

DOCUMENT RESUME

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[Allegations Made by Contractors Concerning Activities of Employees of Defense Contract Administration Services].

B-184112. January 13, 1977. 5 pp.

Report to Rep. Joseph P. Addabbo, Chairman, House Committee on Small Business; SBA Oversight and Minority Enterprise Subcommittee; Rep. James C. Corman, Chairman, House Committee on Small Business; Government Procurement and International Trade Subcommittee; by Elmer B. Staats, Comptroller General.

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Organization Concerned: Defense Supply Agency: Defense Contract Administration Services.

Congressional Relevance: House Committee on Small Business: SBA Oversight and Minority Enterprise Subcommittee; House Committee on Small Business: Government Procurement and International Trade Subcommittee.

Authority: Walsh-Healey Public Contracts Act.

Three allegations made by contractors concerning the activities of certain employees of the New York Region of the Defense Contract Administration Services were reviewed: (1) service employees were misstating and omitting facts in official reports; (2) service employees were harassing contractors who had publicly stated their views concerning Services operations; and (3) a Service employee instructed subordinates to put several contractors out of business. Findings/Conclusions: Services employees did omit or misstate certain information in preaward survey reports, but no-award recommendations did not result from these misstatements or omissions. No evidence was found of harassment of contractors. The statement concerning putting contractors out of business was made, but there was no evidence of intent to carry out the threat. The employee in question has been admonished. (RRS)



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B-184112

The Honorable Joseph P. Addabbo  
 Chairman, Subcommittee on SBA  
 Oversight and Minority Enterprise  
 The Honorable James C. Corman  
 Chairman, Subcommittee on  
 Government Procurement and  
 International Trade  
 Committee on Small Business  
 House of Representatives

In a letter dated March 17, 1976, you asked that we review a series of allegations made by contractors concerning the activities of certain employees of the New York region of the Defense Contract Administration Services.

In discussions with your offices, it was agreed that we would review three allegations. We interviewed various contractor, Services, and Small Business Administration personnel and reviewed correspondence, records, and reports on the subject.

ALLEGATION 1

Services employees were misstating and omitting facts in official reports.

Response

A contractor believed that facts concerning its qualifications had been misstated or omitted by Services employees in various preaward survey reports and that this had resulted in a no-award recommendation to a military buying activity which was considering the contractor as a bidder. We concluded that Services employees did omit or misstate certain information. In the case in question, however, the no-award recommendation did not result from this problem; rather, it resulted from a determination based on Department of Labor criteria that the contractor was not a qualified manufacturer within the meaning of the Walsh-Healey Public Contracts Act. We found no evidence that Services employees acted other than prudently and within the scope of their responsibility in applying the Labor policy.

This allegation was a composite of several specific and related charges made by a single contractor. The contractor charged Services personnel with:

- a. Omitting the contractor's plans to obtain additional production personnel from two preaward survey reports.

Facts developed

The contractor was correct. However, Services failure to include the contractor's plans did not cause the no-award recommendation.

- b. Omitting a change in the significance of the engineering and design function as a qualifying factor from one report.

Facts developed

The contractor was correct. Previously, Services had issued positive preaward recommendations based on an interpretation of the Walsh-Healey Act which made the contractor in question eligible to receive Government supply contracts. This was based on the contractor's engineering and design capability coupled with an assembly operation.

Labor, however, which is responsible for administering the act, later advised Services that an assembler must first qualify as a manufacturer before becoming eligible for the award of a Government supply contract. As a result, Services concluded that the contractor's engineering and design capability was irrelevant in determining Walsh-Healey eligibility and omitted it from the report.

We previously reported to the Honorable Thomas J. Downey on Labor's requirements for determining a bidder's eligibility as a manufacturer (PSAD-76-88, Feb. 23, 1976). In that report we stated, among other things, that the manufacturer requirement was not being uniformly interpreted and applied by Government procurement officials and that Labor should develop improved standards for use by procurement officials and should establish controls necessary to insure that the act is properly administered.

In response to recommendations made in that report, Labor is currently developing and coordinating through the Office of Federal Procurement Policy, Office of Management

and Budget, a proposed codification of various Labor rulings, interpretations, and enforcement policies made with respect to the act.

- c. Omitting factual information concerning the significance of commercial work requiring an engineering, design, and manufacturing effort.

Facts developed

The Services employee responsible for preparing the report on the contractor's operation acknowledged that he made no reference to the fact that the contractor had certain commercial orders in-house at the time of his plant visit. He felt that the work was insignificant since each order had a contract value of less than \$10,000. He further stated that the principal issue was whether the contractor was a manufacturer within the meaning of the Walsh-Healey Act.

- d. Misstating industry's capability to manufacture certain types of filters.

Facts developed

The contractor alleged that it and one other company had the only capability to perform this contract. Data made available to us does not support this allegation. It appears there were a number of established manufacturers with the necessary technical know-how and equipment to fulfill the requirements of this contract.

- e. Making a misstatement of fact in a survey report concerning withholding tax.

Facts developed

The Services employee reported that the contractor had not forwarded withholding tax on its employees. However, a later Defense Supply Agency investigation showed that the contractor had submitted withholding tax on a timely basis for its full-time but not its part-time employees. The Services employee stated that he erred in not qualifying his remarks but that he did not do so at the time because it was not a significant issue in the case.

- f. Misquoting the contractor about its manufacturing capability relative to equipment availability.

Facts developed

The contractor stated that having equipment available per se was not a requirement, since the entire operation could have been subcontracted out. Services felt that the Labor ruling that an assembler must first qualify as a manufacturer (see point b) was an overriding consideration and that it required a contractor to have the equipment necessary for contract performance. Consequently, Services concluded that the contractor was not a qualified manufacturer and recommended no-award in the preaward survey.

ALLEGATION 2

Services employees were harassing contractors who had publicly made known their views concerning Services operations.

Response

This allegation was based on a contractor's statement that Services personnel willfully harassed contractors who had publicly stated that Services was using the Walsh-Healey Act to deprive them of Government contracts. We found no evidence in support of this allegation.

At the request of Chairman Addabbo, the Secretary of Defense initiated an investigation of this allegation to determine whether Services personnel willfully acted in reprisal against those who either testified at a June 5, 1975, hearing on the Small Business Administration's certificate of competency program or spoke publicly on the Walsh-Healey Act problem dealt with at the same hearing. The Defense Supply Agency, which conducted the investigation, found no evidence of deliberate harassment or reprisal although it did point up a need to improve personal contacts and relationships with contractors.

Of the five contractors that either testified or were mentioned at the hearing, four did not make allegations of later harassment.

We found that relations between Services and these contractors had improved since the hearing. Communications, including site visits, had increased and problems appeared minimal.

The contractor making the allegation had serious problems in fulfilling Government contracts, but we found no evidence of harassment by Services employees.

ALLEGATION 3

A Services employee instructed his subordinates to put several contractors out of business.

Response

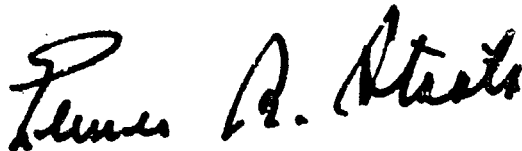
This allegation was made during the time the Defense Supply Agency was investigating the charge of harassment. It was based on a contractor's contention that the statement was made at a meeting of Services personnel. Several Services employees told us that the statement had been made. The employee alleged to have made the remark, although not confirming he had said it, nevertheless, felt that any such remark had to be taken in its entire context, that is, any contractor failing to conform to Government specifications would not be permitted to continue to do business with the Government.

We found that while the statement was apparently made, there was no evidence of any attempt to carry out the threat. The employee concerned has been formally admonished and counseled on how to act in future dealings with contractors.

One of three contractors referred to by the Services employee has since gone out of business. A review of the circumstances surrounding that event failed to reveal that it was attributable to actions taken by Services.

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As instructed by your offices, we did not request comments on this report from the Department of Defense. However, we did discuss our findings with the Commander, Services, New York, and his staff. They agreed with the facts developed and the conclusions reached.



Comptroller General  
of the United States