



**Comptroller General
of the United States**

Washington, D.C. 20548

B-234197

March 15, 1989

D. W. Mikkelson
Colonel, Finance Corps
Chief of Staff
U.S. Army Finance and Accounting Center
Indianapolis, Indiana 46249-0001

Dear Colonel Mikkelson:

This responds to your letter of January 10, 1989, requesting that we grant relief to Mr. _____, Special Disbursing Agent, Finance and Accounting Officer, Tooele Army Depot, Tooele, Utah 84074-5002, under 31 U.S.C. §3527(c) for an improper payment of \$205,231.09. For the reasons stated below, relief is hereby granted.

The improper payment occurred on May 12, 1987 when U.S. Treasury check No. 534,314 in the amount of \$240,764 was erroneously issued to Standard Modern Technologies Corporation, 69 Montcalm Avenue, Toronto, Ontario M6E 4N9 Canada (Standard). Your letter and supporting documentation indicate that the improper payment to Standard should have been made to the Canadian Commercial Corporation, 50 O'Connor Street, Ottawa, Ontario, Canada K1A 0S6, (Commercial). In accordance with the Defense Production Sharing Agreement and the Defense Development Sharing Agreement between the United States and Canada, Commercial, a wholly-owned corporation of the Canadian government, acts as a prime contractor for Canadian suppliers when contracts worth \$25,000 or more are awarded by the United States Armed Forces for the procurement of goods and services in Canada.

A detailed informal investigation completed by the Army revealed that on September 12, 1986, the Tooele Army Depot entered into a contractual agreement (DAAC 89-86-C-0176) with Standard as offeror and Commercial as payee/prime contractor. Block 15-A of the Solicitation, Offer and Award, Standard Form 33 (SF-33), titled "Name and Address of Offeror," indicated Standard as the prime contractor. Block 15-C of the SF-33, titled "Check if Remittance is Different from Above," was marked with an "X", indicating that a

remittance address was different from that indicated in block 15-A.

On September 25, 1986, a Commercial representative advised Tooele Army Depot that the SF-33 erroneously indicated Standard in block 15-A as the prime contractor and requested that Commercial's name be substituted. An inexperienced Purchasing Agent modified the original SF-33 by placing a gummed label containing Commercial's name and address to completely cover Standard's name and address in block 15-A. In addition, the label also indicated Standard as the Subcontractor. (The Purchasing Agent did not modify block 15-C of the SF-33 which continued to indicate that the remittance address was different than the address listed in 15-A.) The modified original SF-33 was subsequently placed in the Directorate of Contracting's file. The copy of SF-33 previously received in the Commercial Accounts Section on September 25, 1986 was not changed to reflect the modification made on the original SF-33.

On April 30, 1987, the Commercial Accounts Section, Tooele Army Depot, received two invoices from Commercial totalling \$240,674.00, the amount of contract DAAC 89-86-C-0176. On May 12, 1987, the Finance and Accounting Office prepared a voucher and issued a check for payment to Standard in the amount of \$240,764.00.^{1/} Under the office organization at that time, a voucher examiner who worked for a subordinate of Mr. _____ would prepare the voucher. The Army investigation revealed that it was not unusual to make payments to someone other than the addressee on the invoice.

On October 14, 1987, after unsuccessful attempts at recoupment from Standard, the Finance and Accounting Office, Tooele Army Depot issued U.S. Treasury check No. 541,881 to Commercial for \$240,674.00, the correct total amount of the original contract.

The investigation revealed that immediately following notice of the erroneous payment to Standard, Mr. _____ pursued collection action through telephone conversations and correspondence with Standard and Commercial officials. The amount of \$35,532.91 due Standard on different contracts reduced the debt owed by Standard to \$205,231.09. In

^{1/} We note an overpayment on the contract of \$90 issued to Standard but this discrepancy is not considered a separate issue in this case since the overpayment is incorporated in the erroneous payment to Standard under consideration here.

October 1987, Mr. learned that Standard was placed in receivership and promptly asked the receiver to give priority consideration to the debt owed the U.S. Government. According to your letter, litigation regarding collection of the erroneous payment is in the hands of the Department of State and Department of Justice.

The Army investigation further revealed that the voucher examiner followed standard instructions that were given to her orally in preparing the erroneous payment to Standard. The voucher examiner advised the Army investigator that she prepared the voucher for payment in the manner she was trained and that she had never seen an SF-33 with block 15-C marked. The voucher examiner felt further assured that Standard was the proper payee because internal procedures assigned this particular voucher examiner the responsibility of processing contracts for all companies and vendors whose names begin with the letter "S". Another examiner was assigned work for companies beginning with the letter "C".

The Army investigator concluded that the erroneous payment was the result of a combination of factors including the Commercial Accounts Section failure to receive the modified SF-33 and the voucher examiner's oversight that block 15-C of the SF-33 was marked indicating a different remittance addressee. The investigation also revealed that although the Purchasing Agent, who was not under Mr. supervision, made the change on the original SF-33, she was not responsible for distributing nor filing the changes.

The Army investigation and the documents accompanying your letter support a conclusion that Mr. had a reasonable system of procedures and internal controls in his office. Results of a Department of the Army Finance and Accounting Quality Assurance Review Team inspection gave Mr. a "noteworthy" (exemplary) review of the disbursing, accounts payable and quality assurance functions that control the funds in his account. While the voucher examiner's statement to the Army investigator revealed she had never seen the contents of the office standard operating procedures, her inattentiveness, lack of experience or oversight cannot be attributed to lack of supervision, negligence or lack of due care by Mr.

Similarly, the Purchasing Agent's failure to route the changes made on the original SF-33 to other offices cannot be attributed to Mr. lack of supervision since the person who might have done so was not under his supervision.

Pursuant to 31 U.S.C. § 3527(c), we may relieve a disbursing official from liability for a deficiency in an account resulting from an improper payment where there is no indication of bad faith or lack of due care on the part of the accountable officer and where diligent collection action is taken. B-227549, July 8, 1987. More particularly, we have granted relief where a subordinate actually disburses funds, rather than the supervisory disbursing officer, upon a showing that the accountable officer properly supervised his subordinates by maintaining an adequate system of procedures and controls to safeguard the funds. B-230863, September 23, 1988.

The detailed Army investigation concluded that the loss in this case was not the result of inadequate supervision, but rather by a combination of factors including simple error caused by inexperience and/or inattentiveness. The type of human error by subordinates that caused the erroneous payment was not the result of negligence attributable to Mr. . The record does not indicate bad faith or lack of due care by Mr. ; to the contrary, the record indicates that he adequately supervised his subordinates by maintaining adequate internal controls and procedures to safeguard the funds entrusted to his office. Furthermore, the record amply supports a finding that Mr. aggressive collection attempts immediately following notification of the improper payment adequately meets the collection requirements of 31 U.S.C. § 3527(c).

We note that subsequently, additional controls and procedures were implemented to prevent this type of error from reoccurring. For the reasons stated, relief as requested is hereby granted Mr. .

Sincerely yours,


Gary L. Kepplinger
Associate General Counsel