

Protests of )  
C.D.E. AIR CONDITIONING COMPANY, INC. ) Date: April 2, 1992  
COASTAL MECHANICAL CORPORATION )  
Solicitation No. 355825091-A-0033 ) P.S. Protest Nos.  
92-11 and 92-18

### DECISION

C.D.E. Air Conditioning Company, Inc. ("CDE") and Coastal Mechanical Corporation ("Coastal") timely protest the re-evaluation of proposals and re-selection of Power Cooling, Inc., ("Power Cooling") for award of a contract to replace air conditioning equipment at Canal Street Station, New York City.

#### Background

The New York Division Support Services Office issued Solicitation 355825-91-A-0033 July 30, 1991, seeking offers to demolish and remove two steam absorption chillers and two water pumps from the basement mechanical room and two cooling towers from the roof of the Canal Street Station, and to install new electric reciprocating chillers, pumps, and cooling towers, and perform related construction work. The Postal Service estimated the cost of the project to be between \$390,000 and \$475,000.

The solicitation provided that the contract would be awarded "to the responsible offeror whose proposal conforming to the solicitation will be most advantageous to the Postal Service, cost or price and other factors specified elsewhere in this solicitation considered." Section M.2 of the solicitation listed, in descending order of importance, the "primary areas to be used in determining which proposal is most advantageous to the Postal Service":

1. Contractor must show that he is now, and has for the past five (5) years, been engaged in the installation, service and/or repair of installations of the type specified by submitting a list of all such work.
2. A list of at least five (5) installations of a type and nature similar to the work required by this contract of which at least two (2) of the above required installations shall date back less than two years from the date of proposal opening.
3. List at least two supervisory level people with experience in administering two projects each similar to the Canal Street Post Office Absorption A/C Unit

Replacement. List names, years of experience, position in firm, project name, location, project responsibility, size of project and key personnel.

4. Provide a detailed Critical Path Method Schedule.
5. Provide certified financial statements for the past three years.
6. Itemized Cost Breakdown.

The solicitation further provided that the cost/price would be considered in the award decision, although the award may not necessarily be made to the offeror submitting the lowest price (Section M.2, part b), and that award could be made on the basis of initial proposals without discussions (Section K.1).

Sixteen proposals were received and referred to the New York Facilities Service Office for evaluation. Seven offerors provided only a price and none of the information required by section M.2. Of those remaining, Power Cooling was the fifth lowest in price. Both Coastal and CDE offered lower prices than Power Cooling, as did two other offerors, Climatech Systems, Inc., and Lotus Air Conditioning and Refrigeration, Inc.

The record of this protest includes the evaluation committee's abstract of the proposals and its original recommendation for award. The abstract listed the offerors' prices, whether each offeror had provided "complete submittals,"<sup>1/</sup> and as to those offerors said to have made "complete submittals," whether each of the six items required by section M.2 was "lacking," "no," or "ok." On an accompanying routing slip addressed to the contracting officer was the statement of the evaluation committee:

See attached chart showing conformance to evaluation criteria. Many lower price offers were lacking in demonstrating they had done project specific absorption units or chiller installations as requested in items 1 & 2 [of section M.2]. Power Cooling Inc. is recommended.

No scoring system was employed to evaluate the proposals; no discussions were held; and the basis for contractor selection was not documented. The contracting officer directed award to Power Cooling without additional comment. Award was made on October 9, with notification to the other offerors.

CDE's and Coastal's protests of the award were sustained in a decision issued January 16, 1992.<sup>1/</sup> The decision examined the evaluation and selection procedures followed, as well as the proposals submitted by the five lowest price offerors, and found the rejection of the protesters' proposals to be arbitrary. The decision noted that uncertainties both as to technical matters and price in Power Cooling's proposal, as

<sup>1/</sup> The seven offerors excluded for providing only price information were indicated as not having provided "complete submittals."

<sup>2/</sup> C.D.E. Air Conditioning Company, Inc.; Coastal Mechanical Corporation P.S. Protest Nos. 91-80 and 91-83, January 16, 1992.

well as in the four lower priced proposals, required that discussions be held with all offerors in the competitive range. The decision summarized the deficiencies:

The record of this procurement reveals an absence of the technical analysis and reasoned evaluation required in a procurement where price is not the sole criterion for selection, as well as a pervasive disregard of regulations applicable to proposal evaluation and selection of a contractor.

The technical evaluators had neither a source selection plan nor a scoring system for evaluating the proposals. They provided no definition of the ratings, "ok," "no" and "lacking", or the value or weight assigned to them. The rejection of the protester's proposals was found arbitrary because they had appeared to have provided exactly what was requested with respect to several of the evaluation criteria. For example, section M.2 asked for a list of at least five "installations of a type and nature similar to the work required by this contract" of which at least two shall "date back less than two years from the date of proposal opening." Because there were no instructions as to the detail desired for any project listed, the decision faulted the evaluators for downgrading offers which provided lists with less detail than the evaluators wished. The handling of the responses to the request for detailed CPM schedule was only marginally more consistent with the solicitation. Although none of the five low offerors provided such a schedule, four, including Power Cooling were rated "ok" for their bar chart schedules.

The contracting officer was directed to reevaluate all the proposals in accordance with the evaluation criteria stated in the solicitation, and otherwise in accordance with the PM. If the re-evaluation resulted in selection of other than Power Cooling, its contract was to be terminated for convenience and award made to "the proposal most advantageous to the Postal Service consistent with the requirements of the solicitation." PM 4.1.5 b.1. The contracting officer was also directed to issue a stop work order to Power Cooling while the re-evaluation was being conducted.

### Coastal's Proposal

Coastal's proposal included a list captioned "installations of a type and nature similar to the work of this contract," which identifies five projects by owner, location, cost and years that apparently indicate beginning and ending dates.<sup>1/</sup> All but one of the projects were performed since 1989. The list does not further specify the nature of each project.<sup>1/</sup> Coastal also identified two supervisory level individuals "with experience in administering projects similar to the Canal Street Post Office." One is the company's president, who administered the \$2 million HVAC project and the \$3 million piping work

<sup>3/</sup> A representative item from Coastal's list was as follows:

Drake Hotel 440 Park Avenue \$2 million 1989-1991

<sup>4/</sup> It appears that Coastal's list of projects was specifically intended to be responsive to both items 1 and 2 of section M.2.

project which were in Coastal's list of "similar" projects. The other is a supervisor who worked on the \$2 million HVAC project and on a listed \$700,000 piping project. Coastal provided a contact person for each project attributed to its listed supervisory personnel. Its itemized cost breakdown showed two categories: labor is 52% of its costs; material is 48%. It did not submit a progress schedule.

### CDE's Proposal

In response to "section M - point 1," CDE provided a schedule of 22 jobs in progress of which 11 cost more than \$1 million and 12 are 75% or more complete.<sup>1/</sup> CDE separately listed "5 installations of type and nature similar to work required by this contract" (Section M, point 2), and two projects (each with the required detail) supervised by its president and vice-president, respectively (Section M, point 3). One \$850,000 HVAC project that was 95% complete was also on the list of projects similar to the contract work and had been supervised by CDE's vice-president. A \$566,000 project for modifications to a chilled water system was listed as 90% complete and had been supervised by CDE's president. CDE submitted a bar graph type progress schedule and a cost breakdown of the work.

### Power Cooling's Proposal

Power Cooling submitted a list of projects in several categories, including three cooling tower installations and five chiller installations, ranging in cost from \$125,000 to \$510,000.<sup>1/</sup> In only one project did Power Cooling install both a cooling tower and a chiller. None of its listed projects was as old as five years, and only one is earlier than 1989 (a rooftop installation of Liebert units). Power Cooling also submitted a list of

<sup>5/</sup> A representative example is the following:

Chief Medical Examiner's  
Building  
520 First Avenue  
New York, New York

Federally Assisted/Funded - NO  
Project # - PW77139A  
Agency/owner - NYC Dept. of  
General Services  
Dollar value - \$ 849,736  
% Complete - 95

CDE also lists this project in response to M.2, with the additional information that the work called for was "Contract No. 3 - H.V.A.C." and the name and telephone number of a "Contact." It is also identified in the response to M.3 as one of two projects supervised by CDE's vice-president.

<sup>6/</sup> A representative example of information provided by Power Cooling in a booklet titled "An Overview of Power Cooling, Inc." is the following:

#### Chiller installations

- 1) Carlyle Hotel, Madison Avenue at 78th Street  
\$470,000- 1990

(1) 400 ton Hitachi 2-stage absorption chiller Plate Heat exchanger to provide free cooling

Engineer: Cosentini Associates

Customer: Peter Sharp & Co.

"key project managers," apparently in response to item 3 of section M.2. However, it did not identify the projects of each named manager that were similar to the work required by the solicitation.<sup>1/</sup> Its progress schedule was in the form of a bar chart, and it submitted a ten-item cost breakdown.

On January 28 and February 3, a team of three evaluators<sup>2/</sup> reviewed the five proposals, and prepared narrative comments and a quantitative score for each one. The six evaluation factors in section M.2 were assigned, respectively and in descending order, weights of 10, 10, 5, 3, 3, and 3. Whether all required information was submitted with the proposal was indicated with a "yes" or "no." The committee established a rating scale for each criterion:

3	Excellent
2	Very good
1	Good
0	Does not meet criteria <sup>3/</sup>

If a proposal was deemed complete, its rating times weighting equals score with cost/price and other factors considered to find the most advantageous offer to the Postal Service.

The numeric values assigned by the three evaluators for each of the ratings, multiplied by the respective weights, were added to arrive at the score for each item in each proposal. (For example, if two evaluators considered an offer "very good" as to the first (ten point) criterion, and the third evaluator considered it "excellent," its score for that criterion would be 70 points:  $(2 \times 10 \times 2) + (3 \times 10)$ .) The total score for each proposal was compiled by adding the weighted score each evaluator assigned each criterion. Power Cooling was ranked first with a total score of 290. The scores of the other offerors ranged from 116 to 188.

### Evaluation of Coastal's Proposal

The program manager noted that Coastal submitted only a "limited listing of projects" covering only the period 1989-1991 for item 1 and that the five projects listed in response to item 2 "are not classified specifically (chiller)." For item 3, Coastal's president and supervisor were listed, with 27 and 25 years' experience, respectively, "but not specifically (chillers)." The program manager assigned ratings of 1 for item 1;

<sup>1/</sup> Power Cooling stated the academic degree held and the institution where it was earned (neither item requested); and general background, e.g., "Many years of experience with mechanical contracting firms, as a Project Manager, designer, estimator, before joining Power Cooling."

<sup>2/</sup> The committee was comprised of the same individuals who evaluated the initial proposals: A senior architect-engineer ("A-E") (chairman), a program manager, and a mechanical engineer employed under a contract with the Postal Service.

<sup>3/</sup> The rating scale also included "exceeds criteria," which was marked with "N/A" rather than a number, apparently indicating that no proposals merited that rating.

0 for item 2; and 0 for item 3.

The mechanical engineer noted that Coastal listed several projects performed in the last five years, but "the list does not include information as to whether installations are of type specified ... compliance can not be verified from the submitted proposal." He made similar comments concerning items 2 and 3. He rated items 1 and 2 a 0 and item 3 a 2.

The A/E recognized that Coastal's list of five projects was responsive to both items 1 and 2, and commented that they were "HVAC and piping and did not show work using absorption unit systems. Criteria was lacking and incomplete."<sup>10/</sup> As to the responsiveness of Coastal's list to the second evaluation factor under section M.2, the A/E noted, somewhat confusingly, that of the five projects, one was "indicated as HVAC work and the other four projects were not shown in the project list in item no. 1." His comments on item 3 were similar to those of the other evaluators. He rated items 1 through 3 as 2. He also commented that a progress schedule was "submitted and reviewed," rating that item 2.

#### Evaluation of CDE's Proposal

The program manager noted that CDE appeared to have good experience and had submitted a "long list," but the project information was "not specific." No chiller installations were specified among the supervisors' projects. He rated CDE 2 for each of the first three criteria.

The engineer expressed doubt that the projects listed for items 1 and 2 of section M.2 were performed within the prescribed five-year time period and noted further, as to items 1-3, that it could not be verified from the proposal whether the projects listed were of the type specified. He assigned ratings of 0, 0 and 2 for these items.

The A/E also complained that the projects listed did not specify the type of work performed, asserting particularly that "[t]he solicitation asked for the type of work to be specified." Only one of the five projects listed in response to item 2, a cooling tower and chiller replacement, was similar to the work of the contract. Although the supervisory personnel had sufficient general experience, they lacked "any chiller system experience." He assigned a rating of 2 for each of the first three items.

#### Evaluation of Power Cooling's Proposal

The program manager commented for item 1 of section M.2: "good experience, long list. Chiller proj. & towers listed." For item 2, he noted "many project-specific listings." As to item 3, he noted that the listed supervisors had "great credentials," and pointed

<sup>10/</sup> Coastal, however, apparently understood HVAC to include the work to be done under this contract. Its protest dated October 18, 1991, begins: "Our company recently bid on the HVAC portion of the above referenced job ...." Moreover, the relevance of experience with installation of absorption type chillers is unclear. Although the contract calls for removal of such equipment, the replacements are specified to be electric reciprocating chillers.

out there were two project managers and others experienced with mechanical contractors, and six persons listed altogether. He did not mention the failure to include project-specific information required by the solicitation. He assigned a 3 to each of the first three items.

The engineer's comments parallel those of the program manager, except that he observed the absence of required information on item 3. His ratings were 3, 3 and 2.

The A/E was impressed by PowerCooling's listing of jobs by type or scope of work, finding that the "data submitted more than fulfilled criteria requested," for a rating of 3 on items 1 and 2. He stated that the "list of supervisory personnel included academic degrees in mechanical eng[ineering] and experience." -- finding that their "competence is implied even though resumes were not project specific" -- for a rating of 2.

The technical evaluators did not identify any matters requiring discussion. The committee's evaluation was furnished to the contracting officer who determined that Power Cooling should proceed with work under the contract. All five offerors were notified of this result by letter dated February 20.

In its protest received in this office March 3, 1992, CDE states that it is inconceivable that Power Cooling's proposal was reselected in light of the previous protest decision, citing particularly the statement that, "[t]he rejection of CDE's and Coastal's proposals was arbitrary in the face of their apparently providing exactly what was requested." Using substantially identical language, Coastal protested to the contracting officer by letter dated March 5.<sup>11/</sup> The contracting officer understood the letter to be a protest, and on March 9 notified the interested parties as required by PM 4.5.7 b.<sup>12/</sup>

The contracting officer's timely report included the committee's summary of the re-evaluation, the score sheets and the narrative comments of each committee member. The contracting officer expressly relies upon those comments as the reasons for the scores assigned the technical proposals and the basis of his own report. He identified the primary factor for differentiating among the technical proposals to be whether projects listed by each offeror were "the type specified in the contract documents, which are the plans and specifications portion of the solicitation." He further explained the meaning of "type and nature" similar to the work of this contract:

The contract work as shown in the plans and specification portion of the solicitation includes the following: Replacement of chillers or absorption units, related piping and controls and the cooling towers. "HVAC" work and "Piping" alone are not of a "type and nature similar" to the work required by this contract nor are they of the "type specified" in the

<sup>11/</sup> Although the protester indicated a copy was sent to the General Counsel, none was received until March 18 when the contracting officer forwarded a copy to this office by facsimile transmission.

<sup>12/</sup> Where a protest addressed to the contracting officer is neither meritorious nor determined to be obviously without merit, it should be forwarded within ten days to this office. PM 4.5.6. The contracting officer is to notify interested parties of the existence and basis of protests that are submitted to the General Counsel. PM 4.5.7 b.

contract ... specifications and plans.

With respect to price analysis, the contracting officer commented:

The cost/price analysis of each proposal and the "estimated cost" of the contract work prepared by the design engineer were balanced with the narrative and the score of each technical proposal.

After reviewing the adequacy of the price competition and the technical criteria it was determined that the proposal by Power Cooling would result in the most reasonable price without discussion.

The contracting officer concluded that, upon the directed reevaluation, "the contractor chosen was the most highly qualified, and the price was fair and reasonable."<sup>13/</sup> He also identified a number of factors that apparently mandate Power Cooling's continued performance: A considerable amount of the contract is already performed. All the old equipment has been removed, the new equipment has arrived and is being installed. Moreover, an emergency condition would be created if the building remains without cooling capacity after mid-May, with the likelihood of an employee walk-out at this facility as well as others.

CDE submitted comments to the contracting officer's report of the re-evaluation. Referring to portions of the January 16 decision where PM requirements had not been met and the initial evaluation was found to be arbitrary, CDE's president noted that (1) no discussions were held; (2) CDE provided exactly what section M.2 required, a "list," and rejection for failure to comply with the M.2 requirements is arbitrary; (3) the award to Power Cooling was improperly based on its providing information not requested in the solicitation; (4) Power Cooling's list of key personnel was deficient and should have been rejected. He also noted that his detailed letter of October 31, 1991, demonstrated the similarity of CDE's listed projects to the contract work. CDE concluded that "the re-evaluation was based upon the same incorrect criteria, project descriptions, as the original decision. Finally, CDE rejected the contracting officer's reasons for continuing performance by Power Cooling.

### Discussion

The issues to be resolved here are for the most part the same issues addressed in the January 16 decision concerning this procurement. The evaluation or scoring of proposals is the responsibility of the contracting officer, who is to exercise a reasonable degree of discretion in that regard. PM 4.1.5 b; Service America Corporation, P.S. Protest No. 89-27, August 22, 1989, and cases cited therein.

Our review of the technical evaluation of proposals in negotiated procurements is limited (see Southern Air Transport, P.S. Protest No. 89-56, October 3, 1989), and we will not substitute our judgment for that of the technical evaluators or disturb the

<sup>13/</sup> There is no mention of price analysis in the contracting officer's summary of the re-evaluation.

evaluation unless it is shown to be arbitrary, capricious, or in violation of procurement regulations. Lazerdata Corporation, P.S. Protest No. 89-60, September 29, 1989, cited in Handling Systems, Inc., P.S. Protest No. 89-70, December 19, 1989; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981. Determinations of the contracting officer are generally upheld if they are reasonably supported by substantial evidence. International Jet Aviation Services, P.S. Protest No. 87-36, September 1, 1987; POVECO, Inc. et al., P.S. Protest No. 85-43, October 30, 1985; American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984.

The burden of proving its case rests with the protester, and that burden must take into account the "presumption of correctness" accorded the contracting officer's procurement decisions. Poveco, Inc. et al., supra; Michaletz Trucking, Inc., P.S. Protest No. 85-28, June 14, 1985.

We pointed out in the January 16 decision that discussions are required "whenever there is uncertainty as to the pricing or technical aspects of the most favorable initial proposal." PM 4.1.5 f.2. Where an initial proposal is not fully in accord with the solicitation requirements, it should not be rejected "if the deficiencies are reasonably susceptible of being corrected and the offer made acceptable through negotiations." Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987. 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." Raytheon Co., Comp. Gen. Dec. B-218408, 85-2 CPD & 51, July 15, 1985.

The January 16 decision noted, for example, that omission of the progress schedule by Coastal appears to be the kind of deficiency that is easily remedied, especially in light of the contracting officer's acceptance of the bar charts submitted by other offerors in lieu of the CPM schedules specified in the solicitation.<sup>14/</sup> The contracting officer's failure to recognize the "uncertainties" in the proposal of Power Cooling and in the lower priced proposals of the protesters and to conduct discussions prevented a fair re-evaluation, thereby vitiating the goals of the competitive procurement system.<sup>14/</sup>

The record of the review of proposals reveals a superficial attempt at technical analysis, but little in the way of reasoned evaluation. No explanation is provided of the

<sup>14/</sup> Critical Path Method (CPM) is a type of network analysis system employed in more complex projects. Its format for schedule logic shows analytically the planned start and completion dates of each activity, logical constraints between activities, and total float of each activity. In contrast, a simple progress chart, often in bar graph form, shows only the principal categories of work, the order and the expected start and finish dates of each task. Compare section 01030 of Div. I - General Requirements in repair and alteration contracts with the same section for contracts for new construction. See also Handbook RE-14, Procedures 270.10 and 270.15.

<sup>15/</sup> No references were checked on the re-evaluation, although the October 31, 1991, letter from CDE describing in detail that each of its five listed projects specifically involved tower and chiller replacement should have indicated to the A/E that the "list" expressly required by the solicitation would not alone provide the details concerning previous projects the contracting officer apparently wanted and that the solicitation was fatally ambiguous, that the committee's review was wholly insufficient, or both.

ratings used by the evaluation committee, and in some instances, an evaluator's numerical ratings are inconsistent with his narrative comments. For example, one evaluator criticized Coastal's responses to items 1 and 2, yet rated both "very good." Another evaluator rated all three offerors "very good" for requirement of a "detailed CPM schedule," while rating another offeror "excellent" for its bar-type schedule that bore a label, "Critical Path Schedule." Thus, the contracting officer's reliance on that evaluation (among others similar) was arbitrary and without a reasonable basis. See Daniel J. Keating Construction Company, P.S. Protest No. 89-92, March 1, 1990.

Deficiencies in Power Cooling's proposal were treated leniently, while similar problems with the others were used to justify lower ratings. CDE's list of projects covered two years, and the deficiency was noted. Coastal's list was proffered explicitly as complying with the M.2 requirement; its failure to include dates resulted in lower ratings. Power Cooling's project list was also limited to the most recent two years; that fact was ignored or inaccurately reported by committee members.<sup>17</sup>

The PM requires that contractor selection be made in accordance with the solicitation's stated evaluation factors. PM 4.1.5 b.2.

Section M.2 asked for a list of projects performed in the past five years and involving "the installation, service and/or repair of installations of the type specified," and for a list of at least five "installations of a type and nature similar to the work required by this contract" of which at least two shall "date back less than two years from the date of proposal opening." Proposals that included lists were again downrated because the lists lacked specific details of which the solicitation did not give notice, despite the advice set out in the previous decision that it was inappropriate to downgrade proposals for such perceived omissions. See Dawson Construction Co., Inc., P.S. Protest No. 91-47, September 25, 1991.

The re-evaluation is no less flawed than the original evaluation of proposals. The procuring office has disregarded the procurement principles and the PM procedures that were explicitly drawn to its attention in the January 16 decision. Accordingly, it is again necessary to sustain the protest.

Remaining in this case is the question of remedy. The contract was partially performed prior to the re-evaluation and directed stop-work order, and the contracting officer directed Power Cooling to resume performance at the time the re-evaluation was complete. Nevertheless, relief may include an order to terminate for the convenience of the Postal Service the improperly awarded contract. C.J.M. Construction, Inc., P.S. Protest No. 91-74, December 9, 1991; TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987. The latter case, citing Inforex Corporation et al., P.S. Protest No. 78-12, June 26, 1978, stated the factors that have been regularly used in determining whether to order termination:

<sup>16/</sup> The A/E stated: "Firm started in 1966 and showed they had for 5 years been engaged in the installation of absorption systems by listing various jobs by type or scope of work." He observed that Coastal's list of projects covered only the period of 1989 - 1991, but did not mention the same characteristic in Power Cooling's list.

Whether to require termination in a given case depends on consideration of such factors as the seriousness of the procurement deficiency, the degree of prejudice to unsuccessful offerors or to the 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. Honeywell Information Systems, Inc., Comp. Gen. Dec. B-186313 (April 13, 1977), 77-1 CPD & 256, page 7.

The degree of prejudice both to the unsuccessful offerors and to the integrity of the procurement process is high in this case, and ordinarily would mandate termination, with instruction to resolicit proposals for the remaining work and to conduct an evaluation and selection that complies with the PM and this decision. Under the circumstances of this case, however, we cannot lightly dismiss the mission of the Postal Service to provide prompt, reliable and efficient postal services and to provide safe and healthful working conditions for its employees. See 39 U.S.C. ' 101; Employee and Labor Relations Manual, 811.4. Performance of this contract is well underway and significant delay in its completion could have a serious negative impact on working conditions and employee morale upon the arrival of warm weather, with resultant damage to the Postal Service's mission of providing efficient postal services.<sup>17/</sup> Accordingly, although the protests are again sustained, it is not in the best interest of the Postal Service to make relief available to the protesters. See The Office Place, Inc., P.S. Protest No. 90-15, May 11, 1990. However, the degree of prejudice to the competitive procurement system can be mitigated, provided the lessons of this procurement are observed in future procurements. Domino Amjet, Inc., P.S. Protest No. 91-54, October 8, 1991; Dwight Foote, Inc., *supra*.

Finally, because Postal Service contracting officers have broad authority and significant responsibility, they are held to a high standard of competence and must meet strict requirements of education, experience and training. PM 1.5.2. c.I; RE-14 Proc. 01.00 (June 1991). They are responsible for, among others, "protecting the interest of the Postal Service in all its contractual relationships." PM 1.5.2 b. "[They] are given the latitude to exercise sound business judgment while adhering to the requirements of the PM and other applicable Postal Service directives." Id. Contracting officers, like other Postal Service employees, "are held to the highest standard of conduct in the performance of their duties, and must conduct themselves so as to avoid even the appearance of any impropriety." PM 1.7.7.

The contracting officer's actions in this case were inconsistent with the standards of the PM, the clear directives in the January 16 decision, and the advice of assigned counsel received in the course of this protest. Those actions raise serious concern he does not meet the standards required by postal regulations for the exercise of contracting authority. We therefore recommend to the appointing official that that authority be withdrawn or sub-stancially restricted pending further training and the satisfactory

<sup>17/</sup> The financial cost of a remedy ordinarily is a factor to be considered in selecting a course of action. However, cost would have little influence in this case because of the seriousness of the deviation from established principles and procedures.

demonstration that the exercise of that authority will not disserve the best interests of the Postal Service.

The protest is sustained to the extent indicated.

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Office of Contracts and Property Law