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The Honorable Charles W. Whalen, Jr.
House of Representatives

Dear Mr. Whalen:

As requested in your letter of August 14, 1972, we reviewed your file concerning the loss of Government-furnished precious metals being used by a contractor under an Air Force contract. One of your constituents believed that the investigations by the agencies involved were incomplete. You asked us to determine whether the General Accounting Office should further investigate the matter.

We analyzed the scope and information already developed in Air Force and Defense Supply Agency reviews and believe the matter has been investigated as thoroughly as possible. We support the Air Force and Defense Supply Agency legal staffs' position that there is no basis to support an enforceable legal claim against the contractors involved.

BACKGROUND

In 1953 the Air Force Systems Command awarded a cost-reimbursable-type contract (AF 33 (600)-8410) to the Glass Technology Company to develop and produce scientific glass. The Defense Contract Administrative Services District, Pasadena, California, was responsible for administering the contract.

The Air Force Systems Command furnished the contractor 4,662.604 troy ounces of platinum worth \$582,825 and 31.87 troy ounces of rhodium worth \$7,808 to be incorporated into precision instruments used to fabricate glass, and the contractor furnished 66.41 troy ounces of rhodium worth \$16,270. The Government- and contractor-furnished precious metals were delivered directly to Engelhard Industries, Newark, New Jersey, and were credited to Glass Technology's account.

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Engelhard incorporated the precious metals in glass-making precision instruments (stirring rods and crucibles) which it fabricated and repaired under subcontracts with Glass Technology.

The contract contained special provisions specifically delineating the contractor's liability for the Government-furnished precious metals and incorporated standard Armed Services Procurement Regulations clauses providing for control over and liability for Government-furnished property in general. The special provisions required the contractor, upon contract termination or when the precious metals were no longer needed for contract performance, to either return all the precious metals in a refined state or reimburse the Government for any shortage. The general clauses specified that the prime contractor was liable for loss or damage of Government-furnished property while it was in the possession of a subcontractor. Also the contractor had to maintain adequate property control procedures and records and to physically inventory all Government property in its possession.

In November 1965 Glass Technology advised the Government contract administrator that the glass-making precision instruments were no longer needed and requested disposition instructions. The contractor's understanding was that it would pay the costs under the contract for returning the glass-making equipment to the place designated by the Government and for assaying the precious metal contents removed from these instruments. The contractor felt that it should be reimbursed under the subject contract for costs incurred in converting the Government-furnished precious metals to a refined state (individual bars weighing 400 ounces or less). The contract administrator disputed this and contended that Glass Technology should pay these conversion costs.

The contract administrator learned through the General Services Administration that the Air Force's San Antonio Air Material Area urgently needed these precious metals. Anticipating that Glass Technology would return the metals, the San Antonio Air Material Area canceled a pending purchase for \$420,000 worth of these metals.

In February 1966 the contract administrator instructed Glass Technology to proceed with transferring the glass-making instruments containing the precious metals according to shipping instructions to be furnished by the San Antonio Air Material Area. The contract administrator informed the contractor that it would not be reimbursed for refining costs. However, the San Antonio office later directed the contractor to ship the glass-making instruments to Engelhard and agreed to pay the refining costs.

Engelhard removed the precious metals from the glass-making instruments and returned the metal to a refined state under a separate contract, AF 41 (608)-39864, awarded by the San Antonio Air Material Area. Engelhard was paid approximately \$13,000 for this.

In May 1966 Engelhard notified the San Antonio Air Material Area and Glass Technology that the assayed weight of the precious metals after refinement was 4,285.210 troy ounces of platinum and 4.076 troy ounces of rhodium. This represented a shortage of approximately 377 troy ounces of Government-furnished platinum worth \$47,175 and 94 troy ounces of Government and contractor furnished rhodium worth \$23,080. (The Government had supplied 29 of these ounces worth \$7,208; the contractor had supplied 65 of these ounces worth \$15,872.)

CONTRACTOR RELIEVED OF LIABILITY ON
BASIS OF INITIAL AIR FORCE INVESTIGATION

No inquiries were made relative to this loss of precious metals until April 1968 when the contract administrator for contract AF 33 (600)-8410 asked Engelhard to provide him with evidence of the receipt of glass-making instruments shipped by Glass Technology and of the weight of the precious metals recovered after refinement. Subsequently, in February 1969, the contract administrator requested the Air Force's Office of Special Investigations to ascertain whether any fraudulent action was involved in the loss of the precious metals.

After a 3-month investigation consisting of interviewing management personnel and reviewing available property records at both Glass Technology and Engelhard, the Air Force investigators could not pinpoint the cause of, or responsibility for, the loss of the precious metals. On the basis of investigative results, the contract administrator concluded that there was no verifiable evidence of fraudulent action. Consequently, the contract administrator and Glass Technology entered into a written agreement in June 1969 whereby the Government agreed to relieve Glass Technology of liability for the loss of the Government-furnished precious metals and Glass Technology agreed to not pursue a counterclaim against the Government for the loss of contractor-furnished precious metals.

MATTER REINVESTIGATED BY AIR FORCE
AND DEFENSE SUPPLY AGENCY

As a result of your interest in this matter, procurement, legal, and investigative staffs of the Air Force and the Defense Supply Agency reinvestigated this matter from January through July 1972. They concluded:

- That the 377-troy-ounce, or 8-percent, loss of platinum could be reasonably attributed to normal chemical attrition.
- That the 94-troy-ounce, or 98-percent, loss of rhodium was unexplainable but that there was no verifiable evidence to support a legal course of action against Engelhard.
- That the contract administrator acted improperly in not requiring Glass Technology to have the precious metals refined under contract AF 33 (600)-8410.
- That, had the precious metals been returned to a refined state under the original contract instead of under a separate contract between Engelhard and the San Antonio Air Material Area, Glass Technology would

have been liable for the precious metal loss regardless of who was responsible for the loss.

- That the written agreement entered into in June 1969 relieving Glass Technology of liability for the loss of Government-furnished precious metals and relieving the Government of liability for the loss of contractor-furnished metals was legally proper and binding.
- That the loss of precious metals was an isolated incident and that the present property control procedures contained in the Armed Services Procurement Regulations are adequate and need no revision.

LOSS HAS BEEN THOROUGHLY INVESTIGATED

We believe this matter has been investigated as thoroughly as possible and we concur in the Air Force and Defense Supply Agency legal staffs' position that there is no basis to support a claim or to institute legal proceedings against either Glass Technology or Engelhard for the loss of Government-furnished precious metals.

In our opinion, the Government would have had legal recourse against Glass Technology for the full amount of the precious metal loss under the special precious metal liability clause contained in contract AF 33 (600)-8410 had the Government contract administrator directed Glass Technology to return the precious metals to a refined state under this contract. However, because of a dispute over who would bear the refining costs under this contract and of the possibility that this dispute would delay the return of the precious metals which were urgently needed, the San Antonio Air Material Area directed Glass Technology to immediately ship the glass-making instruments to Engelhard for refinement. This was done under contract AF 41 (608)-39864, and the San Antonio office agreed to pay the refining costs.

As a result of this action, together with the previously mentioned June 1969 written accord in which the Government and Glass Technology agreed to drop liability claims against

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each other for the loss of Government- and contractor-furnished precious metals, the Government was able to cancel its pending purchase order for \$420,000 worth of precious metals and was able to avoid Glass Technology's claim for its loss of \$15,872 of precious metals.

We concur in the Air Force's position that the loss of precious metals in this instance was an isolated case. During the past 7 years the Air Force awarded only two contracts in which substantial amounts of precious metals were furnished by the Government. Under one contract awarded in 1966, the Government furnished the contractor with \$518,000 worth of precious metals. Upon completion of this contract in 1971, a \$9,290 loss of precious metals was discovered and attributed to normal attrition. The contractor reimbursed the Government for this loss as required by the special precious metal liability clause and standard Armed Services Procurement Regulations provisions incorporated in the contract.

Under the other contract awarded in 1967 and still open, the Government furnished the contractor with \$1.5 million worth of precious metals. This contract also contained a special liability clause and general Armed Services Procurement Regulations provisions which required, upon contract completion or when the precious metals were no longer needed for contract performance, the contractor to return the total amount of precious metals in a refined state or to reimburse the Government for any shortage.

The special liability clauses and general Armed Services Procurement Regulations provisions contained in the above two contracts are almost identical to those contained in the contract with Glass Technology. They appear to be adequately protecting the Government in the limited situations in which the Government furnishes precious metals to contractors. Therefore we see no need at this time for revising the Armed Services Procurement Regulations.

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As you requested, the correspondence file submitted with your inquiry is returned for your records.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James B. Stewart".

Comptroller General
of the United States

Enclosure