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Testimony

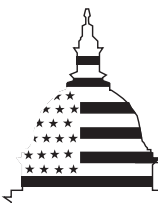
Before the Committee on Small Business, House of
Representatives

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CONTRACT MANAGEMENT

Purchase of Army Black Berets

Statement of David E. Cooper, Director, Acquisition and
Sourcing Management



G A O

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Mr. Chairman and Members of the Committee:

Thank you for inviting me to participate in today's hearing on the purchase of berets for the U.S. Army. The Army's decision to issue black berets to all of its forces in just 8 months placed enormous demands on the Department of Defense's (DOD's) procurement system. In fact, at the time of the announcement, DOD had only one domestic supplier under contract to produce a maximum of 138,052 berets. To meet this challenge, DOD awarded contracts to purchase nearly 5 million berets at a cost of about \$30 million. DOD's contracting strategy consisted of increasing the domestic supplier's production, awarding contracts to known foreign sources, and procuring berets from additional sources, anywhere they could be found. My testimony will focus on two aspects of this strategy—specifically, the contracting procedures DOD used in purchasing the berets and circumstances surrounding waivers to the Berry Amendment, a statutory requirement to purchase clothing items from domestic suppliers.

Contractual Arrangements to Purchase the Berets

As you know, the Army Chief of Staff announced on October 17, 2000, that all Active, National Guard, and Reserve personnel would be issued black berets as part of their standard headgear. The Chief also announced that the troops would begin wearing the new berets on June 14, 2001—the Army's first birthday in the new millennium.

In response, the Defense Logistics Agency (DLA) modified the domestic supplier's existing contract in early November to increase monthly production from about 10,000 to over 100,000 berets per month. The modification added 1.2 million berets to the domestic supplier's contract. DLA then awarded contracts to purchase berets from two known foreign sources, which would deliver 1.6 million berets. Because a substantial shortfall still existed, DLA contracting officials intensified their efforts to identify other sources that could produce the berets and, in early December, competitively awarded four contracts to purchase one million berets from four additional foreign suppliers. In February 2001, when production problems surfaced and deliveries fell behind schedule, DLA exercised options on the competitively awarded contracts with the four foreign sources to purchase another million berets. (Details of the contract actions are included in app. I.)

Due to the extremely short timeframe for delivery of the berets to the Army, DLA contracting officials took a number of actions to expedite award of the contracts. For example, the first three contract actions in November 2000 were taken by DLA without providing for "full and open"

competition as required by the Competition In Contracting Act of 1984. According to contract documents, the contract actions were not competed because of an “unusual and compelling urgency,” one of the circumstances permitting other than full and open competition. The basis for the unusual and compelling urgency was:

“The Army will be seriously injured if this action is not approved. The Army Chief of Staff has approved a uniform change for the entire Army and this action is imperative in order for this Command to support the service by the introduction date.”

In addition, DLA contracting officials did not obtain a review of these contract actions from the Small and Disadvantaged Business Utilization Office for possible small business participation. Officials in the small business office said they would have conducted an expedited review to determine if a small business award was appropriate. However, a study conducted for the Principal Under Secretary of Defense for Acquisition, Technology, and Logistics concluded that the small business review was immaterial to the outcome given the time constraints and because only one domestic source was known to exist.

Also, in awarding a contract to one of the foreign sources, the DLA contracting officer was confronted with a price that was 14 percent higher than the price of the domestic supplier. The contracting officer performed a price analysis and determined the price was fair and reasonable. Contract documents explained that

“ . . . the Contracting Officer must make immediate awards to attempt to meet initial fielding requirements of the Army, so there is no time to obtain detailed cost or pricing data, analyze that data, develop a negotiation position, negotiate with a firm, and then finally make award.”

Nevertheless, when competition was introduced into the process at a later date, prices declined. Specifically, the price on the single largest noncompetitive contract was 27 percent higher than the average competitive price.

Despite all their efforts, DLA officials advised us that quality and delivery problems will prevent distribution of berets to all Army forces by June 14. In fact, the officials expect that less than half of the Army’s forces will receive berets on that date. DLA officials also advised us that they are terminating three contracts because the contractors did not meet delivery requirements.

Waiver of the Berry Amendment

Over the years, Congress has restricted DOD's expenditure of funds for purchases of certain articles and items, including clothing, to American firms. The restrictions are contained in the so-called "Berry Amendment" that has been included in various forms in legislation since 1941. The Berry Amendment can be waived if it is determined that a satisfactory quality and sufficient quantity of articles and items cannot be acquired as and when needed at U.S. market prices. The determination to waive the Berry Amendment must be made by the Secretary of the department concerned, or a designee.

To meet the desired timeframes for purchasing the berets, DLA determined that domestic sources were unavailable to produce all of the berets required and that contracting with foreign sources was necessary. DLA contracting officials in Philadelphia prepared three waivers to the Berry Amendment. The Deputy Commander of DLA's Defense Supply Center-Philadelphia approved two waivers—on November 1 and December 7, 2000. DLA's Senior Procurement Executive approved the third on February 13, 2001.

As the first waiver was being processed, questions were raised by DLA Headquarters about whether officials in Philadelphia had the authority to waive the Berry Amendment. On November 8, 2000, DLA's Senior Procurement Executive requested that authority to waive the Berry Amendment be delegated to DLA. On February 1, 2001, the Principal Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) delegated authority to waive the Berry Amendment to DLA's Director and Senior Procurement Executive, with the provision that it may not be redelegated.

Upon receipt of the delegation of authority to waive the Berry Amendment, DLA's Senior Procurement Executive reviewed the waivers and, on March 23, ratified the approvals made by the Deputy Commander in Philadelphia. DOD's Deputy General Counsel for Acquisition and Logistics reviewed this matter and expressed the opinion that DLA officials could take these actions to ratify the initial waivers.

On April 24, 2001, the Principal Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) canceled the delegation of authority previously granted to the DLA Director and Senior Procurement Executive. The cancellation was taken to ensure that any request for a waiver to the Berry Amendment "receives attention at an appropriate level within the Department of Defense . . ."

A chronology of the events surrounding waivers of the Berry Amendment to purchase the berets from foreign sources is included in appendix II.

Conclusion

Mr. Chairman, clearly, the imposition of June 14 deadline placed DOD in a high-risk contracting situation. In their eagerness to serve the customer, DOD procurement officials chose to shortcut normal contracting procedures. The date allowed very little time to plan for the purchase of the berets and little room to respond to production problems. Ultimately, DLA will not be able to meet the Army's deadline. Had DOD taken more time to plan for this acquisition and follow well-established contracting procedures, such problems may well have been avoided.

Mr. Chairman this concludes my testimony. I will be happy to answer any questions that you or Members of the Committee may have.

Appendix I: Contracts for Black Berets

<u>Award date</u>	<u>Contractor</u>	<u>Quantity</u>	<u>Unit price</u>	<u>Total price</u>	<u>Country of origin</u>
11/2/00	Bancroft Cap Co.	1,200,000	\$6.30	\$7,560,000	Domestic
11/2/00	Dorothea Knitting Mills	1,083,504	7.20	7,801,229	Canada
11/6/00	Denmark Military Equipment	480,816	5.75	2,764,692	Romania
12/7/00	Bernard Cap Co.	375,000	5.95	2,231,250	South Africa
	C. W. Headdress	120,000	4.36	523,200	Sri Lanka
	Northwest Woolen Mills	196,032	5.05	989,962	India
	Kangol, LTD	308,968	6.24	1,927,960	China
2/14/01	Bernard Cap Co. (option)	375,000	5.95	2,231,250	South Africa
	C.W. Headdress (option)	120,000	4.36	523,200	Sri Lanka
2/22/01	Northwest Woolen Mills (option)	196,032	5.05	989,962	India
	Kangol, LTD (option)	308,968	6.68	2,063,906	China
Totals		4,764,320		\$29,606,611	

Appendix II: Berry Amendment Waivers

Nov. 1, 2000	DLA approves waiver-Dorothea Knitting Mills and Denmark Military Equipment contracts
Dec. 7, 2000	DLA approves waiver-Bernard Cap., C.W. Headdress, Northwest Woolen Mills, and Kangol, LTD contracts
Feb. 1, 2001	Delegation of authority to Director, DLA and DLA Senior Procurement Executive approved
Feb. 13, 2001	DLA approves waiver-Bernard Cap, C. W. Headdress, Northwest Woolen Mills, and Kangol, LTD contract options
Mar. 23, 2001	DLA Senior Procurement Executive reviewed and approved November and December waivers
Apr. 24, 2001	Delegation of authority to DLA Director and Senior Procurement Executive cancelled