



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: J.D. Miles & Sons, Inc.

File: B-251533

Date: April 7, 1993

David A. Hearne, Esq., and Grover C. Outland, Jr., Esq., Outland, Gray, O'Keefe & Hubbard, for the protester. William E. Franczek, Esq., Vandeventer, Black, Meredith & Martin, an interested party. Billie Spencer, Esq., Paul M. Fisher, Esq., Garrett L. Rensing, Esq., Department of the Navy, for the agency. Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposed awardee failed to meet a solicitation definitive responsibility criterion requiring 5 years of experience in performing the type of work required under the current solicitation is denied where, although proposed awardee itself had been in business for limited time, record indicates that it submitted evidence showing it had acquired all assets and employees of another firm with sufficient experience, and that several of its supervisory employees had extensive experience; contracting officer reasonably concluded from this information that the criterion had been met.

DECISION

J.D. Miles & Sons, Inc. protests the proposed award of a contract to States Roofing Corporation under invitation for bids (IFB) No. N62470-92-B-1299, issued by the Department of the Navy for the replacement and repair of roofs at various Navy Public Works Centers. Miles argues that States is ineligible for award for failure to meet a solicitation experience requirement.

The protest is denied.

The IFB, as amended, solicited bids for a 1-year, indefinite delivery requirements contract. The IFB required bidders to provide prices for all line items of work, including the removal of existing roofing, the repair and installation of different types of roofing, and the repair and installation of sheet metal items related to roofing (gutters, roof

drains, and downspouts). The IFB also contained the following provision at paragraph 1.30:

"CONTRACTOR'S EXPERIENCE

The contractor shall have a minimum of five (5) years experience in performing the type of work required in this solicitation."

Bids were opened on November 25, 1992, and three bids were received. States submitted the apparent low bid, which included documentation to demonstrate compliance with IFB paragraph 1.30. Although States acknowledged it was a new company, it claimed compliance based on the experience of a purported predecessor firm, Eastern Roofing Corporation, which had more than the requisite 5 years experience, and the experience of its personnel. (By agreement of February 9, 1990, Eastern had transferred its assets to States and allowed States to assume its obligations and liabilities under other Navy roofing contracts.) States also submitted the resumes of five of its employees, all former Eastern employees, showing that, combined, they had more than 79 years of experience installing and repairing roofs. Based on a review of this information, the contracting officer determined States to be responsible. Miles then filed this protest with our Office. Award of a contract has been suspended pending the resolution of this protest.

Miles principally argues that States did not meet the minimum 5-year experience requirement because States has been in existence for less than 3 years, as it was incorporated in Virginia on January 26, 1990.

A solicitation requirement that a prospective contractor have a specified number of years of experience in a particular area is a definitive responsibility criterion. Western Roofing Serv., B-232666.3, Apr. 11, 1989, 89-1 CPD ¶ 368. Failure to meet a definitive responsibility criterion renders a firm nonresponsible. See Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Where an allegation is made that such a criterion has not been satisfied, we review the record to ascertain whether sufficient evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive responsibility criterion has been met. DJ Enters., Inc., B-233410, Jan. 23, 1989, 89-1 CPD ¶ 59.

In doing so, we have recognized that there are situations where an offeror, although not meeting the specific letter of definitive criteria, may satisfy the criteria through a level of achievement equivalent to or in excess of that

required. See Tama Kensetsu Co., Ltd., and Nippon Hodo, B-233118, Feb. 8, 1989, 89-1 CPD ¶ 128. In this regard, in determining compliance with a bidder experience requirement, an agency may consider the experience of the bidder's employees, even if the experience was gained while these employees worked for other employers. See Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. In addition, in evaluating the experience of a corporation, the agency may consider the experience of a predecessor firm. See R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220.

We find that States submitted sufficient evidence upon which the contracting officer reasonably could conclude that States met the 5-year experience requirement based on its purchase of Eastern's assets and hiring of its employees. As indicated, States, by agreement of February 9, 1991, purchased all of Eastern's assets, including equipment, furnishings and fixtures, and assumed all of Eastern's obligations under other Navy contracts. Also pursuant to this agreement, States initially hired all 447 of Eastern's employees. Currently, of States' remaining 36 employees, 23 are former Eastern employees hired in connection with the agreement.

States also provided the Navy with the resumes of several of States' current employees. All of these individuals were in supervisory positions and showed more than 79 years of combined experience supervising work on various levels and performing a broad range of roofing related tasks with Eastern/States. For example, one individual who worked as a superintendent, foreman, and project manager for both States and Eastern for the past 15 years had performed various commercial roofing services such as the removal and restoration of slate roofing and sheet metal work related to roofing. He also had been employed by Eastern as project manager for 5 years, in which capacity he performed all types of residential roofing services and repairs. States' superintendent had 2 years of experience with States working on all aspects of commercial roofing systems, and previously had been employed for 19 years by Eastern, where he was responsible for installing different types of roofing systems and performing associated sheet metal work. Similarly, States' foreman, field superintendent, and sheet metal superintendent, all of whom came from Eastern, showed at least 38 years of combined experience in the roofing business.

We think the information furnished the Navy established the existence of a substantial nexus between Eastern and States, such that Eastern's prior experience and that of several of States' managerial and supervisory employees could be considered sufficient to satisfy the 5-year experience requirement. Taken together with the transfer of assets,


the presence of a significant component of Eastern's highly experienced employees along with managerial and supervisory personnel reasonably could indicate, in our view, that there was enough continuity between Eastern's and States' operations that Eastern's experience was relevant in assessing the extent of States' experience.

Miles maintains that Eastern's experience is irrelevant because that firm remains in existence and States did not assume its liabilities; Eastern thus is not in Miles' opinion a "predecessor firm" of States. However, we fail to see what relevance States' obligation to Eastern's creditors has to a responsibility determination. The question is whether the relationship between the two firms is such that Eastern's experience is useful in predicting States' successful performance of the contract. In our view, it is Eastern's assets and employees that are relevant to that determination, not its debts.

Miles also argues that States' experience is irrelevant since there is no indication that the resumes submitted were for States' "principal officers." Depending upon a particular business organization's size, structure, staff and methods of working, corporate officers may or may not be important to whether its experience is attributable to another firm. Principal officers are not necessarily essential in determining whether a bidder experience requirement has been met. Urban Masonry Corp., supra; A.R. & S. Enters., Inc., B-201924, July 7, 1981, 81-2 CPD ¶ 14. The relevant consideration is not whether a group of employees has a certain label but whether the employees' role and experience with another firm is predictive of the bidder's performance under the contract. In this case, Eastern had over 10 times more employees than States' currently has, so that Eastern's senior managers might be expected fulfill many of the responsibilities that corporate officers might fill in the smaller firm. Under the circumstances here, we find that the Navy reasonably

concluded that States established experience equivalent to that required by the IFB through Eastern's assets and employees.¹

The protest is denied.


for James F. Hinchman
General Counsel

¹Miles argues that States' employees' resumes were inadequate to show that States' experience had been in "the type of work required in this solicitation." This argument is without merit, since States' employees' resumes showed extensive experience performing roofing work, that is, "the type of work" required under this IFB.