

PSBCA 5322

APPEALS OF SOUTHERN MAIL SERVICE, INC., ET AL.

Under Contract No. HCR 75124, et al.

August 26, 2009

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OPINION OF THE BOARD ON MOTIONS FOR SUMMARY JUDGMENT [FN1]

Appellants, Southern Mail Service, Inc., and four of its affiliated companies, are parties to a number of mail transportation contracts issued by Respondent, United States Postal Service. [FN2] Appellants have appealed from the contracting officer's denial of a request for a contract price adjustment in one contract and from his revocation of adjustments previously granted in seven other contracts. Appellants filed a motion for summary judgment. Respondent filed an opposition to Appellants' motion and a cross-motion for summary judgment.

Under certain circumstances, the contracts at issue provide for adjustments to the contract price, based on changes in the Consumer Price Index for urban wage earners (CPIW), when a supplier voluntarily replaces tractors used to provide the contract service. Through their motions, the parties have, in effect, severed two issues of law from the proceedings and asked the Board to decide them. The first issue is the correct method, under the applicable contract provisions and Postal Service publications, for establishing the beginning date CPIW to be used in calculating adjustments for replaced equipment. The second issue is whether, having initially approved Appellants' requested adjustments in seven of the eight contracts, Respondent had the right to revoke those approvals.

For the purpose of deciding the parties' motions, we make the following findings of fact, which appear to be undisputed:

FINDINGS OF FACT

APPLICABLE CONTRACT PROVISIONS

1. All of the contracts at issue covered the transportation of mail between specific locations and in accordance with set schedules, and had been renewed for four-year periods - some beginning on July 1, 2003, and others beginning July 1, 2004. Each contract specified the minimum number of vehicles (tractors and trailers) to be provided by the contractor. Each contract was stated to be a fixed-price contract, but each contained a provision allowing for adjustments to compensation, as follows:

"Adjustments to Compensation

Contract compensation may be adjusted, from time to time, by mutual agreement of the supplier and the contracting officer.

a. Any such adjustments shall be made in accordance with the provisions of this clause and any USPS Management Instruction governing adjustments in effect on the date of adjustment.

* * *

c. Adjustments in compensation pursuant to this clause shall be memorialized by formal amendment to the contract...."

(Appeal File for PSBCA 5322, Tab (5322AF) 1, p. 83; Consolidated Appeal File (CAF), Tabs I - VII; VIII (pp. 513, 560)).

2. The "USPS Management Instruction" referred to in the above clause is entitled "Economic Pay Adjustments for Highway and Inland Domestic Water Contracts." The parties agree that the adjustments at issue here were all subject to either the August 8, 2002 or the February 25, 2004 versions of the Management Instruction (MI), and agree that there were no substantive or wording differences between the two versions, although the versions contained different numbering schemes. For reference purposes, the Board will use the numbering scheme contained in the August 8, 2002 version, as did the parties. (CAF Tab IX, pp. 620-41, 642-64; Memorandum in Support of Appellants' Motion for Summary Judgment, p. 7; Respondent's Opposition to Motion and Cross-Motion for Summary Judgment, p. 7).

3. To initiate a request for an adjustment in compensation, the MI required the contractor to submit a Postal Service Form 7463, "Cost Statement, Highway Transportation Contracts" and any required documentation to the contracting officer. The Form 7463 contained a breakdown of the various cost elements that made up the contract price. Item 1A(1) on the Form was the entry that represented the cost of the tractors used in each contract, and is the entry at issue in the disputes before us in these appeals. Section 162 of the MI, entitled "Analyzing Form 7463," contained the following relevant language:

"a. Item 1

(1) Item 1A, Vehicle Cost

(a) The annual vehicle cost should reflect the sum of the depreciation and the interest paid on the vehicle(s) purchased or leased as shown on the last approved cost statement.

(b) The annual cost of each vehicle is subject to individual adjustment

only when replacement equipment is placed in service on the route. The value of the replacement equipment must exceed the present value in order for the additional compensation to be considered. When a supplier changes equipment on the route, the allowable increase is determined as follows:

(i) Identify whichever is the later of:

(a) the CPIW[[FN3]] number used in computing the most recent adjustment due to replaced equipment, or

(b) the CPIW number of the month prior to the solicitation proposal closing date.

(ii) Establish the percentage change formula using the procedure in section 163.2.

(c) If the supplier agrees, use CPIW computation dates that will yield less than the maximum dollar adjustment which the supplier may otherwise be eligible. As an example, based on previous adjustments for equipment changes, the supplier may be eligible to use a comparison period from August 1996 to August 2001. To keep the contract rate competitive, the supplier may use a comparison period that will produce a total dollar increase that is less than the period cited above (e.g., August 1996 to August 2000). The maximum adjustment to which the supplier will be entitled, however, may not exceed the amount determined by the CPIW computation...."

(CAF Tab IX, p. 627) (emphasis added).

4. Section 163 of the MI, "Establishing CPIW Factors and Percentage Change Formula for an Economic Adjustment," read as follows:

"163.1 Establishing CPIW Factors

Perform the following steps to establish the CPIW factors for an economic adjustment.

1. Identify the [contract number].

2. Identify the date the request is received by the CO [contracting officer].

3. Determine the beginning month of the comparison period. This is the month that contains one of the following dates, whichever is latest:

Proposal Closing Date _____

Renewal Date _____

Last Economic Adjustment Date (if applicable)_____

* * *

4. Determine the ending month of the comparison period. This is the month prior to the month in which the request is received by the CO (see step 2).

5. Determine the beginning CPIW number. This is the CPIW number for the month prior to the beginning month identified in step [3. [FN4]]

6. Determine the ending CPIW number. This is the CPIW number for the month prior to the A/P in which the request is received by the CO.

The data gathered in this section will be used to calculate the percentage change formula in section 163.2.

* * *

163.2 Establishing the Percentage Change Formula

The supplier will be allowed an amount equal to the percentage change in the CPIW for those items adjustable by CPIW changes. Determine the percentage change as described below. See example.

1. Determine the effective date of adjustment. This is the first day of the accounting period in which the request was received.

2. Identify the beginning CPIW number (from section 163.1, step 5).

3. Identify the ending CPIW number (from section 163.1, step 6).

4. Calculate the percentage factor. Divide the ending CPIW number by the beginning CPIW number. Carry the decimal to five places.

5. Calculate the new allowable amount per line item. Use the line items in column III of the most recently approved cost statement. Multiply a line item by the percentage factor.

Note: Apply only to line items eligible to be adjusted by CPIW changes...."

(CAF Tab IX, p. 637) (emphasis added).

5. The MI also provided that two other cost items were subject to adjustment in accordance with the procedures of section 163. [FN5] In contrast to the vehicle cost adjustment provisions, which specifically referenced subsection 163.2 to establish the "percentage change formula," the provisions for the two other items referred generally to section 163 to determine the "allowable adjustment." (CAF Tab IX, p. 628).

6. Under paragraphs 121, 164 and 165 of the MI, either the contracting officer (CO) or contracting officer's representative (COR) could approve or deny an adjustment request (CAF Tab IX, pp. 620, 621, 638).

7. Paragraph 176 of the MI provided that:

"Adjustments in the rate of compensation due to supplier's election to replace equipment ... will be effective the date that such equipment was placed in service on the route, provided that the supplier notifies the CO within 60 days of the date replacement equipment was actually placed in service on the route...."

(CAF Tab IX, p. 640).

8. Under Section 14 of the MI, "Limitations and Restrictions," paragraph 141 provided that: "Adjustments are allowed only for cost changes that occur during the contract term or as otherwise specified in this instruction." Paragraph 142 of that section provided that "[p]roposal errors or omissions in the supplier's cost state-

ment are the responsibility of the supplier. The Postal Service does not allow adjustments for them, except as discussed in Chapter 4 of the Purchasing Manual." (CAF Tab IX, p. 623).

9. Each contract also contained a Changes clause that read, in relevant part:

"a. Service Changes

(1) Minor Service Changes. The Contracting Officer may, at any time, without consulting the supplier, issue orders directing an extension, curtailment, change in line of travel, revisions of route, or increase or decrease in frequency of service or number of trips and fixing an adjustment in the supplier's compensation which increases the supplier's rate of pay by no more than \$2,500. If the supplier believes the increased cost of providing the service required by the order exceeds the increase made in compensation, it may request an adjustment of compensation for the service change.

(2) Other Service Changes. Service changes other than minor service changes, including increases or decreases in compensation, may be made by mutual agreement of the Contracting Officer and the supplier. Such changes shall be memorialized by formal amendment to the contract...."

(5322AF 1, p. 83; CAF Tab VIII, p. 561).

APPELLANTS' REQUESTS FOR CONTRACT ADJUSTMENTS

10. By letters dated August 17, 2004, Appellants requested adjustments in all of the contracts at issue here. With respect to those contracts that had been renewed effective July 1, 2003, the requested effective date of the adjustment was December 13, 2003, when new tractors had been placed into service. With respect to the contracts that had been renewed effective July 1, 2004, the requested effective date was the date of the renewal - i.e., July 1, 2004. (CAF, p. 216; Supplemental Appeal File (SAF), pp. 688, 716, 758, 775, 886, 901, 948).

11. In their adjustment requests, Appellants used various starting dates for the CPIW change calculation. [FN6] Appellants calculated the increase for each tractor in each of the contracts. In general, for each tractor replaced, where there had been at least one previous adjustment, Appellants used the month before the previous adjustment as the starting date for the calculation. Where there had been no previous adjustment, Appellants used the original award date of the contract [FN7] as their starting date. In those cases in which a tractor had been added to a contract after the original award - i.e., where the number of tractors required under a contract had been increased after award - Appellants used the month before the tractor had been added to the contract as their starting date. As a result, the starting dates in the calculations varied widely - from as early as October 1978 (for some of the tractors in HCR 75124) to as late as June 2003 (HCR 752L2), and including such interim dates as January 1988, October 1992, and March 1997. (CAF, pp. 8, 47, 97, 149, 217, 373, 436; SAF, p. 919).

12. With regard to the contracts other than HCR 75124 (PSBCA No. 5322), between October 25, 2004, and March 16, 2005, Respondent issued "Contract Route Service Orders" (PS Form 7440) directing that the contract rates be adjusted as a result of Appellants' adjustment requests. In general, the adjustment ordered was the same as that requested by the contractor, although in some cases the adjustment differed from the request by a small amount. In each case the Route Service Order was signed by a COR in the box designated for the contracting officer's signature. (CAF, pp. 48, 98, 150, 326, 379, 457; SAF, p. 704).

13. With regard to contract HCR 75124, however, by letter dated March 30, 2005, to Appellant Southern Mail Service, the contracting officer indicated that he was returning the request for adjustment "unprocessed." The contracting officer indicated that the records necessary to calculate such an adjustment were available to Respondent only from 1993, and that the older records had been archived and destroyed by the Federal Records Center. He stated that he was unwilling to authorize an adjustment in the amount requested (\$299,106.23) with no means to verify the documentation provided by the contractor. Finally, the contracting officer indicated that he would be willing to process an adjustment "back one replacement cycle," provided Appellant supplied data such as when the tractors that were replaced in December 2003 had been placed in service on the contract and certain data concerning the new tractors. (SAF, p. 1046).

14. By letter dated October 17, 2005, Appellant Southern Mail Service filed a certified claim seeking \$299,106.23 per annum as an adjustment under contract HCR 75124 (5322AF 7).

15. By final decision dated November 29, 2005, the contracting officer denied Appellant's claim in its entirety. In the final decision, the contracting officer, citing language in the MI (see Finding 8), stated that Respondent would not consider adjustment requests for cost changes that occurred outside the current contract term - i.e., July 1, 2003 through June 30, 2007 - and that "any alleged cost adjustments not requested and made during the contract term have been legally waived by Southern." (5322AF 8). Appellant filed a timely appeal, which was docketed as PSBCA No. 5322.

16. During the pendency of PSBCA No. 5322, by letters dated September 19, 2006, addressing each of the other seven contracts, the contracting officer advised each contractor that he had concluded that the increase previously granted had been granted in error. The contracting officer advised each contractor that,

"It has come to our attention that our approval of the full amount of adjustment for replacement tractors that you stated in your request was made in error. You did not submit documentation sufficient to substantiate the amount that you requested, and you did not provide explanation of a computation method that could justify that amount.

The information you provided does not enable us to determine when the replaced tractors were placed in service on this contract. However, we are willing to accept without further documentation that those tractors were placed in service during the last term of [the contract] prior to its renewal with the effective date of"

The contracting officer then indicated that he had calculated what the adjustment would have been under his offer, and demanded that the contractor repay the difference between that number and the adjustment previously granted. The letter also advised the contractor that if it believed that the adjustment should be some amount other than that calculated by the contracting officer, the contractor was to provide the contracting officer with an explanation and supporting documentation. (CAF, pp. 52, 102, 151, 330, 383, 461; SAF, p. 707).

17. Appellants responded to the contracting officer by letters dated October 17, 2006. In those letters, Appellants questioned the contracting officer's assertion that they had not provided sufficient documentation to support the adjustments that had been requested and granted, arguing that they had provided all the documentation required by the MI. Appellants also argued that the adjustments had been incorporated into the contracts by formal, binding contract modifications and could not be rescinded unilaterally by the Postal Service. Finally, the letters questioned the timing of the proposed rescissions, arguing that they had been motivated by a desire to gain an advantage in the litigation over contract HCR 75124, then

pending at this Board (Finding 15). (CAF, pp. 12, 105, 332, 386, 464; SAF, pp. 732, 805).

18. By final decisions dated November 9, 2006, the contracting officer concluded that Appellants' October 16, 2006 responses had failed to provide the information necessary for reconsideration of the conclusions set out in his September 19, 2006 letters. The contracting officer specifically cited Appellants' failures to provide the dates that the replaced tractors had been placed into service, and faulted Appellants for using, without explanation, starting dates in their calculations that apparently preceded the service dates of those earlier tractors. In addition, the contracting officer asserted that Appellants had not shown that the language of the MI permitted use of a date that preceded both the "effective date of the contract or the last prior replacement [of] the tractors used for it." The contracting officer then concluded that the annual rates of the contracts would be reduced as proposed in the September 19 letters, and claimed entitlement to the overpayments alleged in those letters. The contracting officer, however, stated that recoupment of the alleged overpayments would be suspended pending Appellants' exercise of their rights to appeal the decisions. Concurrent with the issuance of the final decisions, by issuing Route Service Orders that cited the Changes clause and contained the label "Insignificant Minor Service Change," the contracting officer directed that the contracts' annual rates be reduced in accordance with the final decisions. (CAF, pp. 17, 20, 60, 63, 110, 113, 154, 158, 337, 341, 391, 394, 469, 472). Appellants filed timely appeals, which were docketed as PSBCA Nos. 5375, 5377-5382 (See footnote 2).

DECISION

Summary judgment may be granted only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987); *AFV Enterprises, Inc.*, PSBCA Nos. 2691, 3316, 98-1 BCA ¶ 29,586; *Rood Trucking Co., Inc.*, PSBCA Nos. 3121, 3132, 93-2 BCA ¶ 25,564. As noted above, the sole issues in dispute with respect to the motions before us are the proper procedure, under the contract and MI, for determining the starting date for the computation of CPIW changes for tractor replacements and whether Respondent may revoke, on the basis of error, the adjustments it had previously granted in seven of the contracts. [FN8]

Determining the Starting Date

The dispute between the parties in this area centers on the MI language quoted in Findings 3 and 4, above. Under Appellants' theory, calculating the adjustment begins by choosing the appropriatedate from the two possible dates set out in subsection 162.a.(1)(b)(i) - i.e., the later of the most recent CPIW adjustment for tractor replacement (if there has been one) and the "solicitation proposal closing date" - and determining the corresponding CPIW number. Appellants interpret the phrase "solicitation proposal closing date" to refer only to the solicitation that led to the "original" award - as opposed to any later renewal - of the applicable contract. Thus, if there has been no later CPIW adjustment, the starting CPIW number would be the number corresponding to the time of the original contract award.

Under Appellants' theory, the calculation then proceeds, as directed by subsection 162.a.(1)(b)(ii), to the steps set out in MI subsection 163.2 to "establish the percentage change formula" and calculate the final adjustment. Step 2 of the procedure in subsection 163.2 directs that the beginning CPIW number be identified "(from section 163.1, step 5)." Appellants contend, however, that that language is inapplicable - i.e., that there is no reason to resort to "section 163.1" - since, for vehicle replacement cost adjustments, the beginning CPIW number has already been determined under 162.a.(1)(b)(i), as described above. Thus, according to Ap-

pellants, the final amount of the adjustment is calculated under steps 3, 4 and 5 in subsection 163.2, using the beginning CPIW number determined under subsection 162.a.(1)(b)(i).

Respondent challenges Appellants' approach in three primary areas. First, Respondent argues that Appellants improperly ignore the provisions of subsection 163.1 when determining the beginning CPIW number. That MI subsection sets out three possible dates to be used in determining the beginning CPIW number, rather than the two contained in subsection 162.a.(1)(b)(i). Under subsection 163.1, the date to be used is the latest of the "proposal closing date," the "renewal date," and the "last economic adjustment date." Since each of the contracts at issue here had been renewed shortly before Appellants requested adjustments, use of the renewal date as the "latest of" date would significantly limit the period to be used in calculating the CPIW difference and the corresponding adjustments. Respondent contends that since subsection 162 does not contain the complete instructions for calculating the adjustment, it is appropriate to refer, instead, to the entirety of section 163, which does contain complete instructions for the calculation.

Respondent's second challenge to Appellants' approach is to point out what it argues are the practical difficulties in identifying the initial or original award date of a particular contract, especially when the route has been in existence for a long period of time and has been performed under a number of successive contracts. Respondent argues that contract requirements do not necessarily remain static over time - i.e., that routes change; equipment specifications change; routes are divided, combined, and renumbered; major revisions to standard provisions are implemented; suppliers evolve, are bought and sold, and may temporarily provide services together with other suppliers, etc. In short, Respondent argues that it may be difficult to conclude that a current contract, even though it may bear the same contract number, is actually a descendent of a particular "original" contract. Respondent also argues that the same difficulty attaches to determining what it calls the "bloodlines" of a particular tractor. Respondent also challenges Appellants' interpretation as unreasonable in that it would allow a contractor to delay seeking a vehicle adjustment indefinitely and then seek a "catch-up" adjustment many years after the initial award. Respondent contends that this would unreasonably require Respondent to maintain its contract files indefinitely - i.e., much longer than its usual document destruction policies would mandate.

Finally, Respondent challenges Appellants' interpretation of the phrase "solicitation proposal closing date" in MI subsection 162.a.(1)(b)(i) as applying only to the process leading to the award of the initial contract. Respondent points to references to a "renewal solicitation" and "this solicitation" found in the paperwork leading up to the latest contract renewal as evidence that the MI phrase can be read to refer to the renewal process in those instances in which there has been a renewal. Respondent argues that the term "solicitation," used both in the renewal contract and in the MI referenced therein, reasonably refers to the same thing - i.e., the renewal solicitation - and does not refer only to the original solicitation, as argued by Appellant.

Having considered the parties' arguments, we conclude that the appeals are not amenable to summary disposition on this issue. In deciding the interpretation issues raised by the parties' motions, we are to give the contract language the "meaning that would be attributed to it by a reasonably intelligent person acquainted with the circumstances surrounding the contract." *Alliance Properties, Inc.*, ASBCA No. 42451, 94-1 BCA ¶ 26,462 at 131,675, citing *Alvin Ltd. v. United States Postal Service*, 816 F.2d 1562 (Fed. Cir. 1987). In so doing, we start with the plain language of the contract and MI. Where this language is clear and unambiguous, extrinsic evidence is not needed to interpret it. See *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996). We agree with Appellants' argument that the language applicable to the adjustments they seek clearly is found in 162.a.(1)(b)(i) of the MI and that subsection 163.1 does not apply to

adjustments for replacing equipment. [FN9] However, we conclude that the phrase "solicitation proposal closing date," as used in subsection 162.a.(1)(b)(i) of the MI is not clear on its face and requires extrinsic evidence to determine its true meaning. Although not so argued by either party, that phrase, as used in the MI, is ambiguous - i.e., is capable of more than one reasonable interpretation, see, e.g., *Grumman Data Systems Corp. v. Dalton*, 88 F.3d 990, 997 (Fed. Cir 1996). As argued by Appellants, the phrase may have been intended to refer only to the process leading up to the award of the original contracts. As argued by Respondent, however, and as supported by language used in some of the record documents related to contract renewals, [FN10] the phrase may have been intended to refer to that process as well.

Appellants contend that "solicitation proposal closing date" can only refer to the award of the original contract, arguing that a renewal does not involve competitive proposals with closing dates, but proceeds via "discussions" between the parties to the existing contract. However, we cannot find as a matter of law that there is no "solicitation" of an offer or "proposal" as part of the renewal process, or that there cannot be a date that could be reasonably understood to be a "closing date" for such a proposal.

We conclude that further development of the record with regard to the process leading to renewals is required in order for the Board to determine what the parties understood this language to mean. Evidence is required, for example, with regard to such things as the parties' intentions, the exact steps taken by the parties leading up to the renewals, and whether the parties relied on their interpretations in negotiating these renewals, e.g., *Edward R. Marden Corp. v. United States*, 803 F.2d 701, 705 (Fed. Cir. 1986); *Osborne Constr. Co.*, ASBCA No. 55030, 09-1 BCA ¶ 34,083. Given the current record and the parties' differing views of the renewal process, we cannot say that there are no material facts genuinely in dispute with regard to this issue. Accordingly, summary judgment with respect to this issue is not appropriate, and the parties' motions are denied.

Revoking Prior Adjustments

Appellants argue that the officials [FN11] who signed the route service orders approving the requested adjustments in PSBCA Nos. 5375, 5377-82, had the discretion and authority to do so. As a result, Appellants contend that the contracting officer who revoked the adjustments on the grounds that Appellants had not provided sufficient information to support them did not have the right under the contract to take that action.

Respondent contends that the adjustments requested by Appellants and approved by Respondent's personnel were in violation of the MI provisions and that, therefore, the personnel who approved them had no authority to do so. Respondent contends that the MI provisions set out a mechanical process for determining the appropriate adjustment and that its personnel had no authority to approve adjustments that were not the result of applying that process. Respondent does not argue that its personnel had no authority to approve adjustments, but only that they lacked authority to approve adjustments that did not comply with the MI instructions.

In revoking the previously granted adjustments, the contracting officer did not question the authority of the approving personnel to approve adjustments, but contended that Appellants had provided insufficient information to support the approval of adjustments of the size requested. He contended that the adjustments had been granted in error in that Appellants had not "submit[ted] documentation sufficient to substantiate the amount you requested, and ... did not provide explanation of a computation method that could justify that amount."

Nevertheless, whether or not they should have been satisfied with the level of

documentation submitted, the CORs who approved the adjustments apparently were satisfied with what they received from Appellants. Appellants provided a detailed explanation of their calculations in each case. Based on the fact that in some instances the adjustment awarded differed from the amount requested, it seems clear that the CORs were satisfied, either by accepting Appellants' calculations or by performing their own, that the amounts requested were proper.

As noted above, see Finding 6, the CORs had the general authority to approve adjustment requests made under the MI. Respondent argues, however, that the CORs lacked authority to approve the adjustments requested by Appellants because those requests were in violation of the MI provisions. Under the facts of these appeals, we disagree. As we have held with respect to the MI interpretation issue, above, the language of the MI lends itself to more than one reasonable interpretation, including the interpretation apparently adopted by Appellants. Thus, whatever is ultimately determined to be the parties' interpretation under PSBCA No. 5322, we cannot say that the CORs lacked the authority or the discretion to approve the requested adjustments.

Under the facts before us here, the approvals by the CORs of the adjustment requests were within their authority and binding on Respondent. Accordingly, the contracting officer did not have the power to revoke the agreements made by Respondent's authorized representatives. See *Broad Avenue Laundry and Tailoring v. United States*, 681 F.2d 746 (Ct. Cl. 1982); *Honeywell Federal Systems, Inc.*, ASBCA No. 39974, 92-2 BCA ¶ 24,966; *Liberty Coat Co.*, ASBCA No. 4119, 4138, 4139, 57-2 BCA ¶ 1576; see also *URS Consultants, Inc.*, IBCA No. 4285-2000, 02-1 BCA ¶ 31,812; *Cibinic, Nash, and Nagle, Administration of Government Contracts, Fourth Ed.*, at 63-65. Appellants are entitled to judgment as a matter of law with respect to this issue and, to that extent, their motion for summary judgment is granted.

The holding in Appellants' favor on the second issue is dispositive of the appeals in PSBCA Nos. 5375 and 5377-5382, and those appeals are granted. The appeal in PSBCA No. 5322 is remanded to the parties for further proceedings consistent with this Opinion.

David I. Brochstein

Administrative Judge

Vice Chairman

I Concur:

William A. Campbell

Administrative Judge

Chairman

I Concur:

Norman D. Menegat

Administrative Judge

Board Member

FN1. Administrative Judge Gary E. Shapiro took no part in the Board's consideration

of these motions.

FN2. The contractors, contract numbers, and docket numbers are as follows:

Southern Mail Service, Inc.; HCR contracts 75124, 750L5, and 752L2; PSBCA Docket Numbers 5322, 5377, and 5381, respectively.

S&B Stagelines, Inc.; HCR contract 75110; PSBCA Docket Number 5375.

Byrd Trucking, Inc.; HCR contracts 798L0 and 75398; PSBCA Docket Numbers 5378 and 5382, respectively.

H&L Mail Service, Inc.; HCR contract 77027; PSBCA Docket Number 5379. Alamo Mail Service, Inc.; HCR contract 70011; PSBCA Docket Number 5380.

FN3. Defined in the MI as "Consumer Price Index for urban wage earners" (CAF Tab IX, p. 620).

FN4. The actual text of the MI read "step 2." However, we conclude that this is a typographical error, inasmuch as the "beginning month" is determined in step 3, not in step 2.

FN5. Item 1B, Operational Cost, and Item 5, General Overhead Cost.

FN6. In each case, Appellants used the month before the newest tractors had been placed into service as the end date - i.e., either November 2003 or June 2004. The correct end date is not at issue with respect to these motions.

FN7. I.e., the date when a contract for the service had first been awarded to one of the Appellants.

FN8. For the purpose of deciding these motions, Respondent has stipulated that "the VEA [Vehicle Economic Adjustment] requests at issue were for tractors of greater value than those they replaced [see Finding 3], that Respondent received proper notification within 60 days after the tractors were placed in service [see Finding 7], and that [Appellants] made VEA requests accompanied by documentation." (See Respondent's Opposition, page 10).

FN9. Subsection 163.1 would, however, apply to the other items that provide for CPIW-based adjustments (See Finding 5).

FN10. See, e.g., 5322AF 1, pp. 3 ("your proposal"), 9 ("Request for Proposal"); CAF 1, pp. 23, 26.

FN11. As noted in Finding 12, above, each of the route service orders approving and implementing the adjustments was signed by a "COR." In this instance, however, whether the route service orders were signed by a contracting officer, by CORs, or by "acting contracting officers," as they are referred to in Respondent's reply, has no effect on the result.