

Protests of)	Date: January 16, 1992
)	
C.D.E. AIR CONDITIONING COMPANY, INC.)	
COASTAL MECHANICAL CORPORATION)	
)	
Solicitation No. 355825-91-A-0033)	P.S. Protest Nos. 91-80 and 91-83

DECISION

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

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 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. Following a preproposal conference, the solicitation was amended to clarify some technical specifications and require proposals to be submitted by September 6, 1991.

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 the "primary areas to be used in determining which proposal is most advantageous to the Postal Service" in descending order of importance:

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 cost/price would be considered in the award decision, although the award may not necessarily be made to that 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). The following statement appeared on the first page of the solicitation and was repeated at the end of the list of evaluation criteria:

**ALL INFORMATION MUST BE SUBMITTED WITH PROPOSAL.
FAILURE TO SUBMIT INFORMATION WITH PROPOSAL WILL CAUSE
THE PROPOSAL TO BE REJECTED.**

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 copies of the proposals of the five lowest offerors and the evaluation committee's abstract of the proposals and its recommendation for award. The abstract listed the offerors' prices, whether each offeror had provided "complete submittals,"^{1/} 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". No definitions for these ratings were provided. However, it appears that a "no" rating signified the offeror's failure to submit anything in response to an item. The rating of "lacking" was applied to submissions that were ostensibly responsive to the requested items, but were deemed by the evaluators to be insufficient or unsatisfactory for reasons not explained and not always able to be discerned. A designation of "ok," on the other hand, seems to have been applied to submissions deemed to have achieved a satisfactory level, also without explanation.

The abstract also noted the Postal Service's estimate of the project cost and described

^{1/} The seven offerors excluded for providing only price information were indicated as not having provided "complete submittals."

a "competitive range" expressed in dollars which included the prices of Power Cooling, Coastal, and C.D.E., but not Climatech and Lotus. 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.

The contracting officer's statement and report did not include the scoring system employed to evaluate the proposals, a written report of the evaluation of proposals, or documentation of the basis for selection of a contractor. There is no indication that the proposal evaluation process included any investigation of references provided by the offerors, and inquiry to the contracting officer's representative confirms that none was made prior to selection.^{1/} Although the abstract of proposals describes a "competitive range," the record otherwise indicates that no discussions were conducted with any offeror.^{1/}

The contracting officer directed award to Power Cooling without additional comment. Award was made on October 9, and the other offerors, including the protesters, were notified by letter dated the same day. The letter identified the contractor and the contract price (\$422,661), and stated that award was made without discussions. It stated that award was "based on price and other related factors; specifically, evaluation criteria as specified in Section M of the solicitation."

Protest of Coastal

A letter from Coastal dated October 18, and addressed to the Postmaster General, was received in this office October 31. Coastal asserts the award was unfair because its price was lower than that of Power Cooling and it submitted complete responses to the questions in the solicitation. The letter seeks a review of the "bids"^{1/} and an explanation of why this contract was awarded to an offeror with a higher price. Coastal believes such awards are unfair and that it is wasting its time submitting a bid under these circumstances.

^{2/} Prior to award, Power Cooling was requested to provide telephone numbers and names of contact persons for the projects identified in its proposal so that those references could be checked.

^{3/} The determination of a competitive range is a step taken in the course of awarding a negotiated contract through discussions. Following the evaluation of proposals, the contracting officer determines the competitive range, that is, the range of proposals which, as evaluated, or as capable of being improved as the result of subsequent discussions, have a real chance of selection for award. The determination whether an offer is within the competitive range is made on the basis of the evaluation factors stated in the solicitation. Procurement Manual (PM) 4.1.5 g. 2.

^{4/} The term "bid" is not generally used in connection with negotiated procurements conducted under the Procurement Manual. The appropriate term is "offer" or "proposal".

Upon its receipt by this office, Coastal's October 18 letter was considered to be a protest concerning the award to Power Cooling and was so docketed.^{1/}

Protest of CDE

By letter dated October 11, acknowledging receipt of the October 9 notice of award, CDE asked the contracting officer for "a satisfactory explanation" why it was not awarded the contract, since its bid was lower than that of Power Cooling.

While we understand that part of the criteria for award was based on paperwork as specified in Section M, we believe that we submitted a comprehensive reply to all points contained therein.

The contracting officer wrote in response,^{1/} stating that CDE's proposal did not meet all the criteria requested in the solicitation....

Your proposal did not indicate that you had completed five chiller/tower projects of a similar size. Neither did your proposal indicate that two similar projects were completed within the last two years. [Emphasis in original.]

The letter was received by CDE on October 31. By letter dated the same day, CDE replied to the contracting officer, stating that, as requested by section M, it had "provided a list of five projects of a similar nature for various clients, all of which have been completed within the last two years." CDE presented additional details concerning each of the five projects, noted that its price was lower than that of Power Cooling, and requested a prompt reversal of the award decision.^{1/}

The contracting officer's response, received by CDE November 12, acknowledged receipt of the more specific information, explained that because award was made without discussions additional information was not requested from the offerors, and

^{5/} PM 4.5, which sets out the Postal Service's protest procedure, describes a protest at 4.5.2 a. as "[a] written objection by an interested party concerning ... the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract." PM 4.5.3 provides that protests may be filed with the contracting officer or the General Counsel, and PM 4.5.4 a. makes it clear that the timeliness of a protest is measured from its receipt by the contracting officer or the General Counsel. Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983; Fred H. Gowen and Betty L. Gowen, P.S. Protest No. 79-26, June 13, 1979.

^{6/} The contracting officer's reply characterized CDE's letter as requesting a debriefing. PM 4.1.5 j. provides that in response to a written request, unsuccessful offerors may be debriefed. We have previously expressed our concern with written responses to requests for debriefing: "A written communication is not a debriefing ..., nor is it a satisfactory substitute for one." Cummins-Allison Corporation, P.S. Protest No. 91-18, June 4, 1991.

^{7/} A protest is a written objection ... concerning 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.

pointed out additional defects in CDE's proposal.^{1/} The contracting officer did not regard or treat the October 31 letter as a protest.^{1/}

On November 18, this office received a letter dated November 12 from CDE requesting correction of the "error made in the award of this project." CDE complained that, contrary to the contracting officer's belief expressed in his November 7 letter, CDE had in fact complied with the requirements of section M.2. The letter added, "If greater detail than specified was necessary for him to make his decision, [the contracting officer] should have requested it." (Emphasis in original.)

Contracting Officer's Report

According to the contracting officer, the two lowest-priced proposals, Climatech and Lotus, were rejected because "they did not contain sufficient information or meet the evaluation criteria." Because installation of the equipment required by the contract requires particular expertise, the contracting officer gave the highest priority in the evaluation criteria

to examples of similar work in kind, size and number of projects recently completed or in progress. Offerors who stated they had done only Piping or H.V.A.C. (Heating, Ventilating, and Air Conditioning) work may not be qualified to perform the more specialized contract work.

Offers that were not specific concerning their examples of similar work, their cost or size and their status of completion dates were rejected.

According to his report, the contracting officer rejected Coastal's proposal specifically because, although it indicated completed HVAC and piping projects, it did not indicate experience installing absorption units or chillers. In addition, its itemized cost breakdown for the Canal Street project consisted only of labor and material, with no further detail, and Coastal did not submit "the required progress schedule." CDE's proposal was rejected for lack of descriptive detail requested by the evaluation criteria. "Only one project for Cooling Tower and Chiller Replacement with no clear indication of the project completion status was listed." Also, the requirement for a list of five similar installations "was not met in full."

The contracting officer also pointed out that as of the date of the submission of the contracting officer's report, Power Cooling's performance of the contract was more than 25% complete, and that submissions have been approved and equipment ordered.

^{3/} Your proposal was not specific as to project size and date of completion or construction status. [It] indicated only one chiller project.... No dollar amount or chiller capacity was stated regarding that work

^{9/} Concurrence of assigned counsel is required for a contracting officer's denial of a protest as obviously without merit. PM 4.5.6 c.2. The record reveals no such action, and the contracting officer's response does not otherwise suggest that CDE's October 31 letter was seen as a protest.

Coastal submitted no comments in response to the contracting officer's report. CDE, by way of comment, referred to its previous letters to the contracting officer, including additional information it provided concerning similar projects with its October 31 letter.

The Proposals

Coastal's proposal included a list headed "installations of a type and nature similar to the work of this contract," which identified the project owner, location, cost, and recited years that apparently indicate beginning and ending dates.^{10/} All but one of the five projects were performed since 1989. The list does not further specify the nature of each project.^{11/} 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 a \$2 million HVAC project and a \$3 million piping work project, both of which were in the list of "similar" projects. The other is a supervisor who worked on the same \$2 million HVAC project and on a \$700,000 piping project, also a listed "similar" project. Coastal provided the location and 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 include a progress schedule in the 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.^{11/} CDE also 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

^{10/} A representative item from Coastal's list was as follows:

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

^{11/} It appears that Coastal's list of projects was specifically intended to be responsive to both items 1 and 2 of section M.2.

^{12/} A representative example is the following:

Chief Medical Examiner's	Federally Assisted/Funded - NO
Building	Project # - PW77139A
520 First Avenue	Agency/owner - NYC Dept. of
New York, New York	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. In that listing, only the name and address of the project appear, with the vice-president named as "key personnel" and a contract amount of \$949,275.66. The vice-president is stated to have ten years' experience.

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.

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 \$510,000.¹⁷ Power Cooling also submitted a list of "key project managers," apparently in response to item 3 of section M.2. However, it did not identify the projects each named manager had worked on that were similar to the work required by the solicitation.¹⁷

None of the five lowest priced proposals contained a CPM schedule as required by the solicitation; Coastal provided no schedule, and the others submitted only bar chart schedules.

Discussion

Timeliness

A threshold question in every protest is whether it was received by the contracting officer or the General Counsel within the time limits prescribed by the Procurement Manual. This office lacks jurisdiction to consider protests that are untimely. PM 4.5.4 a. The burden is on the protester to furnish its protest to the contracting officer or the General Counsel in a manner that will ensure its timely receipt.

Protests not alleging deficiencies in the solicitation must be received within ten working days after the information on which they are based is known or should have been known, whichever is earlier; and no protest will be considered if received more than 15 working days after award of the contract in question. PM 4.5.4 d.

The contracting officer notified the unsuccessful offerors of the award by letter dated October 9, 1991. Coastal's protest was dated October 18 and acknowledged receipt

^{13/} 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.

^{14/} Power Cooling stated the academic degree held and the institution where it was earned (neither item requested by M.3); and general background, e.g., "Many years of experience with mechanical contracting firms, as a Project Manager, designer, estimator, before joining Power Cooling."

of the October 9 notice of award. However, there is no indication in the record of the date Coastal received its notice of the award to Power Cooling. Thus, we cannot determine the date when the protester knew or should have known the information upon which it is based. A protester is not required to produce concrete evidence to establish that its protest is timely. Since the record does not demonstrate the protester knew of relevant facts any earlier than the October 18 date of its letter, we have no reason to conclude the protest is untimely on that basis. Plaza Printing, P.S. Protest No. 88-39, September 26, 1988, citing Lott's, P.S. Protest No. 80-8, March 10, 1980; LaBar Transportation Corp., P.S. Protest Nos. 78-6 and 78-7, On Recon. April 13, 1978. Coastal's protest, which was addressed to the Postmaster General, was received by this office on October 31, within 15 days after award of the contract. Thus the protest is timely.

While it is not necessary that a protest employ the word "protest" in order to be recognized as such, the protester should not put the contracting officer in the position of having to guess whether a letter merely seeks information or is intended to be a formal protest. The contracting officer, not unreasonably treated CDE's first letter, dated October 11, as a request for information, specifically a "satisfactory explanation" for the rejection of its offer. In his response, which CDE received October 31, the contracting officer identified two deficiencies in CDE's offer as the basis for its rejection.

CDE's October 31 letter to the contracting officer was to the effect that the contracting officer had misread CDE's proposal, stated that CDE had fully complied with section M, and requested "reversal of your decision to mistakenly award" the contract to another offeror. Although the letter was timely received by the contracting officer, he did not recognize or treat it as a protest and responded by letter identifying additional deficiencies -- failure to specify cost, date of completion, or size of installed equipment -- of projects listed in CDE's proposal.^{15/}

As a general rule, it is the protester's obligation to furnish its protest to the contracting officer or the General Counsel in a timely manner, and the timeliness limitations in the PM are strictly interpreted. Flamenco Airways, Inc., P.S. Protest No. 91-21, May 21, 1991. However, in the narrow circumstance where the contracting officer fails to act as prescribed by the regulations and thereby prevents the protester from meeting the time limits for submitting a protest, the contracting officer's actions have been held to suspend the running of the protester's time. American Telephone Distributors, Inc., P.S. Protest No. 87-117, February 23, 1988,; Hydralifts, Inc., P.S. Protest 75-41, November 3, 1975. In this case, the contracting officer's initial delay in replying to CDE's October 11 letter and his subsequent failure to treat CDE's October 31 letter as a protest tolled the running of the 15-day period following award allowed for protesting.^{16/} Hence,

^{15/} It was dated the same day it received the requested information from the contracting officer and was received not later than November 7.

^{16/} The letter to the contracting officer was dated October 31 and was received not later than November 7; hence it was a timely protest under the rule requiring that a protest be received within ten days after the protester obtains the information upon which it is based (in this case, the contracting officer's October 28 letter).

its protest to the General Counsel, received November 18, was timely. Flamenco Airways Inc., supra.

Interested parties

Only protests from interested parties can be considered. PM 4.5.2. An interested party is one who would be eligible for award or otherwise might be affected if the protest were sustained. See PM 4.5.7 b; Canteen Service, Inc., P.S. Protest No. 90-68, November 15, 1990. Except as to price, which was not the dispositive factor, the evaluation materials provide ambiguous and incomplete information concerning evaluation or ranking of the proposals. Both Coastal and CDE asserted that they had submitted complete responses to the items requested in Section M and that their respective prices were lower than that of Power Cooling. Both sought correction of the mistaken award, and Coastal asserts specifically that the award was unfair, in effect challenging the propriety and fairness of the evaluation and selection process. If that process is found deficient, the protesters would have the right to have their proposals reevaluated; thus, they are interested parties. Mycor Services Incorporated, P.S. Protest No. 91-57, November 15, 1991; Sheldon Transfer & Storage Co., P.S. Protest No. 91-8, March 13, 1991.

Proposal Evaluation

Proposal evaluation addresses both technical and price considerations, and both evaluation and selection must be made in accordance with the source selection plan and the evaluation criteria stated in the solicitation. PM 4.1.4 and 4.1.5 b. The technical evaluation must be documented, including, among other things, as appropriate, an analysis of the technical acceptability of each proposal and "a narrative statement of the major strengths and weaknesses of the various proposals." PM 4.1.4 c.

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 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.

Award in this case was made without discussions, a permissible course whenever the existence of adequate competition or price analysis makes it clear that acceptance of the most favorable initial proposal will result in a reasonable price. PM 4.1.5 f.1. However, 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.^{17/}

The technical evaluators had no source selection plan and used no scoring system to evaluate proposals. The lack of information that might provide a reasonable basis for the evaluation and selection requires a conclusion that in relying on that evaluation, the contracting officer acted arbitrarily and without a reasonable basis. Daniel J. Keating Construction Company, P.S. Protest No. 89-92, March 1, 1990. No information is furnished by the evaluators of what the ratings, "ok," "no", and "lacking", signify, or what value or weight was assigned them. For example, although the protesters' submissions for item 2 of section M.2 were rated "lacking," both proposals included lists of projects specifically identified as responsive to that item.

Section M.2 asked for a list of projects 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." There were no instructions as to the detail desired for any project listed. The request for information about projects administered by the offeror's supervisory personnel specifies the detail desired for that item: "project name, location, [the individual's] project responsibility, size of project and key personnel. If similar detail were wanted for other categories, it could have been specified in a similar manner.

CDE was rated "lacking" for item 2. However, it appears that CDE provided exactly what was requested for item 2: a list of five installations that it described as "of [a] type and nature similar to work required by this contract." Similarly, Coastal was rated "lacking" for items 1 and 2. Although it provided only one list of five projects, those projects, among them, meet the requirements of the two items; they span the five-year period prescribed and at least two "date back" less than two years. Coastal's list was headed: "Installations of a type and nature similar to the work of this contract."

The rejection of CDE's and Coastal's proposals was arbitrary in the face of their apparently providing exactly what was requested. Moreover, although the solicitation

^{17/} 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. 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.

notified prospective offerors that the failure to submit any of the required items listed in section M.2 "will cause rejection of the proposal," the contracting officer provides no explanation for doing so while disregarding similar deficiencies in the proposal on which award was made. Power Cooling and both protesters were rated "bk" for supervisory personnel and detailed information about their projects (item no. 3). Coastal and CDE named two individuals, stated their years of experience, and provided the name, address and work performed for each of two or three projects. Power Cooling, on the other hand, listed "key personnel" and their years of experience, but without reference to specific projects they supervised or their specific role in those projects.

Only marginally more consistent with the solicitation was the handling of responses to the solicitation's request for a detailed CPM schedule. Although none of the five low offerors provided such a schedule, four, including Power Cooling, were rated "ok" for their bar chart schedules. Coastal was rated "no", having submitted no schedule of any kind.

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. Accordingly, it is appropriate to sustain the protests.

Remedy

The procedural flaws in this procurement merit corrective action, which should be applied beginning at the point in the evaluation process just prior to any identified departure from the requirements of the PM. The contracting officer therefore is directed to reevaluate all the proposals in accordance with the evaluation criteria stated in the solicitation, and otherwise in accordance with the PM.¹⁷ If the re-evaluation results in selection of other than Power Cooling, its contract must 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.1.¹⁷ In addition, while the contracting officer conducts the re-evaluation, Power Cooling should be directed to stop work on the contract.

^{18/} In evaluating the proposals, the contracting officer may not take into consideration the reasonable costs associated with a termination for convenience, in the event that is required. C.J.M. Construction, Inc., P.S. Protest 91-74, December 9, 1991.

^{19/} The contracting officer indicated in his report that performance of the contract was more than 25% complete, and that items requiring a long lead time had been ordered. We note that the report was submitted approximately four weeks later than the ten working days after notification of the protest in which PM 4.5.7 e. requires such reports to be submitted, and that the issuance of this decision was further delayed by the necessity of repeated requests to the contracting officer for supplemental data that should have been provided with the initial report. We do not believe it appropriate to allow costs or inconvenience occasioned by the contracting officer's delays in this regard to preclude the provision of a remedy. Further, we note the likelihood that long lead time items already ordered may well be usable by a successor contractor, if any. See C.J.M. Construction, Inc., *supra*.

The protests are sustained, and the contracting officer is directed to proceed in accordance with this decision.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/18/95 WJJ]