

Protest of)	Date: June 4, 1991
)	
CUMMINS-ALLISON CORPORATION)	
)	
Solicitation Nos. 104230-90-A-0167)	
and 104230-90-A-0168)	P.S. Protest No. 91-18

DECISION

Cummins-Allison Corporation ("Cummins") protests the exclusion of its proposal from the competitive range and the award of Solicitation No. 104230-90-A-0167 (vt-0167") for 550 Type II and 3,000 Type III coin-counting and sorting machines to Brandt Company ("Brandt"). Cummins also protests the cancellation of Solicitation No. 104230-90-A-0168 ("-0168") for the procurement of 160 Type I coin-counting and sorting machines.

Solicitation No. -0167 was issued on July 26, 1990, by the Office of Procurement, Headquarters, soliciting offers for quantities of Type II and Type III coin counting machines to be submitted no later than August 27.^{1/} It stated in Section A.1 that the Postal Service would "either award two separate contracts to different offerors for Type II and Type III Coin Counting Machines, or one contract to an offeror for [both] Type II and Type III. Award will be based on the offer or offers which provide the lowest total overall cost to the Postal Service and passes [sic] the product evaluation sample test."

Specification USPS-M-1178 described the three types of coin counting machines at issue here. Type I is described as a "highspeed" machine capable of sorting coins of varying diameters simultaneously into different containers. It is to have a hopper holding \$1,500 in mixed coins, and to sort at least 3,000 unmixed quarters a minute. Type II is described as a heavy-duty machine that sorts mixed coins in multiple operations, counting and sorting the largest-diameter coin, while "off-sorting" all smaller coins into a separate container, from which they may be the subject of successive sorting operations. The Type II hopper holds \$750 in mixed coins and the machine counts 1,500 quarters a

^{1/} Specifically, the solicitation provided for basic and option quantities as follows:

Item	Basic Quantity	First Option	Second option
Type II	550	100	500
Type III	3000	100	200

The options, which were exercisable within five months of contract award, were to be included in the evaluation of price.

The contract provided for delivery in specified quantities at monthly intervals, but indicated that specific delivery destinations would be provided upon contract award.

minute Type III is described as a "light-duty" machine with capabilities and capacities the same as or less than those of Type II.

Sections 3.8 and 3.14 of the specification attached to the solicitation stated:

3.8 Automatic Count Setting

All types of CCS [Coin Counting and Sorting] machines shall be equipped with resettable automatic stop controls. . . . The type II . . . CCS machines shall have a minimum capability of being programmed to automatically stop at any count from 5 to 9,999.

3.14 Safety

All types of CCS machines shall be equipped with electrical interlock switches or mechanical switch guards to prevent accidental "start-up" of the machine during maintenance or jam clearing. The machine shall be securely grounded by a (UL approved) three-prong, 10-foot line cord.

Seven firms submitted offers under solicitation -0167. Cummins submitted an offer only on the Type II machines. By letter dated October 4, Cummins was notified that its proposal was being excluded from the competitive range due to major technical difficulties in the equipment it offered. The protester was further advised that additional information on its exclusion would be provided after award during a debriefing. Award was made to Brandt for both Type I and Type II on February 15, 1991. Cummins was notified of the award on the same date; its timely protest was received by this office on March 8.

Solicitation No. -0168 was issued by the Office of Procurement Headquarters on August 29, with a due date of September 28. It sought to award one contract for Type I coin counting and sorting machines.^{1/} Three firms submitted offers. Best and final offers were received on November 19. Cummins was the lowest priced offeror, and negotiations with Cummins began on November 29. After over three months of negotiations with Cummins, the solicitation was canceled by amendment issued February 25, 1991. According to the amendment, the solicitation was being canceled because the Postal Service no longer had a requirement for the Type I machines.

By facsimile messages on February 21 and 27, followed by a letter dated February 28, Cummins requested a debriefing concerning both solicitations. The contracting officer responded, by letter dated March 1, explaining briefly both the cancellation of -0168^{1/} and

^{2/} As amended by Amendment 2, the solicitation provided for basic and option quantities as follows:

Item	Basic Quantity	First Option	Second Option
Type I	160	40	675

The options, which were exercisable within five months of contrast award, were to be included in the evaluation of price.

The contract provided for delivery in specified quantities at monthly intervals to delivery locations specified in an attachment to the solicitation.

^{3/} The letter noted the change in the Postal Service's requirements for Type I machines, and noted "those of

the exclusion of Cummins' proposal under -0167 from the competitive range.^{1/} This explanation was supplemented by a summary of the test results on Cummins' product, dated March 6.^{1/} No formal, face-to-face debriefing was scheduled or held. Cummins' March 8 protest, referenced above, included its objections to the cancellation of -0168.

The Protest

Cummins, through counsel, alleges that it has been denied the debriefing required by Procurement Manual ("PM") 4.1.5 j. which states that "upon . . . written request, [an offeror] must be debriefed and told the basis for the selection decision and contract award . . . [and] the Postal Service's evaluation of the significant weak or deficient factors in [its] proposal. . . ." The protester contends that the March 1 letter provided none of the information listed in PM 4.1.5 j.3^{4/}, the refusal of the Postal Service to give it the required debriefing, and the "puzzling" outcomes of both the solicitations for these coin counters, leads it to question the basic fairness of the Headquarters' Procurement Department.

The protester further asserts that its exclusion from the competitive range under -0167 was arbitrary, capricious and in violation of the Postal Service's Procurement Manual. Cummins states that had it been advised of the deficiencies in its machine, it would have been willing to modify it to include the required ability to stop at any set number,^{1/} the required electrical interlock switches or mechanical switch guards, and the required ten-foot power cord. Cummins contends that none of these reasons was sufficient to exclude it from the competitive range since it had a reasonable chance of being selected for award, if discussions had been held.

us who are responsible for conducting procurements are not the ones responsible for the decisions relating to requirements." Further along, the letter noted:

The contract awarded for Type II and Type III machines seems to have satisfied the overall Postal Service need. That contract was awarded before negotiations were complete on the Type I machines. In fact, as you may know, one area which was never resolved on the Type I machines was service.

^{4/} The letter also included the following paragraph:

Your letter requests a debriefing. In this, my response, I have attempted to provide all the relevant information that we would[] (within the limitations specified in the Procurement Manual) have covered in a formal debriefing. Accordingly, please let us know if you still want a debriefing.

^{5/} Cummins offered its Model CA135XD machine. The technical summary noted that that model did not meet the requirements of specification paragraph 3.8 because while it could be programmed to stop counting at various "set stops," it could not be set to stop at any number between 5 and 9,999. The summary also noted that Model CA135XD did not have the electrical or mechanical switch protections required by specification paragraph 3.14, and that its power cord was 8 feet long, rather than 10 feet long, as required. The report concluded: "The Cumins-Allison Model CA-135XD is considered technically inadequate under solicitation 10423090-A-0167 and should be given no further consideration for contract award."

^{6/} PM 4.1.5 j.3 states in pertinent part: "The identity and relative ranking of the offerors, the overall evaluation scores if proposals were scored, and the prices proposed may be disclosed if requested."

^{7/} Cummins doubts that this capability would ever be needed and states it is unduly restrictive of competition. Cummins is aware that such an argument is untimely as being raised after the date for receipt of proposals, but offers it as background information necessary to understanding its protest.

Turning to the events surrounding Solicitation No. -0168, Cummins contends that its offer was not evaluated under the criteria listed in that solicitation. Cummins adds that it is clear from the contracting officer's March letter that -0168 was canceled based upon the award of -0167. Further, the protester alleges that there was no legitimate basis for the cancellation of -0168, as required by PM 4.1.2 j.^{1/} Cummins points out that if the Postal Service's requirements for the Type I coin counters could be fulfilled by the Type II coin counters, the issuance of Solicitation No. -0167 for Type I coin counters was improper and a fraud upon the offerors.^{1/} Cummins requests a suspension or termination of the contract awarded to Brandt under -0167 and a reevaluation of all the offers. The protester asks for a rescission of the cancellation of -0168 and a reopening of negotiations with Cummins pursuant to that solicitation.

The Contracting Officer's Statement

The contracting officer disagrees with the protester's statements concerning its debriefing request. The contracting officer states he never intended to deny Cummins a debriefing in accordance with PM 4.1.5 j. The contracting officer contends he would have been willing to further debrief Cummins, had it so requested after receiving the March 1 material.

Concerning the exclusion of Cummins' machine from the competitive range, the contracting officer states that the Type II machine Cummins offered under -0167 was not in conformance with the solicitation requirements in the areas cited in the technical evaluation. Since Cummins' machine failed to meet the functional requirements of the solicitation, its proposal was not given further consideration. The contracting officer contends that these deficiencies would have required major revisions and redesign of the machine, such that Cummins' proposal could not be made acceptable, obviating the need for discussions. The contracting officer contends that his decision was not arbitrary or capricious and did not violate the procurement regulations.

Regarding Solicitation -0168, the contracting officer states that, contrary to Cummins' assertions, its proposal was evaluated on the basis of the evaluation criteria listed in Section M.1 of the solicitation. Further, the contracting officer disputes Cummins' allegation that the cancellation of this solicitation was improper, stating that the negotiations took place in good faith. He points out that although this contract had been scheduled to be awarded by October 8, 1990, negotiations were still continuing in February, 1991. During the intervening time, the need for coin counters increased and the delay was affecting the Postal Service's ability to perform its duties. This increasing need made the substitution of Type II machines for Type I more attractive. Since the requiring activity agreed to use Type II machines, and there was no longer a need for the

^{8/} "Solicitations may not be canceled unless circumstances make cancellation essential, such as when there is no longer a requirement for the supplies or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed." PM 4.1.2 j.

^{9/} Cummins argues that it should be reimbursed for the cost of preparing and negotiating its proposal and its protest costs even if the cancellation of -0168 is upheld by the General Counsel. This request must be denied because "we lack either statutory or regulatory authority to make such awards. In the absence of authority, we cannot award costs and fees to a successful protester. DHL Airways, P.S. Protest No. 89-36, July 7, 1989 (citations omitted).

Type I machines, cancellation was proper under the regulations.

Interested Parties' Comments

Brandt, through counsel, urges the Postal Service to uphold its award under solicitation -0167, arguing that the contracting officer properly exercised his discretion in excluding Cummins from the competitive range due to its technically unacceptable proposal. Brandt adds that the protester has failed to show how the contracting officer's determination was arbitrary or contrary to postal regulations.

Brandt also argues that Cummins' complaint concerning its debriefing request is ambiguous. Brandt points out that, although the protester states that it was refused a debriefing, Cummins also states that the Postal Service left a door open for it to request a formal debriefing, if it still desired one. Based upon the three technical omissions in the Cummins machine, Brandt agrees that Cummins was properly excluded from the competitive range. Brandt relies upon several Postal Service protest decisions^{10/} for the proposition that a proposal that does not meet the solicitation requirements is technically unacceptable.

Brandt alleges that Cummins does not present evidence that its machine did meet the solicitation requirements but instead disagrees with the significance of the items that it failed to meet. Further, Brandt states that since these items were so obvious, discussions were not necessary to point them out. In Brandt's view, there is no requirement for discussions to be held with an offeror whose proposal is technically unacceptable or not within the competitive range. Brandt agrees with the protester that it could have alerted the contracting officer to any restrictive terms of the solicitation prior to the date set for receipt of proposals. Since Cummins did not do so, Brandt argues that such issues are now untimely.

The Protester's Response

Cummins argues that since there was a competitive range determination in solicitation -0167, there had to be discussions as well. Cummins further points to PM 4.1.5 g.2.(b) which states that "[t]he competitive range . . . must reflect the chances of the competing proposals as evaluated, and the potential for improving the competitive position of the proposals through revision following discussions. . . . When there is uncertainty as to whether a proposal is in the competitive range, it must be included." The protester remarks that the contracting officer's statement that the deficiencies in its machine were major is not supported by any factual information and therefore is an egregious violation of PM 4.1.5 g.2.

Cummins notes that section J.1.4 of the solicitation required offerors to complete a "matrix" identifying various features of the offered machines. (For example, the matrix contained items in which offerors could specify whether or not their machines could select any value for a count setting and whether they had safety interlock switches. The form called for explanations to be included on a separate page.) Cummins' supplied matrix noted its machine's omissions in this regard, but apparently was not accompanied

^{10/} T & S Products, P.S. Protest No. 90-12, May 30, 1990; N.R.F. Enterprises, Inc., P.S. Protest No. 90-13, April 24, 1990.

by any explanations. The protester views the matrix as evidence of an offeror's minor noncompliance, about which the Postal Service would negotiate during discussions. In summary, Cummins alleges that the contracting officer failed to show that its proposal required major revisions or that there was not need for discussions.

Concerning the cancellation of Solicitation -0168, the protester asserts that a successful negotiation was achieved but was later rejected by procurement managers. Cummins details lengthy telephone and facsimile communications that included several requests to meet postal personnel face to face, which were denied. The protester strains to believe that the contracting officer now pleads urgency as a reason to cancel -0168 when this issue never arose during months of negotiations. On the contrary, Cummins adds that when it was asked to extend its offer, it expressed a need for prompt action by the Postal Service since its suppliers were becoming more reluctant to maintain their price quotes. Cummins finds the contracting officer's "urgency" argument totally unsupported and contrary to PM 4.1.2 j.

Cummins asserts that the Type II machines are no substitute for the Type I machines solicited in -0168. For the contracting officer to suggest that these machines are interchangeable suggests to Cummins that there was never a legitimate requirement for Type I machines and that solicitation -0168 was a sham and a fraud upon the offerors. The protester adds that the solicitation for -0168 was written so that only Brandt's product was acceptable. Cummins reiterates its demands for relief, including protest costs.

The Contracting Officer's Rebuttal

Replying, the contracting officer reiterates that Cummins' proposal in Solicitation No. -0167 did not meet the requirements, contending that Cummins admits this fact in its protest. He attaches a statement,^{11/} dated April 18, 1991, from the requiring activity, that another offeror's proposal was excluded from the competitive range for missing only two technical requirements, claimed to be less severe than Cummins'. The statement asserts, without elaboration, that the three deficiencies noted were major, requiring design, tooling, or software modifications. The statement also noted other areas in which Cummins' responses to the evaluation matrix were incomplete, suggesting the possibility of other problems.

Concerning Solicitation No. -0168, the contracting officer states that the specification for the Type I machine was derived from a market survey and was generic without being geared toward one particular vendor. He disputes Cummins' statement that an agreement had been reached in the negotiations. The contracting officer reasserts the serious need for the coin counting and sorting machines in the field, adding that all offerors were asked to extend their offers while negotiations were pending.

The statement from the requiring activity stresses the continuing need for the coin counters, adding that the Type II and III machines are in greatest demand.^{12/} Therefore,

^{11/} The contracting officer's rebuttal refers to this statement as an "affidavit."

^{12/} Two April, 1991, memoranda from field offices were attached to the statement as evidence of the field's urgent need for coin counters. One, from the Houston Division, spoke generally of the need for coin counters (type unspecified) in field offices; the other, from the Alhambra, CA, MSC, requested a type II machine not previously ordered.

the contracting officer states, even though the Type II and II machines had fewer capabilities than the Type I machines, the substitution was made, negating the need for the Type I machines and necessitating cancellation of -0168. Since there no longer existed a need for the Type I machines, the contracting officer argues that cancellation was proper under the PM.

The Protester's Conference and Comments

During its protest conference, Cummins reiterated its dissatisfaction with its debriefing. The protester stated that although no discussions were held with it concerning possible revisions to its proposal, it believes that discussions were held with Brandt and Automated Business Products under the solicitation.

The protester also reiterated its claim that the specifications for -0168 were geared towards Brandt and that the Type I and the Type II machines are in no way interchangeable. The protester added that it had heard from disgruntled postal field personnel who had been advised by the Headquarters procurement office that a Type II machine would be substituted for the Type I machine they had ordered.

Cummins complained about a Postal Service memo, dated February 22, 1991, from the requiring activity to field managers stating that the solicitation for Type I machines "has been canceled due to the inability of the contractor to provide adequate warranty repairs and service for all sites allocated equipment." The protester contended that not only did this memo amount to trade slander^{13/} but that it contradicts the contracting officer's argument that -0168 was canceled because the requirement no longer existed.^{14/} The

^{13/} Cummins remarked that it understood that such an action against the Postal Service would probably be barred by the Federal Tort Claims Act.

^{14/} A subsequent memorandum from the requiring activity to the contracting officer undertakes to explain the February 22 memorandum and offer a further explanation for the cancellation:

[The February 22 memo] was a very brief memo to inform field offices that the remaining requirement would be filled. It did not address the complex issues involved in the decision to cancel the Type I CCS machine solicitation. To avoid confusion and speculation in the field, a reason was provided that was very limited in scope. This memo cannot be utilized individually to convey all reasons for the cancellation of the solicitation.

Since the initiation of this program in January 1990, several major changes to the overall vending program have impacted the requirement for a high speed coin SORTING machine. The most notable are the recent modifications to the next generation vending equipment (PCM625 and PBSM-624) that will primarily accept currency and dispense change from large coin "pay back" hoppers. This equipment will form the backbone of the USPS Vending Program OBSOLETING older models that accepted large quantities of mixed coin.

The Type I CCS machine counts all coins simultaneously at high speeds. The requirements for this high speed sorting capability will continually decrease to a point where it will be virtually nonexistent in the very near future. There will be a requirement for a heavy duty off-sort (Type II CCS machine) that will verify the quantity of PRESORTED coins bought from the bank and used to load change "pay back" hoppers.

It is very difficult to explain long range program goals and requirements to field organizations that primarily work in very immediate near term. Therefore, field organizations were not provided the detail of these long range goals.

memorandum advises field activities that Type II machines will be substituted for Type I machines.

In its comments, Cummins states that it believes that the absence of documents supporting the contracting officer's decision in this protest indicate either that the documents do not exist or do not support his position. Cummins remarks that the contracting officer failed to respond to its allegation that it was excluded arbitrarily from the competitive range on -0167. Cummins accuses the contracting officer of not addressing the standard for making competitive range determinations, listed in PM 4.1.5 g.2.

The protester admits that if this procurement had been one conducted without discussions, its proposal would have been properly rejected. However, Cummins argues that even the contracting officer fails to state that this procurement was an award without discussions and instead simply states that discussions were not necessary. Further, Cummins states that competitive range determinations are only made under an "award with discussion" procedure. Cummins asserts that it now knows, from documents received in this and a sister protest, that the Postal Service held discussions with Automated Business Products concerning its Type III machine's lack of a ten-foot power cord, although discussions were not held with Cummins on its similar omission. According to the protester, this establishes the arbitrariness of its exclusion from the competitive range. The protester believes it has shown that it had a reasonable chance of being selected for award, necessitating discussions with it concerning the three deficiencies in its proposal.

Cummins reasserts that it was refused a face to face debriefing, adding that this refusal is typical of the procurement department's overall avoidance of dealing with any other offeror but Brandt. Cummins refutes the requiring activity's statement that the three deficiencies in its proposal were major and required design modifications to its machine. In addition, the protester points out that the "affidavit" produced by the contracting officer to support his rebuttal is not an affidavit but merely a signed statement.^{15/}

The protester also seeks to rebut the contracting officer's reliance upon urgency as a justification for the cancellation of -0168, pointing out that he offered no pre-cancellation documents demonstrating urgency. Cummins contends that the field memoranda requesting coin counters (fn. 12, supra) support its view that the field offices were confused over the cancellation of the Type I machine requirement. Cummins adds that it is natural that the field would ask for Type II and III machines after the February 22 memo telling them the Type I would not be available. Cummins asserts that the circumstances warrant termination of Brandt's contract if this protest is sustained.

Discussion

We first discuss the two issues raised by the protester concerning solicitation -0167. The

(emphasis in original.)

^{15/} While the protester is correct that the statement is not an affidavit, since it is not signed under oath before a notary, we afford no greater weight to sworn statements than unsworn ones. See International Business Machines Corporation, P.S. Protest No. 90-66, January 11, 1991.

protester's first issue concerning this solicitation is the inadequacy of its debriefing. Such a complaint is not protestable to this office. A protest is a "written objection . . . concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract." PM 4.5.2 a. The adequacy of a debriefing is an administrative matter unrelated to solicitation terms or contract award. See also Coopers & Lybrand, P.S. Protest No. 89-91, March 21, 1990 (suggesting that an offeror who has problems with an unresponsive contracting officer should contact that officer's supervisor).^{16/}

As its second issue concerning -0167, the protester challenges its exclusion from the competitive range. The contracting officer excluded Cummins' proposal because its Type II machine did not meet three functional requirements of the solicitation, finding its proposal technically unacceptable in those respects. When a proposal has been determined to be technically unacceptable, "[t]his office will not substitute its judgment for that of the contracting officer or disturb his evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations." T & S Products, P.S. Protest No. 90-12, May 30, 1990.

Cummins alleges that its exclusion from the competitive range due to minor deficiencies in its proposal was arbitrary and in violation of PM 4.1.5 g. That provision, "Award With Discussions,"^{17/} describes the determination of the competitive range and the conduct of discussions.

"The competitive range must be determined on the basis of the evaluation factors stated in the solicitation and must include all proposals that have a reasonable chance of being selected for award, either as submitted or as revised following discussions." PM 4.1.5 g.2

[T]he evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of accommodating them. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range.

^{16/} We note, however, our discomfort with the contracting officer's action here. His March 1 letter, while offering to conduct a debriefing if one was requested, clearly undertook to dissuade the offeror from asking for one by indicating that no additional information would come from it. See supra note 4. A written communication is not a debriefing (PM 4.2.8), nor is it a satisfactory substitute for one. The contracting officer did not afford Cummins the debriefing it was due.

^{17/}PM 4.1.5 g. applies to this procurement even though the solicitation contained provision M.3, "Award Without Discussion," which provides that "[t]he Postal Servicemay award a contract on the basis of initial proposals received, without discussions. Therefore, each initial proposal should contain the offeror's best terms from a cost or price and technical standpoint." PM 4.1.5 g. (emphasis added).

Since provision M.3 warned offerors that award might be based upon their initial technical proposals, the contracting officer was not obligated to hold discussions with offerors, even about minor technical concerns. Similarly, had there been award without discussions, there would have been no need to make a determination of the competitive range. Compare PM 4.1.5 f. with PM 4.1.5 g.

However, since in this instance, the contracting officer made a competitive range determination he was required to make that determination in accordance with 4.1.5 g.

RCA Service Co., et al., Comp. Gen. Dec. B-218191; B-218191.2, 85-1 CPD &585, May 22, 1985 (citations omitted).

[W]here an initial proposal is not fully in accord with RFP requirements, the proposal should not be rejected if the deficiencies are reasonably susceptible of being corrected and the offer made acceptable through negotiations. Although there is no requirement that negotiations be conducted with an offeror whose proposal has been declared technically unacceptable or not within the competitive range, a basic element of negotiations is providing offerors whose proposals are susceptible of being made acceptable an opportunity to correct deficiencies through the submission of revised proposals.

Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987 (citations omitted). Under this standard, Cummins' disqualification for the omissions identified in the evaluation of its proposal was arbitrary and unreasonable.

As the Comptroller General has advised: "In order to reject a proposal for technical deficiencies alone, without regard to other factors [such as price], the technical portion of the proposal must be unacceptable in relation to the agency's requirements or so deficient that an entirely new proposal would be needed. Otherwise, the extent of both the technical and any potential cost savings generally should be factors in a competitive range determination." Raytheon Co., Comp. Gen. Dec. B-218408, 85-2 CPD & 51, July 15, 1985; accord Dwight Foote, Inc., *supra*. Further, PM 4.1.5 g.2.(b) cautions that "[w]hen there is uncertainty as to whether a proposal is in the competitive range, it must be included."

In the absence of any reasoned technical analysis of the severity of the deficiencies identified in Cummins' proposal,¹⁷ the contracting officer erred in excluding it from the competitive range.¹⁷ This portion of the protest is sustained.

Since award has been made and performance begun, we are limited in the relief we can grant. When contract performance is underway, whether to require termination of the contract "depends on consideration of such factors as the seriousness of the procurement deficiency, the degree of prejudice to unsuccessful offerors or to the

^{18/} The contracting officer and the requiring activity contend that the deficiencies are major, requiring significant retooling or design changes. However, they have provided no bases for these conclusions, having afforded only limited review of the Cummins proposal.

The protester contends that the deficiencies are minor, and could readily have been resolved in discussions. In the absence of any detailed technical analysis to the contrary from the contracting officer, there is nothing by which we can resolve the dispute authoritatively. It is obvious, however, that one identified deficiency, the length of the line cord, could easily be corrected. It is far from clear that the remaining problems (mechanical or electrical interlocks and a settable, rather than preset, stopping system), could not be accommodated similarly.

^{19/} The contracting officer's reports fail to describe how many offerors comprised the competitive range for the type II machines. The protester suspects that only one (Brandt) was included. In the absence of contrary advice from the contracting Officers the protester's supposition carries some weight. "We [must] closely scrutinize any determination which results in only one offeror being included in the competitive range." Forecasting International Ltd., Comp. Gen. Dec. B-220622.3, 86-1 CPD & 306, April 1, 1986.

integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the Government, the urgency of the requirement, and the impact of termination on the accomplishment of the agency's mission." Inforex Corporation, P.S. Protest No. 78-12, June 26, 1978.

While the procurement deficiencies in this case are serious, and Cummins has suffered prejudice from the decision to exclude it from the competitive range, it is not clear that Cummins would otherwise have been entitled to the contract here. Cf. American Telephone Distributors Inc., P.S. Protest No. 87-117, February 23, 1987. While it was entitled to have its proposal fairly evaluated, it is possible that the proposal would have been found unsatisfactory during discussions or that negotiation would have been unsuccessful. As of this date, Brandt is scheduled to have delivered 150 of the 550 Type II machines. Termination of its contract for convenience at this point would occasion significant termination costs to the Postal Service, as well as delay in the provision of coin counting systems badly needed in the field. On balance, we decline to order termination of the Brandt contract. TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987.

We note, however, that the contract contains options for additional quantities which have not been exercised. The contracting officer is hereby directed not to exercise any as yet unexercised options under the Brandt contract for Type II machines. The Postal Service's ongoing need for type II machines beyond the quantities already committed to Brandt shall be the subject of a new solicitation, for which Cummins and all other offerors may propose. Inforex Corporation, supra.

We next turn to the cancellation of Solicitation -0168. The PM states that "[s]olicitations may not be canceled unless circumstances make cancellation essential, such as when there is no longer a requirement for the supplies or services, or the solicitation requires amendments of such magnitude that a new solicitation is needed." PM 4.1.2 j. Further, "[i]n a negotiated procurement . . . the contracting officer has broad discretion in deciding whether to cancel a solicitation after the receipt of proposals, and need only have a reasonable basis to do so." Independent Business Services Inc. - Request for Reconsideration, Comp. Gen. Dec. B-235569.4, 90-1 CPD & 207, February 23, 1990. In order to be successful in its challenge, Cummins must rebut the contracting officer's factual basis for the cancellation. See Discount Machinery and Equipment, Inc., Comp. Gen. Dec. B-231067.2, 88-2 CPD & 63, July 18, 1986.

In the course of Solicitation -0168, the contracting officer and the requiring activity have offered various reasons for the cancellation, including Cummins' inability to provide maintenance support for its units; the compelling need for coin counting machines in the field which justifies supplying smaller, less sophisticated Type II machines instead of these Type I machines; and the imminent disappearance of the requirement for the sophisticated Type I machines. These explanations are contradictory, mutually exclusive, and unsatisfactory. They lack a factual foundation and fail utterly in providing a reasoned basis for the cancellation. This portion of the protest is also sustained.

"The appropriate remedy where an agency improperly cancels a solicitation is for the agency to reinstate the canceled solicitation and conduct discussions." Griffin Services Inc., Comp. Gen. Dec. B-23726.2; B-237271.2; B-237272.2; B-237274.2, 90-1 CPD & 558, June 14, 1990. Solicitation -0168 is directed to be reinstated. To the extent that changed needs resulting from the delay in award of a contract under the solicitation, the

substitution of Type II machines, or other circumstances have affected the number of Type I machines which comprise the Postal Service's actual current need, the solicitation may be modified to reflect those changes, but it may not be revised so as to eliminate the need altogether.

The protest is sustained to the extent indicated.

[Signed]

William J. Jones
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Office of Contracts and Property Law

[Compared to original 5/11/95 WJJ]