

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

57061

FILE: B-182717

DATE: September 26, 1975

MATTER OF: Interad, Limited

97405

## DIGEST:

Decision B-182717, June 16, 1975, is affirmed upon reconsideration since protester offers no evidence to refute agency's determination that bid did not provide sufficient information to determine that offered radio would meet agency needs and protester fails to establish any error of law.

Interad, Limited (Interad), requests reconsideration of our decision Interad, Limited, B-182717 of June 16, 1975, wherein we denied its protest against cancellation of invitation for bids (IFB) No. 75-8, issued by the Federal Communications Commission for the furnishing of radio receivers.

The IFB required bidders to submit descriptive literature to establish "details of the products the bidder proposes to furnish as to product data sheet showing specifications" and conformance with the specifications and other requirements of the IFB. Paragraph 37 of the specifications contained an additional requirement for descriptive material and documentation which stated that "a complete technical description of the receiving system including mechanical and electrical details as well as complete pictorial and schematic diagram(s) shall be furnished with the bid." The four bids received and accompanying descriptive literature were technically evaluated and each bidder's descriptive literature was found to be inadequate. Interad was the low bidder. Since all of the bids were adjudged "technically nonresponsive," the FCC canceled the solicitation. The agency also stated that Interad's bid did not contain sufficient information to enable the FCC to determine whether Interad's receivers would satisfy the agency's needs. Interad protested the decision of the FCC to cancel the solicitation and argued that its bid was responsive and award of the contract should be made to it as the low responsive bidder.

In our decision of June 16, 1975, we found that the solicitation was defective because the descriptive literature clause did not state the data requirements with sufficient particularity and recommended that the procurement be resolicited under an IFB which

complies with the descriptive literature provisions of the Federal Procurement Regulations § 1-2.202-5 (1964 ed. amend. 10). While we recognized that under certain circumstances an improper descriptive literature requirement can be disregarded and an award made, citing 49 Comp. Gen. 398 (1969), we stated that:

"\* \* \* in the instant case, the FCC has stated that Interad failed to submit sufficient data to enable the agency to determine whether Interad's receivers would satisfy its needs. Since Interad has not shown the agency's judgment in this respect to have been erroneous, we do not believe we would be warranted in holding that an award should be made under the original solicitation."

Interad takes the position that this conclusion is incorrect as a matter of fact and that as a matter of law it incorrectly applies 49 Comp. Gen. 398, supra.

Interad argues that while the FCC has generally asserted that Interad's material was insufficient, the FCC has never articulated the basis of that insufficiency. We note, however, that the FCC's administrative report in response to Interad's initial protest, received by counsel for the protester on January 15, 1975, describes the materials submitted and states:

"No schematic is shown for the very important IF tuners, the detectors, mixer stages, filters, local oscillators, audio amplifier, power splitter, carrier operated relay, video amplifier, beat frequency oscillator, power supply, and gain control circuits.

"Mechanical and electrical details are omitted. Only three of the seven drawings submitted, D-125 Simplified Block Diagram D-126 receiver front panel pictorial, and C-192 Signal Display Unit/Counter Block Diagram are pertaining and these three represent only a small portion of the system. The other four are sample drawings of other component circuits previously prepared. These contributed nothing to the Bid evaluation, but were merely interesting evidence of somewhat related design activity by the protestant."

The four drawings submitted as reference materials apparently were from prior designs not related to the present procurement and, in the protester's own words, "these schematics may be modified to meet the detail requirements of the specification."

Interad also states that during the conference on this protest the FCC specifically stated that even if Interad had submitted additional material, the FCC could not have performed a more complete evaluation of the receiver; that this could be done only by evaluating the receiver itself. Interad contends that this statement shows that the FCC's allegation of insufficient data is without basis and, therefore, our finding that Interad has not shown the allegation of insufficiency to be incorrect is clearly erroneous. The record provides no evidence other than Interad's allegations which indicates that the agency took such a position or the context in which it may have been taken. In such circumstances, we must accept the agency's position as reflected in the written record. See 46 Comp. Gen. 740, 744 (1967); 41 Comp. Gen. 47, 54 (1961).

In 49 Comp. Gen. 398, supra, we stated that a defective descriptive literature provision in an invitation could be disregarded and an award made thereunder where three conditions are met: (1) where competition has not been affected; (2) where the agency by award would enter into a binding contract for what it wanted; and (3) where no bidder obtained an option or other undue advantage because of the defect in the invitation. However imperfectly it may have been stated in the IFB, it is apparent that the FCC was seeking sufficient information to permit something more than a perfunctory technical assessment of each bidder's proposed equipment. Where, as here, an agency is left to guess as to the modifications intended or required to synthesize a series of apparently unrelated schematics into an integrated system, we must conclude that there is substantial support for a determination that the materials provided were not sufficient to assess whether the offered components would satisfy the agency's needs. Interad offers no evidence to counter this conclusion. In these circumstances, there is a failure to meet the second requirement of 49 Comp. Gen. 398, supra, and award would not be proper.

In addition, we have been informally advised that the solicitation has been reissued as IFB No. 76-4 with slightly altered specifications and a restated descriptive literature requirement as required by our prior decision. We understand that Interad attended the pre-bid conference held on August 18, 1975.

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In view of the foregoing, our decision of June 16, 1975, is affirmed.

  
Deputy Comptroller General  
of the United States