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DOCUMENT RESUME

01118 - [A0751237]

[Alleged Irregularities in the Subcontract Award for Aircraft Shelter Program in the United Kingdom]. PSAD-77-71; B-187633. February 10, 1977. Released March 18, 1977. 6 pp.

Report to Sen. Henry M. Jackson; Sen. Alan Cranston; by Robert F. Keller, Deputy Comptroller General.
Response to Former Senator John V. Tunney.

Issue Area: Federal Procurement of Goods and Services (1900);
International Economic and Military Programs (600).
Contact: Procurement and Systems Acquisition Div.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058); National Defense:
Defense-related Activities (054); International Affairs:
Foreign Economic and Financial Assistance (151).
Organization Concerned: Department of the Air Force; Marwais
Steel Co.
Congressional Relevance: Sen. Henry M. Jackson; Sen. Alan
Cranston.

The United States' role in the procurement of 83 tactical aircraft shelters at four air bases occupied by the United States in England was questioned, particularly whether the United States' interests were properly represented by the British Department of the Environment. Concern was expressed over the selection of an Italian firm to subcontract steel components rather than Marwais International, S.A.
Findings/Conclusions: The Air Force and the British Department of Environment acted according to existing agreements and procurement regulations to protect the United States' interests. Marwais International, a subsidiary of Marwais Steel Co. of Richmond, California, was given an equitable chance to participate as a subcontractor. There was no evidence of Arab-boycott influence over the subcontractor selection, although Marwais is owned by a Jewish family. (RRS)

01118



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

B-187633

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FEB 20 1977

3/18/77

The Honorable Henry Jackson
United States Senate

Dear Senator Jackson:

By letter dated September 16, 1976, former Senator John V. Tunney requested that we inquire into a contract awarded by the British Department of Environment, on behalf of the United States Air Force, to construct 93 tactical aircraft shelters at four air bases occupied by the United States in England. Questions raised, which you support in your letter of October 1, 1976, involved the United States' role in the procurement and whether the United States' interests are being properly represented by the British Department of Environment. You were particularly concerned with the prime contractor's selection of an Italian firm rather than Marwais International S.A., a wholly owned Luxembourg subsidiary of Marwais Steel Company of Richmond, California, as a subcontractor to fabricate steel components. In addition we considered an allegation by Marwais that the Arab boycott of Jewish-owned firms may have influenced decisions made regarding this procurement.

We discussed the circumstances of this procurement with officials of the U.S. Air Force, British Department of Environment, United States Embassy in London, and the United States Mission to the North Atlantic Treaty Organization (NATO). We also contacted representatives of Marwais International in Luxembourg and other knowledgeable individuals. In addition, we reviewed pertinent documents, such as agreements between the United States and the United Kingdom on contracting rights. However, under British Law the United States has no right of access to British procurement records; therefore, we obtained much of our information on contract procedures and award from discussions with Department of Environment officials. We did not consider it necessary to obtain formal comments from the Department of the Air Force; however, the results of our work were discussed informally with Air Force officials at Headquarters, United States Air Forces in Europe.

Based on our review we believe the Air Force and the British Department of Environment acted according to existing

agreements and procurement regulations to protect United States' interests, and that Marwais was given an equitable chance to participate as a subcontractor. The procurement regulations followed are similar to those set forth in the Armed Services Procurement Regulation. Further, we found no evidence of Arab influence over the subcontractor selection.

The following sections present additional information on the results of our inquiry.

THE UNITED STATES PROVIDED ADVANCE FINANCING

To improve the chances of survival in the event of hostilities, the Air Force desires to shelter 100 percent of its tactical and reconnaissance aircraft committed to the NATO Alliance for deployment in Europe. The procurement in question involved 83 shelters in England and represents the Air Force's fiscal year 1976 shelter program for the United Kingdom. According to Air Force officials, construction costs for these shelters are eligible for NATO funding. Funding is arranged typically in one of two ways--either NATO funds the project directly, or the Air Force finances the project and later applies for recoupment from NATO.

Because of the urgency associated with the fiscal year 1976 shelter program, the Air Force elected to finance the procurement in question. To protect recoupment rights, the shelter design had to receive NATO technical approval and be annotated by NATO's Infrastructure Progress and Payments Committee to reflect the United States' intention to seek reimbursement from NATO. Air Force officials advised us that the technical approvals were obtained, and that the Infrastructure Committee indicated on January 29, 1976, that the United States intends to seek reimbursement from NATO.

The Air Force plans to include this particular program cost in the United States' 1979 budget submission to NATO.

PROCUREMENT REGULATIONS AND PROCEDURES FOLLOWED

If a program or project is to be eligible for NATO funding, NATO International Competitive Bidding Procedures must be used in the bid and award process. These procedures are used to

allow business interests from member nations an equal opportunity to participate in the contract competition. The procedures require that the host country conduct the bid competition; they define the host country as the country that carries out the NATO project.

Under a cost-sharing agreement between the United States and United Kingdom, signed in 1952 and updated in 1973, the United States must use an agency of Her Majesty's Government to contract for or perform all maintenance and construction at military bases which United States forces use. The procurement, therefore, was made under British procurement regulations in conjunction with NATO International Bidding Procedures.

Although under the above agreements the Air Force has no direct procurement responsibility, it does retain overall responsibility for construction monitoring through liaison officers. In addition to issuing design instructions or construction directives, the Air Force may have changes made as construction progresses and participates in a joint acceptance-at-completion visit to assure itself of the quality of work performed.

British regulations for civil engineering (construction) contracts require bids to contain estimates by cost item as specified in a document called the Bill of Quantities. This Bill of Quantities is a British Government-prepared estimate of each work requirement and the quantities of material needed. Bidders are instructed to estimate prices for each requirement. Through examination of bid data, the British determine not only the low bidder but the reasonableness of each cost element in a bid. Contracts resulting from this procedure are called fixed-price, lump sum contracts. There are, however, two instances in which the fixed price can be changed. First, if there is an error in the Bill of Quantities, the price may be adjusted either up or down. Secondly, contracts expected to last more than one year include a variation of price clause which permits adjustments for inflation.

The Department of Environment maintains lists of qualified construction contractors. When work is required, the Government invites a number of these firms to bid on the proposed work. The number of firms invited to bid depends upon the value of the proposed work. Firms are selected with the

intention of securing competition and obtaining a company suited for the work.

When major portions of the work require subcontracts for specialty work, such as structural steel fabrication, the British require that the prime contractor make a selection from a list of Government-approved subcontractors. This subcontractor list is included in the bid documents. NATO work is opened to prospective subcontractors of participating NATO countries. In this case, both Marwais and the Italian firm that was eventually awarded the subcontract were on the approved list included in the bid documents.

CONTRACT AWARD

The prime contract was awarded to Costain, Civil Engineering Limited, a subsidiary of Richard Costain Limited, United Kingdom, on August 26, 1976. The value, excluding certain prime cost items (such as the door drive and winch assembly) that were separately bid, was about \$39 million.

Ten firms from the United Kingdom and 19 from other NATO nations were sent the British equivalent of an invitation for bid. Both Marwais and the Italian firm which eventually received the subcontract for steel components requested and received invitations to bid as the prime contractor. Eight firms responded for the requirements at 3 bases and 10 firms responded for requirements at the fourth base; neither Marwais nor the Italian firm chose to bid as a prime contractor. In all, 14 different firms responded to the invitation for bid for the prime contract. British officials informed the Air Force that Costain was the low responsive bidder for all requirements.

SUBCONTRACTOR SELECTION

Rather than bid as a prime contractor, Marwais chose to submit proposals for performing selected portions of the contract work to prospective prime contractors. Following these bids on June 3, 1976, Marwais entered into negotiations with Costain representatives for the shelter liner and door subcontract. A number of meetings were held between Costain and Marwais representatives leading to Costain's July 1976 bid for the prime contract which listed Marwais as subcontractor for the shelter frames and doors.

According to Marwais' notes of meetings between Marwais and Costain representatives, both companies were negotiating the signing of a "letter of intent" on June 25, 1976. Though the "letter of intent" was never signed, a Marwais representative claims a gentlemen's agreement was reached with Costain representatives and sealed with a handshake. Shortly after the late June meetings, negotiations broke off and Costain eventually proposed the Italian firm as a replacement subcontractor for Marwais.

British procurement regulations do not provide for procurement agency control over subcontractors when the prime contract is competitively awarded. The only restriction placed on the prime contractor is that his subcontractors must appear on the list of approved contractors maintained by the Department of Environment; as previously mentioned, both Marwais and the Italian firm were on this list.

Further, under British regulations and also under Department of Defense regulations, the successful prime contractor for a competitively awarded, fixed-price contract is not obliged to obtain competition for any subcontracted work, or if it chooses to use competition for the work, to award a subcontract to the lowest bidder. With the exception of the requirement that selected subcontractors must appear on an approved list, these procedures are similar to those contained in the Armed Services Procurement Regulation.

Prior to subcontract award, Department of Environment officials, although not required by regulations but at the request of the Air Force, arranged a meeting with Costain representatives to determine why Marwais was replaced. Costain representatives attended the meeting and cited several areas dealing with bid responsiveness and technical ability to perform as reasons why Marwais was dropped. Marwais officials contend that these reasons are specious and informed us that they intend to seek redress from Costain through the British court system. We did not contact Costain for additional information because such contact could be prejudicial to Marwais' case.

Whether the change in subcontractors reduces or increases Costain's cost of performance should not affect the prime contract price. As previously stated, once a competitive firm-fixed-price contract is awarded, the only basis for adjusting

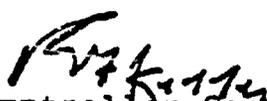
the price is an error in the bill of quantities or as required because of inflation. If, as alleged, the Italian firm's bid was higher than Marwais', the additional cost would lower Costain's anticipated profit.

Marwais officials mentioned that one possible reason for their being dropped involves the Arab boycott. Marwais is owned by a Jewish family and one member of Costain's Board of Directors is an Arab representing the interests of the United Arab Emirates. Air Force and Department of Environment officials, as well as officials from the United States Embassy in London and the United States Mission to NATO, believed that this was not a likely reason for Costain's action.

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We trust this information answers your concerns. In response to a similar request, the substance of this report is also being sent to Senator Alan Cranston.

Sincerely yours,


DEPUTY Comptroller General
of the United States