



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Morton Management, Inc.  
**File:** B-224031  
**Date:** January 8, 1987

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### DIGEST

1. Where bid otherwise does not take exception to solicitation specifications for automated data processing cable and includes descriptive literature which shows that the system offered includes "RG-62/U" cable which conforms with the specifications, clerical error in cover letter which refers to nonexistent "RG-69/U" cable does not render bid ambiguous and, therefore, nonresponsive, because under circumstances of this case, bid was not susceptible of more than one reasonable interpretation.
2. Solicitation requirement that the bid contain name of "at least one [reference] where the [automatic data processing] network is in commercial use" does not relate to responsiveness of bid, where solicitation does not require the furnishing of a standard commercial product compliance with which must be established in the bid, but to responsibility of bidder. Bid omitting name of commercial reference should not have been rejected as nonresponsive.

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### DECISION

Morton Management, Inc. (Morton) protests the rejection of its bid as nonresponsive and the award of a contract under invitation for bids (IFB) No. M00243-86-B-0007, issued by the Marine Corps Recruit Depot, San Diego, California, for automated data processing equipment needed to upgrade and automate the workload at the Depot's legal office. Morton contends that it was the low responsive bidder.

We sustain the protest.

### FACTS

Subsection H-3 of the solicitation imposed the following requirement:

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"Bid Content. All bids will contain, at a minimum:

A. Brochure for each element of the system.

. . . . .

C. Alternate source of cabling and specifications for the cable.

. . . . .

G. Original print samples from all printers.

H. At least one preference [sic] where the network is in commercial use."

The agency initially asserted that Morton's bid was nonresponsive because it did not (1) contain brochures or descriptive literature for elements of the microcomputer system as required by subsection H-3-A; (2) identify an alternate source of cabling and specifications for that cabling as required by subsection H-3-C; (3) include original print samples from all three types of printers to be used, as required by subsection H-3-G, but "[o]nly samples from the page printer and dot matrix printer . . . and these appeared to be reproductions rather than originals" (emphasis added); and (4) provide "any references noting where [the network-offered by Morton] is in commercial use" as required by subsection H-3-H.

We need not consider the first and third of these arguments. At the protest conference as well as in its comments filed following the conference, the agency acknowledged that descriptive literature was, in fact, included with Morton's bid. With respect to the requirement for print samples, the protester maintains that it submitted the required original print samples along with its descriptive literature. The agency has offered no rebuttal on this point, and does not even mention, much less discuss, the issue of the print samples in its conference comments. These circumstances lead us to consider that the agency also has conceded on this point.

Concerning the second basis on which Morton's bid was rejected, it does appear that the bidder failed to identify an alternate source of cabling as requested. Morton asserts that this was not necessary, however, because the "RG-62/U or equivalent" cable, identified in its descriptive literature and whose specifications it provided, is a standard stock

supply item.<sup>1/</sup> Morton acknowledges that in a cover letter accompanying its bid it also referred to "RG-69/U" cable, but states that reference was an obvious typographical error since it identifies a nonexistent type of cabling.

On this point the agency maintains that it properly determined Morton's bid to be nonresponsive not only because Morton failed to provide information concerning an alternate source of cabling but because the numerical discrepancy in Morton's bid made it unclear what type of cable Morton intended to offer.

With regard to the fourth ground on which the bid was rejected, the protester states that it provided no information in response to the solicitation's request for "preference where the network is in commercial use" because the contracting officer would not clarify the meaning of that term and it was unclear to the protester what the solicitation required. At the protest conference the agency explained that the provision contains a typographical error and should have read "reference" instead of "preference." The agency takes the position, however, that Morton's claim that it failed to understand the provision is "unpersuasive" and its objection to its wording as "unclear" is untimely in that it constitutes a protest of a solicitation defect which, under our bid protest regulations, must be filed prior to bid opening. The Marine Corps further asserts that rejection of Morton's bid as nonresponsive for failure to provide a commercial use reference was required by the provisions of the Federal Acquisition Regulation, 48 C.F.R. §§ 14.301 and 14.404-2 (1985), since the bid did "not conform to the solicitation, or . . . [failed] to offer . . . material requirements of the solicitation."

#### ANALYSIS

Since the Marine Corps has either expressly or tacitly withdrawn two of the four grounds on which it initially claimed Morton's bid was nonresponsive, we have two issues remaining for our consideration. The first is whether, as a consequence of the numerical discrepancy between the references in Morton's bid cover letter and in its descriptive literature to the type of cabling it offered, and

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<sup>1/</sup> According to the protester, RG-62/U is "a standard coaxial cable . . . available at any cable supplier," and is a standard federal supply item. The agency has not disputed these claims.

as a result of its failure to identify an alternate source of cable and the specifications for that cable in its bid, the bid was rendered nonresponsive. The second is whether Morton's bid was nonresponsive because it failed to provide a reference where the network it offered is in commercial use.

#### Cable Requirements

Performance of this contract includes the furnishing and installing of the cables and connectors needed to tie the system together. The IFB does not require any one type of cable to be used. The solicitation requirements for "connection media" (which includes cabling) state that the "connection media shall be standard and available from dealers other than the vendor." The solicitation specifications also require that the cabling support a minimum distance of 4,000 feet total network length and that it have a minimum transmission rate of one million bits per second.

In its conference comments, the agency argues that conflicting references in the bid cover letter and in the descriptive literature create an ambiguity as to whether Morton was offering RG-69/U or RG-62/U cable.

The protester points out that in the descriptive literature enclosed with its bid, it offered RG-62/U cabling which, as described therein, exceeds five times over the length required in the IFB and has a transmission rate 2-1/2 times that required. In addition, the protester observes, the single reference to "RG-69/U" cable in its bid cover letter was an obvious typographical error because that number does not identify a existing commercial cable. The Marine Corps has not rebutted this point.

Accordingly, we view this situation as analogous to that in Hirt Telecom Co., B-222746, supra, involving the supply and installation of cables supporting a word processing system, where we found responsive a bid in which a one-digit error in a manufacturer's catalog number referred to cable connector not suitable for use under that contract but the item otherwise was correctly described in the bid. In that context, we stated, it was "unreasonable to conclude that the bidder intended to furnish an inappropriate type connector." We therefore conclude that the numerical discrepancy in Morton's bid does not render it nonresponsive.

The agency also maintains that Morton's bid is nonresponsive because it did not identify an alternate source of cabling and specifications for the cable. Morton may have failed to

supply an item of information requested of it by the IFB, but it or any other bidder already was obligated by the specifications to supply cabling, and that cabling was to be "standard and available from dealers other than the vendor." We do not see how that performance obligation is affected by a bidder's failure to provide information as to an alternate source of cabling.<sup>2/</sup> The rejection of Morton's bid as nonresponsive on this basis was improper.

#### Commercial Reference Requirement

The agency argues that Morton's bid was nonresponsive because it failed to provide the name of "at least one [reference] where the network is in commercial use" as required by the IFB.<sup>3/</sup> As with the "alternate source" requirement, by the Marine Corps has not explained the rationale for the requirement nor how the information was used, if it was, in the evaluation of bids. Its only substantive discussion is as follows:

"The submission of examples of the previous commercial use of a product is not an unusual requirement in government acquisitions. Federal

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<sup>2/</sup> It appears that minimal information was sufficient to satisfy the agency. In response to subsection H-3-C, the awardee simply stated in its bid:

"Alternate source for cabling:  
Western Radio Electronics  
619-268-4400"

What use, if any, the Marine Corps made of this information prior to award has not been explained.

<sup>3/</sup> Morton argues at some length to the effect that it could not have been expected to understand the meaning of the requirement for a reference because of the clerical error in the solicitation and the alleged unwillingness of the contracting offeror to explain its meaning. We agree that the Marine Corps easily could have corrected this error. On the other hand, we think that, in spite of the typographical error, when read in context (" . . . where the network is in commercial use"), the protester reasonably should have understood that the provision called for a commercial reference.

Acquisition Regulation (FAR) at section 11.001 defines a 'commercial product'. . . ."

This argument seems to imply that the information requested was necessary to establish whether the network which the bidder offered to supply would meet a solicitation requirement that it be a standard commercial product. See, e.g., Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153. There was no standard commercial product requirement in the solicitation, however. Therefore, Morton's failure to include the name of a reference in its bid did not qualify its offer to perform in accordance with the IFB's specifications. Under these circumstances, we think the information requested relates to the bidder's ability to perform satisfactorily--i.e., its responsibility--and not to the responsiveness of its bid. It therefore was improper to have rejected Morton's bid as nonresponsive on this basis.

#### CONCLUSION

We conclude, therefore, that Morton's bid was responsive. The protest is sustained.

We have been informed by the agency that performance of the contract was substantially completed at the time the protest was filed and approximately 85 percent of the cost has already been incurred. In view of the advanced stage of performance of the contract, we cannot recommend that the contract be terminated for the convenience of the government. Since through the improper rejection of its low bid Morton was unreasonably excluded from the procurement and since no other remedy is appropriate, we find that Morton should be allowed to recover its bid preparation costs and the costs of filing and pursuing the protest at the General Accounting Office, including attorney's fees. 4 C.F.R. § 21.6(d), (e). Morton should submit its claim for such costs directly to the Marine Corps. 4 C.F.R. § 21.6(f).

*for*   
Comptroller General  
of the United States