

GAO

Report to the Chairman, Subcommittee
on Defense, Committee on
Appropriations, U.S. Senate

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NAVY CONTRACTING

Military Sealift Command's Contract for Operating Oceanographic Ships



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**National Security and
International Affairs Division**

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April 18, 1990

The Honorable Daniel K. Inouye
Chairman, Subcommittee on Defense
Committee on Appropriations
United States Senate

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Dear Mr. Chairman:

In your November 2, 1989, letter, you asked us to examine the contracting practices of the Military Sealift Command (MSC), particularly those concerning its recent award of a 5-year contract for the operation of 10 oceanographic ships. In later discussions with your office, we agreed to concentrate on examining (1) whether MSC complied with the Service Contract Act of 1965 (41 U.S.C. 351 et seq.) in the 1989 contract award for the operation of oceanographic ships and (2) whether the award may have been influenced by the involvement of certain former MSC employees.

Results in Brief

Our review showed that (1) MSC complied with the Service Contract Act and (2) the suggestion that certain former MSC employees may have improperly influenced the contract award is unsubstantiated.

Military Sealift Command

Background

MSC operates and maintains a number of government-owned special purpose ships to support various missions, including cable laying and repair, range instrumentation, oceanographic research, underway replenishment, ocean surveillance, and hospital services. Some of the ships are operated by civil service mariners that MSC employs, and others are operated under commercial contracts with civilian crews,

MSC operated oceanographic ships with civil service mariners until 1986 when, as a result of a competition and cost comparison conducted under the provisions of Office of Management and Budget Circular A-76, it turned the operation of these ships over to a commercial contractor. The initial contract was for 3 years, expiring in 1989. The subject of our review was a follow-on contract for the operation of 10 oceanographic ships, which was awarded in April 1989.

Keywords: Service Contract Act, Oceanographic Ships, Military Sealift Command

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MSC's Compliance With the Service Contract Act

The Service Contract Act requires that "service employees" of a government contractor furnishing services in the United States be paid not less than prevailing wages and fringe benefits as determined by the Secretary of Labor. The question of MSC's compliance with the act concerns whether licensed mariners (generally ships' masters, chief engineers, mates, and assistant engineers) should be defined as "service employees" and therefore included in coverage under the act.

Before 1985, MSC believed that the act did not apply to contracts for the operation of ships because they were operated mostly outside U.S. waters. However, in 1985 the Department of Labor informed MSC that the act applied to the first contract for the oceanographic ships. MSC and Labor later agreed to apply the act to all ship operating contracts whenever the ships are in U.S. waters. There appears to be no dispute that the act does not apply when the ships are outside U.S. waters.

After the agreement with Labor, requests for proposals issued by MSC to prospective contractors for ship operating contracts have (1) included notification that the act would be applied to the contract and (2) required offerors to quote separate rates for the periods the ships will be within U.S. waters. As part of the contracting process, MSC requests from Labor a determination of the minimum wages and fringe benefits applicable to the contract and includes it in the request for proposals in accordance with the act. In making this determination, Labor must decide which employees are service employees for whom prevailing wages apply and which employees are exempt under the act as persons employed in a "bona fide executive, administrative or professional capacity." Wage determinations issued by Labor for MSC ship operating contracts previously excluded licensed mariners from coverage.

With regard to the request for proposals for the follow-on contract for the oceanographic ships, MSC requested a wage determination from Labor on May 25, 1988. The request included (1) a listing of each class of mariner, both licensed and unlicensed, expected to be employed aboard the ships, (2) copies of the collective bargaining agreements for both licensed and unlicensed mariners under which the current contractor was operating, and (3) a listing of the equivalent civil service wages for the unlicensed mariner positions. MSC said that the listing of civil service wages excluded licensed mariners because the previous Labor wage determination for the same ships had included only unlicensed mariners.

The request for proposals was released on August 8, 1988, and Labor issued a wage determination for the oceanographic ships on August 31, 1988. The wage determination included only unlicensed mariners and was based on the wage structure of the contractor then operating the ships. MSC forwarded the wage determination to all prospective offerors, as Amendment One to the request for proposals, on September 14, 1988. MSC received initial proposals from eight offerors in December 1988, conducted negotiations, and received best and final offers in March 1989.

On April 5, 1989, before award of the contract, MSC received an inquiry from a Member of Congress concerning the application of the act to licensed mariners on the oceanographic ships. The Member also proposed that MSC cancel and readvertise the request for proposals with coverage of licensed mariners under the act. However, MSC determined that readvertisement would entail a 6- to 9-month delay, impact the operational commitments of the ships, and require a sole-source extension of the existing contract. Additionally, MSC calculated that inclusion of licensed mariners under the act's coverage would add only about \$150,000 to the contract over 5 years and would have no effect on the relative standing of the offerors. Therefore, MSC decided to award the contract to the low offeror, request a new wage determination, and, as provided in the request for proposals, incorporate any revised wages in the contract after award. The contract was awarded on April 21, 1989. Labor has not yet issued a revised wage determination.

The question of whether or not licensed mariners should be included under the act's coverage is a matter awaiting decision by the Secretary of Labor. We believe that MSC's request for a wage determination for operation of the oceanographic ships provided sufficient information to determine appropriate wages for both licensed and unlicensed mariners. By providing Labor the necessary information and requiring contractor compliance with the resulting wage determination, we also believe that MSC has complied with the requirements of the act.

Suggestion of Improper Influence by Former MSC Employees Is Unsubstantiated

The suggestion that former employees of MSC may have influenced the award of this contract apparently referred to a former naval officer and his wife, a former employee in MSC's contracting office. The former naval officer was assigned to MSC as Director of Operations. This individual was transferred from MSC to the Office of the Chief of Naval Operations in March 1986 and retired from the Navy on January 1, 1988. As the Director, the officer was responsible for ship operations worldwide and for requesting that the procurement office enter into contracts

(such as ship operating contracts) to support those operations. The purchase request for the oceanographic ships operations contract we reviewed was initiated on May 20, 1988, more than 2 years after the officer left MSC.

The officer accepted part-time employment with a commercial firm on June 13, 1988, and, after MSC issued the request for proposals for the oceanographic ships, was employed full-time to help the company prepare its proposal for submission to MSC. Subsequently, the firm formed a wholly-owned subsidiary to submit the proposal and to operate the ships if it won the contract, and the officer was named Vice President for Operations in the new company, which was later awarded the contract. The officer was not involved in this procurement action while assigned to MSC, and we therefore believe his subsequent employment was not in conflict with post-employment restrictions.

The officer's wife was employed at MSC as the Director of the Small and Disadvantaged Business Utilization Program. The only action she took regarding the request for proposals for the oceanographic ships was to issue a recommendation that the request for proposals not be set aside for small business because performance would require (1) more than 500 employees and (2) a cash availability exceeding \$5 million. Within 2 weeks after the request for proposals was issued, she requested to be withdrawn from further involvement in the procurement action because of her husband's employment. She was not involved in this procurement between her request for withdrawal and her temporary assignment away from MSC to the Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics) on January 15, 1989. She returned to MSC on July 15, 1989, after the contract had been awarded, and transferred permanently to the Small Business Administration on August 26, 1989.

The naval officer left MSC more than 2 years before the request for proposals for the oceanographic ships was issued. The officer's wife was withdrawn from involvement in the procurement and was away from MSC during much of the procurement process. Therefore, we believe the suggestion that these two employees may have improperly influenced the award of the oceanographic ships contract is unsubstantiated.

Scope and Methodology

To answer the specific questions asked by your office, we examined MSC correspondence, contract files, and relevant records. We also talked with officials in MSC's contracting and personnel offices in Washington, D.C.

We performed our work between November 1989 and March 1990 in accordance with generally accepted government auditing standards.

As requested, we did not obtain official Navy comments on this report; however, we discussed the results of our work with MSC officials and they agreed with the facts presented.

We are sending copies of this report to the Chairmen, House and Senate Committees on Appropriations and on Armed Services, House Committee on Government Operations, and Senate Committee on Governmental Affairs. Copies also are being sent to the Secretary of the Navy and the Commander of MSC and will be available to other interested parties upon request.

Major contributors to this report were Robert Eurich, Assistant Director, and Robert Wright, Senior Evaluator, both in the National Security and International Affairs Division, Washington, D.C. Please contact me on 275-6504 if you or your staff have any questions concerning this report.

Sincerely yours,



Martin M Ferber
Director, Navy Issues