

GAO

Testimony



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Investigation of Apparent
Preferential Treatment of a
Potential Contractor by the U.S.
Army Strategic Defense Command

Statement of
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Associate General Counsel

Before the
Subcommittee on Oversight of
Government Management
Committee on Governmental
Affairs
United States Senate



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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss a matter included in our 1987 investigation of apparent favoritism towards of a potential contractor at the U.S. Army Strategic Defense Command. On July 13, 1988, we provided testimony concerning our investigation before the House Subcommittee on Legislation and National Security.

The investigation was coordinated with the U.S. Army Criminal Investigation Command, known as the Army CID, and established apparent preferential treatment in the conduct of a procurement by Lieutenant General John Wall, then Commander of the Strategic Defense Command. Specifically, we discovered that General Wall took actions creating the appearance of preferential treatment for an engineering consulting firm, BDM International, Inc.

In July 1986, General Wall directed that BDM be made the interim contractor for a major new research initiative, pending the award of a permanent contract. The Strategic Defense Command was aware that BDM intended to compete for this new contract. We learned that on December 19, 1986, at General Wall's direction, a meeting was held to plan the acquisition strategy for the

permanent contract. At General Wall's invitation, a senior executive of BDM was present, and was the only contractor at the meeting. This gave BDM information not then available to other potential offerors, giving the appearance of an advantage over others. Individuals at the meeting have stated that they felt the presence of a BDM executive was inappropriate and gave a negative appearance to the meeting.

Our review of this procurement determined that in April 1987, 74 requests for bids were distributed to various potential bidders, but only 1 proposal, BDM's, was submitted. BDM was awarded the 7-year, \$108 million contract on September 14, 1987.

As I stated earlier, we jointly investigated the General Wall matter with Army CID. At the conclusion of the Army CID investigation there was a difference of opinion as to whether the information provided at the December 19, 1986, meeting violated Army Regulation 600-50, "Standards of Conduct for Department of the Army Personnel." Two provisions of these standards are relevant. Paragraph 1-4(f) prohibits action "that might result in or reasonably be expected to create the appearance of," among other things, "giving preferential treatment to any person or entity." Paragraph 2-1(g) prohibits the release to a business concern of "any knowledge" Army personnel may have "concerning

proposed acquisitions or purchases." This paragraph states that such information must be released to all potential contractors as nearly simultaneously as possible and through designated agencies to avoid giving one firm an advantage.

The Army CID investigating agent reports that attorneys from the Office of The Army Judge Advocate General and attorneys for Army CID concluded that acquisition information had been provided to one potential contractor in violation of Army Regulation 600-50. According to the same source, a procurement attorney for the Army Material Command concluded that unless it was established that the information provided gave BDM an advantage, there would be no violation of Army Regulation 600-50. As a result of this view, the investigating agent was instructed to reinterview witnesses to determine whether BDM received an advantage from information it received on December 19, 1986. The results of these subsequent interviews were inconclusive. Army CID then concluded that, irrespective of the view of the Army Material Command attorney, actual advantage to a potential contractor is not required for a violation of Army Regulation 600-50. Army CID then recommended that action be taken against General Wall. In May 1988, the Army Vice Chief of Staff issued a written reprimand to General Wall. The following month, General Wall retired from active duty.

In December 1988, partly as a result of the General Wall investigation, the Chief Counsel for the Strategic Defense Command issued detailed guidance regarding the release of information about acquisition plans. This guidance was a result of his belief that potential systemic problems could be avoided by reemphasizing the governing standards of conduct. A copy of this guidance is attached to my written statement.

Mr. Chairman, this concludes my statement. We will be pleased to respond to any questions at this time.

DISPOSITION FORM

For use of this form, see AR 340-18; the proponent agency is TAGO.

REFERENCE OR OFFICE SYMBOL

CSSD-LC (600-50a)

SUBJECT

Contacts with Industry Concerning USASDC Acquisition Plans

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DATE 22 Dec 88

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Mr. Hamilton/of/4680

1. Because of recent events, the Congress and DoD are giving renewed emphasis to long-standing restrictions on improper release of advance acquisition information. Army Regulation 600-50, Standards of Conduct for Army Personnel, paragraph 2-1g prohibits DA personnel from unauthorized or improper release of acquisition information.

2. Within USASDC, the following guidance applies:

a. Before work begins on the draft scope of work for the initiation of a Contract Requirements Package (CRP), potential sources may be provided equal access to information about future requirements as follows:

(1) Long range acquisition information or other advance planning information should be formally published in accordance with existing regulations such as FAR 5.404, AFARS 5.391, and AR 70-35.

(2) There is no requirement that technical personnel or others discuss planned acquisitions with potential offerors. However, if discussions are undertaken, they will be done on a basis which assures equal access of all offerors. Discussions by technical personnel or others may include the technical information which allows potential offerors to determine whether the planned requirement is within their firm's capabilities and area of interest so they may prepare to respond to a solicitation. Government personnel have wide latitude in discussing the technical content of proposed solicitations with potential offerors, and items such as background of, and objectives for, the requirement may be covered. In this respect:

(a) Releaseable background information on the technical requirement includes prior contractual history, if known, and technological advances or knowledge gained or developed by the government which could be helpful.

(b) The objectives for the technical requirement, which may be discussed, normally addresses the purpose of the requirement and desired results or products. Discussion of additional details may be appropriate, but in no instance should offerors be given a "solution" or otherwise be given advice on "how" to respond to a future solicitation.

(3) In addition to technical information, releaseable information on program structure, which includes funding ranges, planned solicitation dates, and contract duration, may be offered. This information should have been previously provided to the public in long range estimates or similar publications. The government employee who provides this information should identify the publication which contains the information, or state when and in what publication the information will be available. If the information is not contained in published long range estimates, the information should be made available as early as practicable as provided in paragraph 2a(4) below. Offerors should be cautioned that all programs discussed are in the planning stage and are subject to changes or cancellation. Under no circumstances will information normally retained in the government, such as Independent Cost

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Estimates, source selection plans, acquisition strategies, and other matters dealing with the contracting process as opposed to the technical requirements to be released.

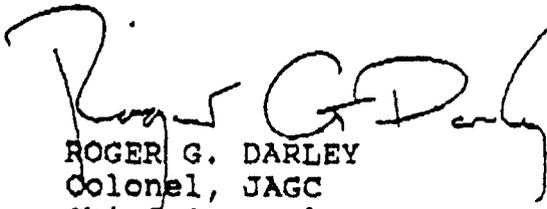
(4) Copies of information provided during any discussions, must, consistent with security restrictions, be made available to all other interested potential sources. When new information is provided during a particular briefing, an information sheet should be prepared by the briefing office which advises potential sources of the new information and how details may be obtained. The sheets should be coordinated with the Contract and Acquisition Management Office and released to potential sources by cognizant contracting officer.

(5) The use of viewgraphs or other briefing material to standardize presentations is encouraged. All discussions must comply with applicable security restrictions.

b. Once work begins on the draft scope of work for initiation of the Contract Requirements Package (CRP) process, the development and preparation phase of an acquisition has begun. Further communication will be through the contracting officer. Before the solicitation is released, these communications may include technical meetings as long as they are under the monitorship of the contracting officer. Once the solicitation is issued, the rules contained in the solicitation apply and questions of potential offerors will be answered in the manner requested by the contracting officer. Normally, this is in writing through the contracting officer. Accordingly, during this phase, potential offerors having questions will be directed to the contracting officer for information.

c. Under no circumstances will information normally retained within the government, such as Independent Cost Estimates, source selection plans, the status of evaluations, the content of competing proposals, and other matters dealing with the contracting process be released.

3. Broad Agency Announcements and other special solicitation methods will follow the rules applicable to the solicitation type. Under no circumstances will offerors be promised or otherwise be given reason to believe that they will be provided a contract unless and until selected in accordance with applicable procedures.



ROGER G. DARLEY
Colonel, JAGC
Chief Counsel

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