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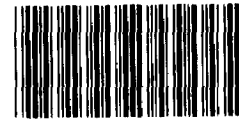


COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-198502

APRIL 29, 1980

The Honorable Jack Brooks  
Chairman, Subcommittee on Legislation  
and National Security  
Committee on Government Operations  
House of Representatives



112382

Dear Mr. Chairman:

Subject: [Allegations of Army Retaliation Against Bristol Electronics, Inc., New Bedford, Massachusetts, As a Result of Earlier Committee Inquiries] (PSAD-80-45)

In response to your November 15, 1979, request, we investigated allegations by Mr. Stanley A. Revzin, President, Bristol Electronics, Inc., that were set forth in his November 1, 1979, letter to you. (See enc. V.) We also considered the information in Mr. Revzin's February 27, 1980, letter to you, concerning essentially the same allegations.

In our investigation we found no documentary evidence supporting Mr. Revzin's allegations, and all indications are that the Army treated Bristol fairly. Bristol's difficulties appear to be the result of its decision to accept the risk inherent in bidding a fixed-price contract at an unrealistically low price, expecting to offset losses against other business. Details supporting our conclusions are set forth in enclosure I.

The scope of our work was designed to cover your primary concern that a contractor may have suffered retaliation as a result of its cooperation and testimony before your committee. During the course of our investigation, we informally kept your office advised of developments as they occurred. We interviewed Mr. Revzin to clarify his allegations, and we reviewed the record of hearings referenced in his letter. We visited the U.S. Army Communications and Electronics Materiel Readiness Command, Fort Monmouth, New Jersey, to review contract files and other records pertinent to the allegations and to interview those having direct knowledge of these issues. We visited the Defense Contract Administration Services, Management Area, Boston, Massachusetts,

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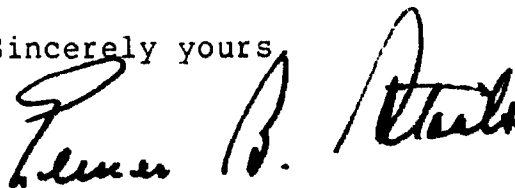
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to discuss the preaward survey data. At this location we talked to the quality assurance representative about the details concerning the operability of the Government-furnished special acceptance test equipment, which was an item at issue. We also interviewed the contractor who refurbished and delivered this test equipment to Bristol.

At the conclusion of our fieldwork, we held comprehensive exit conferences with Army officials at the Pentagon and with Mr. Revzin at his plant in New Bedford.

As you requested, we did not obtain official agency or contractor comments on the matters discussed in this report. Unless you publicly announce its contents earlier, no further distribution of this report will be made until 30 days from the date of the report.

Sincerely yours,

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

Comptroller General  
of the United States

Enclosures - 5

ALLEGATIONS OF ARMY RETALIATION  
AGAINST BRISTOL ELECTRONICS, INC.,  
NEW BEDFORD, MASSACHUSETTS, AS  
A RESULT OF EARLIER COMMITTEE INQUIRIES

BACKGROUND

Bristol's president, in his November 1, 1979, letter, to the chairman, House Committee on Government Operations (see enc. V), alleged that his company was experiencing retaliation by the Army as a direct result of earlier inquiries by the committee. These inquiries were the basis for two reports: (1) Questionable Contract for Mobile Field Radios by the Department of the Army, House Report Number 94-1383, August 3, 1976, and (2) Procurement Practices at the U.S. Army Communications and Electronics Materiel Readiness Command (CERCOM), House Report Number 95-1677, October 2, 1978. Two of the procurements covered in these reports concerned contracts for the AN/PRC-77 radio sets and the Modem 522 teletypewriter. Both contracts were awarded to E-Systems, Incorporated. In general, the committee questioned the procurement practices and procedures employed in the award of these contracts.

Because of administrative difficulties, the AN/PRC-77 contract awarded in March 1974 was advertised four times. Bristol bid low three times, but E-Systems was low the fourth time and received the contract. In regard to the Modem 522 teletypewriter contract awarded in September 1977 to E-Systems, the committee was concerned that this procurement was a "buy-in." Buy-in refers to the practice of attempting to obtain a contract award by knowingly offering a price or cost estimate less than anticipated costs with the expectation of either (1) increasing the contract price or estimated cost during the period of performance through change orders or other means or (2) receiving future follow-on contracts at prices high enough to recover any losses on the original buy-in contract.

After the committee issued its August 3, 1976, report but before it issued its October 2, 1978, report, Bristol was awarded two contracts for manufacturing radio sets. Discussion of these two contracts, the Army contract and the Austrian contract, follows.

THE ARMY CONTRACT DAAB07-78-C-0107

This contract was for the manufacture of 7,452 AN/PRC-77 radio sets and 3,505 RT-841 receiver-transmitters, with supporting data and accessory items. The RT-841 is an AN/PRC-77 without the accessories. (See photo, p. 3.)

In bidding for this contract under formal advertising procedures, Bristol made a management judgment to bid a price it believed would win the competition, knowing that such a price would not recoup all of its costs. Bristol submitted the low bid of \$6,107,966, representing a unit price of \$563 for the AN/PRC-77 and \$518 for the RT-841. The four other bidders for this contract and their bids were as follows:

E-Systems	\$6,348,456
Baltimore Electronics	\$7,011,484
Sentinel Electronics	\$8,390,683
Cincinnati Electronics	\$8,763,441

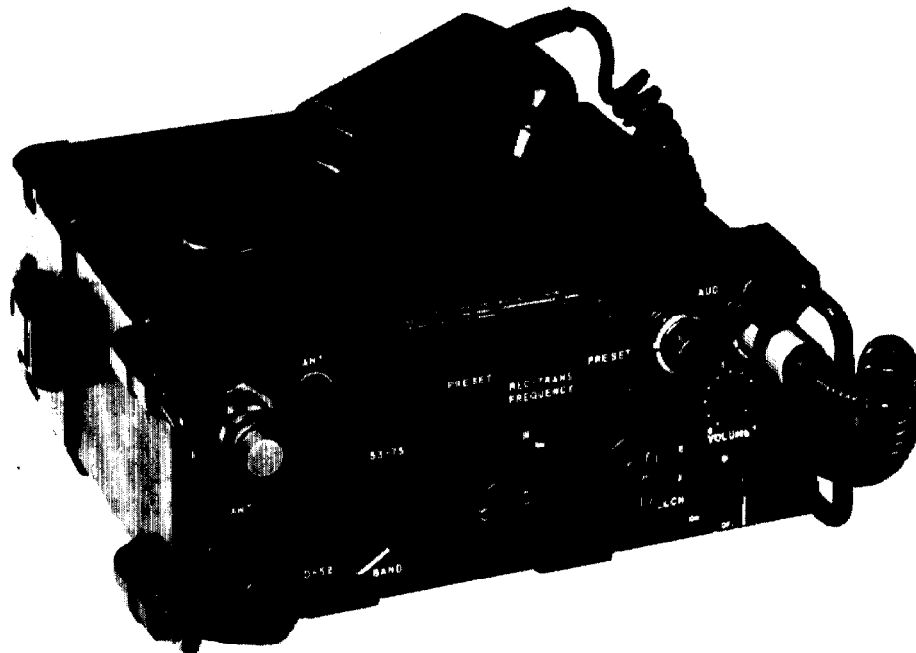
Under the formal advertising method of procurement, the contractor submitting the low bid, if found responsive and responsible, must be awarded the contract.

The preaward survey disclosed that Bristol, during the prior 4 years had produced 7,760 radio sets (AN/PRC-77) for foreign sales, commercial sales, and the U.S. Government. The last contract was with a commercial firm for 4,029 RT-841s at \$735 each. That contract was completed in March 1977, 4 months ahead of schedule. Largely because of this prior experience in producing the radio sets and satisfactory performance on other contracts, the preaward survey team found Bristol to be a responsible prospective contractor.

Although the preaward survey team was satisfied that Bristol met or exceeded the minimum standards for responsible prospective contractors, it was concerned with Bristol's financial resources. Bristol's financial condition was not completely satisfactory because of inadequate working capital to sustain day-to-day operations without short-term borrowing. However, Bristol's bank agreed to provide a total line of credit amounting to \$650,000 and to finance the Army contract in an amount not to exceed \$200,000.

While Bristol was not required, under formal advertising procedures, to submit a detailed cost analysis of its bid

AN/PRC-77 RADIO SET



SOURCE: U.S. ARMY

price, it did provide data to enable the preaward survey team to evaluate Bristol's financial capability to perform the contract. Bristol included the fact that its bid price did not provide for the full recovery of indirect expenses. Prior to bidding on this contract, Bristol was experiencing a factory overhead (O/H) rate of about 150 percent of its direct factory labor. In addition, its general and administrative (G&A) expenses were running at a rate of about 15 percent of the total of all costs. However, Bristol's bid price reflected a combined rate of only 62.5 percent of direct factory labor. (See enc. II.)

Using these factors, along with estimates of certain material and labor costs, and considering Bristol's forecasts of other sales (see enc. III), the team concluded that although Bristol might incur a loss of \$875,000 on the Army contract, it could absorb that loss by realizing an overall profit of 3.6 percent on total forecasted sales of \$24.3 million over the contract life.

On the basis of an overall analysis of Bristol's financial position, the preaward survey team determined that Bristol was financially responsible and met the minimum standards for financial resources in accordance with applicable procurement regulations. Accordingly, Bristol was awarded a fixed-price contract on November 16, 1977, at its bid price of \$6,107,966.

#### AUSTRIAN CONTRACT DAAB07-78-C-0117

The Government of Austria directed that 500 AN/PRC-77 radio sets be procured sole source from Bristol Electronics, Inc. At CERCOM's request, Bristol submitted a September 8, 1977, proposal for the manufacture of these radios at a firm-fixed unit price of \$1,550.21. This proposed price included manufacturing O/H at 160 percent and G&A expenses at 17 percent. As stated earlier, Bristol based its unit price for the Army contract on a 62.5-percent factor represented by the 160- and 17-percent factors noted here.

Negotiations were opened on November 22, 1977. CERCOM noted that the proposal included an inflated bill of materials, possible duplication of first articles and gage requirements, and some duplication in the overhead rate. Also, the same radio was being procured under the Army contract at \$563 each. Bristol countered by noting an earlier delivery schedule, requiring a separate material acquisition for lesser quantities than required for the Army contract. Also, the Austrian contract required separate first article bench testing. CERCOM then offered a unit price of \$1,150

to which Bristol countered with a unit price of \$1,402. Negotiations then reached an impasse. On November 23, 1977, Bristol accepted CERCOM's counteroffer of a unit price of \$1,175, or a total price of \$587,500.

While the contract awarded on December 28, 1977, required completion of deliveries in June 1979, subsequent modifications to the delivery schedule were made, changing the final delivery date to November 1979. Bristol advised CERCOM in a September 26, 1979, letter that shipments were being delayed by parts shortages caused by its cash flow problems. Bristol has delivered 300 of the 500 radio sets and is delinquent on the remainder.

#### OTHER FACTORS

Bristol is a small business firm. Its history of the numbers of people employed is shown in enclosure IV. That data shows that, at the time of Mr. Revzin's allegations (Nov. 1, 1979), Bristol employed 80 people, compared to a 5-year peak of 216 people in 1976.

According to documents in CERCOM's files, Bristol's original financing plan did not provide for increases in the prime interest rate for borrowing. Actual combined sales <sup>1/</sup> for 1978 and 1979 were \$2.3 million as compared with projected sales of \$13 million. For its fiscal year ended August 31, 1977, Bristol made a net profit of \$109,484; while for fiscal years 1978 and 1979, it had losses of \$529,314 and \$306,574, respectively. (See enc. III.)

Also, when Bristol made its allegations, CERCOM had already granted Bristol a unilateral adjustment under the Army contract for \$981,049 to cover costs relating to a 13-month delay, primarily due to the inability to furnish Government-owned special acceptance test equipment. (See pp. 9 and 10.)

Bristol was also waiting for a CERCOM Contract Adjustment Board to decide on its request under the Army contract

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<sup>1/</sup>Financial data is based on operations of Bristol Electronics, Inc., and Bristol Electronics International, Inc. Both corporations are controlled by Mr. Stanley Revzin.

for relief under Public Law 85-804. <sup>1/</sup> Bristol requested \$3,520,000 for correction of what it claimed to be a mutual mistake based on its estimate that it would currently cost about \$11 million to perform the original \$6.1 million contract. According to Bristol, the mutual mistake was that both Bristol and the Government believed that the contractor's bid price did not include a large inherent loss.

An audit report of October 18, 1979, prepared by the Defense Contract Audit Agency, in connection with the Bristol claim, concluded that, had this procurement been performed at the original contemplated price of \$6.1 million, there would have been an estimated cost overrun of \$2.6 million, excluding material scrap costs. The report states that one reason for the indicated overrun was that historical experience, as well as current experience, is in extreme variance with the 62.5-percent composite rate Bristol included in its bid.

On December 12, 1979, with the concurrence of Headquarters, U.S. Army Materiel Development and Readiness Command, CERCOM notified Bristol that its request for relief under Public Law 85-804 was denied and that the contract was terminated for default because Bristol's financial position was so bad that it constituted an anticipatory breach of contract. CERCOM also demanded that Bristol return \$558,568, representing the unearned balance of progress payments.

On December 19, 1979, pursuant to an order received from the Department of the Army, CERCOM sent Bristol a letter rescinding the December 12 notices denying relief under Public Law 85-804 and terminating Bristol's contract for default, pending further review. On February 14, 1980, CERCOM received a message from its headquarters, stating that, as a result of a review conducted by the Department of the Army General Counsel at the request of the Secretary of the Army, the order of December 19, 1979, was withdrawn. CERCOM then notified Bristol on February 15, 1980, that the decision

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<sup>1/</sup>Public Law 85-804 allows the President to authorize any Government agency or department exercising functions in connection with national defense to modify contracts and make advance payments regardless of other laws that relate to making, performing, amending, or modifying contracts, whenever he deems that such action would facilitate national defense.



to deny its request for relief under Public Law 85-804 was reinstated, as was the termination for default.

#### BRISTOL'S ALLEGATIONS

Bristol's November 1, 1979, letter (see enc. V) cited several allegations and other allegations were made to us during interviews with Mr. Revzin. The sideheadings are taken from Mr. Revzin's letter, and the information which follows them was obtained during our review.

Bristol believes it is experiencing retaliation by the Army as a direct result of the committee's inquiries.

The committee inquiries are covered in the two reports discussed on page 1 of enclosure I.

In our interviews with Mr. Revzin, he said on the issue of retaliation that, although he has no documented proof, his feeling of being retaliated against is based on several factors. One is that, after the Modem 522 contract was awarded to E-Systems in September 1977, Bristol asked for a debriefing on that award, but the contracting officer refused. According to Mr. Revzin, the contracting officer also refused to return several telephone calls.

CERCOM's correspondence files include information showing that on two occasions, November 8, and December 13, 1977, debriefing meetings were scheduled, but Bristol chose not to attend. In response to a January 31, 1978, letter from Bristol requesting a written explanation to numerous questions, the contracting officer informed Bristol that he was ready to give a debriefing at any mutually agreeable date and time and reiterated that he and CERCOM would cooperate to the greatest extent possible. Bristol's February 15, 1978, reply included the following:

"Your letter doesn't indicate that on two occasions you told me over the telephone that you would write me a written debriefing as required by the ASPR [Armed Services Procurement Regulation], and on one occasion you were unable to keep an appointment due to some other meeting you had to attend.

"Due to the inclement weather and my own personal upcoming vacation, I will not be able to schedule a formal debriefing until the early part of March. I trust the facts will remain sufficiently clear

in your mind on that day so that I may obtain a meaningful debriefing."

The procurement regulation that concerns the debriefing of unsuccessful offerors does not require that the debriefing be in writing. It does require that the request for a debriefing be written.

According to the contracting officer, Bristol did not subsequently contact him to arrange for the March debriefing.

Mr. Revzin charged further that CERCOM (1) took the full 45 days allowed by contract 0117 (Austrian contract) to approve the first article test reports even though the actual tests had been witnessed and approved by the Defense Contract Administration Service Management Area (DCASMA) quality assurance representative and (2) declined to send someone to witness the tests.

We discussed the above complaint with the CERCOM product assurance specialist assigned to Bristol. He produced his travel records which showed that, contrary to Mr. Revzin's recollection, he was at Bristol most of the time from December 26, 1978, through March 21, 1979, when the testing took place at the plant.

Records at CERCOM show that Bristol submitted the first article test reports without submitting the required requests for waivers and/or engineering change orders. Bristol was therefore requested to submit the missing data. While the approval of the reports was within the time provided in the contract, the delay, according to CERCOM, was actually attributable to Bristol's not providing required data.

The Government determined that Bristol's bid was not a loss contract. Bristol sustained a protest by E-Systems when the contracting officer advised the General Accounting Office that he personally reviewed all pertinent data and conditions and was satisfied that it was not a loss contract.

The evidence we found indicates that this allegation is not accurate. Bristol is referring to a response the contracting officer made to our office in reference to E-System's bid protest of December 19, 1977. The contracting officer responded that the preaward survey did indicate the possibility of a loss. The response stated, in part:

"\* \* \* an analysis of Bristol's financial capability during the preaward survey did indicate the

possibility of a loss of approximately \$350,000 if Bristol's projections of future business and sales did not materialize. However, if Bristol's projections do materialize, and the projections were not considered to be unrealistic, Bristol will make a profit on the contract. In any event, Bristol's ability to absorb the potential loss was reviewed and evaluated, and Bristol did demonstrate sufficient resources and credit to absorb the potential loss."

In reviewing the preaward survey data, however, we found that the approximate loss of \$350,000 was understated and the DCASMA financial analyst's survey workpapers clearly showed a potential loss of about \$875,000 on the Army contract. The contracting officer's loss figure of about \$350,000 appears to have been based on an analysis we found in CERCOM's records showing an indicated loss of \$383,495. CERCOM currently considers the indicated loss was approximately \$875,000. We believe that the \$350,000 figure may have been used in the bid protest response to our office merely to reduce the appearance of a buy-in.

The Army failed to deliver certain Government-furnished test equipment on time and in a condition suitable for use. As a result, Bristol's contract has been delayed over 13 months during which time it could not perform and had to sustain a loss in unabsorbed O/H.

Mr. Revzin told us that he believes this action amounted to retaliation. The contract required the Army to provide Bristol with two sets of Government-furnished special acceptance test equipment 90 days after award or about February 16, 1978. However, the first system was not delivered until June 7, 1978, and the second on November 7, 1978. Both systems were inoperative upon arrival at Bristol's plant. Mr. Revzin charged that the Army made the contract award to Bristol in full knowledge that this test equipment was defective. This charge is based on the fact that delays involving similar test equipment were part of a claim submitted to CERCOM by Cincinnati Electronics Corporation, another firm that was also manufacturing the same radio sets.

The general statement that the Army knew that the test equipment was not operating properly is correct. The Army was unable to deliver two test systems on time; and, when delivered, they did not work as intended.

On November 17, 1978, Bristol submitted a claim for an additional \$9.6 million because of a delay in furnishing the test equipment for its original \$6.1 million contract. CERCOM accepted the delay period as 13 months, and in subsequent negotiations the claim was reduced somewhat to \$7.4 million. However, CERCOM was unable to reach a negotiated settlement, and the contracting officer, after review and analysis, found that portions of the claim had merit. Accordingly, he rendered a unilateral decision granting Bristol \$981,049 as an equitable adjustment.

The records at CERCOM show that prior to November 16, 1977 (the date of the Bristol Army Contract), test systems manufactured in 1970 and 1971 by AAI Corporation were not working properly. Downtime reports for the period March 1977 through October 1977 for two test systems in operation at Cincinnati Electronics show numerous malfunctions and unanticipated problems were encountered in testing AN/PRC-77 production radio sets.

Cincinnati Electronics made claims against the Government totaling over \$19 million. These were the claims alluded to by Mr. Revzin as resulting from defective Government-furnished test systems. According to the Cincinnati Electronics claim data we examined, only \$141,122 was attributable to the test systems; and, according to CERCOM the final settlement included less than \$100,000 for delays caused by the test systems.

On October 17, 1977, CERCOM modified its service contract with AAI Corporation to assign a full-time service representative to work on the test systems' problems at Cincinnati Electronics. According to AAI Corporation, after that modification, use of the systems improved at Cincinnati Electronics.

In September 1977 CERCOM contracted with AAI Corporation to refurbish the test systems for what was to become Bristol's November 16, 1977, contract.

AAI Corporation could not determine exactly how long it would take to refurbish the systems because needed spare parts were not readily available. Also, after the systems were delivered to Bristol, AAI Corporation representatives experienced a general lack of cooperation at Bristol. As an example, an AAI Corporation representative responded to a service call in November 1978 and needed to borrow some of Bristol's test equipment to complete the service call. Bristol refused to allow the use of its equipment, however, necessitating the transportation of AAI Corporation equipment from Baltimore,

Maryland, and causing a longer than usual delay. An AAI Corporation representative said he understood that Bristol Electronics would make test equipment available as a courtesy.

As another example of poor cooperation, a CERCOM product assurance specialist said that Bristol would not permit him to use its instruments to calibrate small fixtures. He also said that Bristol wanted the test systems maintained at a level beyond that needed to perform tests required by the contract. Bristol denies that it withheld the use of test equipment from AAI Corporation or from CERCOM.

As previously mentioned, one test system was delivered to Bristol on June 7, 1978, and the second system on November 7, 1978. Problems were experienced with both systems. On December 4, 1978, the Government Director of Product Assurance certified the test systems were operational and suitable for their intended use. AAI Corporation service personnel also certified their suitability. CERCOM records state that, while testing one system on November 15, 1978, Bristol refused to witness the acceptance tests. Bristol still would not approve the systems until May 30, 1979.

The Army threatened default and gave Bristol 10 days to cure the loss condition or suffer default. The Army also assumed a position of not encouraging performance.

The CERCOM cure notice of July 18, 1979, stated that the potential loss under the Army contract would exceed \$3 million. Because Bristol had admitted an inability to absorb even a portion of the potential loss, the Army concluded that performance of the contract in accordance with its terms was endangered and issued a cure notice.

In our opinion, the Army's actions were appropriate. According to CERCOM records, the Army granted Bristol several time extensions to the cure notice through December 12, 1979, when the contractor was first informed that the contract was terminated for default. The termination for default took place after Bristol was denied a request for relief under Public Law 85-804 and could not provide an adequate cure for its financial inability to perform the contract.

According to CERCOM correspondence, after the Army sent Bristol the cure notice, it did not encourage Bristol to proceed with the contract and said that proceeding would be at Bristol's own risk.

Mr. Revzin also questions CERCOM's action to terminate the contract for default rather than for convenience to the Government since no deliveries had been made under the contract. In this respect, an examination of the termination notice shows that it was pursuant to Defense Acquisition Regulation 7-103.11(a) covering default. The contracting officer's decision was based upon Bristol's inability to perform the contract, which the Army believes constitutes an anticipatory breach. The contract was not terminated for convenience because the Government still needs the AN/PRC-77 radio sets.

The Army requested Bristol to submit a proposal for leasing commercial automatic test equipment when it became obvious that there would be a delay in delivering special acceptance test equipment. A year later, CERCOM rejected Bristol's proposal to lease automatic test equipment.

According to records at CERCOM, the Army, as of January 24, 1978, authorized Bristol to study the feasibility of acquiring other automatic test equipment on a lease-type arrangement and submit a proposal after it became obvious that deliveries of the Army test equipment would be delayed. The Army reserved the right to review and approve any resulting leasing plans.

Correspondence prepared by Bristol shows it was unable to meet with a test equipment supplier and could not respond with a firm proposal by March 15, 1978, the Army's designated date. It was not until May 1, 1978, that the Army received Bristol's proposals for leasing automatic test equipment. A proposal using one supplier's equipment amounted to \$1.4 million, and the lease arrangement would have permitted Bristol to acquire equipment at the end of the lease at a purchase-option price amounting to an estimated 85-percent discount off the purchase price. A proposal to lease equipment from another supplier would have cost \$2.4 million.

On the basis of its evaluation of the proposals, CERCOM concluded that Bristol's acquisition of two sets of automatic test equipment would result in a severe delay in the delivery schedule of both the Army and the Austrian contracts. Therefore, CERCOM withdrew its January 24, 1978, authorization and notified Bristol that it intended to deliver the original test equipment. One test set was to be delivered in June 1978 and the other in January 1979.

Bristol again proposed using the leased automatic test equipment even after the first of two Army systems had been delivered since it claimed the Army test equipment was not reliable. Because Bristol continued to find fault with the Army equipment, in October 1978 the Army agreed that Bristol could provide additional information on the specific terms of its proposed lease of test equipment. However, because delays had already occurred, the Army informed Bristol that it still proposed to install and maintain two operational test systems and that the second system would be delivered about November 6, 1978, to minimize any further delays. The second system was delivered on November 7, 1978. It should be noted that, although the Army test equipment deliveries were completed in November 1978, some time was needed to make the systems ready for use.

During meetings held at Bristol's plant on November 7, and 8, 1978, CERCOM representatives were still willing to consider Bristol's acquisition of automatic test equipment. Discussions covered the alternative of having Bristol purchase rather than lease the equipment because of the problem of interest on lease payments and the fact that the lease price was considerably greater than the direct purchase price by Bristol. CERCOM's representatives indicated that a procedure would be developed to provide Government funding so that Bristol would not have any burden of interest cost. The actual procedure for funding was to be developed at later negotiations, with the title to the automatic test equipment remaining with Bristol.

Bristol's response was that it would not submit acquisition cost data and would not further discuss its proposal for acquiring equipment unless the contracting officer first agreed in writing to Government liability for a 12-month delay in the performance of both the Army and the Austrian contracts. In essence, Bristol wanted the contracting officer to admit Government liability for a claim Bristol was planning to make, and 9 days later Bristol did submit a \$9.6 million claim for a delay, previously discussed on page 10.

As noted on page 11, Bristol did not accept the Army test systems until May 30, 1979, when negotiations began on the Bristol claim.

#### EXAMPLE OF ARMY ASSISTANCE TO BRISTOL

The Army contract originally limited Bristol's progress payments, prior to a first article approval, to \$10,200, representing 85 percent of Bristol's \$12,000 bid price for

the first article. Bristol requested a contract modification to allow an increase in the progress payments limitation. On June 26, 1978, the Army modified the contract for consideration of \$1,000. The net effect of this modification was to provide Bristol with an increased progress payment limit from \$10,200 to \$610,796. The value of this change to Bristol, at the then commercial, short-term interest rate of 8.25 percent, equals \$49,549 a year.

#### CONCLUSION

In our investigation we did not find any documentary evidence supporting Bristol's allegations that the Army retaliated against it as a direct result of Mr. Revzin's earlier testimony before the House Committee on Government Operations. On the contrary, the record shows that the Army gave Bristol fair treatment within its authority and, in fact, may have been lenient in applying applicable procurement regulations.

In our opinion, the basic cause for Bristol's present extreme financial difficulties is the unrealistically low price it bid on a formally advertised fixed-price contract, expecting to offset that loss against profits from estimated future business. These estimates proved unrealistically high, and much of Bristol's future business did not materialize. Bristol used the same buy-in procurement strategy which was criticized in the earlier Government Operations Committee reports.

The Army is not without fault. It knew that the Government-furnished special test equipment, planned for use on Bristol's contract, was plagued with problems. The Army also had information that showed Bristol's potential loss could be as much as \$875,000; yet, in responding to a bid protest, it only acknowledged a potential loss of about \$350,000. The DCASMA preaward survey team's workpaper showed the \$875,000 potential loss, yet this fact was not clearly highlighted in the preaward survey report. While these circumstances suggest a less than adequate judgment on the part of Army procurement personnel in the award and administration of the Bristol contract, the facts do not support the allegation of retaliation.

After the award of Bristol's contract, the Army took appropriate actions in attempting to resolve the developing problems described in this report and obtain satisfactory contract performance. The Army did accept responsibility for a 13-month delay and the associated adjustment of \$941,049. The Army's denial of Bristol's request for relief under

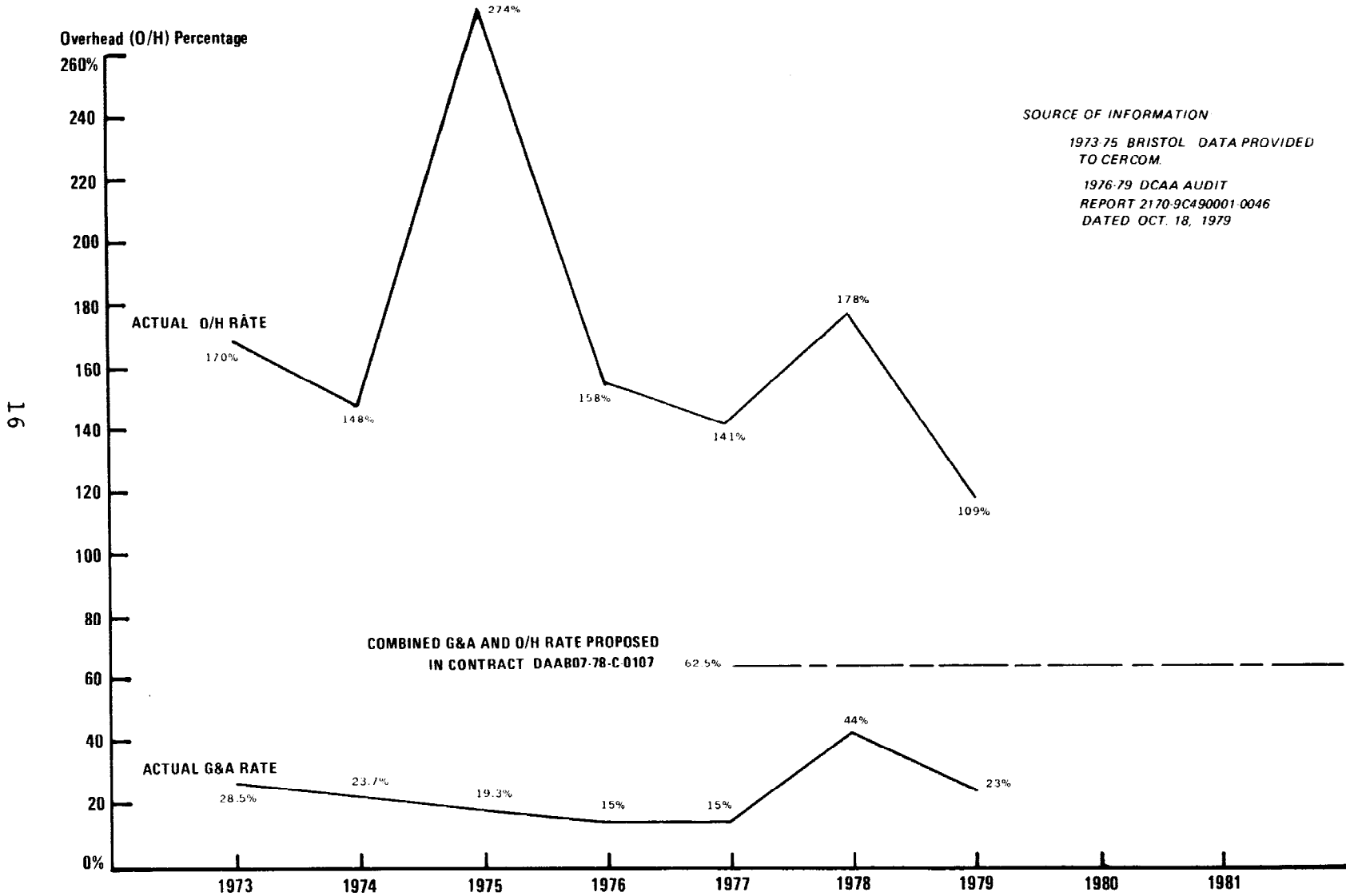


ENCLOSURE I

ENCLOSURE I

Public Law 85-804 was based on what the Army believes to be the merits of that claim, and we see no basis to question the action taken.

**BRISTOL ELECTRONICS, INC. ACTUAL RATES FOR OVERHEAD AND GENERAL & ADMINISTRATIVE  
EXPENSES AND COMBINED RATE USED IN ARMY CONTRACT**

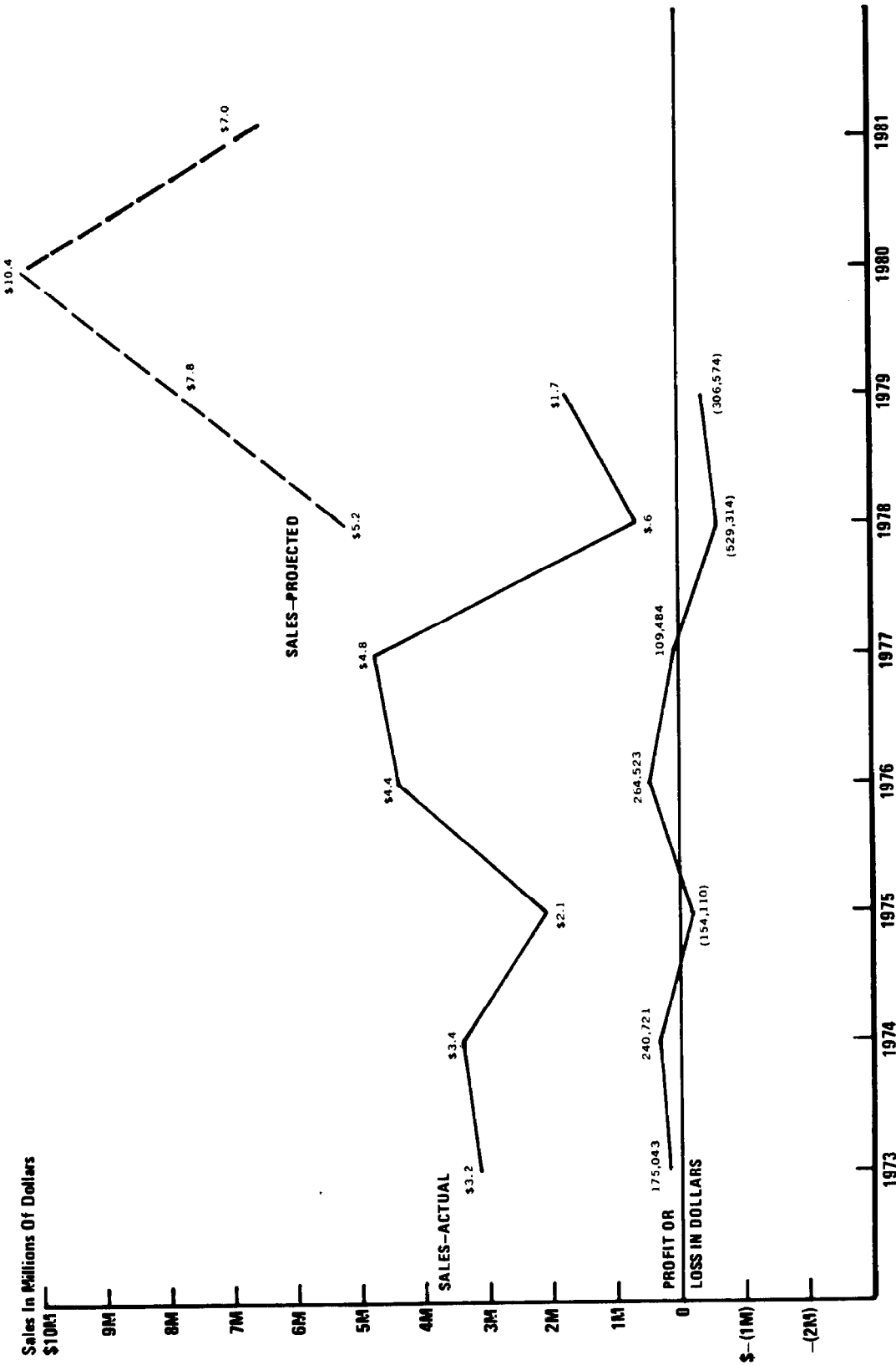


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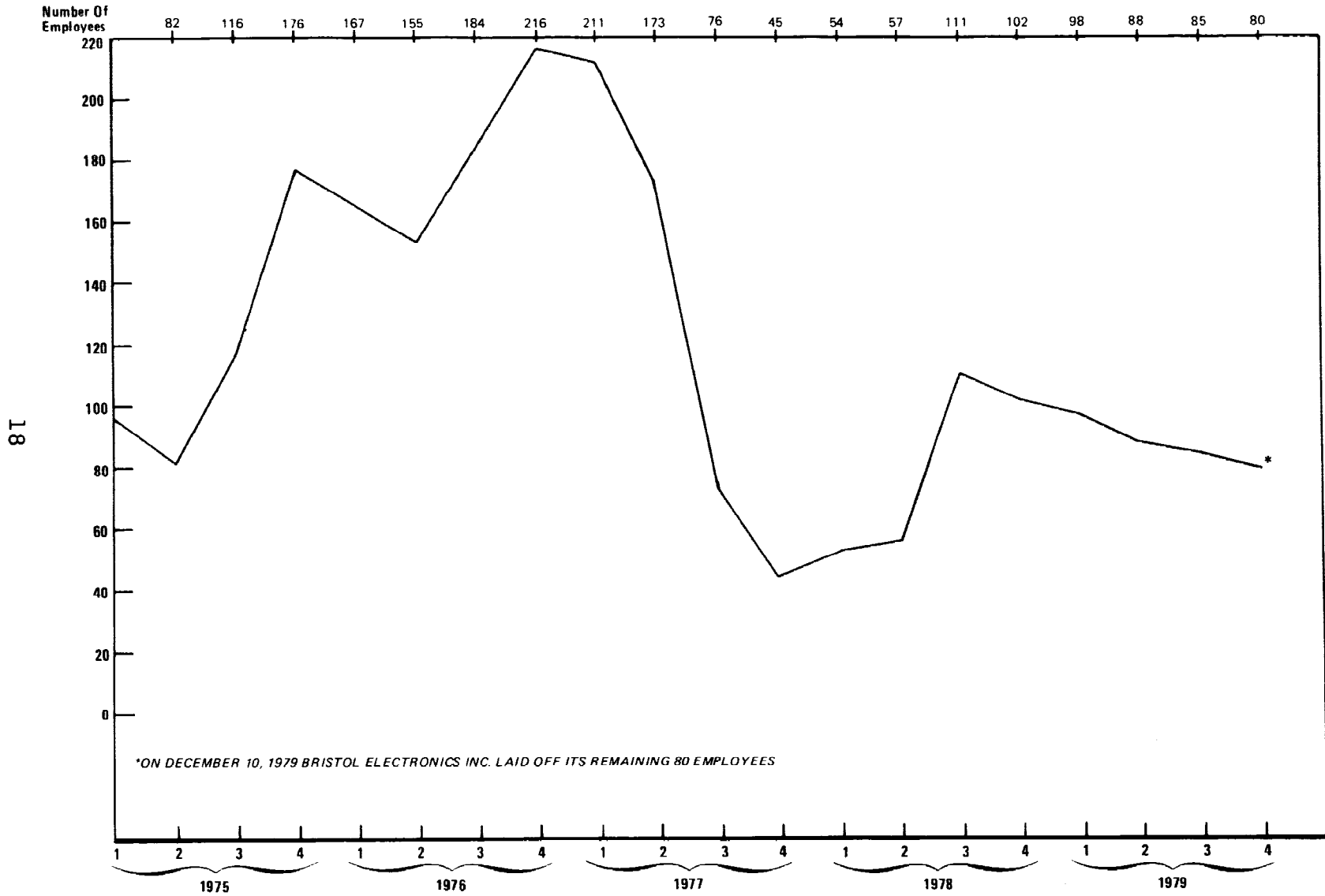
ENCLOSURE II

ENCLOSURE II

BRISTOL'S SALES—ACTUAL/PROJECTED AND PROFITS AND LOSSES



BRISTOL ELECTRONICS INC. NUMBER OF EMPLOYEES BY QUARTER  
FROM 1975 THROUGH 1979.



18

ENCLOSURE IV

ENCLOSURE IV

## BRISTOL ELECTRONICS, INC.

BRISTOL BUILDING • 2157 RAYBURN STREET • NEW BEDFORD, MASSACHUSETTS 02451 • TELEPHONE (617) 852-2100

November 1, 1979

RECEIVED

NOV 5 1979

Mr. Jack Brooks, Chairman  
 Committee on Government Operations  
 2157 Rayburn House Office Building  
 Washington, D.C. 20515

HOUSE COMMITTEE ON  
 GOVERNMENT OPERATIONS

Dear Mr. Chairman:

On two occasions in the past, my company has been the subject of hearings conducted by your Committee: House Report 94-1383 "Questionable Contract for Mobile Field Radios By Department of the Army, August 31, 1976; House Report 95-1677 "Procurement Practices at the U.S. Army Communications and Electronics Materiel Readiness Command" October 2, 1978. In both cases, your Committee has questioned the loss of two contracts at that Agency, and to the same company. The loss of these contracts has had a very serious impact on our finances and we are on the brink of financial disaster. It is my belief that my company is experiencing retaliation by the Army as a direct result of the Committee's inquiries.

In November 1977, we obtained a \$6.1 million contract for these same radios on a formally advertised procurement. We were determined to have the qualifications necessary for award after a detailed review by the Army and the Defense Contract Services Administration. In addition, the Government determined that our bid was not a loss contract. We sustained a protest by E-Systems when the Contracting Officer advised The General Accounting Office that he personally reviewed all pertinent data and conditions and was satisfied that it was not a loss contract.

The Army failed to deliver certain Government Furnished Test Equipment on time and in a condition suitable for use. As a result, our contract has been delayed over 13 months during which time we could not perform and had to sustain a loss in unabsorbed overhead. The Army, in June 1979, made an analysis of the inflationary factors influencing material and labor and they determined that it would now cost \$11 million to produce. However, with hindsight, they

Mr. Jack Brooks

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November 1, 1979

reevaluated their original opinion and decided that our contract was really a loss contract. The method of analysis is such that when applied to the bids of the other offerors, all would have sustained a similar loss. The Army threatened default and gave us 10 days to "cure" the "loss" condition or suffer default. In addition, at the same time, told us that they were not encouraging performance. Throughout the life of the contract, the Army requested us to redesign their test equipment and then rejected our proposal. They told us to lease whatever equipment was to be developed, and one year later told us that leasing was contrary to Army regulations. There were a great amount of other peculiar administrative vacillations. Our only "cure" was to seek relief under Public Law 85-804 on the basis of a mutual mistake. My company cannot continue in business if we lose this contract by default or by convenience of the Government. My company will be lost, after 19 years as a faithful supplier, and my life savings will be lost. This is a horrendous prognosis and not warranted by the facts.

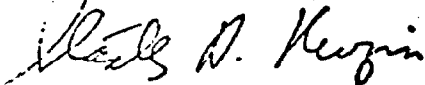
Mr. Chairman, there are only 3 proven producers of this vital Army radio, the basic infantry means of communication. The other two are large businesses. All form the industrial base in case of a national emergency. The elimination of my company will seriously erode this mobilization base, reduce competition and cause higher prices in the future with or without an emergency. Small business keeps the cost of Government's needs down to realistic levels. We are necessary for our National Defense. It is noted that one of our competitors was already granted relief under Public Law 85-804 and has subsequently filed a \$10 million claim, and received compensation, for the very same defective Government property which has caused the delay in our contract. The Army made this award to Bristol in the full knowledge that the test equipment was defective and was not available for issuance to our company to permit performance.

It is my hope that your Committee will continue its investigation to correct this disaster and to cause the Army to consider the cash flow problems of Small Business of primary concern. It has been extremely difficult to keep my company operating over the 13 months of delay in performance. Forcing my company out of business will not serve the public's needs.

I respectfully solicit your help in correcting an injustice.

Very truly yours,

BRISTOL ELECTRONICS, INC.



Stanley A. Revzin  
President

SAR/jal