



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

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Dear Senator Cranston:

As requested by your letter of October 20, 1971, we have examined into the circumstances surrounding three contracts awarded to the James A. Hill, Demolition Contractors, Los Angeles, California, by the Los Angeles District of the Corps of Engineers. Our inquiry included discussions with Corps and contractor officials and an examination of available records.

In his October 5, 1971, letter to you, the contractor claimed that actions taken by certain Corps personnel resulted in a breach of contract. He claimed also that these actions constituted harassment and possible racial prejudice and included an unreasonable 30-day delay in making progress payments on two contracts. The contractor claimed further that the delay impaired his ability to

- efficiently perform further under the contracts and
- pay his employees and creditors.

The information we obtained showed that the difficulties were due to contractual problems and concern by the Corps that the contractor would not satisfactorily complete the required work. As a result of the several problems encountered, the Corps did delay progress payments and the contractor did experience financial difficulties. There was evidence that this contractor, as in the case of other small contractors, did not have sufficient capital to carry him through the contract period. These matters are discussed in greater detail below.

The three contracts awarded to the James A. Hill, Demolition Contractors, were part of a group of contracts for the demolition and removal of residences and buildings damaged during the February 1971 earthquake in the Los Angeles area. Pertinent data on the three contracts follows.

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<u>Contract number</u>	<u>Award date</u>	<u>Original</u>		<u>Revised (note a)</u>	
		<u>Amount</u>	<u>Comple- tion date</u>	<u>Amount</u>	<u>Comple- tion date</u>
DACW09-71-C-0127	5-25-71	\$ 7,000	8-1-71	\$10,862.55	8-26-71
DACW09-71-C-0128	5-25-71	23,000	8-3-71	31,547.29	8-21-71
DACW09-72-C-0008	7-14-71	8,850	9-4-71	17,500.74	9-28-71

^aContract prices were revised in November 1971, and completion dates were extended in recognition of work performed by the contractor in accordance with the original agreements and subsequent change orders.

These contracts were "small business set asides"¹ awarded on a competitive basis to the lowest bidder.

ALLEGED BREACH OF CONTRACT DELAY IN PAYMENT

The contractor had requested progress payments on August 1, 1971, for completion of 95 percent of the work under contract -0127 and 99 percent of the work under contract -0128. The percentages of completion were estimates of what would be accomplished by August 1. These estimates were based on the actual work performed as of July 20, 1971, and on a projection of the work to be performed through the end of the month. Corps officials informed us that the contractor's progress was unsatisfactory at the time estimates were prepared and that little or no work was performed after July 20, 1971, as projected by the contractor. Progress payments therefore were withheld until the contractor performed the percentages of work included in his claim for progress payments.

¹Contracts awarded as a result of a Government policy requiring Government agencies to make certain that a fair portion of Government contracts are placed with small business.

The Corps had a contractual obligation to make progress payments for work actually performed; but Corps officials told us that no payments had been made because the claim submitted by the contractor had not been based on work actually performed. Corps officials did not consider the delay in making progress payments to be a breach of contract, because the contractor had failed to meet the estimated percentage of completion as claimed.

Also, due to the possibility that a subcontractor might file liens against the properties for nonpayment, the Corps was hesitant to make payment to the contractor until a full release was obtained from that subcontractor. This potential problem became known to the Corps around the middle of August. The required release was obtained on September 1, 1971, and progress payments were made on the same date for work actually accomplished to that date.

Whether the Corps' delay in making progress payments was a breach of contract is no longer an issue, because the contractor and the Corps, through negotiations completed on November 9, 1971, resolved the contractual disputes. The negotiations resulted in (1) the contractor's and the Corps' agreeing to increases in the amounts of the three contracts for additional work performed and (2) the contractor's agreeing to withdraw any further claims against the Government.

CONTRACTOR'S ABILITY TO PERFORM

Corps officials informed us that they did not believe that the delay in making progress payments had impaired the contractor's ability to perform because as of August 1, 1971, the contractor was behind schedule in the demolition work. Corps officials informed us that, as early as June 1971, problems arose in getting satisfactory performance from the contractor.

Various Corps officials informed us that these problems consisted primarily of a lack of progress and a disorganized approach to the demolition. In addition, our examination of the Daily Log, maintained by the Resident Engineer, for June 28,

July 6, and July 19, 1971, showed that the Resident Engineer and the Project Engineer were not satisfied with the contractor's progress and were considering using another company to do the work.

Also, on July 20, 1971, the Resident Engineer advised the contractor, in writing, that contract termination was being considered because of unsatisfactory progress. The Corps, after various meetings and discussions with the contractor, issued a notice of Termination for Default on August 23, 1971. This notice was withdrawn in an attempt to give the contractor an opportunity to complete the work. On September 7, 1971, after more meetings and discussions, the Corps terminated the contracts for default. The contractor's bonding company completed the remaining work under all three contracts. Final payment was made on these contracts on November 19, 1971.

A former contractor official advised us that the difficulties between the Corps and the contractor were probably the result of, among other things, the contractor's inability to take and coordinate all the actions necessary to see that the work was performed on schedule. This official, who represented the contractor in dealings with the Corps, was involved in negotiating the contract revisions.

CONTRACTOR'S ABILITY TO PAY CREDITORS

According to Corps officials, they did not become aware of the contractor's financial situation until they were so informed by one contractor official at a meeting held about the middle of August 1971. Prior to this time the contractor indicated that he had adequate financial resources. The former contractor official advised us that the financial problems may have been aggravated by the contractor's unwillingness to admit his lack of funds.

As another example of the contractor's apparent lack of financial resources, we noted a letter dated August 21, 1971, to the Corps from Accelerated Dump Trucks, Inc.--a subcontractor to James A. Hill, Demolition Contractors--requesting

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assistance in obtaining payment. This letter included a statement that, without assurances of payment from an official of the bonding company, Accelerated Dump Trucks would not have entered into any contract with the contractor.

ALLEGED RACIAL DISCRIMINATION

Although the contractor believes that some of the problems were possibly the result of racial discrimination, Corps officials maintain that no discrimination existed. Corps officials informed us that, if anything, the Corps "bent over backward" in giving this contractor an opportunity to perform satisfactorily under the contracts. They also commented that several other small minority contractors were involved in the demolition work and that this was the only small contractor with whom the Corps had had difficulties.

Although Mr. Hill felt that the Corps' actions were possibly based on racial discrimination, he could not provide us with specific information to show that this actually had occurred.

OTHER MATTERS

In discussions with your office, we were asked to furnish any observations relative to administrative deficiencies which might create problems for small businesses. Although it must be recognized that a small business might be somewhat at a disadvantage--legally and financially--in the event of a dispute with the Government, we did not note any administrative policy or procedure which would be detrimental to small businesses.

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We trust that the information contained in this letter will be of assistance to you. We shall be pleased to discuss the details of our inquiry with you or members of your staff if you so desire.

Sincerely yours,

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

Comptroller General
of the United States

The Honorable Alan Cranston
United States Senate

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