



**Department of
Environmental
Protection**

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**Christopher O. Ward
Commissioner**

**Stuart M. Erdfarb, P.E.
AGENCY CHIEF CONTRACTING OFFICER**

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To: Contract ROF-REM1 File

for From: Stuart M. Erdfarb, P.E. 

Date: April 15, 2002

Re: Contract ROF-REM1
Withdrawal of Bid Due to Error
Safeway Environmental Corp.

On April 10, 2002, bids were opened for Contract ROF-REM1, for the EMERGENCY ROOFTOP AND FACADE REMEDIATION AT THE WORLD TRADE CENTER SITE (the "Contract"). Ten bids were submitted. The low bidder, with a bid of \$547,337.50, was Safeway Environmental Corp. ("Safeway"). The engineer's estimate for the Contract was \$3,303,000, and the next lowest bid, submitted by Fiber Control, Inc. was \$1,287,337.50. The average of the ten bids is \$2,651,918. When the low bid is eliminated, the average increases to \$2,885,761. This is a unit price contract.

In a letter to the Department, dated April 10, 2002, Safeway stated that it had based its bid on cleaning only the *front* of the affected buildings, when in fact, the Contract calls for the cleaning of *each side* of the buildings. According to Safeway, its unit prices for this work omitted a substantial quantity of work, i.e. the cost of suspending scaffolding for cleaning the sides and backs of the buildings. In a follow-up letter, dated April 11, 2002, Safeway explained that it used \$.96 per square foot instead of \$3.09 per square foot of cleaning. Safeway unintentionally omitted a substantial quantity of work in the compilation of its bid.

Pursuant to §3-02(m)(3)(iii) of the Procurement Policy Board Rules, I, as Agency Chief Contracting Officer, **approve the withdrawal** of the bid submitted by Safeway based on the following:

- the mistake was made known the Agency within three days of the opening of the bids; and,
- the price bid was based on an error of such magnitude that enforcement would be unconscionable;
- the bid was submitted in good faith, and the bidder submitted credible evidence that the mistake was an inadvertent omission, as opposed to a judgement error; and,



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- the error in the bid is actually due to an unintentional omission of a substantial quantity of work made directly in the compilation of the bid, which unintentional omission has been clearly shown by objective evidence drawn from inspection of the original paperwork, documents or material used in the preparation of the bid sought to be withdrawn; and
- it is possible to place DEP in the same position as existed prior to the bid.

The second low bid of \$1,287,337, submitted by Fiber Control, Inc., will be processed for award of the Contract.

cc: Alvatroni
Smyth
Fenves
Wasserman
Schiano