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

B-213963

June 17, 1985

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives



Dear Mr. Chairman:

Subject: GAO's Assessment of Affidavits Concerning HHS'
Proposed Debarment of the Paradyne Corporation
(GAO/IMTEC-85-12)

Your letter of June 7, 1985, as amplified in conversations with members of your staff, requested our comments on certain affidavits and related material, which you provided us, regarding the Social Security Administration's (SSA's) contracts with the Paradyne Corporation. Specifically, you asked us to assess whether 1) these affidavits, submitted by Paradyne in response to the Department of Health and Human Services' (HHS') proposal to debar Paradyne, refute the basis of HHS' debarment recommendation, and 2) Paradyne's actions in securing its data communications contract with SSA were consistent with common industry practice.

To respond to your concerns we reviewed the information which you supplied in light of the two reports which we issued on this subject in 1984, our related testimony before your Subcommittee on Legislation and National Security, and supporting information. Because of the need for a prompt response, we are not providing a detailed point-by-point consideration of every assertion made in the affidavits. However, since our prior two reports and testimony addressed the same general issues, we have been able to conclude that the affidavits (1) do not refute the basis of HHS' proposal for debarment and (2) do not support Paradyne's argument that its actions in obtaining this contract were consistent with customary practices in the computer industry.

In hearings you held on September 13, 1984, we acknowledged that GAO believed that sufficient evidence existed for the government to initiate suspension and debarment proceedings against Paradyne. We based this opinion on information collected during our review, which indicated that in its August 1980 proposal, submitted in response to SSA's Request for Proposals (RFP),

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Paradyne represented that its controller (the P-8400 processor/controller subsystem¹) was in existence and operational. We found that Paradyne, in fact, did not have a functioning controller in its product line.

Further, we discovered that, at its December 1980 pre-award equipment test (the Operational Capability Demonstration (OCD)), Paradyne demonstrated a controller based on hardware and software components substantively different from the controller it had proposed in response to the RFP. This occurred because its proposed equipment was not integrated into an operational system. We said that we found no evidence that Paradyne had informed any SSA official that it was demonstrating equipment different from what it had proposed. We concluded that had Paradyne informed SSA of the equipment substitution, it would have been clear that Paradyne was proposing a prototype controller, contrary to the terms of the RFP, in which case SSA should have eliminated Paradyne's proposal from consideration.

On March 12, 1985, HHS informed Paradyne that, after having conducted its own study of the contract activities, it was considering debaring Paradyne from government contracting and subcontracting. The basis for HHS' proposed debarment was that: (1) Paradyne misrepresented the status of the system it had proposed; (2) Paradyne's representations were relied upon by SSA throughout the competitive selection process and were a critical factor in SSA's decision to award the contract to Paradyne; and (3) those misrepresentations constituted a serious and compelling breach of the integrity required of responsible contractors who seek to do business with the government.

In responding to HHS, Paradyne cited, among other information, the affidavits that are the subject of this report--one from George Whit Dodson (a retired procurement official from the General Services Administration), dated April 10, 1985, and another from Joseph M. Fox (a former vice-president of IBM's Federal Systems Division), dated November 27, 1984. These affidavits were offered to support two points relevant to Paradyne's defense in the debarment proceedings:

1. That, given common industry practices, statements made in Paradyne's proposal ought not have been interpreted as implying an already existing system at the time the proposal was submitted; and

¹This subsystem contains all hardware and software integrated to provide the functional capability to permit multiple user terminals to communicate with SSA's central computer facility.

2. That, in the context of SSA's intentions regarding the OCD, Paradyne was not required to identify to SSA the differences in the system it proposed and the system it demonstrated.

At your request, we have reviewed these affidavits and provide the following observations.

Mr. Dodson, in his affidavit, offers his opinion that "the portions of Paradyne's proposal submitted in response to the RFP, quoted in the Notice of Proposed Debarment, was [sic] not in fact misleading and should not have been misleading to those SSA officials who were evaluating Paradyne's proposal." In support, he relies on his characterization of "the general custom and usage of the ADP industry," as shown by several IBM product notices that refer in the present tense to features of systems which the notices state will not "be... generally available" until some future time. These product announcements are not relevant to Paradyne's situation. The IBM documents cited by Mr. Dodson are examples of general product announcements made to publicize new items. Since these announcements explicitly state that the products will not be generally available until some future time, the use of the present tense should naturally be taken as referring to a design or prototype version.

Paradyne's statements about its products, on the other hand, were made in response to an RFP which required "that the hardware proposed be ... available to the general user" at the time of the proposal. Paradyne's statements in the present tense were without qualification as to the time of general availability. Because SSA's RFP prohibited offers based on prototype equipment, Paradyne's use of the present tense without qualification in response to the RFP is, contrary to Mr. Dodson's assertion, most naturally interpreted as referring to an existing, developed product. As stated in HHS' Notice of Proposed Debarment, Paradyne's representations were in fact relied upon by SSA throughout the evaluation and negotiation process, including the December 1980 OCD. As we noted in our report of August 27, 1984, we confirmed that SSA officials believed, at the OCD, that Paradyne was demonstrating the equipment it proposed in its August 1980 submission.

Mr. Dodson further supports his view with his statement that "the majority of the portions of Paradyne's proposal quoted in the Notice of Proposed Debarment involve a description of the computer operating system² Paradyne was proposing to use, which Paradyne

²An operating system is a computer program which, among other things, "supervises" the operation of a computer and controls interaction with users.

called PIOS."³ He asserts that PIOS was functionally identical to features of UNIX available at the time of the OCD and that the adaptation of UNIX to the Paradyne equipment (called "porting") was a "sure-thing." Mr. Dodson fails to reconcile this conclusion with statements elsewhere in his affidavit that UNIX cannot be adapted to a processor without changes and that an important portion of UNIX must be rewritten to adapt it to the specifics of a particular processor (such as the Z-8000) and its associated hardware. Our contention is that the porting of UNIX was not a "sure thing" in the time available to Paradyne.⁴ Paradyne's proposed controller could not be operated as intended until UNIX was adapted to it; therefore, we believe it could not properly be called "available to the general user" as represented by Paradyne at the time of its proposal because this "porting" process was not completed.

In his affidavit, Mr. Fox analyzes the RFP in an attempt to determine SSA's intentions regarding the latitude permitted to vendors responding to the RFP. Among other things, he states that SSA's RFP reflected a carefully thought-out approach to minimize technical risk to assure SSA that the equipment acquired would meet stringent reliability standards. This analysis parallels arguments offered by Mr. Wiggins, Paradyne's president, in testimony before your Subcommittee on September 13, 1984.

Mr. Fox concluded that:

1. "I do not believe the system Paradyne demonstrated [at the time of the OCD] was a 'prototype' in fact or within the contemplation of the RFP," and

³PIOS is Paradyne Corporation's name for the Microsoft variation of UNIX, named XENIX, which has been customized to run on its equipment. UNIX is an operating system originally developed at Bell Laboratories, that has been adapted to several different processors.

⁴In an article in the October 1983 issue of Byte (a technical periodical), Michael Tilson, vice-president for technical development at Human Computing Resources Corporation, addressed the difficulties in adapting UNIX to a new configuration. He based his opinion on his experience in implementing UNIX on several machines. He concluded "... to bring up a system with all of the utilities, with an allowance for inevitable problems with some performance tuning and commercial enhancements, and with everything tested and solid, takes about a year." [Emphasis added.]

2. "I am of the view that the system demonstrated by Paradyne on December 15, 1980, fairly represented the functions and capabilities of the system Paradyne proposed and delivered to the SSA."

According to Mr. Fox: (1) The RFP "gave vendors wide latitude to develop and stage a demonstration which showed, to the SSA's satisfaction, the vendor's ability, as a corporation, to configure and deliver, if and when awarded the Contract, equipment meeting the functional requirements of the RFP," and (2) "From the standpoint of what systems using these two processors [the PDP-11 processor used by Paradyne at the OCD in place of the proposed Z-8000] can do--which was the ultimate point of the OCD--the two processors are functionally equivalent."

Mr. Fox's point concerning the degree of latitude available to vendors is not supported by the RFP. As we noted in our report of August 27, 1984, the RFP explicitly required that the vendor demonstrate, at the OCD, "that the proposed equipment can perform each of the mandatory requirements," except "if modification or enhancements to existing products would be difficult or impractical to test, the vendor may submit (with Government approval) a written description of analysis in place of the actual test" (Emphasis added.) Further, as shown by Paradyne's presentation of an analysis of an encryption device (in lieu of an operational demonstration), we conclude that Paradyne understood the RFP requirements cited above.

The basis of Mr. Fox's point concerning functional similarity is his view that there is no significant difference between the P-8400 system that Paradyne proposed and the system it demonstrated. Among other things, Mr. Fox relies upon a functional similarity between the proposed Z-8000 and the demonstrated PDP-11 processors in that they both "treat data 16 bits at a time, and both processors perform the same basic functions, and the same types of operations on data."

Mr. Fox does not deal with the substantive dissimilarities between these processors. In response to a question raised during hearings on September 13, 1984, we stated that the Z-8000 and PDP-11 processors "... are similar only to the extent that they both have the fundamental capability of simultaneously operating on 16 'bits' of information. In almost every other technical respect they are quite dissimilar. They use totally incompatible instruction codes. They have very dissimilar operating and performance characteristics." In fact, it was these dissimilarities which forced Paradyne to undertake to "port" the UNIX operating system rather than employ the PDP-11 version of UNIX. This contributed to Paradyne's inability to demonstrate the controller they had proposed.

Thus Mr. Fox's first conclusion--that the equipment demonstrated by Paradyne was not a prototype as contemplated in the RFP--is not relevant, since the equipment proposed by Paradyne was different from that demonstrated. His second conclusion--that the demonstrated equipment fairly represented the functions and capabilities of the system Paradyne proposed and delivered--is not correct in the context of this procurement. The RFP called for more than the demonstration of the vendor's capability to produce, at some time in the future, a product that would meet SSA's requirements, as suggested in Mr. Fox's affidavit. The RFP, reflecting SSA's expressed concern both for functional capability and for reliability, specifically required the demonstration of the actual equipment proposed with the exception previously noted (permitting vendors to submit written analyses with government approval--which Paradyne did not exercise).

Messrs. Dodson's and Fox's arguments do not show that Paradyne met the RFP requirement that it either demonstrate the exact equipment it proposed or inform the government, in writing, of the differences between what it proposed and what it demonstrated. In this regard, Mr. Fox and Mr. Dodson both rely on the fact that the equipment proposed and the equipment demonstrated possessed certain "functional" similarities. Both used 16-bit processors, and each operating system was adapted from an identical operating system. As we have reported to you previously, we do not accept the validity of this argument. Furthermore, Mr. Fox's own examination of the RFP confirms his awareness of SSA's intention to achieve a "low-risk" procurement with a high emphasis on equipment reliability. SSA's intention emphasizes the critical importance of the many and substantial differences, including those of the operating systems, that existed between the proposed and demonstrated equipment. Had SSA been made aware of these differences, it could have avoided the serious problems encountered in bringing the Paradyne equipment to a "tested and solid" condition after installation and operational use.

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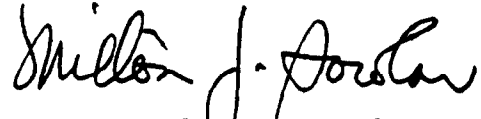
Overall, Messrs. Dodson's and Fox's affidavits seek to build upon various differences of opinion which have been expressed regarding whether Paradyne's proposal satisfied the terms of the RFP. The basis of the proposed debarment, however, is not that Paradyne's proposal was unacceptable, but rather that the proposal was, in fact, accepted on the basis of Paradyne's misleading assertions and conduct.

In our view, whatever errors may have been committed in the award process, there can be little question but that Paradyne misled SSA regarding the judgment SSA was required to make concerning Paradyne's success in the OCD. If we accept the assertions made by Mr. Fox concerning the latitude permitted vendors at the OCD, it is difficult to understand what could have motivated Paradyne not to divulge the true status of the equipment it had proposed. One might reasonably conclude that Paradyne intended to convey misleading information in its response to the RFP.

In any event, evidence in the affidavits does not support an assertion that Paradyne's representations and conduct in connection with the SSA computer procurement were consistent with customary practices in the computer industry. Furthermore, we find that the information contained in these affidavits in no way refutes HHS' conclusions in proposing Paradyne's debarment.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Jordan".

Acting Comptroller General
of the United States