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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Potomac Electric Corporation

File: B-311060

Date: April 2, 2008

Leny Chertov for the protester.

Brian Toland, Esq., and Elizabeth J. Bare, Esq., Department of the Army, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under a request for proposals (RFP) for motors, which did not request a technical proposal or descriptive literature, a proposal including a cover letter stating that the offeror is proposing a motor that is a “FIT, FORM and FUNCTION replacement of the motor described” in the RFP renders the proposal’s blanket offer to comply with the specifications ambiguous, such that the proposal was properly rejected as unacceptable.

DECISION

Potomac Electric Corporation protests the U.S. Army Materiel Command’s rejection of its proposal under request for proposals (RFP) No. W52H09-07-R-0502 for a direct current (DC) motor used in the M109A6 Paladin Self Propelled Howitzer.

We deny the protest.

The RFP provided for the award of a fixed-price contract, for 31 direct current motors, national stock number 6105-01-391-4920, part number 12927815, to the low-priced acceptable offeror. The DC motor is a necessary support item that functions as the climate control motor used in the M109A6 Paladin Self Propelled Howitzer. It supplies power for the microclimate conditioning system (MCS) by driving a pulley that rotates a compressor unit. According to the Army, the MCS is extremely important, as it is designed to help protect warfighters in the event of a nuclear, biological or chemical attack. The solicitation specified the motor’s requirements through a comprehensive technical data package (TDP), which included specifications for speed, power, starting characteristics, motor resistance, weight, life cycle, reliability, temperature, humidity, pressure, elevation, sand and

dust, salt, fog, fungus, vibration, shock, di-electric strength, and insulation resistance. The motor was also required to interface properly with other components and fit within a certain size envelope for proper clearances. Shortcomings on any one of the TDP requirements may cause the MCS to fail. Contracting Officer's Statement (COS) at 1.

The RFP did not require the submission of technical proposals or descriptive literature. Due to the specificity required in the TDP for the manufacture of the DC motors, the agency chose not to include as part of the solicitation the clause at Instructions to Offerors – Competitive Acquisitions, Alternate II, which in pertinent part reads:

Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined.

Federal Acquisition Regulation § 52.215.1, Alternate II; see COS at 2. As a result, proposals were not permitted to depart from the requirements of the TDP.

Three proposals were received in response to the solicitation. Potomac's proposal offered the lowest price and consisted of seven pages, the first two of which were a cover letter, which stated:

Potomac Electric Corporation is a small business manufacturer . . . We specialize in design and manufacturing of servomotors. The strength of our company is in innovative designs of motors . . . The motor design quoted in the proposal is based on our MX8200 motor developed in 2005. . . . **Note:** The motor proposed here is FIT, FORM and FUNCTION replacement of the motor described in your documentation.

Agency Report, Tab 7, Potomac's Proposal, Cover Letter. This proposal was found unacceptable because the contracting officer determined that Potomac was apparently offering an alternative motor and, thus, failed to comply with the requirements of the solicitation. Award was made to Fischer Electric Technology, the second low-priced offeror, which submitted an acceptable proposal. This protest followed.

Cover letters submitted with proposals are considered part of the proposal. INDUS Technology, Inc., B-297800.13, June 25, 2007, 2007 CPD ¶ 106 at 6. This is so because a cover letter may alter the obligations the offeror would otherwise assume under the terms of the solicitation. Only by evaluating a cover letter or extraneous documents submitted with a proposal can a contracting officer assure himself or

herself of making award on the basis of a compliant proposal which satisfies the agency's stated requirements. System Dynamics Int'l, Inc.—Recon., B-253957.4, Apr. 12, 1994, 94-1 CPD ¶ 251 at 3; Techniarts Eng'g; Department of the Navy—Recon., B-238520.3, B-238520.4, June 27, 1991, 91-1 CPD ¶ 608 at 3-4. Where a proposal (including any cover letter) includes a blanket offer of compliance to meet specifications and also contains conflicting provisions which call that offer of compliance into question, the proposal is ambiguous and properly may be rejected as technically unacceptable. Cache Box, Inc., B-279892, July 29, 1998, 98-2 CPD ¶ 146 at 3.

Here, Potomac submitted a blanket offer of compliance with the RFP requirements by offering a price and signing the solicitation cover sheet and acknowledging copies of amendments 1 and 2 to the RFP. This was all that the RFP required in order for a proposal to be found acceptable. However, as noted, Potomac's cover letter noted that it was proposing a "FIT, FORM and FUNCTION replacement of the motor described" in the RFP. The contracting officer, upon reading Potomac's cover letter, construed Potomac's "FIT, FORM and FUNCTION replacement" statement as an offer to provide a motor that Potomac was representing to be interchangeable with the motor contained in the solicitation with respect to physical and functional capacity, but not necessarily a motor that would fully comply with all of the detailed TDP requirements. Potomac argues that its language did not imply that it would be proposing an alternative to the TDP requirements and that the "fit, form and function" expression is a term of art among engineers in the field and did not take exception to the RFP requirements. Nevertheless, we find that this terminology, at best, created an ambiguity, such that the contracting officer was unable to unequivocally determine whether Potomac's replacement would comply with all of the requirements of the TDP or provide a fully compliant replacement motor. Since the solicitation did not allow submission of proposals departing from the TDP requirements, the contracting officer reasonably rejected Potomac's offer to be unacceptable because it was ambiguous as to whether it was offering an alternative motor which complied with all of the RFP requirements. Cache Box, Inc., *supra*; Barton ATC, Inc., B-271877, B-271878, Aug. 6, 1996, 96-2 CPD ¶ 58 at 3-5.

The protest is denied.

Gary L. Kepplinger
General Counsel