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**Comptroller General
of the United States**

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

Decision

Matter of: U.S. Reconstruction and Development Corporation

File: B-296195

Date: June 7, 2005

Kyle Sampson for the protester.

Capt. Sunny S. Ahn, Department of the Army, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly rejected protester's offer as technically unacceptable where the solicitation called for diesel generators to be delivered to Iraq and the protester offered unleaded gasoline generators to be delivered to Kuwait.

DECISION

U.S. Reconstruction and Development Corporation (USRDC) protests the rejection of its offer under solicitation No. W912D1-05-T-0076, issued by the U.S. Army Contracting Command Kuwait to supply diesel-powered generators to be delivered to Camp Bucca, Iraq.

We deny the protest.

On January 22, 2005, the U.S. Army Contracting Command Kuwait issued a solicitation requesting offers to supply 30 diesel-powered generators to be delivered to Camp Bucca, Iraq. The solicitation stated that award would be made to the firm submitting the lowest-priced, technically acceptable offer. The Army received nine timely offers. USRDC submitted the lowest total price. However, USRDC proposed an unleaded gasoline generator that it would deliver to Camp Arifjan, Kuwait. The contracting officer noted the deficiencies in generator type and delivery location in USRDC's offer and rejected it as unacceptable. On March 20, the contracting officer awarded the contract to Smart Traders, the firm with the lowest-priced, technically acceptable offer, and this protest followed.

USRDC alleges that its offer mistakenly indicated that it would supply a gasoline generator, as opposed to the diesel generator the solicitation required, and that the

contracting officer had an obligation to examine the offers for such apparent mistakes and to seek verification of any offer containing an apparent mistake. The agency argues that the deficiencies in USRDC's offer do not constitute apparent mistakes and that the offer in fact was technically unacceptable.

The contracting officer properly rejected USRDC's offer for failing to conform to the terms of the solicitation. USRDC offered a gasoline-powered generator when the solicitation called for a diesel-powered one, and quoted delivery to Kuwait instead of the specified location in Iraq. Accordingly, the contracting officer properly rejected the offer as technically unacceptable because it took exception to a material feature of the item itself, as well as to the delivery requirements in the solicitation. See American Fuel Cell & Coated Fabrics Co., B-293001, B-293020, Jan. 12, 2004, 2004 CPD ¶ 13 at 5, Ralph Constr., Inc., B-222162, June 25, 1986, 86-1 CPD ¶ 592 at 2-4.

In support of its argument that the contracting officer had an obligation to examine USRDC's offer for apparent mistakes and to seek verification of any offer containing an apparent mistake, USRDC cites Federal Acquisition Regulation (FAR) § 14.407 and § 15.508; neither provision is applicable here. FAR § 14.407 applies to correction of mistakes in the context of sealed bids; the procurement here was not conducted using sealed bid procedures. Similarly, FAR § 15.508 refers to post-award mistakes in a contractor's proposal and thus likewise is inapplicable here.¹

Finally, the protestor also argues that the contracting officer failed to indicate whether the awardee met certain registration requirements, such as having a valid and active DUNS number. Since USRDC's offer was properly found unacceptable, and there is another firm besides the awardee eligible for award, USRDC is not an

¹ While in a negotiated procurement a contracting officer generally has discretion to engage in communications with an offeror to clarify mistakes, FAR § 15.306(b)(3)(i), there simply was no reason for the contracting officer to even consider doing so here. As noted above, USRDC took exception to two material terms of the solicitation; in no way could those deficiencies in its proposal be regarded as "mistakes" within the meaning of any of the FAR provisions discussed above. See, e.g., U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 14 (setting forth circumstances that warranted the use of the provisions in FAR § 15.306(b)(3)(i), where it appeared to the contracting officer that an offeror's price might have been generated using an incorrect multiplier); MKB Constructors, Joint Venture--Recon., B-250413.2, June 8, 1993, 93-1 CPD ¶ 441 at 4 (noting that where bid is otherwise responsive, and where bid establishes exact nature of error and intended bid, FAR authorizes correction of an "obvious clerical error" apparent from the face of the bid); Kentucky Bridge and Dam, Inc., B-235806, July 17, 1989, 89-2 CPD ¶ 56 at 3 (noting that correctible mistakes under FAR § 14.407-2 include an obvious misplacement of a decimal point or the use of an obviously incorrect discount).

interested party to raise this argument. 4 C.F.R. § 21.1(a) (2005); see TRS Research, B-283342, Nov. 4, 1999, 99-2 CPD ¶ 85 at 4. In any event, we note that the agency reports that the awardee has complied with all of the registration requirements of the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel