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RELEASED

B-177501

AUG 1 1973

74-0248

The Honorable Ken Hechler  
House of Representatives

R Dear Mr. Hechler:

Your letter of November 8, 1972, requested that we examine into several unanswered questions pertaining to a Navy project to construct 150 family housing units at the Guantanamo Bay Naval Base, Cuba. These questions centered around a dispute between the prime contractor, Burns and Roe Construction Corporation, and a painting subcontractor, Mr. William Trautner.

In an initial discussion with your office, it was agreed we would review two principal areas in the contract file: (1) the status of the Navy's acceptance of the housing units and (2) whether there were any indications of problems in the quality of workmanship on the housing units. In addition, we are providing some general information you later requested pertaining to a prime contractor's authority, under the Armed Services Procurement Regulation, to seize a subcontractor's equipment for nonperformance.

We recently discussed our proposed report with your office to insure that we were being fully responsive to your inquiry and are including some additional information requested at that time. As also discussed, we are providing the information in this report without onsite verification. As agreed, we are not following our customary practice of obtaining agency comments because of the nature of the information being provided and the fact that, during the review, we obtained oral and written agency comments concerning the specific aspects of the contract we were requested to look into. However, before releasing the contents of this letter you may wish to obtain comments from the prime contractor in view of the criticism herein of some of its operations.

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Our findings are summarized below.

STATUS OF THE NAVY'S ACCEPTANCE OF  
THE HOUSING UNITS

On November 13, 1970, a contract in the amount of \$3,728,330 was awarded to Burns and Roe Construction Corporation which was to complete the housing project by September 2, 1972. The project consists mainly of two-story townhouses, of which 50 are for officers and 100 for enlisted personnel.

The Navy has accepted all of the 150 units, as shown below.

<u>Time of acceptance</u>	<u>Number of units</u>
Aug. 1972	16
Oct. 1972	16
Nov. and Dec. 1972	29
Jan. 1973	39
Feb. 1973	22
Apr. 1973	<u>28</u>
Total	<u>150</u>

The original contract completion date was extended because of (1) delays beyond the control and without the fault or negligence of the contractor, (2) a strike, and (3) excessive inclement weather.

Contract responsibility

The Naval Facilities Engineering Command administered this project; the Engineering Command's headquarters staff was responsible for reviewing, approving, and funding the project. The contracting officer responsible for contract performance was located at the Atlantic Division, Engineering Command, Norfolk, Virginia. Also, a resident officer in charge of construction was located at the project site and reported to the Atlantic Division.

QUALITY OF WORKMANSHIP

Mr. Trautner's complaint about the poor condition of the walls and other surfaces he was to paint raised the question of whether the quality of workmanship on this project was adequate.

Installation and construction procedures

Correspondence and Government inspection reports in the contract file show that there were some questionable installation and construction procedures, such as (1) placing concrete having less than the specified consistency, (2) installing improper sill plate fasteners, and (3) using asphalt primer in lieu of mastic or plastic cement to set gravel stop on built-up roofs. According to the file, the Navy held several meetings with the prime contractor to discuss these problems and the agreements reached seemed mutually satisfactory. In addition, a Navy official at Norfolk informed us that the Navy had not experienced any more problems with this project than with other projects of this type.

Mr. Trautner's allegations centered, in part, around the installation of drywall before finishing. Navy inspection reports show that metal corner beads were quite rusty and no attempt was made to remove the rust before applying drywall cement. Other sources disclosed that drywall was installed which was not flush at the surface. Although it appears that there may be some basis for Mr. Trautner's charges, we could not determine if he was directed to finish these walls. In connection with this matter, the Navy provided the following information.

"The problems encountered by Mr. Trautner are believed to be due to (1) the contractor's use of nonprofessional wallboard hangers; (2) edge damage of wallboard due to rough material handling and moisture damage; (3) contractor's reluctance to discard sections of wallboard which could be repaired successfully; and (4) use of 8 foot gypsum wallboard. The use of 8 foot lengths, laid in a

horizontal manner, is acceptable practice but produces a greater number of joints requiring tape and compound than 10 or 12 foot material would have produced. This was the contractor's option and in no way hindered the structural integrity of the project.

"A recent inspection [January 1973] was made of apartments occupied since 18 August 1972. All walls and ceilings were examined in detail and no nail pops, ridging, or cracks exist."

#### Storage of construction materials

The contract file shows that some problems were experienced regarding the methods used by Burns and Roe Construction Corporation to store construction materials. On many occasions the storage of materials was inadequate and, as a result, these materials were exposed to inclement weather. For example, gypsum panels were badly mildewed because they were exposed to severe rains and weather for about 6 months. In this instance, the contractor's quality control representative condemned the damaged panels and did not permit them to be installed.

You wanted to know whether the contract required any particular method of storing gypsum wallboard, or whether the method of storage was at the prime contractor's option. We found that the contract does not require specific methods for storing construction materials other than flammable materials and liquids.

To further clarify the situation, we requested the Engineering Command headquarters to provide additional information on the storage of construction materials and received the following comment:

"On site storage of construction materials has been an intermittent problem with this contract. The contractor did not elect to construct shelters for much of his material and, as a consequence, experienced damage to factory applied

gypsum panels. \* \* \* Condensation did wet the gypsum and, in some cases, stain the paper face as well as create conditions for mildew growth, but wetting is not detrimental since gypsum regains its original strength when dried out. Further, contract specifications require mildew resistance paint. These storage conditions, while not adversely affecting the gypsum board to such a degree that the material would not be usable, were not condoned. \* \* \* It is evident that the contractor elected to make corrective repairs to the gypsum panels rather than incur the cost of constructing extensive covered storage."

#### Quality control

The contract requires the prime contractor to provide general and specific quality controls to obtain the quality level established by the contract requirements and to bear all costs it incurs for quality control. The basic reason for having a contractor quality control organization is to provide the contractor with a means of assuring itself that construction complies with the contract requirements. To insure an appropriate degree of independence, the contractor's job superintendent is not permitted to act as its quality control representative. The quality control representative must submit inspection reports daily to the Government's representative responsible for the project. In addition, a Government employee also inspects the work daily.

The contract file shows that the contractor's quality control organization initially was not performing satisfactorily. The Atlantic Division notified the contractor that it was dissatisfied with the quality control and held several meetings with the contractor to resolve, among other things, this problem. The file shows that thereafter the contractor's quality control improved somewhat.

We were requested to comment on whether the prime contractor improved its quality control before or after Mr. Trautner's experience.

According to the file, Mr. Trautner began work at the Guantanamo Bay Naval Base in March 1972. During September 1971 the Navy notified the prime contractor that, because some of the work was deficient, it was clearly evident that contractor quality control was nonexistent. Furthermore, the contractor was directed to submit a quality control plan that would assure conformance with specifications and accepted construction practices.

On June 2, 1972, the Atlantic Division notified the prime contractor that his quality control representative had indicated that deficiencies were not being reported unless they were major and that this was not in compliance with contract requirements. Furthermore, these matters had been brought to the prime contractor's attention previously.

During a meeting between the Navy and the prime contractor on June 15, 1972, the prime contractor was informed that there was some improvement in his quality control reporting.

In a letter dated July 14, 1972, Mr. Trautner complained to the base commander about the poor condition of the walls and panel sections he had contracted to paint; however, there are indications in the letter that he called the problem to the attention of Navy officials soon after he arrived in March.

It seems, therefore, that the question of unsatisfactory quality control was a problem early in the contract and continued intermittently during Mr. Trautner's experience at the base. The contract file does not show whether quality control improved or became deficient after Mr. Trautner left the job site in July 1972. In this regard, however, a Navy official at the Atlantic Division informed us that the prime contractor's quality control improved slowly during the project and that, by August 1972, quality control was adequate because of changes in the contractor's administrative personnel onsite and the contractor's increased experience with the quality control concept.

We cannot say with any degree of certainty whether quality control improved as a result of Mr. Trautner's complaints. However, we believe it would be reasonable to assume that the need for greater attention to such control was highlighted by his actions.

MATTER OF PRIME CONTRACTOR'S SEIZURE OF  
SUBCONTRACTOR'S EQUIPMENT FOR NONPERFORMANCE

Mr. Trautner left the job site early in July 1972 after he stopped work apparently because he was dissatisfied with conditions. Shortly thereafter the prime contractor seized his equipment because of nonperformance.

Because the Government is not a party to a contract between a prime contractor and subcontractor, problems arising between the prime contractor and any of its subcontractor must be resolved between themselves. Paragraph 23-203 of the Armed Services Procurement Regulation provides that the contracting officer shall not participate in disputes between a prime contractor and its subcontractor. Also, we find no reference in these regulations to a prime contractor's authority to seize a subcontractor's equipment.

However, when the dispute is not handled to a subcontractor's satisfaction, the subcontractor may seek remedy under the Miller Act 40 U.S.C. 270a, et. seq., which requires the prime contractor to furnish a payment bond under the contract. This requirement is intended to insure proper payment to the subcontractor for work performed. Whether the dispute here involved comes within the provisions of the payment bond would be a matter between the subcontractor and the payment bond company.

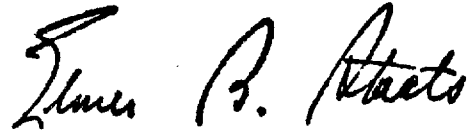
The Navy's Deputy Judge Advocate General also looked into this matter and concluded that:

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"Mr. Trautner's remedies are available through the civil courts, therefore, against both Burns & Roe, the contractor, and the Great American Insurance Company, the surety on the bond."

Please let us know if we can be of any further assistance.

Sincerely yours,

A handwritten signature in cursive script, reading "James B. Axtell". The signature is written in dark ink and is positioned above the typed name and title.

Comptroller General  
of the United States