

DECISION



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

FILE: B-213134

DATE: May 14, 1984

MATTER OF: Computer Sciences Corporation

DIGEST:

1. Where clause in invitation for bids requires submission of manufacturer's descriptive literature showing compliance with requirements in 14 specific areas, only reasonable reading of clause is that descriptive literature must show compliance with essential requirements in those areas and need not show compliance with every detail of specifications.
2. Protester's disagreement with agency determination that awardee's descriptive literature showed compliance with essential requirements of specifications is not sufficient to overturn that determination, since that determination must stand unless it is shown to be clearly unreasonable.

Computer Sciences Corporation (CSC) protests the award of a contract to the Truland Systems Corporation (Truland) for an energy monitoring control system, under invitation for bids (IFB) No. DACA31-83-B-0093, issued by the United States Army Corps of Engineers (Corps).

We deny the protest.

The IFB contained a clause requiring bidders to submit, with their bids, descriptive literature showing that their proposed systems satisfied the specifications. The solicitation warned bidders that failure to include such literature or restricting the literature from public disclosure would require rejection of the bid.

The clause stated that bidders must "[p]rovide manufacturers descriptive literature for the hardware, software, and system functionality as defined in the bid set, as follows." The IFB then listed 14 specific areas, such as central control unit and peripherals, communications link termination, and field interface devices.

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The Corps received nine bids in response to the solicitation. The Corps found all bids, except Truland's, CSC's and M.C. Dean Company's (M.C. Dean), to be nonresponsive for a variety of reasons. Of those bids, Truland's bid was second low, M.C. Dean's bid was fifth low, and CSC's was the high bid.

In evaluating the descriptive literature, the Corps found that the literature of Truland, CSC, and M.C. Dean contained information deviating from some of the detailed specifications listed in the IFB. The Corps determined that for all three bidders, the deviations were not material, and the literature showed compliance with the Corps' needs. The Corps awarded to Truland, the low responsive bidder.

CSC lists 27 areas in which it contends that Truland's descriptive literature deviates from the specifications. Additionally, CSC points to the Corps' technical evaluation, which found 13 deviations in the Truland literature. CSC argues that the deviations shown by Truland's descriptive literature are material and that the rejection of Truland's bid is required. CSC contends that the descriptive literature must show exact compliance with every material specification listed in the IFB. According to CSC, the Corps' technical evaluation admitted that the deviations were material when it stated that Truland could easily correct the deviations. CSC claims that if the deviations require correction, they could not be minor.

CSC also argues that if, in fact, the specifications deviated from are minor, then they should not be included in the IFB. By doing so, the Corps has overstated its minimum needs. Therefore, the solicitation was defective, and the requirement should be resolicited.

The Corps contends that the deviations that its technical evaluation group found in the descriptive literature of all three responsive bidders were not material, but were minor in nature and did not affect the operation of the system. Consequently, the Corps was required to waive the deviations or to permit bidders to correct them if necessary. According to the Corps, because the IFB clause requested manufacturers' descriptive literature, which is not custom-tailored to each project, the Corps did not expect literature to conform exactly to every minute specification. The Corps responded specifically to the

27 deviations in Truland's literature alleged by CSC. According to the Corps, 22 of the 27 alleged deviations were not deviations, as Truland's literature showed compliance with the requirements. Four of the alleged deficiencies were not requirements, and one alleged deficiency was an item that every computer must have to function. Consequently, the Corps assumed that it was included in Truland's system.

When descriptive literature is required by an IFB to be submitted with bids, the adequacy of the literature in showing compliance with the specifications is a matter of responsiveness. Where the literature does not show compliance, the bid must be rejected. Amray, Inc., B-205037, February 9, 1982, 82-1 CPD 116. The IFB must definitely set forth the components or specifications for which descriptive literature is required, and literature is not required to show compliance with specifications beyond those set forth. See Kaiser Aerospace & Electronics Corporation, B-190148, February 14, 1978, 78-1 CPD 124. Also, where descriptive literature shows a deviation from specifications that is not material, the deviation must be waived, or the bidder must be given an opportunity to correct the deviation. Brown Boveri Electric, Inc., B-209338, April 1, 1983, 83-1 CPD 342. A deviation is immaterial when its significance as to quality, quantity, delivery or price is trivial or negligible when compared with the total cost or scope of supplies or work to be furnished. Champion Road Machinery, International Corporation, B-200678, July 13, 1981, 81-2 CPD 27.

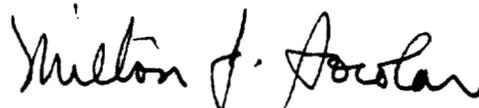
The determination of the technical adequacy of bids, based on submitted descriptive literature, is essentially a technical evaluation. Calma Company, B-209260.2, June 28, 1983, 83-2 CPD 31. In keeping with our basic standard of review of technical evaluations, we have held that the determinations of the technical evaluators of contracting agencies concerning the adequacy of technical data will not be disturbed by GAO absent a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of the procurement statutes and regulations. Interad, Ltd., B-210013, May 10, 1983, 83-1 CPD 497. This is especially the case where the goods or services being purchased are highly technical in nature. Atlantic Research Corporation, B-179641, February 25, 1974, 74-1 CPD 98.

Here, the descriptive literature clause required manufacturers' descriptive literature for hardware, software and system functionality relating to 14 specific areas of the required system. We think that the only reasonable interpretation of this clause is that bidders were required to submit literature showing that their systems satisfied the Corps' essential requirements in each of the 14 areas. Accepting CSC's interpretation, that the literature was required to show exact compliance with every detailed specification, would render meaningless the listing of the 14 specific areas and the reference to manufacturers' literature, which is obviously standardized, not custom-tailored, to specifications. It would also violate the rule that descriptive literature is only required to show compliance with the items referred to in the descriptive literature clause. Kaiser Aerospace & Electronics Corporation, supra. Additionally, it is clear from the record that the Corps and the three responsive bidders interpreted the clause in that way. All three responsive bidders submitted literature that deviated in a similar manner and degree from the detailed specifications. In evaluating the literature, the Corps examined it to ensure compliance with the essential requirements of the 14 areas, not to every detailed specification. We find it telling that CSC has not argued that M.C. Dean's bid is nonresponsive and obviously does not consider its bid nonresponsive, even though both bids contained descriptive literature that deviated from the detailed specifications to at least as great a degree as did Truland's bid.

We conclude that CSC has not shown that the Corps' determination that Truland's descriptive literature met the essential requirements of the 14 listed areas and deviated only immaterially was unreasonable. CSC has merely disagreed with the Corps' findings as to the materiality of the deviations, and that is not sufficient. Also, CSC has not explained its assertion that its own bid is responsive, notwithstanding similar deviations from the IFB's specifications. In these circumstances, the Corps' technical evaluation will not be disturbed.

CSC also argues that by accepting a bid that admittedly deviated from the specifications, the Corps has acknowledged that the specifications exceed its minimum needs and, therefore, that the solicitation was defective. We disagree

with this position. While the Corps has admitted that Truland's bid deviated from the solicitation, it maintains that the deviations are not material and, therefore, not sufficient to render Truland's bid nonresponsive. The Corps' actions have not indicated in any way that the solicitation does not represent its minimum needs.



Acting Comptroller General
of the United States