

**DECISION**



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

507790

FILE: B-182717

DATE: June 16, 1975 97187

MATTER OF: Interad, Ltd.

**DIGEST:**

1. Protester reasonably interpreted descriptive literature clause as not requiring statement by bidder acknowledging one-year warranty obligation, since a warranty is not generally considered part of the product "specifications" within the meaning of the Descriptive Literature clause and contractor's warranty obligation was explicitly set forth in IFB.
2. Agency's requirement that bidder's descriptive literature reiterate obligation to provide maintenance-operation instruction manuals provided no greater assurance that Government's needs would be satisfied and unnecessarily increased chances that bids would be found nonresponsive.
3. IFB was defective in that it failed to set out in a manner as detailed as practical the nature and extent of the descriptive literature requirement. Canceled invitation should be readvertised in accordance with descriptive literature requirements.

Invitation for bids (IFB) No. 75-8 was issued by the Federal Communications Commission (FCC) for the supply of 15 radio receivers, with an option for 7 additional units. Among the conditions of the IFB was the following "REQUIREMENT FOR DESCRIPTIVE LITERATURE":

"(a) Descriptive Literature as specified in this invitation for bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to product data sheet showing specifications.

"(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids

will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth in this Invitation for Bids."

Eight single-spaced pages of the IFB were devoted to equipment specifications. All of the specifications described the required physical and electrical characteristics of the receivers, except the last three paragraphs which read as follows:

- "35. INSTRUCTION MANUALS: Each system shall be delivered with two copies of the maintenance-operation instruction manual and in addition, one copy of the manual shall be furnished to Chief, Engineering Division, 1919 M Street, NW., Room 738, Washington, D.C. 20554. The contract will not be considered as fulfilled until the equipment and all the required instruction books have been delivered.
- "36. WARRANTY: The equipment provided under these specifications shall be fully guaranteed, including parts and labor for a minimum of one year from date of delivery.
- "37. DESCRIPTIVE MATERIAL: 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."

Interad, Ltd. submitted the lowest of the four bids received. All bids and accompanying descriptive literature were technically evaluated, pursuant to which each bidder's descriptive literature was found to be inadequate and to deviate from the specification requirements. Since in its judgment all bids received were "technically nonresponsive," the FCC canceled the solicitation. Interad subsequently protested the rejection of its bid and the cancellation of the IFB, contending that its bid was in fact responsive and that it was therefore entitled to the award.

The first reason advanced by the FCC for the rejection of Interad's bid was that the descriptive literature submitted by that firm did not "affirmatively respond" to specification paragraphs 35 and 36 quoted above. Apparently, the FCC desired some independent statement from each bidder that it would furnish instruction manuals and would warrant its equipment for one year. Interad interprets the IFB as not requiring bidders to separately respond to paragraphs 35 and 36; notes that it took no exception to these requirements; and considers itself bound to them through signing and returning the bid. We believe there is merit to Interad's position.

In our view, the FCC did not clearly state its intention that bidders' descriptive literature include the provisioning of instruction manuals and the recognition of a one-year warranty obligation. The descriptive literature clause, quoted above, required the bidder to show "details of the products" he proposed to furnish "as to product data sheet showing specifications." We have stated that "specifications" is generally understood to mean the description of the technical requirements of a product, rather than the terms and conditions under which bids are submitted and the rights of the parties are defined. B-175329, June 28, 1972. In that decision, we held that a bidder's exception to a warranty provision was not "cured" by the statement in its bid cover letter that its products "meet or exceed the requirements of the specifications. We take no exception to these specifications." We therefore believe Interad reasonably interpreted the requirement for descriptive literature showing its product met the "specifications" as not including a statement that it would offer a one-year warranty.

A similar situation exists with respect to the "maintenance-operation instruction manuals" which are mentioned only in paragraph 35 of the IFB specifications quoted above. Apparently, all the FCC required was a statement in each bidder's descriptive literature that the firm would supply the manuals. In this connection, we note that Federal Procurement Regulations (FPR) § 1-2.202-5(a)(1964 ed. amend. 13)

provides that the term "descriptive literature" excludes "information such as that \* \* \* for use in operating or maintaining equipment." Furthermore, we think that requiring the bidder to merely reassert an obligation already imposed by the solicitation increases the chances that a bid will be found nonresponsive without providing any correspondingly greater assurance that the bidder will satisfy the Government's needs.

The principal issues in this protest are whether a descriptive literature requirement was justified and, if so, whether Interad satisfied that requirement. Interad contends that the receiver specifications were so detailed as to obviate the need for descriptive literature and that it should, therefore, not be found nonresponsive for failure to meet an unnecessary requirement. Alternatively, Interad argues that its descriptive literature adequately demonstrated that its equipment would meet the agency's needs.

The record does not contain a written justification for the inclusion of the descriptive literature clause, as required by FPR § 1-2.202-5(c)(1964 ed. amend. 10). However, in view of the FCC's advice that the receivers are new, complex, unique, state-of-the-art items, it appears a reasonable basis existed for requiring descriptive literature.

However, we do not believe the requirement for descriptive literature was adequately expressed by the agency. The IFB in this case is very much like that discussed in our Air Plastics decision, 53 Comp. Gen. 622 (1974). Here, as there, the descriptive literature clause failed to set out in a manner as detailed as practical the nature and extent of the descriptive literature requirement. In the instant case, bidders were instructed only that descriptive literature was required to establish "details of the products the bidder proposes to furnish as to product data sheet showing specifications." In addition, paragraph 37 of the IFB specifications required that the bid be accompanied by a "complete technical description of the receiving system," including mechanical and electrical details and pictorial and schematic diagrams. Since paragraph 37 imposed a documentation requirement rather than a description of the equipment being purchased, its presence among the specifications appears inappropriate. Even if paragraph 37 is read in conjunction with the descriptive literature clause, we believe bidders were not adequately informed of what was expected of them.

Under certain circumstances, the inclusion of a defective descriptive literature provision in an invitation may be disregarded and an award made thereunder. 49 Comp. Gen. 398, 401 (1969). However, 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.

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In view of the foregoing, we are advising the FCC by separate letter of today that the requirement should be resolicited under an IFB which complies with the descriptive literature provisions of FPR § 1-2.202-5.

*Pyke*  
Deputy Comptroller General  
of the United States