DOCUMENT RESUME

07315 - [C2867975]

Illegal Expenditure by the Army To Replace Laundry and Drycleaning Equipment. PSAD-78-113; B-178978. October 11, 1978. 8 pp. + 2 appendices (5 pp.).

Report to the Congress; by Elmer B. Staats, Comptroller General.

Issue Area: Appropriate Consideration of All Factors in Deciding to Make or Buy Needed Goods or Services. (1915).
Contact: Procurement and Systems Acquisition Div.
Budget Function: National Defense: Department of Defense - Procurement & Contracts (058); National Defense (050).
Organization Concerned: Department of Defense; Department of the Army.
Congressional Relevance: House Committee on Armed Services; Senate Committee on Armed Services; Congress.
Authority: Department of Defense Appropriation Act [of] 1976 (P.L. 94-212). Anti-Deficiency Act (31 U.S.C. 665). Second Supplemental Appropriation Act [of] 1952 (65 Stat. 765). Department of Defense Appropriation Act [of] 1955 (68 Stat. 337). Department of Defense Appropriation Act [of] 1970. Department of Defense Military Construction Appropriation Act [of] 1970. 83 Stat. 484. 83 Stat. 468. DOD Directive 5126.8. DOD Directive 4100.15. DOD Instruction 4100.33. OMB Circular A-76. Army Regulation 235-5. Defense Acquisition Regulation 13-101.8. S. Rept. 82-1036. H.R. 5650 (82nd Cong.).

Laundry and drycleaning services at Fort Carson, Colorado, are provided by a Government-owned and -operated facility. Using fiscal year 1976 funds, Fort Carson bought 21 new laundry or drycleaning equipment items and systems for over $400,000 to modernize its facility. The Army did not determine whether laundry and drycleaning services were available from commercial sources at reasonable rates, and approval for replacement of the equipment was not requested. Findings/Conclusions: These expenditures were in violation of the Department of Defense Appropriation Act of 1976 which prohibits Government investment in laundry and drycleaning facilities within the United States unless the Secretary of Defense certifies that commercial services are not available at reasonable rates. All disbursements for the purchase of equipment were made against the fiscal year 1976 appropriation. Since the amount of money specified under that appropriation was not legally authorized, any expenditure made from those funds was in excess of the amount available, and a violation of the Anti-Deficiency Act occurred. Recommendations: To preclude similar violations in the future, the Secretary of Defense should take action to review the adequacy of all policies, procedures, and regulations that have been established in the Department of Defense to implement the appropriation restriction. (RRS)

7975

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Illegal Expenditure By The Army To Replace Laundry And Drycleaning Equipment

The Army spent over $400,000 of fiscal year 1976 funds to replace a major part of the equipment in a Government-owned and -operated laundry and drycleaning facility at Fort Carson, Colorado--to update, modernize, and expand its productive capacity.

These expenditures were in violation of the Department of Defense Appropriation Act, 1976, which prohibits Government investment in laundry and drycleaning facilities in the United States unless the Secretary of Defense certifies that commercial services are not available at reasonable rates.

The Army did not determine whether commercial services were obtainable at reasonable rates, nor did it request appropriate approval for the replacement action. Because the purchase did not receive the required consideration and approval, GAO believes that the purchase violated not only the Appropriation Act but also the Anti-Deficiency Act.

PSAD-78-143
OCTOBER 11, 1978

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

B-178978

To the President of the Senate and the
Speaker of the House of Representatives

This report concerns an expenditure of funds by the Department of the Army that was in violation of a restriction in the Department of Defense Appropriation Act, 1976 (Public Law 94-212, section 724), and subsection (a) of the Anti-Deficiency Act (31 U.S.C. 665).

The matter arose from our recent review of executive branch policies and programs for obtaining commercial or industrial products and services for Government use. This review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

A preliminary Army investigation has concluded that the expenditure did not violate subsection (a) of the Anti-Deficiency Act. The investigation considered but stated no specific conclusion regarding possible violation of Public Law 94-212. We believe that the violations occurred.

Because this matter could have broader significance, we are of the opinion that it is of sufficient importance to both the Congress and Defense to warrant a special report to the Congress under section 312(c) of the Budget and Accounting Act, 1921 (31 U.S.C. 53(c)), which provides for reports by the Comptroller General to the Congress concerning expenditures or contracts made by any department or establishment in violation of law.

BACKGROUND

Section 724 of the Department of Defense Appropriation Act, 1976, states that:

> "None of the funds appropriated in this Act shall be used for the construction, replacement, or reactivation of any bakery, laundry, or drycleaning facility in the United States, its territories or

possessions, as to which the Secretary of Defense does not certify in writing, giving his reasons therefor, that the services to be furnished by such facilities are not obtainable from commercial sources at reasonable rates."

The language of section 724 was first used in section 604 of the Second Supplemental Appropriation Act, 1952. 1/ Later, it was incorporated into the Department of Defense Appropriation Act, 1955, 2/ and has been included in all Defense appropriation acts since that time.

The provision was proposed by Senator Allen J. Ellender in response to opposition by certain launderers and drycleaners to Air Force requests for appropriations to construct new laundry and drycleaning plants at various military installations. Senator Ellender stated that the restriction of funds for laundry and drycleaning plant construction would:

"* * * implement the general policy of Congress and the often stated objective of [the Senate Appropriations Committee] to make maximum use of civilian services whenever practicable. Large defense appropriations should not provide a vehicle for disruption or ruin of our small businesses." 3/

Although section 724 requires approval by the Secretary of Defense, this responsibility has been delegated to an Assistant Secretary of Defense. Obviously, the Congress wanted serious, high-level consideration before the Government invested in laundry and drycleaning plants in the United States. While the Congress did not bar such investment, it demanded that competition with private enterprise not be undertaken lightly.

ILLEGAL EXPENDITURE FOR LAUNDRY AND DRYCLEANING EQUIPMENT

Because the equipment purchase in question did not receive appropriate consideration and approval, we believe that it violated section 724 of Public Law 94-212.

1/65 Stat. 765-66.

2/68 Stat. 337.

3/Hearings on H.R. 5650 before the Senate Committee on Appropriations, 82d Cong., 1st sess. 10 (1951).

Laundry and drycleaning services at Fort Carson, Colorado, are provided by a Government-owned and -operated facility. Using fiscal year 1978 funds, Fort Carson bought 21 new laundry or drycleaning equipment items and/or systems for over $400,000 to modernize its facility. The equipment is listed in appendix I.

Fort Carson did not determine whether laundry and drycleaning services were obtainable from commercial sources at reasonable rates, and appropriate approval for replacement of the equipment was not requested.

The stated need for the new equipment was that it would replace older equipment, many items of which were purchased in 1942, for which spare parts were no longer available. The lack of parts could seriously curtail production and stop work in some sections of the facility--resulting in mission failure.

With respect to the new laundry equipment it was further stated that:

--New polyester fabrics cannot be properly finished on equipment designed for cotton material (which requires a different heat and pressure configuration).

--The old equipment could not meet current production and quality standards.

--The new equipment would reduce the loss of material tensile strength by one-third, and this would add one-third more lifetime to military uniforms processed in the facility.

--The new equipment would cut water consumption by 80 percent and save electricity.

With respect to the new drycleaning equipment, it was stated that the equipment would cut electricity requirements and recover 95 percent of all solvent used, thereby eliminating backwashing and heavy sludge removal.

The current inventory of laundry and drycleaning equipment at Fort Carson is valued at about $830,000. Thus, it appears that the purchase represents about 50 percent of the value of the equipment at the facility.

Because the Army purchase did not involve construction, replacement, or reactivation of an entire facility, the issue arises as to whether the restriction on expenditures for laundry and drycleaning facilities was intended to include expenditures for a major part of the equipment contained in a facility, where such equipment significantly modernizes and increases the productive capacity of the facility.

Department of the Army
General Counsel opinion

On September 13, 1976, subsequent to the purchase in question, the Army Office of General Counsel responded to a request for a legal opinion on whether the language of section 724 applied to equipment investments as well as to construction investments. A copy of the opinion is presented as appendix II.

The opinion stated that, although the legislative history does not specifically address the word "facility," section 724 was to create maximum use of civilian services and avoid additional capital investment in Government facilities. It further stated that:

> "* * * any addition or replacement of equipment designed to increase capacity requires a certification, because the additional capacity could be handled by commercial facilities where available.
>
> "The hearings regarding the original provision and the words of the statute itself do not prohibit operation of existing facilities. Thus, there may be circumstances where the replacement of existing equipment that is inoperable and uneconomical to repair, without a design to increase capacity, could be accomplished without certification. In such cases there may be some incidental increase in capacity due to the increased efficiency of newer, more modern equipment. Such an action would appear to be merely the keeping of an existing laundry and dry cleaning facility in operation. Whether certification is required in any particular case where new equipment is involved, however, is entirely dependent on the facts of that case which would have to be carefully examined in detail before any conclusion could be reached."

Our opinion

We do not disagree with the opinion of the Army Office of General Counsel. We conclude that, in this case, the Army replacement of a major part of the facility's laundry and drycleaning equipment for the purpose of modernization, with a resulting increase in the productive capacity of the facility, constituted a replacement of a facility within the meaning of the appropriation restriction.

Defense and Army regulations applicable to the implementation of the provisions of section 724 clearly show that expenditures for laundry and drycleaning equipment comparable to Fort Carson's were intended to be subject to the restriction.

Department of Defense Directive 5126.8 ("Delegation of Authority with Respect to Certification of Construction, Replacement or Reactivation of Bakery, Laundry or Dry Cleaning Facilities," March 13, 1970) authorizes the Assistant Secretary of Defense (Installations and Logistics) to issue the required certification: 1/

> "* * * to meet the restrictions upon the use of appropriated funds for the construction, replacement, or reactivation of any bakery, laundry or dry cleaning facility which are imposed by * * * [Section 625, Department of Defense Appropriation Act, 1970 (83 Stat. 484) and Section 104, Department of Defense Military Construction Appropriation Act, 1970, (83 Stat. 468)], similar provisions in previous Acts, or which may be similarly imposed by future statutes." (Emphasis added.)

The language of section 724 is identical to section 625 of the 1970 Appropriation Act.

Directive 5126.8 also states that requests for such authorizations as may be required will be submitted in accordance with various regulations, including Department of Defense Directive 4100.15 ("Commercial or Industrial Activities," July 8, 1971) and Department of Defense Instruction 4100.33 ("Commercial or Industrial Activities - Operation of," July 16, 1971).

1/This responsibility now rests with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

Directive 4100.15 and instruction 4100.33, which implement Office of Management and Budget Circular A-76 ("Policies for acquiring commercial or industrial products and services for Government use," Aug. 30, 1967), expressly define new starts as including the construction, replacement, or reactivation of laundry and drycleaning facilities subject to directive 5126.8.

The term "new start" generally refers to a newly established Government commercial or industrial activity which is operated and managed by an executive agency to provide for the Government's own use a product or service that is obtainable from a private source. The term also generally includes a reactivation, expansion, modernization, or replacement of such an activity.

In connection with new starts, instruction 4100.33 provides that:

> "In a new start, we are concerned with an entire activity. The modernization of such an activity wherein the productive machinery, or a major part of such machinery, is being replaced to update, modernize or expand the productive capacity would constitute a new start * * *." (Emphasis added.)

Army regulation AR 235-5 ("Management of Resources Commercial and Industrial-Type Functions," Nov. 1972) implements directive 4.00.15 and instruction 4100.33 within the Army. This regulation also identifies the construction, replacement, or reactivation of laundry and drycleaning facilities as new starts. It further provides that new starts do not include the:

> "Replacement of an individual machine damaged or worn out beyond economic repair with a similar machine designed to perform the same or like task, if productive capacity of the replacement machine does not exceed that of the replaced machine." (Emphasis added.)

Accordingly, the replacement action constituted a new start which was subject to the appropriation restriction contained in section 724.

Further, appropriate definitions in common military use and military procurement use are particularly persuasive.

The Department of Defense "Dictionary of Military and Associated Terms," (Joint Chiefs of Staff publication No. 1, Sept. 3, 1974), which was prepared in coordination with the Office of the Secretary of Defense, includes equipment within its definition of a facility. As defined there, a facility is:

> "1. A physical plant, such as real estate and improvements thereto, including buildings and equipment, which provides the means for assisting or making easier the performance of a function, e.g., base arsenal, factory. 2. Any part or adjunct of a physical plant, or any item of equipment which is an operating entity and which contributes or can contribute to the execution of a function by providing some specific type of physical assistance." (Emphasis added.)

Further, paragraph 13-101.8 of the Defense Acquisition Regulation (formerly the Armed Services Procurement Regulation) defines facilities similarly:

> "Facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment." (Emphasis added.)

Plant equipment is further defined by the regulation as:

> "* * * personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose."

In view of the above, we believe that the Army expenditure of over $400,000 of appropriated funds to replace a major part of the equipment in the laundry and drycleaning facility at Fort Carson to update, modernize, and expand its productive capacity was subject to the provisions of section 724 of Public Law 94-212.

Violation of the terms of the Appropriation Act also constituted a violation of the Anti-Deficiency Act (31 U.S.C. 665). Subsection (a) of that Act provides:

> "No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

Clearly, all disbursements for the purchase of the laundry and drycleaning equipment were made against the fiscal year 1976 appropriation (Public Law 94-212). Since the amount of money specified under that appropriation was not legally authorized, any expenditure made from those funds was in excess of the amount available. Thus, a violation of the Anti-Deficiency Act occurred.

RECOMMENDATION

To preclude similar violations in the future, we recommend that the Secretary of Defense take the action necessary to review the adequacy of all policies, procedures, and regulations that have been established within Defense to implement the appropriation restriction.

- - - -

Copies of this report are being sent to interested congressional committees and Members of Congress; the Director, Office of Management and Budget; the Secretary of Defense; and the Secretary of the Army.

Comptroller General
of the United States

LIST OF EQUIPMENT PURCHASED BY FORT CARSON, COLORADO. USING FUNDS MADE AVAILABLE BY THE DEPARTMENT OF DEFENSE APPROPRIATION ACT, 1976

Item/system	Quantity	Amount paid (note a)
Drycleaning unit assembly (#70)	1	$ 23,258.22
Vapor absorber	1	2,962.00
Drycleaning unit assembly (#100)	1	30,319.72
Washer-extractor	2	55,365.00
Spreading/feeding device	2	19,590.00
Drying and conditioning tumbler	2	57,328.92
Central liquid system	1	83,174.00
Conveyor system	1	69,887.32
Laundry press unit (trousers)	3	32,592.00
Laundry press unit (coats)	3	29,869.98
Cash register	2	3,789.90
Typing machine	1	1,297.00
Scale	1	604.00
Total	21	$410,038.06

---

a/Includes contractor installation of complex equipment.

APPENDIX II

DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20310

13 SEP 1976

MEMORANDUM FOR MR. WILFRED F. FLOYD, CHIEF
OFFICE OF COMMERCIAL AND INDUSTRIAL-
TYPE ACTIVITIES PROGRAM, DALO

SUBJECT: Request for Legal Opinion - Laundry and Dry Cleaning Equipment Investments

You have asked this office whether the language of Section 724 of the DoD Appropriation Act, 1976 applies to equipment as well as to construction investments.

The provision was initially introduced in the Senate for the Second Supplemental Appropriation Bill of 1952. Act of Nov. 1, 1951, ch. 6, § 604, 65 Stat. 765. The Senate Report does not provide much help for it contains only the following statement:

> The committee recommends in the over-all reduction that no funds be provided for the laundry and dry-cleaning plant at Lake Charles, La., and has further provided that no part of the funds made available by this act or any other act of the present Congress shall be used for the construction, replacement, or reactivation of any laundry or dry-cleaning facilities in the United States, its Territories, or possessions as to which the Secretary of Defense does not certify, in writing, after consultation with representatives of the laundry and dry-cleaning industry affected, that the services to be furnished by such facilities are not obtainable from commercial sources at reasonable rates

S. Rep. No. 1036, 82d Cong., 1st Sess. 4 (1951).

The Senate Appropriations Committee hearings, however, are more instructive concerning the origins of the statutory language and its purpose. The language was introduced by Senator Ellender in

APPENDIX II

opposition to Air Force attempts to construct a number of new Laundry and Dry Cleaning Plants. His opposition was apparently prompted by numerous letters from Louisiana laundry and dry cleaning proprietors who were against the laundry and dry cleaning plant which the Air Force proposed for Lake Charles, La. Senator Ellender explained the proposed amendment as follows:

> Accordingly, I propose that:
>
> 1. The Air Force request for an appropriation in the sum of $541,000 for the construction of a new laundry and dry-cleaning plant at the Lake Charles Air Base in Louisiana be stricken from H.R. 5650 and
>
> 2. That H.R. 5650 be amended to include a provision -- the text of which I will be glad to suggest -- which would deny funds appropriated by the present Congress for the construction of Government laundry and dry-cleaning plants unless the Secretary of Defense certifies, after investigation of the facts, that the necessary laundering and dry-cleaning services are not obtainable from regular commercial sources.
>
> Such an amendment would merely implement the general policy of Congress and the often-stated objective of this committee to make maximum use of civilian services whenever practicable. Large defense appropriations should not provide a vehicle for disruption or ruin of our small businesses.

Hearings on Second Supplemental Appropriations Bill, 1952, Before the Senate Comm. on Appropriations, 82d Cong., 1st Sess. at 10 (1951). The provision Senator Ellender introduced was the following:

> No part of the funds made available by this act, or any other act of the present Congress shall be used for the construction, replacement, or reactivation of any laundry or dry-cleaning facilities in the United States, its Territories or possessions, as to which the Secretary of Defense does not certify, in writing, after consultation with representatives of the laundry and dry-cleaning industry affected, that the services to be furnished by such facilities are not obtainable from commercial sources.

Id. This is the language adopted in the Senate Report with the addition of the words "at reasonable rates" at the end of the sentence. S. Rep. No. 1036, 82d Cong., 1st Sess. 8 (1951). The version as passed removed the words "after consultation with representatives of the laundry and dry-cleaning industry affected," and substituted the words "giving his reasons therefor." The provision in the present Appropriation Bill is substantially the same as that adopted in 1951 with the addition of "bakery" facilities.

The rationale for the introduction of Senator Ellender's provision is, therefore, instructive. He cites two purposes (1) making maximum use of commercial facilities, and (2) avoiding disruption and damage to small laundry and dry-cleaning businesses. Senators Knowland and Cordon went beyond this and called for an avoidance of additional capital investments in laundry and dry-cleaning facilities where alternative military service facilities are available or where private capital will carry the investment. Hearings on Second Supplemental Appropriations Bill, 1952, Before the Senate Comm. on Appropriations, 82d Cong., 1st Sess. at 15 (1951).

Therefore, although the legislative history does not specifically address the word "facility", certain observations can be made with regard to the meaning of Section 724 of the Department of Defense Appropriation Act, 1976. The words of Section 724 clearly require certification if construction is involved or if an inactive laundry is reactivated. The dual purposes of making maximum use of civilian services and avoiding additional capital investment in laundry and dry-cleaning facilities which motivated the provision, furthermore, indicate that any addition or replacement of equipment designed to increase capacity requires a certification, because the additional capacity could be handled by commercial facilities where available.

The hearings regarding the original provision and the words of the statute itself do not prohibit operation of existing facilities. Thus, there may be circumstances where the replacement of existing equipment that is inoperable and uneconomical to repair, without a design to increase capacity, could be accomplished without certification. In such cases there may be some incidental increase in capacity due to the increased efficiency of newer, more modern equipment. Such an

APPENDIX II

action would appear to be merely the keeping of an existing laundry and dry cleaning facility in operation. Whether certification is required in any particular case where new equipment is involved, however, is entirely dependent on the facts of that case which would have to be carefully examined in detail before any conclusion could be reached.

The attached documents indicate that "OSD has taken the position that any equipment investment for laundry and dry-cleaning facilities requires Secretary of Defense certification." However, we are unaware of any OSD/OGC legal opinion to the effect that any equipment investment statutorily requires certification regardless of the reason for the replacement. Informal contacts with OSD/OGC have not revealed the existence of any such opinion. If one exists, we would be happy to reexamine our views in light thereof. However, our informal contacts indicate that OSD/OGC is, as a general matter, in agreement with the above-stated approach.

It appears that your concern is with both the policy adopted by OSD with respect to equipment investment and the lack of dollar thresholds in the new start definition contained in DoD Directive 4100.15, ¶ III.C.1.c. (8 July 1971) and DoD Directive 4100.33, ¶ III.D.1.c. (July 16, 1971). We suggest that it would be more appropriate for you to try to work with OSD to reach an accommodation of your concerns within the pertinent policy parameters.

It would appear that under certain circumstances a failure to obtain required certification could result in a violation of 31 U.S.C. § 665 (1970). However, whether or not a violation has occurred necessarily depends upon a detailed analysis of the individual facts present in a particular case. Consequently, such a determination is not possible with regard to the attached papers.

Stanley N. Nissel
Deputy General Counsel (Logistics)

(950399)