradicted the project engineer's determination that the awardee was not qualified--here the project engineer expressly found that the combination of Mocon's sliplining experience and Inliner's supervision unquestionably qualified Mocon. VT at 11:20:57.

Mocon's Experience and Capability

The Inliner sewer relining technique bid by Mocon requires the following steps: (1) visually inspecting the pipe for obstacles--such as tree roots, slipped pipe joints, grout, concrete or other pipe wall calcification--by means of a video camera; (2) cleaning the pipe and removing or repairing all obstacles; (3) establishing a bypass pumping system for sewer water so that the pipe requiring rehabilitation remains empty throughout the relining process; (4) winching a flattened premanufactured felt liner into the empty pipe using a hydraulic steel cable; (5) filling the pipe cavity with water--a process which simultaneously inflates the liner and inverts a premanufactured tube of resin through the felt liner; (6) heating the pipe cavity water to a 2-hour temperature of 140 degrees and 4-hour temperature of 190 degrees to "cure" the liner--a step which causes the resin to become sufficiently "sticky" so that the resin-saturated pipe liner is glued to the walls of the pipe; (7) cooling down the pipe cavity water to a temperature of 100 degrees; (8) inspecting the pipe to ascertain the success of the installation--again by means of a video camera; and (9) testing cuts of pipe to ensure the sewer relining's success.⁹

Sliplining, the sewer rehabilitation technique with which Mocon has extensive experience, is fundamentally similar to the Inliner method except for the following three significant differences. First, whereas the Inliner method requires the contractor to winch a flexible felt liner into place--thus, it is referred to as a "softlining" method--sliplining requires the contractor to winch a pre-manufactured, non-flexible plastic pipe into the sewer

⁹The Insituform method--the other patented sewer rehabilitation method specified in the solicitation and the sewer relining process bid by Celco--involves nearly identical steps; however, instead of winching in the liner, the Insituform method pushes the liner into place by using water or steam pressure to invert the liner within the sewer cavity--a method which is analogous to a sock being pulled on or off.

cavity. Second, unlike the Inliner method, sliplining is not a patented process; rather it is a technology within the public domain. Finally, unlike the Inliner method, sliplining does not involve a curing or CIPP process; that is, a sliplining contractor does not use water or CIPP equipment to inflate or cure the winched-in (flexible) pipe.

With respect to the difference between the installation of Inliner's flexible felt liner and the installation of a sliplining non-flexible pipe, the record shows that a sliplining installation presents two obstacles which an Inliner contractor does not encounter. First, the degree of cleaning and repair required in the sewer cavity prior to sliplining installation is more difficult because unlike the Inliner soft flexible liner, which can be easily woven through uneven joints in the sewer cavity because of its flattened, flexible shape, the sliplining hardened pipe--by virtue of its rigid form--cannot be installed unless the interior of the sewer cavity is in perfect condition. VT at 18:56:07-18:58:23. Additionally, the degree of difficulty inherent in winching in the reliner pipe under the sliplining method is greater than that involved in the Inliner method since sliplining requires the contractor to winch in a heavier, rigid form. VT at 19:00:20. Based on this evidence, we think a sliplining contractor's winching installation experience reasonably may be considered superior to an Inliner contractor's,¹⁰ and accordingly, Mocon's sliplining installation experience is directly transferrable to the Inliner installation required here.

Additionally, only licensed contractors may utilize the Inliner technology and method, which is patented. In locating qualified contractors to perform its technology, Inliner reports that it specifically seeks out sewer rehabilitation contractors with sliplining experience because of the correlation between the Inliner and sliplining installation methods, and because of the heavy construction skills and experience which sliplining contractors possess.¹¹ VT at 19:01:39. Inliner also reports that before it licenses a contractor to use Inliner, it requires the contractor to

¹⁰Even the protester's expert witness admitted that a sliplining contractor would have a "head start" in learning to utilize the Inliner method. VT at 17:28:39.

¹¹The record shows that beyond the actual pipe rehabilitation technique, sliplining can typically involve heavy construction where the diameter of pipe requiring rehabilitation exceeds the corresponding manhole diameters; in such situations, the sliplining contractor must create an access point by excavating into both the ground and the sewer pipe requiring repair. VT at 19:00:00.

complete extensive and intensive training. With respect to Mocon's training, the record shows that Mocon was introduced to the Inliner technology in 1991 and received on the job site training at four of the five Inliner projects referenced in its bid as well as at two 1992 Houston projects. VT at 15:43:46.

Based on this showing of sliplining experience and Inliner training, we think the record supports the University's conclusion that Mocon possesses the requisite background and skills to successfully perform this project using Inliner's supervision and assistance, even though Mocon does not itself hold the CIPP project experience called for under the definitive responsibility criterion.

Inliner's Supervision/Assistance Role

As evidenced by the bid documents, Mocon intends to rely on Inliner for supervision and assistance in its performance of the required sewer relining. The University's investigation into the precise parameters of Inliner's supervision/assistance role shows that Inliner's role will consist of selling Mocon all of the inversion lining materials and equipment which Mocon will use for this Inliner project; providing a CIPP foreman to oversee Mocon's performance; and providing any experienced Inliner installation laborers which Mocon desires to hire in its performance of this requirement. Because Inliner will not perform any of the actual manual labor on this project, Gelco argues that it was improper for the University to apply Inliner's project experience to qualify Mocon for this contract under the "Qualifications" definitive responsibility criterion. We disagree.

The intent of the experience requirement was to obtain a contractor with CIPP expertise.¹² VT at 9:57:30 and 9:58:14. The technical expertise required to successfully perform Inliner's CIPP process--which Mocon arguably lacks by virtue of the fact that it does not hold the requisite five CIPP projects experience--lies in the resin technology and the curing schedule. VT at 14:16:18; 14:35:45 through 14:38:00; 19:07:36.

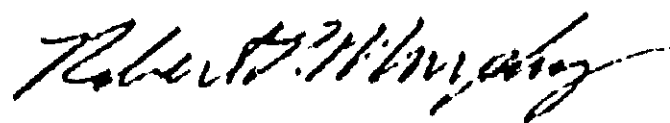
With respect to the CIPP resin materials, Inliner reports that the required resin compound, felt liner, and resin hose will all be premanufactured at an Inliner facility and supplied by Inliner to Mocon in a ready-to-install form.

¹²In the opinion of Gelco's expert witness, this solicitation's definitive responsibility criterion "requires somebody to have experience in the CIPP process." VT at 17:17:43.

VT at 14:35:26; 14:57:28; 15:08:49; 19:11:35. With respect to the CIPP curing stage, the record shows that in its supervisory/assistance role, Inliner will monitor Mocon's performance of the curing process to ensure that the heating equipment, curing schedule, and technology are performed and applied properly. VT at 19:11:27. The record shows that the heating boilers which Inliner will supply for Mocon's use "automatically heat" the water in the curing stage and do not require any special mechanical skill not otherwise inherent in the operation of sliplining or construction machinery. VT at 19:07:14. Finally, as established by the Mocon-Inliner sublicensing agreement, as well as by testimony at the hearing, any testing of the installed Inliner pipe will be conducted by Inliner. VT at 19:07:28.

Mocon's reliance on Inliner's project experience to qualify under this solicitation's project experience definitive responsibility criterion--based on its use of Inliner's technical supervision and technical support--is analogous to a corporation applying the individual experience of its management personnel to meet an experience definitive responsibility criterion. See DJ Enters., Inc., B-233410, Jan. 23, 1989, 89-1 CPD ¶ 59 (newly incorporated company's reliance on two principal officers' individual experience to qualify under solicitation's definitive responsibility criterion unobjectionable). As evidenced by the Mocon-Inliner agreements, representations made to the University during the course of its project experience investigation, and testimony from both Mocon and Inliner, Inliner will be available for the duration of the LLNL project--and ready to provide any technical support or assistance which Mocon may require at any stage of its performance--including steps not involving CIPP expertise. We conclude, therefore, that Inliner's supervision and assistance role--while not involving performance of actual manual labor by Inliner personnel--nevertheless is so pervasive that it constitutes an integral technical component of Mocon's performance. Under these circumstances, we think the University's application of the supervising entity's project experience to qualify Mocon was reasonable.

The protest is denied.


for James F. Hinchman
General Counsel