

112870
JUN 80

GAO

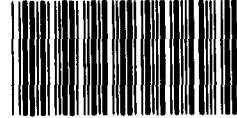
United States General Accounting Office
Washington, DC 20548

Logistics and
Communications
Division

B-199163

JULY 29, 1980

The Honorable Jamie L. Whitten
Chairman, Committee on Appropriations
House of Representatives



112896

Dear Mr. Chairman:

Subject: [DOD's Implementation of Section 114 of the
Fiscal Year 1980 Military Construction
Appropriations Act] (LCD-80-90)

In your letter of November 29, 1979, you asked us to monitor the implementation and effect of section 114 of the fiscal year 1980 Military Construction Appropriations Act. This section requires that American steel producers, fabricators, and manufacturers be given the opportunity to compete for the sale of steel outside the United States when U.S. military construction funds are used.

We focused primarily on the Department of Defense's (DOD's) use of U.S. military construction funds in the European theatre for both unilateral 1/ and North Atlantic Treaty Organization (NATO) infrastructure funding. Unilateral funds flow through service appropriations and are usually managed for contracting by the European Division of the Corps of Engineers. U.S. contributions to the NATO infrastructure system are controlled by the U.S. Mission, NATO, which has veto authority over infrastructure projects recommended to the NATO infrastructure committee.

1/Unilateral financing is financing through U.S. military construction appropriations, excepting those projects which are eligible for NATO infrastructure funding and for which reimbursement will be sought.

(945186)

11486



For fiscal year 1980 the funds authorized and appropriated for unilateral and infrastructure construction are as follows:

<u>Type of funding</u>	<u>Authorized</u>	<u>Appropriated</u>
	----- (millions) -----	
Unilateral construction	\$212.0	\$185.6
Infrastructure construction	185.0	150.0

Unilateral and NATO infrastructure construction in Europe is done essentially by direct contracting or indirect contracting through the host country.

DOD IMPLEMENTATION INSTRUCTIONS

To insure implementation of section 114, DOD issued instructions on December 17, 1979, to its component commands and procurement centers in its European Division and the U.S. Mission, NATO. The instructions stated that all contracts to be awarded by DOD activities utilizing fiscal year 1980 military construction appropriations outside the United States should contain the following clause:

"The contractor 1) agrees that it will not deny United States steel producers, fabricators, and manufacturers the opportunity to compete, on an equal basis with firms of any other nation, for any steel requirements purchased or subcontracted under this contract."

This clause presented no problem for DOD unilateral prime contract awards. However, NATO countries involved in the infrastructure system did not agree that the NATO contracts should contain the language specified by the DOD instructions. NATO uses International Competitive Bidding (ICB) procedures, which permit eligible, qualified firms of any nation the right to bid on any direct contract as a prime contractor. Therefore, NATO countries felt that the established ICB procedures already provided all qualified manufacturers an equal basis to compete and that the language in section 114 was already satisfied by complying with ICB procedures.

DOD COMPLIANCE RESPONSIBILITIES

The responsibility for assuring compliance with section 114 in DOD's European Division rests with the contracting officer and/or a designated representative. DOD officials said 33 indirect contracts have been awarded for steel procurement since section 114 was enacted. Of the 33 contracts awarded, 25 were made in the Federal Republic of Germany and contained the clause mentioned in the December 17, 1979, instructions. The remaining eight were awarded in the United Kingdom and did not contain the clause included in the December instructions. DOD officials said the language in the contracts awarded in the United Kingdom provided the same guarantees as the language in the clause prepared by DOD to implement section 114. The same officials said that as of June 27, 1980, no American producer, manufacturer, or fabricator had bid on any direct steel contract as a prime contractor for DOD contracts awarded in host countries in Europe.

The responsibility of assuring compliance with section 114 for NATO infrastructure system funding rests with the Director, Infrastructure and Logistics Division, U.S. Mission, NATO. The Director handles U.S.-appropriated funds, which constitute the U.S. contribution to the NATO infrastructure system. In addition, he assures that contracts awarded are free from bars, restrictions, or prejudices before the U.S. contribution is released. He said that current NATO procedures do not allow national overview over contracting below the prime contracting level.

DOD ACTIONS TO INSURE COMPLIANCE

DOD officials said several actions are being taken to insure compliance with section 114 for indirect unilateral and NATO infrastructure system contracts. Each of the countries, in which indirect contracting takes place through the host country for unilateral contracts, has been solicited regarding its policy as it affects the language in section 114. With the exception of Italy, none of the major nations have restrictive laws which bar firms from the guarantees afforded by section 114. Italy, by its own law, requires that "prime" contractors not registered be barred from competing for business in Italy. Firms wishing to act as sub-contractors do not need to be registered.

The U.S. Mission, NATO, in response to section 114 for NATO infrastructure system indirect contracts, has worked out an agreement with all NATO countries except the Federal Republic of Germany. The agreement states that the host nation will publish a list of qualified bidders for each international competitive bid. The U.S. Mission, NATO, through the Department of Commerce, will notify respective U.S. steel industries as to whom they should contact in the event they are interested in submitting proposals for sub-contracts.

Germany, whose laws will not permit such publication of potential bidders, has informally agreed to either (1) separate from the prime contract any self-standing steel component and award it separately (e.g., steel liners or doors for shelters) or (2) communicate to successful prime bidders the names of all interested U.S. steel producers, fabricators, or manufacturers for possible negotiations for any steel subcontract. According to the Director, Infrastructure and Logistics Division, some project funding is currently being delayed because one host country has not followed the new procedure.

In addition, DOD has asked the Department of Commerce to canvass interested American steel producers, fabricators, or manufacturers to determine (1) if they are interested in bidding for NATO construction contracts and (2) what would be the minimum quantities of steel they would consider for bidding purposes as a prime or subcontractor. A Department of Commerce official said questionnaires were sent to 45 to 50 American steel producers, fabricators, or manufacturers during June. This official advised us that it may take months before the responses to these questions are received.

As agreed with your office, copies of the report are being sent to interested agencies and will be available to other parties upon request.

Sincerely yours,



R. W. Gutmann
Director