

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

To General Counsel Fred Feinstein *[Signature]* Date: September 18, 1997
From Inspector General Robert Allen *[Signature]*
Supervisory Auditor Michael Griffith *[Signature]*
Subject Final Report - "Auditor's Review of the Agency's Computer Maintenance
Contract for Fiscal Years 1996 and 1997
Report No. OIG-AMR-20

Enclosed is the Office of Inspector General (OIG) report in the above referenced matter. A copy of this report is being provided to the Chairman. A draft of the report was submitted to you for your comment. The comments were considered in preparing this final report. This Final Report augments the parallel OIG Investigative Reports in OIG-I-173, 187, a copy of which has been provided to you. The scope of the investigative report is broader than this report and the investigation involved the examination of substantially more documents and the interviewing of many more witnesses under oath. None of the individuals interviewed in the subject review were sworn, nor did they execute written statements.

The OIG conducted this review after receiving allegations that the National Labor Relations Board was paying a contractor for computer services which were not performed satisfactorily or were not performed at all. This report presents the results of our review which determined that Agency officials had not verified whether the contractor provided computer maintenance in conformance with the terms of the contract. The OIG concluded that Agency officials did not establish the reasonableness of the prices proposed by the contractor who was awarded the contract on a sole source basis. The maintenance contractor may have exceeded regulatory guidelines regarding that amount of the National Labor Relations Board contract which it subcontracted to another vendor.

We appreciate the cooperation extended to the OIG during the conduct of this review. Should you have any questions or comments concerning this report, please do not hesitate to call upon us.

R. E. A.

cc: William B. Gould IV, Chairman

REPORT

Office of Inspector General

**AUDITOR'S REVIEW OF THE AGENCY'S COMPUTER
MAINTENANCE CONTRACT FOR
FISCAL YEARS 1996 AND 1997**

OIG-AMR-20



National Labor Relations Board

Issued: September 18, 1997

BASIS FOR REVIEW

The Office of Inspector General (OIG) was provided documentary materials which alleged that the Agency had paid a contractor, Dynatech Integrated Systems Corporation, for services which were not performed satisfactorily or were not performed at all. Dynatech had been awarded the National Labor Relations Board's (NLRB) computer maintenance contract for Fiscal Year (FY) 1996. Dynatech would subcontract much of the maintenance work to Memorex Telex Corporation. The Agency renewed the contract with Dynatech for FY 1997. The OIG began a review in September 1996 to ascertain whether the NLRB received the services specified in the contract and if these services were performed to the satisfaction of the appropriate Agency officials. Contract files maintained by the Procurement and Facilities Branch (PFB) and the Management and Information Systems Branch (MISB) were examined. Agency officials and contract employees were interviewed. The MISB assisted the PFB with contract administration by: developing the description of services which would be needed by the NLRB; performing the technical review of Dynatech's proposal; and monitoring the contractor's performance to assure that services were performed in accordance with the requirements of the contract.

RESULTS OF THE REVIEW

Quality Assurance. The Division of Administration should strengthen the quality assurance function relating to NLRB's computer maintenance contract. Agency officials were not verifying the performance data which showed whether the contractors were delivering the services specified in the contract. There is no definitive answer as to whether the contractors were repairing or replacing hardware and software within the time frames set forth in the contract. Dynatech prepared Monthly Status Reports which included performance data for the contractors and showed whether maintenance services were being provided in conformance with contract requirements. These reports provided by Dynatech generally indicated that it

met the agreed upon compliance rate of 90%.¹ However, the performance data relied upon by Dynatech was not verified by MISB. The Procurement and Facilities Branch (PFB) calculated the compliance rate in March 1996 and again after the end of Fiscal year 1996 using the unverified data submitted by Dynatech. These complications show that the 90% rate was obtained in only four months of Fiscal Year 1996. In this review we interviewed seven Agency employees with technical backgrounds in the ADP area who were involved in the computer maintenance contract with Dynatech. These individuals and other material witnesses executed affidavits in the investigation. For a recitation of the views of these individuals see the investigative report.

NLRB employees have instructions to contact Dynatech's Help Desk when computer maintenance is needed. This procedure became effective in October 1996. During the period October 1995 through September 1996, Agency employees had been instructed to contact Memorex first, and then Dynatech if problems occurred regarding the maintenance service. During FY 1996 and early FY 1997, the technicians performing the maintenance were usually Memorex employees. In early FY 1997, Decision One acquired part of Memorex including that segment which was performing maintenance work at the NLRB through a subcontract with Dynatech. Beginning in early FY 1997, Dynatech employees were dispatched to perform maintenance at NLRB Headquarters and the Baltimore Region. Decision One employees began providing maintenance services to the remainder of the Agency.

Under these procedures, a Dynatech employee receives the call from the NLRB employee and records the time and date of request into a call tracking system. The Dynatech employee at the Help Desk attempts to resolve the problem. A maintenance technician is usually dispatched to the NLRB site. The technician telephonically informs the Dynatech Help Desk as to the time and date of arrival at the NLRB site; and the time and date that the problem was resolved. The Dynatech employee at the Help Desk records this information into the call tracking system. The maintenance technician completes a Service Record Sheet which

¹ the 90% compliance rate with the contractual time requirements was agreed upon at a meeting on November 23, 1995. This does not appear in the contract which was executed in September 1995.

records a variety of information including times and dates applicable to that service call. An NLRB employee is asked to sign the Sheet acknowledging that the service was performed. The maintenance technician sends the Service Record Sheet to Dynatech.

The OIG reviewed the Monthly Status Report prepared by Dynatech for the period November 1996. This Status Report stated that there had been 165 calls for regular maintenance service during November 1996 and that the contractors' total performance rate was 87 percent. Total performance rate measures the actual resolution of problems with the overall time frames set forth in the contract. We were provided the maintenance technicians' Service Record Sheet pertaining to 28 of these calls. These Record Sheets were completed by contract employees at the NLRB site which had requested the maintenance services. We were informed that, in the future, MISB personnel will review a portion of the Service Record Sheets and verify the data in the Monthly Status Reports. The OIG determined that the Service Record Sheets are not a reliable control for verifying the Monthly Status Reports. Our review of 28 Record Sheets pertaining to service calls during November 1996 disclosed that:

- 4 of the sheets did not include dates for any action (request for service by an Agency employee, the technician's arrival at the NLRB site, resolution of problem);
- another 7 sheets did not include times for any actions;
- another 14 sheets did not include the time and date relating to the initial call requesting maintenance service; and
- 3 sheets did not include the signature of an NLRB employee acknowledging that the service had been performed (2 of these sheets included dates which were incorrect such as stating that the maintenance was performed before a request for service had been made).

Recommendation 1 of 3 to the Office of the General Counsel

Verify the performance data pertaining to the contractor's conformance with the requirements of the computer maintenance contract. To be of use, Service Record Sheets must be properly completed by contract employees and Agency employees must be diligent in checking the information before they sign the Sheets.

Management Agreed.

Reasonableness of Contract Price. The Agency did not establish the reasonableness of the prices proposed by Dynatech regarding NLRB's computer maintenance contract for FY 1996 and 1997. The contracts for computer maintenance at the NLRB have been awarded on a sole source basis since at least FY 1992. In each instance Agency officials concluded that proposed prices were reasonable in comparison to costs incurred in prior years. However, these sole sourced contracts had not been negotiated in an environment which included adequate price competition. Therefore, the Agency should have but did not obtain cost or pricing data from Dynatech so that the contractor's prices could be analyzed for reasonableness.

Between FY 1991 and 1993, Information Systems & Networks Corporation (ISN) had the contract for performing computer maintenance at the NLRB. ISN, certified as an 8(a) contractor by the Small Business Administration, subcontracted much of the maintenance work to BancTec Service Corporation. The 8(a) program is intended to promote the development of small businesses owned by socially and economically disadvantaged individuals so that they can develop into viable competitors in the commercial marketplace. Under the program, the Small Business Administration acts as a prime contractor, entering into contracts with federal agencies and then subcontracting work to firms in the 8(a) program. Individual agencies usually negotiate directly with the 8(a) contractor. Contracts involving multi-locations are frequently subcontracted, by the 8(a) firm, to large businesses which employ individuals throughout the country.

The contracts with ISN were cost-plus-fixed-fee awarded on a sole source basis. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract

performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. See the Federal Acquisition Regulations (FAR) at 16.301-2.

In Fiscal Year 1994, the Agency awarded the contract for computer maintenance to Synetics Corporation which was an 8(a) contractor. Synetics would subcontract much of the maintenance work to BancTec. The contract with Synetics was a cost-plus-fixed-fee awarded on a sole source basis in the amount of \$762,529. NLRB did not require cost or pricing data from Synetics, regarding the FY 1994 contract, because the Agency concluded that the prices proposed by Synetics were reasonable in comparison to the prices which had been paid to ISN. Cost or pricing data is used to verify the amounts which a contractor proposes to charge an agency for the services being rendered. During FY 1994 the contract with Synetics was modified and actual payments to the contractor totaled \$942,961. The contract with Synetics was renewed in FY 1995 during which payments to the contractor totaled \$1,121,292.

In FY 1996, the Agency awarded the computer maintenance contract to Dynatech which was an 8(a) contractor. Dynatech would in turn subcontract much of the maintenance work to Memorex which was a large corporation with employees located throughout the country. The contract with Dynatech was a firm-fixed-price awarded on a sole source basis. A firm-fixed-price contract is suitable for acquiring services on the basis of detailed specifications when the contracting officer can establish fair and reasonable prices at the outset, such as when there are reasonable price comparisons with prior purchases of similar services made on a competitive basis or supported by valid cost or pricing data. See the FAR at 16.202-2. Agency officials performed a price analysis and concluded that Dynatech's prices were fair and reasonable when compared against the prices being paid to Synetics for substantially the same service, quantity, terms and conditions. As a result, NLRB did not require cost or pricing data from Dynatech. The contract with Dynatech in FY 1996 was for \$1,304,899. In FY 1997, the contract with Dynatech was renewed in the amount of \$1,379,975.

As previously stated, the Agency waived cost or pricing data from Dynatech because a price analysis determined that Dynatech's prices were fair and reasonable when compared against the prices being paid to Synetics during FY 1995. Price analysis was not the appropriate means for establishing the reasonableness of Dynatech's proposal because prior contracts had not been awarded in an environment which included competition. In accordance with FAR 15.804-2, the Agency should have obtained cost or pricing data from Dynatech so that the contractor's prices could be analyzed for reasonableness. FAR 15.804-1(b)(iii) states that price analysis should clearly demonstrate that a contractor's proposed price is reasonable in comparison with current or recent prices under contracts that resulted from adequate competition. The FY 1995 contract with Synetics was the cost basis for the price analysis of Dynatech's proposal. This FY 1995 contract was awarded without price competition. In the case of computer maintenance, the Agency has not competed the contract since at least FY 1992. Therefore, the contract with Dynatech was not negotiated in an environment which included adequate price competition. FAR 15.805-2(b) states that to provide a suitable basis for comparison, price analysis should consider differences in quantities ordered, trends of improvements in the industry's efficiency, and when prior acquisitions occurred. This section of the FAR states that any comparison will not be valid unless the reasonableness of the prior price was established. The amount of the contract awarded to Dynatech in FY 1996 was 16 percent (\$183,607) higher than what was paid to Synetics during FY 1995. The current contract (FY 1997) with Dynatech is almost double the initial amount of the FY 1994 contract with Synetics. In recent years NLRB has significantly increased its ADP resources while substantial changes have occurred within the computer industry. During this period, the Agency did not ascertain the reasonableness of the contract prices proposed by either Synetics or Dynatech.

Recommendation 2 of 3 to the Office of the General Counsel

Solicit multiple vendors for priced offers on the computer maintenance contract to be awarded in FY 1998. This will enable the contracting officer to determine that prices agreed upon were based on adequate competition. Cost or pricing data should be obtained from Dynatech if the Agency considers renewing the current contract without soliciting offers from other vendors.

Management Agreed.

Services Required from Dynatech

In our draft review it was stated that Dynatech was not required to provide certain services. The draft did not refer to Dynatech's contract proposals which were specifically incorporated into the contract. These proposals included a section entitled "Executive Summary" which stated that Dynatech would provide certain staffing and specified their duties and hours of work.

Subsequent to the execution of the draft audit review, a full scale OIG investigation was conducted which included an inquiry into the value add staffing and services set forth in Dynatech's Executive Summary. Matters not covered by the audit review report were analyzed in the investigative report; e.g. the Executive Summary, the negotiations for the contract, the representations by Dynatech in its campaign to obtain the contract; the admissions by Dynatech, the partial compliance, without question, by Dynatech with the requirements of the Executive Summary for the first eight months of the contract.

These and other factors are set forth in detail in the investigative report and for the first time subjected to a legal analysis. The prior audit review as specified on its face was a "Draft" and as with all drafts subject to further consideration.

Accordingly, this section of the draft audit review has been deleted from the Final Review and your attention is directed to the investigation report in OIG-173, 187 for our analysis and conclusions regarding the contract requirements.

Limitations on Subcontracting. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the 8(a) contractor. See the FAR at 52.219-14 which was incorporated in Dynatech's contract at Section H. Dynatech was awarded a firm-fixed-price contract to perform computer maintenance during FY 1996 at the NLRB. The contract with Dynatech was renewed for FY 1997. During FY 1996, Memorex employees did most of the computer maintenance at the NLRB. Dynatech employees administered the contract with the Agency, managed the performance of Memorex, and provided some add on services. As discussed earlier, some of these add on services were not provided. Was at least 50 percent of the personnel costs relating to this contract during FY 1996 expended for employees of Dynatech? The OIG believes it's improbable that this 50 percent criteria was met in FY 1996 considering that Memorex employees performed most of the computer maintenance at the NLRB. Dynatech may have:

- paid Memorex more than 50 percent of the overall contract amount or
- realized substantial corporate profits.

FAR 16.202-1 states that a firm-fixed-price contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs. Nevertheless, 8(a) firms are expected to employ individuals at a level which would account for at least 50 percent of the contract's overall personnel costs.

In FY 1997, employees of Dynatech began performing computer maintenance for all Headquarters components and the Baltimore Region. As a result, Dynatech's payroll cost relating to NLRB's contract should have increased significantly.

Recommendation 3 of 3 to the Office of the General Counsel

Ascertain whether Dynatech is meeting the 50 percent criterion regarding personnel costs. Management has advised it will refer this matter to Small Business Administration.

A complaint alleging a 50% rules violation and requesting an investigation was filed on March 11, 1997 (OIG-I-190). Even if this allegation were to have merit, it would not impact upon the NLRB. The OIG, therefore, agrees with management that the matter should be referred to the SBA and we are closing the portion of OIG-I-190 which refers to the 50% rule.

As stated in the investigative report, further recommendations will be forthcoming.