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United States General Accounting Office

GAO

Report to the Honorable
Marcy Kaptur, House of Representatives

April 1988

MILITARY CARGO ROUTING

Allocation of Port Handling Costs

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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-220902

April 27, 1988

The Honorable Marcy Kaptur
House of Representatives

Dear Ms. Kaptur:

In response to your request, we have investigated allegations by the ocean carrier Fednav (USA), Inc., that the Military Traffic Management Command (MTMC) had improperly allocated port handling costs when determining the lowest cost route for cargo originating in the Great Lakes area and destined for northern Europe. Fednav contended that, because ocean carriers who operated through a government-owned military terminal at Charleston, South Carolina, were not charged the full cost of using the terminal, these carriers had an unfair advantage when competing for cargo. In contrast, Fednav moved cargo through commercial terminals in the Great Lakes area and had to pay for using them.

Based on our review, we believe that MTMC acted in accordance with its regulations and complied with existing procurement laws in determining the lowest cost cargo routes.

Background

MTMC is the traffic manager for the Department of Defense (DOD). Under its regulations and directives, MTMC determines the lowest cost cargo routing based on five cost elements: continental U.S. (CONUS) line-haul(transportation to the port), CONUS port handling, ocean transportation, overseas port handling, and overseas line-haul (transportation from the port to destination). Under the Military Sealift Command (MSC) shipping agreement, MTMC then books cargo with appropriate commercial carriers and issues shipping orders confirming the cargo booking.

Military cargo originating in the Great Lakes area and destined to northern Europe is generally routed through either Great Lakes ports or ports on the East Coast. Until recently, Fednav—a U.S. flag carrier—operated two ships between CONUS and northern Europe. During the months that weather allowed access, the carrier operated through Great Lakes ports. During the winter months, it operated through East Coast ports.

Fednav officials contended that MTMC should have considered the full cost of operating the government-owned terminal at Charleston when comparing costs to determine the least expensive route. Fednav based its position on a Federal Acquisition Regulation (FAR) provision stipulating that government agencies must eliminate, to the maximum extent practical, any competitive advantage accruing to a contractor using government-owned property.

MTMC officials responded that the FAR does not apply to cargo routing decisions. They stated that cargo routing is an evaluation or selection process and not a procurement. They also pointed out that Fednav was not precluded from using the Charleston terminal and had provided service through Charleston during the winter months. According to MTMC officials, the terminal must be maintained to support a mandated mobilization mission, regardless of the level of its peacetime use. These officials considered it inappropriate to include the fixed costs of maintaining the terminal in routing decisions. Instead, they included only the incremental costs of cargo handling, which are affected by changes in the cargo work load. During 1987, Fednav disposed of its ships, and its future operations are uncertain.

Provisions of Procurement Law Not Applicable

Transportation services obtained through the use of transportation forms (for example, a government bill of lading) are not subject to procurement laws.[1] Neither the FAR nor the Department of Defense FAR Supplement applies to such transportation services, which are to be obtained in accordance with MTMC instructions and regulations (48 C.F.R., section 201.103(b) (1985)).

In this instance, the shipping order is similar to the listed transportation forms to which the FAR does not apply. The shipping order reads as follows:

> "This order confirms cargo booking as indicated . . . . Freight will be based upon the cargo actually loaded and entered on the cargo manifest, bill of lading as appropriate . . . . This shipment is to be routed as indicated, and any ocean bill of lading issued to cover the above charge must show the rates, terms and conditions as stated herein."

A government bill of lading is a procurement document used by the government to acquire freight transportation services from common carriers at published rates. Obtaining such services falls outside of the government's procurement system because standard payment is based on the bill of lading, not on government contractual documents. While

[1] FAR 48 C.F.R., section 47.000(a)(2), and 48 C.F.R., section 47.200(b)(2); Petchem Inc., B-220902, Fe 20, 1986, 86-1 C.P.D., par. 179.

the shipping order is issued under a contract (the MSC shipping agreement), the shipping order does nothing more than result in either an actual bill of lading or similar alternative and, like a bill of lading, does not result from a government solicitation. In these circumstances, we view the shipping order issued by MTMC to be similar in nature to the kinds of transportation requests contemplated above. Therefore, the FAR does not apply.

Conclusion

In the absence of a legal requirement to the contrary, we believe that MTMC was correct in considering only incremental port handling costs and not the full cost of using a government-owned military terminal when determining the lowest cost routing for moving cargo to its final destination.

Roles of MTMC and MSC

You also asked that we investigate the proper roles of MTMC and MSC in resolving such issues. In a memorandum dated June 30, 1981, the Deputy Secretary of Defense directed that, effective October 1, 1981, the sealift cargo booking and contract administration functions be transferred from MSC to MTMC. The objective of this action was to consolidate under MTMC, as single manager, operational management of DOD's movement of cargo in intermodal containers (containers constructed for air, land, and ocean transportation) and other dry cargo in partial or full shiploads during peacetime and wartime. MSC continues to be the sealift operator and procurement agent. This delegation of responsibility is reflected in the MSC shipping agreements.

Agency Comments

We requested DOD and Fednav to review and comment on a draft of this report. DOD concurred with our findings and conclusions. Fednav did not provide comments.

Objectives, Scope, and Methodology

The objectives of our review were to determine the appropriateness of MTMC's allocation of port handling costs and to determine the proper roles of MTMC and MSC in the administration of shipping agreements. This was done by meeting with appropriate Fednav and DOD officials and reviewing applicable laws and DOD regulations. We conducted our review from April through November 1987 in accordance with generally accepted government auditing standards.

As agreed with your office, we are distributing this report only to you and to Representative Pursell at this time. We plan no further distribution until 30 days after the date of the report. At that time, we will send copies to the Department of Defense and to other interested parties.

Sincerely yours,

Mark E. Gebicke

Mark E. Gebicke
Associate Director

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