



Procurement
Review
Board
of Canada

La commission
de révision
des marchés publics
du Canada

IN THE MATTER OF:

**Complaint
By Navair Limited
of 2450 Derry Road E.
Mississauga, Ontario**

**Board File No:
G92PRF66M-021-0017**

Complaint upheld

AND IN THE MATTER OF:

**The Free Trade Agreement
Implementation Act, Part II, Sec. 15
S.C. 1988, Ch. 65.**

17 June 1992

DETERMINATION BY THE BOARD

The Complaint

On March 27, 1992, the Procurement Review Board (the Board) received a complaint (see Investigation Report (I.R.) Appendix 1) filed pursuant to section 15 of *Free Trade Agreement Implementation Act* (the Act) by the Ottawa Branch of Navair Ltd. of Mississauga (Navair). The complaint concerns the award of a contract valued at \$82,721.70 for certain equipment, described hereinafter, by the Department of Supply and Services (DSS), on behalf of the Royal Canadian Mounted Police (RCMP), to Unisource Technology of Montréal (Unisource).

The complainant alleged, in part, that "*The contract appears to have been awarded on the basis of price only. Consideration for Warranty Services, units of current manufacture and supply from factory authorized distribution has been ignored... In our opinion this is an illegal sale. Unisource Technology Inc. has no authority to accept and perform warranty on IFR products, and therefore, have no authority to place their name as being able to provide complete maintenance and repair services.*"

The remedy requested by Navair is "*that the Procurement Review Board re-examines all submissions to Supply and Services Canada for the RCMP requirement, and determine the compliance of each bidder's proposal. We would then request that this requirement be submitted to industry for re bid.*"

The complainant met the criteria for filing (subsection 21(1) of the *Procurement Review Board Regulations* (Regulations)). Pursuant to subsection 21(3) of the Regulations, the receipt of the complaint was acknowledged to the complainant.

On March 27, 1992, upon reviewing the complaint, the Board accepted the complaint for investigation as, on its face, it met the criteria for acceptance (subsection 28(1) of the Regulations). Pursuant to paragraph 16(1)(a) of the Act and subsection 28(2) of the Regulations, a Notice of Complaint was published in the Canada Gazette, Part I and Government Business Opportunities (GBO). DSS was officially notified on March 27, 1992 and it was sent a copy of the complaint.

The Investigation

The allegations in this complaint, the government's response to those allegations, and the complainant's comments on the government's response were investigated by means of interviews and the examination of documents.

A number of individuals were contacted by telephone to confirm various statements made and/or contained in the documentation. These individuals are:

Ms. Janet Tsuji, Contracting Officer, DSS Toronto; Mr. David Grainger, RCMP, Toronto; Mr. M. Desrochers, Field Technical, Maintenance Engineering Section RCMP, Ottawa; Ms. Cathy Jones, Contract Manager, Unisource Technology Inc., Montréal; Mr. John Rankin, Contract Administrator, IFR Systems Inc., (IFR) Wichita, Kansas; Mr. T. Malone, Ottawa Branch Manager, Navair Limited; Ms. Heather McNulty, Sales Coordinator, Navair Limited, Mississauga.

In addition, the Board received a submission from the law firm of Nobbs, Woods & Clark of Toronto, legal counsel to Navair, dealing with the protection of certain rights which Navair has in Canada regarding the products in question.

A copy of the Preliminary Investigation Report, including the submission by Nobbs, Woods & Clark, was sent to DSS and the complainant for their comments. DSS informed the Board in writing that they had no comments on the said Report. Navair responded in writing and their reply was then sent to DSS. These comments have been added to the Preliminary Investigation Report and form part of the Investigation Report as submitted to the Board.

The Report of this investigation contains a number of appendices relating to material and documents deemed relevant by the investigative staff as part of their Report. Particular reference is not made to all of these supporting documents in this determination, but they have been made available to the parties, and, subject to the provisions of the *Access to Information Act*, are available to any other person.

Because the investigation produced sufficient information to enable the Board, in its opinion, to resolve the issues raised in this complaint, it was determined that an oral hearing was not required, nor was one requested by either of the parties. The Board, in reaching its conclusions, has considered the Report of its investigative staff and the comments made thereon by the parties, and has made its findings and determinations on the basis of the facts disclosed therein, the relevant portions of which are mentioned in this determination.

The Procurement

A requisition (see I.R. Appendix 2) was received by DSS from the RCMP on December 23, 1991, for a quantity of three each of the following items:

1. *FM/AM-1200S COMMUNICATIONS SERVICE MONITOR COMPLETE WITH OPTIONS 05, 06, 07, 09 AND 11.*
2. *A-7550 SPECTRUM ANALYZER COMPLETE WITH OPTIONS 02, 04, 06, AC5700 AND AC5004.*

According to the RCMP, the Services Engineering Section of the Telecommunications Engineering Branch of the Informatics Directorate (a part of the RCMP Departmental Security) evaluates all test equipment used

by the Telecommunication Groups and publishes an approved list of equipment, referred to as Force Standards, which is updated annually, as required.

The equipment was indicated as "*available*" from Navair Instrument Div., Mississauga, Ontario, under the "*special instructions*" part of the requisition. The following notation was also included:

DO NOT SUBSTITUTE. THIS ITEM IS A FORCE STANDARD THAT HAS BEEN SELECTED FOR ITS PHYSICAL AND ELECTRICAL CHARACTERISTICS.

According to DSS, item 1 could not be readily identified as corresponding to a Federal Supply Classification (FSC) code number, but item 2 (spectrum analyzer) was identified as a class of goods subject to the Canada-U.S. Free Trade Agreement (FTA) when procured on behalf of the RCMP. Consequently, the decision was made to proceed with the procurement as per the terms of the FTA.

A Notice of Proposed Procurement (NPP) was prepared and appeared in the January 24, 1992 issue of the GBO in the GATT/FTA section of Proposed Procurements with the designation F-1, meaning Free Trade procurement - open to all interested suppliers. The NPP identified the equipment as "**IFR**" Models with the words "**No substitutes**" added. (see I.R. Appendix 3).

According to DSS, it was decided to hold a competition for this "no substitute" requirement, in case the U.S. manufacturer, IFR, decided to quote directly, or in the event there existed other Canadian suppliers for this equipment. This investigation revealed that IFR was not contacted by DSS prior to the issuance of the NPP or the award of the contract.

A Request for Proposal (RFP) dated January 27, 1992 with a solicitation closing date of 1400 EST March 6, 1992 was prepared by DSS (see I.R. Appendix 4). The RFP described the need as follows:

001 IFR Inc. Model FM/AM-1200S Communications Service Monitor (NO SUBSTITUTE) complete with the following options:

05 - amplifier

06 - microphone

- 07 - antenna
- 09 - padded carrying case
- 11 - European signalling format

- 002 IFR Inc. Model A-7550 Spectrum Analyzer (NO SUBSTITUTE) complete with the following options:
- 02 - Tracking Generator with 0-75 dB Attenuator
 - 04 - 10.7 MHz FM/AM Receiver
 - 06 - RS-232 type bus to enable external control
 - AC5700 - amplifier
 - AC5004 - carrying case

The RFP contains the following under "**EVALUATION CRITERIA**":

The following factors will be taken into consideration in the evaluation of your proposal:

1. *Conformance to Specification* - Mandatory
2. *Completion of Statement of Eligible Goods* - Mandatory
3. *Delivery as Specified* - Desirable
You are requested to state your best delivery possible.
4. *Transportation costs* - Desirable

Failure to comply with this request may render your proposal as non-responsive.

The following clause from the DSS-MAS 9403 Standard Instructions and Conditions included by reference in the RFP stated under B. Condition 2.:

Material will be new production of current manufacture conforming to the current issue of the specifications, drawings or part numbers as applicable, unless otherwise indicated herein.

The following clauses from the DSS General Conditions DSS-MAS 9329 dealing with the warranty provisions were incorporated by reference in the RFP:

- (1) *The Contractor represents and warrants that the Work will be of a proper quality, free from any defect in material and workmanship, and shall be in full conformity with all other requirements of the Contract.*

- (2) *Notwithstanding prior acceptance of the Work and without restricting any other term of the Contract or any conditions, warranty or provision implied or imposed by law, the Contractor, if requested by the Minister to do so, shall replace or repair at its option and its own expense any Work which becomes defective or which fails to conform to the Contract requirements as a result of faulty or inefficient manufacture, material or workmanship, notice of which is provided to the Contractor within a reasonable time during or after the warranty period which commences the day after delivery and acceptance of the Work. Unless otherwise stipulated in the **Contract** [emphasis added], the warranty period will be 90 days or the length of the Contractor's or manufacturer's standard warranty period, whichever is longer.*

In addition, the following "fill in" warranty clauses were expressly incorporated in the RFP:

cej4 WARRANTY:

Equipment purchase price includes a _____ month WARRANTY covering parts and labour.

A7012T WARRANTY/REPAIR SERVICE

If our firm is awarded a contract as a result of this bid, our firm is able to provide complete maintenance and repair services, including an adequate stock of spare parts, for the equipment referred to herein by:

NAME _____

ADDRESS: _____

According to DSS, and confirmed by Navair, Navair was informed directly by DSS of the procurement action after the publication of the NPP and they were advised to submit a request in writing if they wished to receive a bid package.

Also, the investigation revealed that one supplier raised an objection to DSS that the procurement was identified as a "no substitute". Article IV paragraph 3 of the GATT Agreement on Government Procurement (the Code) states:

There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tenders.

This objection, however, was not pursued further and the supplier submitted a proposal.

Four proposals were received, and a tabulation report was prepared (see I.R. Appendix 5). Two bids were rejected as non-responsive. One was for used rental equipment, and did not include all the accessories and the other was offering a substitute product (see I.R. Appendix 6).

It was determined by DSS that the lower "responsive bid" submitted by Unisource (see I.R. Appendix 7) was missing key information. In fact, Unisource's bid was transmitted by facsimile and consisted of only pages 1 and 3 of the RFP and the "Statement of Eligible Goods". It did not include a statement that Unisource agreed to all the terms and conditions of the RFP including, in addition to the General Terms and Conditions, the following specific clauses, cej4 and A7012T shown above nor did it include clause B4001T Stores Certification. It is in this latter clause that tenderers specifically and overtly certify whether or not what they are offering conforms to the specification. It reads as follows:

STORES CERTIFICATION

The item offered conforms strictly in accordance with the specification.

YES _____ NO _____. The deviations are as follows:

_____.

The Code, incorporated by reference into the FTA and the Act, deals, under Article V, with electronically transmitted bids in the following manner:

15. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (a) *tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit...*

The DSS-MAS 9403 Standard Instructions and Conditions included by reference in this RFP stated under A.1.:

Telegraphic offers will also be considered provided they contain SSC file number, solicitation closing time and date and all requested pricing details and are subsequently confirmed by duly completed and signed copy of this form.

The DSS Supply Policy Manual, in outlining the requirements of an electronically transmitted bid, states:

Directive 3155

- (6) *The bid must contain the bid reference number, sufficient pricing data such as unit prices, sales tax, duty and terms, **technical data** (where applicable) to allow evaluation.* [emphasis added]

On March 9, 1992, DSS telephoned Unisource to clarify its bid relative to the warranty provisions they offered. This was done in a telefax sent by Unisource (see I.R. Appendix 8) as follows:

*Warranty - see attached sheet. [Manufacturer's Limited Warranty]
Warranty repairs by factory. Products requiring warranty repairs to be returned to Unisource, Montréal.*

The company also used this occasion to amend its delivery date to a shorter period (2 - 4 weeks from the previous 6 - 16 weeks in their faxed bid) although the confirming bid includes the two sets of delivery dates. The Code provisions in section 15(a) above are clear as to how to deal with such situations.

The manufacturer's "*Limited Warranty*", (see I.R. Appendix 10) stipulates, inter alia, the following conditions:

The warranty does not apply to any instrument that has been...removed, or to any instrument...purchased within and thereafter removed, without express written consent, beyond the continental limits of the United States.

... This warranty shall, at IFR'S option, become void if the equipment ownership is transferred, unless the prior owner or the proposed owner obtains approval from IFR of continuation of the warranty prior to the transfer of ownership.

However, while it did submit IFR's "*limited warranty*", it did not provide the "*express written consent*" of IFR which is referred to in the limited warranty relating to the applicability of the warranty. Unisource also took the opportunity when confirming their bid to submit two of the five pages missing from their faxed RFP and to fill in the Stores Certification clause.

After obtaining this additional information from Unisource on March 9, 1992, and after acquiring the requisite internal authority, a "*Your proposal is accepted*"-type contract was awarded orally to Unisource the same day, followed by the distribution of the "hard" copy on March 10, 1992.

The contract contains, inter alia, the following clauses:

D005D DELIVERY

The Contractor shall make the complete shipment by 31 March 1992.

ce4j WARRANTY:

Equipment purchase price includes a twenty-four (24) month WARRANTY covering parts and labour.

A7012T WARRANTY/REPAIR SERVICE

Complete maintenance and repair services, including an adequate stock of spare parts, for the equipment referred to herein will be provided by:

NAME: IFR Systems Inc.

Routed through

*ADDRESS: Unisource Technology Inc.
150 Laurentien Blvd.
Montreal, Quebec*

According to IFR, Navair is the only authorized Canadian distributor of IFR systems. The relationship which exists with Unisource is that of a customer only. According to Unisource, they placed the order with IFR through their office located in Champlain, N.Y. IFR has confirmed in a telephone conversation that its manufacturer's warranty for the equipment in question is with Unisource in Champlain, N.Y. and is not transferable without the written authority of IFR. According to IFR, no such request had been made by Unisource at the time of bidding. However, the Board has received a copy of a letter dated May 19, 1992 from IFR Systems Inc. to Unisource Technology of Champlain, N.Y. reading as follows:

THIS LETTER IS TO CONFIRM THAT THE IFR WARRANTY COVERING FM/AM-1200S 5/N 13536, 13537, 13540, A-7550 5/N 3626, 3627 AND 3630 IS AS FOLLOWS:

IFR SYSTEMS INC LIMITED TWO-YEAR WARRANTY IS IN THE TITLE OF UNISOURCE TECHNOLOGIES IN CHAMPLAIN NEW YORK. THE WARRANTY WILL BE HONORED DURING THIS TIME PERIOD AS LONG AS THE UNITS ARE RETURNED FROM UNISOURCE

*TECHNOLOGY, NY, SENT BACK TO UNISOURCE TECHNOLOGY
AND ANY CHARGES (IF ANY) PAID BY UNISOURCE TECHNOLOGY.*

*IF YOU REQUIRE ANY ADDITIONAL INFORMATION, PLEASE
DON'T HESITATE TO CONTACT US...*

Discussion

This procurement started with an inherent problem. The requisition and the subsequent RFP called for a "No substitute" procurement, something which is contrary to the provisions of the Code which is incorporated into Chapter 13 of the FTA and the Act itself. The requisition states "*THIS ITEM IS A FORCE STANDARD THAT HAS BEEN SELECTED FOR ITS PHYSICAL AND ELECTRICAL CHARACTERISTICS.*"

Since this matter was not raised in the complaint nor was it pursued with the Board by the potential supplier that raised it with DSS before bid closing and because of the other matters that are dealt with in this Determination, the Board will not decide this issue. The Board will observe, however, that in the absence of being able to meet one or more of the exception criteria provided for in Article V.16 of the Code, the government did not comply with the provisions of the Act. Indeed, they should have added the words "or equivalent" after the specification. In this regard, the Board noted in its determination of April 9, 1990 (Reis, D90PRF6601-021-0001) that it "*interprets*" Article IV.3 of the GATT Code quoted above "*as effectively prohibiting 'no substitute' procurements under the FTA.*"

The next problem with this procurement is that, after the publication of the NPP, the complainant was contacted by DSS and advised to submit a request in writing if they wished to receive a bid set. Technically, this is in contravention of Article 1305.2.b) of the FTA in that one could say that Navair was provided with an advantage in the bidding phase over other potential suppliers in that those other potential suppliers may have missed the NPP whereas the government brought the notice to the attention of Navair. But, the case does not turn on this point.

The major problems with this procurement rest with its unclear evaluation criteria and a flawed evaluation. This enabled one firm to provide additional information on its bid after bid closing and, on this basis, and due to a misunderstanding or misuse by the government of the said

information, to be awarded the contract. In the process, missing data was provided by the contract awardee, in one case three days after bid closing and in the other two months after contract award. The government has also, in the Board's opinion, made erroneous assumptions in interpreting the meaning of the additional information. In fact, the government included a 2 - 4 weeks delivery date in the contract while the proper interpretation, according to paragraph 15(a) of the Code, of the conflicting information respecting delivery in the confirming bid should have been 6 - 16 weeks. Also, the government interpreted the warranty offered by Unisource to read 24 months, and included this in the contract, when, in fact, this was less than clear, as will be seen below.

With regard to unclear evaluation criteria, the relevant section of the RFP indicates those matters which were 'mandatory' and those which were 'desirable', i.e. where the government indicated that it may use some discretion. So far so good. Unfortunately, the RFP goes on to state:

*Failure to comply with this request **MAY** [emphasis added] render your proposal as non-responsive.*

In addition to not knowing to what "*this request*" refers, either a factor is mandatory or it is not. In this instance, the above statement involves a mixed bag of mandatory and desirable evaluation criteria and it is impossible to determine its real meaning. If the government's intent is to signal that failure to meet a mandatory criterion will render a proposal non-responsive, then the RFP should clearly say so. As well, the issue as to how mandatory and desirable criteria will be "*taken into consideration*", as announced in the RFP, should be made clearer. The Board had been informed by DSS, as a result of previous decisions and recommendations (see McDermid, E90PRF6635-021-0013, November 1, 1990; and Nico-Arret, E91PRF6641-021-0003, May 3, 1991), that such confusing and/or unclear clauses had been eliminated some time ago.

There is also the question of the Warranty and Warranty/Repair Service provisions as part of the solicitation and their significance and weight in the bid evaluation process. One thing is clear, however, according to both the RFP and the resulting contract, the **equipment purchase price** includes whichever warranty period is being offered. Further, while not expressly mentioned under "Evaluation Criteria" in the RFP, the warranty provisions were clearly a factor in the awarding of this requirement since the government judged that a telephone call to clarify these matters was

necessary and that one was made. How these factors were used in awarding the contract is unknown. But what is known is that additional information was "*necessary for the evaluation of the tender...*" to quote the Code and the contract clearly shows that not only was the information used but that it was used erroneously by DSS.

Indeed, considering that the contractor was not offering in its "confirming" bid a warranty of its own and recognizing that it did not have the express authorization to offer that of the manufacturer, would DSS have been satisfied with the minimum 90-day warranty period in the General Terms and Conditions? It would appear not since DSS contacted the bidder to clarify this point. This procedure, meant as a clarification exercise according to the investigation, resulted, however, in allowing one bidder to modify, after bid closing, the standard DSS warranty period. In fact, it is possible that the period of warranty had been reduced to 0 days, since Unisource had not secured the express authorization referred to in the manufacturer's warranty. As well, since the government did not pursue this matter directly with the manufacturer, as is expressly provided for in the said warranty under "*proposed owner*", it was not in a position to include in the contract the 24-month warranty as it did. As well, since clause cej4 states "*Equipment purchase price [emphasis added] includes a ___ month WARRANTY covering parts and labor*", it is clear to the Board that DSS wanted at least a 90-day warranty period and that it would consider any proposal offering more than this when awarding this contract.

What, in the opinion of the Board, is fatal to this action, however, is the following: when the bids were opened on Friday, March 6, 1992, DSS found that the faxed bid from Unisource, the firm they thought was the lowest responsive bidder, was incomplete. In fact, five of the eight pages of the RFP dealing with Unisource's agreement to the terms and conditions, the stores certification, and warranty and warranty/repair service, were not included. On Monday, March 9, 1992 DSS telephoned Unisource regarding the missing information and as a result some additional information was provided. The company, for example, certified that the merchandise to be supplied "*conforms strictly in accordance with the specification*" albeit three days after bid closing.

As already mentioned, Unisource used this occasion to amend, or appear to amend, their delivery dates, from 6 - 16 weeks down to a maximum of 2 - 3 weeks, somewhat better than that being offered by Navair, the next lowest bidder. What influence the improved delivery dates had on the purchasing decision, if any, is unknown. With regard to

"Warranty", Unisource provided a "sheet" entitled "Limited Warranty" which, inter alia, states that IFR, the U.S. manufacturer of the equipment, would not warrant the equipment "*without express written consent, beyond the continental limits of the United States.*" No such "*express written consent*" was provided nor it was determined, was requested.

What has now been provided, some two months later, and as a result of the Board's investigation, is a letter dated May 19, 1992 which indicates that the two-year warranty on the equipment is in the title of a U.S. company, Unisource Technologies in Champlain, N.Y. and that it will be honoured, it appears, as long as the equipment is transported from Toronto (the place of use) to Unisource in Champlain, N.Y. (perhaps via Unisource Montreal) and on to IFR, and back again, with Unisource being responsible for charges, if any.

In summary, it is the Board's view that the Unisource faxed bid was missing critical information for its evaluation and, therefore, their offer was non-responsive. The subsequent attempt by DSS to obtain the kind of information they sought "after the fact" is in contravention of the Act as well as DSS policy. The so-called clarifications of March 9, 1992 did not involve "*minor clarifications*" to quote the DSS Supply Policy Manual. In this regard, the Board does not understand how DSS, in its Governmental Institution Report, can state:

It is the Crown's position that the contracting officer had received reasonable assurance in advance of awarding a contract to Unisource that it was fully capable of meeting all of the solicitation, and more specifically, the warranty provisions.

Not only did DSS never receive reasonable assurances, but it equally failed to properly secure the interest of the government as the "*proposed owner*" by failing to contact the manufacturer itself to clarify the warranty issue. It is possible that such clarification would have brought to light, before contract award, the exact relationship that existed between IFR and Unisource and any limitation that may have been involved. This point is of particular significance in light of the exclusive business agreement which currently exists between Navair and IFR, including the assignment of certain exclusive rights.

It is true that Navair received information about the existence of this procurement after the publication of the NPP and that it was advised to ask for a bid set if they wished to bid. They did not, however, initiate this action and cannot be held responsible for it. As well, Navair quoted lot prices in their bid not unit prices, although this is clear in their offer, and the Board is satisfied that no confusion exists as to the price they quoted.

Finally, there is the "no substitute" issue which one could suggest benefited Navair. The facts are that, in addition to being clearly stated in the NPP for every potential supplier to see, one firm actually saw it and raised it with DSS before bid closing. They chose to drop the matter, however, and instead to offer a substitute product in their bid. The Board is equally satisfied that, even if their product was considered an equivalent and their offer was thereby made responsive, they would still not be the low responsive bidder. No firm chose to protest the "no substitute" designation to the Board prior to or after bid closing.

In the circumstances, it is the view of the Board that Navair was the low responsive bidder and should have been awarded the contract "but for" the improper actions of the government (see Cardinal: D89PRF6608-021-0005).

The Board will therefore award the complainant its reasonable costs of protesting this award as well as its costs of bidding. Further, given that the complainant should have been awarded this contract, the Board will recommend that the government pay the complainant the profit it would have made, if any, had it been awarded this contract.

DETERMINATION

The Board has determined on the basis of this investigation that this procurement by the Department of Supply and Services did not comply with the requirements of section 17 of the *Free Trade Agreement Implementation Act* in that:

- a) it used decision criteria in the evaluation of bids and awarding of contract that were not clearly specified in advance; and
- b) it did not provide all potential suppliers equal opportunity to be responsive to the requirements of the procuring entity particularly at the bid evaluation stage.

The Board has also decided:

- 1) to award the complainant reasonable costs relating to proceeding with the complaint; and
- 2) to award the complainant reasonable costs relating to the preparation of its bid.

The Board recommends that DSS terminate the contract awarded to Unisource and award it to the complainant.

If the contract is awarded to the complainant, the value thereof should be reduced by any amount paid in compliance with the Board's bid preparation costs award under paragraph 2 above.

Alternatively, if the contract is not awarded to the complainant, the Board recommends that DSS develop, jointly with the complainant, a proposal for compensation based on the profit, if any, Navair would have made, that the Board could recommend as fair and reasonable pursuant to subparagraph 19(1)(a)(v) of the Act, and that recognizes that Navair should have been awarded this contract. This proposal is to be presented to the Board within 30 days after the date hereof.

Gerald A. Berger _____

Gerald A. Berger