

DOCUMENT RESUME

00105 - [A0590719] (Restricted)

[Investigation of Certain Retired Regular Military Officers to Determine Whether They Are Engaging in Activities Prohibited by 37 U.S.C. 801(c)]. PSAD-77-3; B-184849. December 16, 1976. 7 pp.

Report to Sen. William Proxmire, Vice Chairman, Joint Committee on Defense Production; by Elmer B. Staats, Comptroller General.

Issue Area: Personnel Management and Compensation: Employee Conflicts of Interest (301).

Contact: Procurement and Systems Acquisition Div.

Budget Function: National Defense: Department of Defense - Military (except procurement & contracts) (051).

Organization Concerned: Department of Defense.

Congressional Relevance: Joint Committee on Defense Production.

Authority: 37 U.S.C. 801(c). 38 Comp. Gen. 470. 42 Comp. Gen. 87. 43 Comp. Gen. 408. 41 Comp. Gen. 799. DOD Directive 5500.7.

The "civil selling law" prohibits payments from any appropriation to Regular military officers selling supplies to Department of Defense (DOD) agencies during the first three years of retirement. Findings/Conclusions: All three officers have been employed by major DOD contractors since their retirement. It was not established whether the three officers were present at hunting lodges with DOD officials to promote goodwill or on a social basis. The nature of the work performed by these major contractors placed the retired officers in positions to engage in selling activities; however, there was no evidence to establish that the retirees engaged in selling. Neither the language of the law nor the DOD Standards of Conduct adequately cover the situations described. Recommendations: The duties and responsibilities that cannot be performed by retired personnel in liaison positions should be specified, and employee responsibilities in dealing with retired officers who have contacted them in liaison activities should be defined. Employees should be required to report such contacts to appropriate DOD officials. (RBS)



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B-184649

DEC 16 1976

The Honorable William Proxmire
Vice Chairman, Joint Committee
on Defense Production
Congress of the United States

Dear Mr. Chairman:

In your letter of March 31, 1976, you requested that we investigate the activities of certain retired Regular military officers to determine whether they have engaged in activities prohibited by the "civil selling law," 37 U.S.C. 801(c) (1970). The law prohibits payments from any appropriation to retired Regular military officers who sell supplies or war materials to Department of Defense agencies during the first 3 years of their retirement.

We contacted the retired Regular officers whose names you provided. All three officers have been employed by major Department of Defense contractors in the Washington, D.C., area since their retirement. As agreed with your office, we restricted our work to the companies employing the three individuals.

Interviews were also conducted with (1) the retired officers' employers, (2) military personnel on active duty who visited the hunting lodges when the retired officers were there, and (3) personnel working in the military offices where the retired officers were assigned before retirement.

The retired officers' employers stated before a congressional committee that the purpose of maintaining company hunting lodges and sponsoring hunting trips was to (1) provide a relaxed atmosphere in which company personnel and Department officials could get to know one another and (2) promote goodwill. The employers also have stated that the retired officers were present at the hunting lodges on a voluntary basis.

While our decision 38 Comp. Gen. 470 (1959) held that a retired officer who contacts Government officials for the purpose of promoting goodwill which will result in sales to be effected by other employees or agents of the employer is a violation of the civil selling law, our investigation did not establish that the three retired officers were present at the hunting lodges on other than a voluntary basis

purely for social purposes. Perhaps our conclusions concerning the three retired officers could have been different if the alleged violations had been reported contemporaneously when better evidence might have been available. We have not, however, found any evidence showing that the officers concerned actually participated in promoting goodwill which will result in sales by their employers.

Further, in past decisions we have held that certain activities of retired Regular officers in connection with their regular job responsibilities may be considered as violations of the civil selling law even though the retired officer is not in a procurement-type position. See 42 Comp. Gen. 87, (1962), 43 Comp. Gen. 408 (1963). In the current case, we found that the nature of the work performed by employees in major defense contractors' Washington, D.C., offices, places the retired officers in positions to engage in selling activities. Two of the three retired officers, upon several occasions, visited Department of Defense offices engaged in the acquisition cycle for purposes described as "technical liaison." Our decisions have stated that technical liaison is permitted by the civil selling law. See 41 Comp. Gen. 799 (1962). Because of insufficient evidence we were not able to clearly establish that the retired officers engaged in activities which are actually defined as selling. Again we felt that the lapse of time between the participation in questionable activities by the retired officers and the date of our investigation prevented us from obtaining detailed information as to what actually occurred.

As discussed below, we are recommending that the Department of Defense clarify its regulations regarding liaison activities and require its employees to report contacts made by retired officers for the purpose of selling. If effective results are not obtained from the Department changing its regulations, we believe that Congress should consider revising the law.

THE DEPARTMENT OF DEFENSE'S
IMPLEMENTATION OF THE ACT

The law provides that:

"payment may not be made from any appropriation, for a period of 3 years after his name is placed on the list, to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the Environmental Science Services Administration, or the Public Health Service who is engaged for himself or others in selling, or contracting, or negotiating to sell supplies or war materials to an agency of

the Department of Defense, the Coast Guard, the Environmental Science Services Administration, or the Public Health Service."

The Department of Defense Directive 5500.7, Standards of Conduct, defines selling as:

- "a. Signing a bid, proposal, or contract;
- b. Negotiating a contract;
- c. Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:
 - (1) Obtaining or negotiating contracts,
 - (2) Negotiating or discussing changes in specifications, prices, cost allowances, or other terms of a contract, or
 - (3) Settling disputes concerning performance of a contract, or
- d. Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract thereof is subsequently negotiated by another person."

The directive does not preclude a retired Regular officer from accepting employment with private industry solely because his employer is a contractor doing business with the Government.

CURRENT ACTIVITIES OF RETIRED OFFICERS
PLACE THEM IN A POSITION TO ENGAGE IN
SELLING

We met with two of the three retired Regular military officers identified. We contacted the third, but his attorney did not want him to meet with us. Thus, the information concerning this individual was obtained through correspondence with his employer and his attorney. We obtained the military job descriptions in effect immediately before their retirement for the three individuals, as well as their statements of responsibilities for their current civilian employment.

All three individuals indicated knowledge of the Department's Directive 5500.7, or of the regulations implementing the directive, and each had made this known by signing a Department

of Defense Form 1357. This form, which is required to be completed by retired Regular military officers, provides for employment information after retirement and acknowledges that the directive was received.

The three retired officers began work for Department of Defense contractors within days after retirement from their last military assignments in which they were active in the acquisition cycle. One officer was engaged in liaison activities after retirement, but with the National Aeronautics and Space Administration--an agency not covered by the law. We believe that in the positions they accepted, the other two officers could be placed in a position of selling to the Department of Defense.

One of the two officers coordinated all development and acquisition activities for aerial targets. His responsibilities included considerable contact with Department technical personnel to transmit technical information between the Department and the contractor. Coincident with this activity he sent a telegram to his supervisor informing him of a service's future requirement to modify a large existing inventory of weapons and that he was working with cognizant Department personnel to help clarify technical aspects under consideration.

LIAISON ACTIVITIES BY CONTRACTORS' WASHINGTON OFFICES CAN RESULT IN SELLING

We obtained descriptions of the duties and functions of personnel employed by major Defense contractors' Washington offices and of the retired officers discussed in this report. The job descriptions refer to such terms as customer liaison, technical liaison, and marketing liaison.

We found that contractor personnel assigned to the Washington, D.C., offices were involved in:

- obtaining requirement information on requests for proposals before their release,
- establishing liaison with all levels of customer personnel to impress them with the company's capability to meet requirements,
- maintaining customer relations, soliciting new business, and determining future requirements, and
- assisting Department operating divisions in solving technical problems and attending customer briefings.

These activities could result in selling or promoting the company's products depending on the purpose of any meeting with Department officials.

LIAISON ACTIVITIES ARE NOT SPECIFICALLY
DEFINED BY LAW OR REGULATION

The law prohibits a retired Regular military officer from "--selling or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense--." Liaison activities, however, are not mentioned.

The Department has defined selling as signing a bid; negotiating a contract; contacting Federal officials to negotiate contracts; discussing specifications, price, or other terms; or settling disputes. It also prohibits "any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person." In our view, this is not in sufficient detail to cover the conditions we have described.

Selling, as a prohibited activity under the law and regulations, encompasses more than a simple transaction. In Government, procurement is a long chain of events involving many specialized activities by many persons with decisionmaking power outside the formal procurement organization.

Although every individual employed by a concern that sells a product to the Government could be considered engaged in the selling process, the right of every individual to be gainfully employed should also be considered. We recognized in 42 Comp. Gen. 87 (1962), that within that system, there are many activities engaged in by employees of companies doing business with the Government that are sufficiently specialized in a technical sense or are so broadly based in an administrative sense that they may be considered nonselling in nature. Retired Regular officers engaged in such activities would not be subject to the statutory restrictions of 37 U.S.C. 801(c).

CONCLUSIONS

Company representatives routinely call on Department of Defense staff and operating divisions to discuss company products. Moreover, the contractors' Washington offices employ personnel such as the three retired officers discussed in this report for purposes which place them in a position where selling or promoting goodwill can take place.

Neither the language of the law nor the Department of Defense Standards of Conduct adequately cover the situations we have described. As a minimum, changes in the Department's regulations and enforcement are needed. Personnel within the Department of Defense might not report instances of liaison for selling even if it can be adequately defined. Nevertheless, retired Regular officers and the Government need greater definition of their respective rights and responsibilities under current Department regulations.

RECOMMENDATIONS

We recommend that the Secretary of Defense:

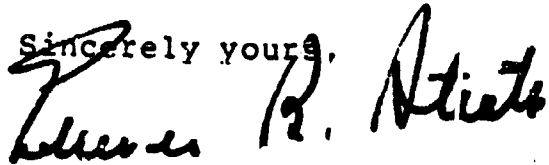
- Amend Department of Defense Directive 5500.7 specifying the duties and responsibilities that cannot be performed by retired personnel in liaison positions. Consideration should be given to prohibiting for the first 3 years after retirement such activities as (1) demonstrating, advertising, or soliciting products of a contractor, (2) exchanging contractual or technical information for the purpose of obtaining future contracts, (3) contacting agency personnel to determine need and future customer requirements, (4) contacting the agency's program or technical office personnel for the purpose of promoting goodwill, (5) contacting Government officials to keep the employer fully informed on new developments, and (6) attending social gatherings sponsored by the contractor where Department of Defense personnel are present.

- Amend Directive 5500.7 to clearly define Department employee responsibilities in dealings with retired Regular officers who have contacted them in liaison or other activities which was for the purpose of directly or indirectly selling or for the purpose of promoting goodwill which will result in sales to be effected by other employees or agents of the employer. Employees should be required to report such contacts to appropriate Department officials.

If an effective result is not obtained from the changes in the Department of Defense Standards of Conduct regulations outlined above, there may be a need for a legislative change so that the prohibition now contained in 37 U.S.C. 801(c) can be realistically enforced.

At your request, we have not obtained comments from the Department of Defense concerning this report. We will contact you shortly after you receive the report to obtain release of it to the Department of Defense. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James R. Stites". The signature is written in a cursive style with a large initial "J" and "S".

Comptroller General
of the United States