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NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

January 10, 1989

Office of General Counsel

Douglas E. Ginsburg, Esq.  
Baskin, Flaherty, Elliott, Mannino, Gordon & Scully, P.C.  
818 Connecticut Avenue, N.W.  
Washington, D.C. 20006

Re: FOIA - Appeal (Your Letter Dated  
December 19, 1988)

Dear Mr. Ginsburg:

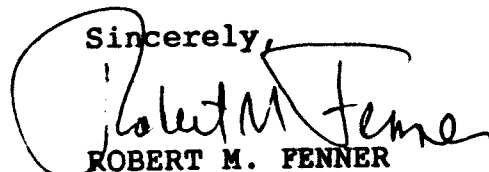
This Office received your FOIA appeal on December 20, 1988. The following documents are being provided in response to your appeal:

1. DND's protest of NCUA's decision not to exercise its option to renew DND and NCUA's response to the protest; and

2. Three memoranda prepared by NCUA staff relating to NCUA's decision not to exercise its option to renew DND.

You are now in receipt of all documents responsive to your FOIA request and appeal. A billing statement for the cost involved in processing your request is enclosed. Please forward a check to this Office within 30 days with a copy of the billing statement.

Sincerely,

  
ROBERT M. FENNER  
General Counsel

Enclosures

cc: Director, Administrative Office  
Ben Henson

FOIA - Vol. IV, C, 1

LAW OFFICES  
**ABRAMS, WESTERMEIER & GOLOBERG, P.C.**  
SUITE 660  
1828 L STREET, N.W.  
WASHINGTON, D.C. 20036-5188  
(202) 785-2050  
TELECOPIER: (202) 659-5410

October 7, 1988

Mr. William Roberts  
Contracting Officer  
National Credit Union Administration  
1776 G Street, N.W.  
Washington, D.C. 20456

Re: Protest of Award of Contracts for Management and  
Technical Support of NCUA Data Processing Environment

Dear Mr. Roberts:

We have been retained by DND, Incorporated ("DND") to address the matter of your agency's award of contracts, including awards to DND subcontractors, for services that are the same as or substantially similar to services required from DND under the contract resulting from Solicitation No. NCUA-87-R-011 (hereinafter referred to as the "Contract"). To that extent, you should consider this an agency protest filed pursuant to Part 33 of the Federal Acquisition Regulations ("FAR").

Based upon information we have received, we believe NCUA's active solicitation and inducement of DND's subcontractors to breach their agreements with DND and then contract to perform exact or substantially similar services directly for NCUA violates the standard of reasonable government action and constitutes arbitrary and capricious activity or activity otherwise not in accordance with the law. DND, upon information, also believes that such acts were undertaken with a specific intent to injure the economic interest of and abrogate NCUA's existing contractual obligations to DND.

Further, by its timing of the release of a solicitation for the services in question, we believe NCUA intentionally misled DND into believing that such procurement was initiated under Section C.3.c of the Contract. The referenced section provides that NCUA could seek services that would be supplemental to DND's effort. Such actions effectively precluded DND from competing for the only contract now existing. Taken as a whole, we believe such facts establish a de facto suspension without the requisite minimal procedural requirements. The purpose of any subsequent government procurement is not to allow an agency to avoid, without cause, its obligation to deal with present contractors in good faith. In support of our case, we present the following information:

1. Effective October 1, 1987, DND was to provide NCUA "vendor supplied management and technical support". The period of performance was for a base year plus three (3) option years.
2. Early into contract performance, NCUA personnel began to make false and unverified accusations regarding certain aspects of DND's performance. This conflict came to the forefront on January 21, 1988. See Exhibit A, attached hereto and incorporated herein by reference. Had NCUA taken time to review its own records prior to making such accusations, it would have found that its concerns were wholly unwarranted and, in fact, contrary to the evidence. See Exhibit B, attached hereto and incorporated herein by reference. However, DND's attempts to resolve perceived "underlying problems" were rebuked with agency silence. Id.
3. Shortly thereafter, certain DND managerial employees were ordered off the site with a thinly veiled declaration to the effect that their services were no longer needed. It is notable that NCUA retained DND's working subcontractors on site, while DND's management services, services that had been specifically requested by NCUA, were deemed no longer necessary. Moreover, NCUA intentionally interfered with DND's managerial judgment when DND sought to remove a subcontractor for what DND determined to be unacceptable work that was later redone by DND employees at government expense.
4. DND was informed and believes that:
  - (A) in or about the early Summer of 1988, NCUA began to directly solicit DND subcontractors to (i) continue working on the same project, but directly under contract with NCUA, and (ii) do so at a price lower than that charged by DND under the Contract;
  - (B) this direct solicitation included the subcontractor DND had sought to remove from the project in order to reduce costs to the government;
  - (C) at least two (2) of DND's subcontractors accepted this offer; and
  - (D) contracts resulting from such solicitations were executed on or about September 29, 1988 and went into effect on October 1, 1988.

Had NCUA intended to act with a minimal amount of good faith towards DND, it should have at least (i) attempted to terminate for convenience, (ii) notified DND of actual deficiencies in its performance and allowed it an opportunity to cure, or (iii) notified DND that a procurement was ongoing to replace the Contract

Mr. William Roberts  
October 7, 1988  
page 3

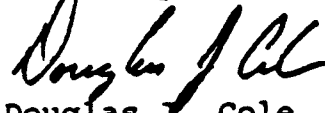
and then allowed DND a fair and reasonable opportunity to compete again. Instead, without a known verifiable complaint as to the quality or timeliness of DND's performance and without providing DND reasonable notice that the Contract would not be renewed for the first option year, NCUA went directly to DND's subcontractors and induced them to breach their subcontract agreements with DND and work directly for NCUA.

There is no other reasonable conclusion than that NCUA acted in bad faith towards DND. If such actions are improper in the commercial marketplace, and may result in personal liability for those interfering with the existing contractual relationship, we believe a government agency should not be allowed to step past that standard of good faith with impunity.

Upon objective review of the written record and the facts and events surrounding that record, we firmly believe that the procurement for services to replace the Contract will be found to be arbitrary, capricious or otherwise not in accordance with the law. We request that NCUA take all actions necessary to terminate the present contracts and (i) either seek to exercise the option on the DND contract, or (ii) recompute the entire effort in compliance with the requirements of applicable law and regulation.

Should you have any questions regarding this protest, please contact us in writing, so as to maintain a written record, and we will provide a prompt written response.

Sincerely,



Douglas J. Cole  
Attorney for DND, Inc.

cc: DND, Inc.

DND002P.DJC



January 21, 1988

## OFFICE OF INFORMATION SYSTEMS


Mr. Jack Telford  
DND, Inc.  
1825 I Street, N. W.  
Suite 400  
Washington, D. C. 20006

Dear Jack:

It has come to my attention that there might be some discrepancies in the hours you report for yourself for the month of December 1987. I met with Delores Martin and Hank Havard of my staff and they both have questions of your time for December 14 and 15. According to the information I received from them, you told them that you had a seminar to attend and would not be in. In fact, it seems that you did not get into the office until very late (after 3:30 p. m.) each of those days.

Unless you provide evidence that you did work, we will not pay for the time claimed. We will subtract 16 hours from your total hours and pay the remainder of the invoiced hours for you and the rest of your staff.

Sincerely yours,



Joseph Visconti  
Director, OIS

cc: Contracting Office, DND  
DM:amd

# DND, INC.

1825 I STREET, N.W.  
SUITE 400  
WASHINGTON, DC 20006  
(202) 429-2016

Correspondence to:  
1019 N. MCKINLEY ROAD  
ARLINGTON, VA 22205  
(703) 532-8206

Mr. Joseph W. Visconti  
National Credit Union Administration  
Office of Information Systems  
1776 G Street NW  
Washington D.C. 22456

January 25, 1988

Dear Joe,

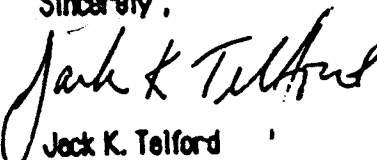
The letter dated January 21, 1988 regarding discrepancies in my reported hours for the month of December leaves me totally bewildered. During my tenure at the National Credit Union Administration, since May of last year, I have given the administration 1,457 hours of loyal and valuable time. You have personally been able to rely on me for long weekends and weekend evenings, when your staff could not be found or would not come in. Many of those hours were never reflected on an NCUA invoice.

In return, DND has had to tolerate ridicule from one of your senior staff members, referring to DND personnel as "migrant workers", to be used as NCUA pleases. We have also overlooked the absurdity of one of your project managers, who works with and manages DND personnel, claiming that God answered her prayers when various DND personnel, and a member of your own staff, submitted their resignations. As if that weren't enough, a senior staff member also attempted to entrap DND performing a demonstration of NCUA software at another federal agency, and DND client. There were never any facts, only rumors, to support this accusation.

On December 14 and 15, I attended morning seminars with George Wysor and Jim Costello. Both days I returned to NCUA after lunch. My hours are reflected in the log: 2 to 5 pm on December 14, and 1:30 to 6:00 pm on December 15. The two days combine for a total of 7.50 billed hours, not the 16 hours you reference in your letter. I feel that it is extremely unfortunate that I am presumed guilty, by hearsay, until proven innocent, and that the accusations come far too late for either side to be accurate in their recollections. Joe, I have never falsely recorded my hours at the NCUA. Every hour I have logged in the book I have been in attendance; and many times, in an effort of good faith, hours have been worked on behalf of the NCUA that have never been entered nor billed. After my review of the log, I can find no reason to revise the hours billed for the month of December 1987.

To be honest, given the scope of this issue, I can't help but wonder if there aren't other underlying problems that need to be addressed. I would welcome an opportunity to discuss these issues with you.

Sincerely,

  
Jack K. Telford



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

October 25, 1988

ADMINISTRATIVE OFFICE

Abrams, Westermeier & Goldberg, P.C.  
1828 L Street, N.W., Suite 660  
Washington, D. C. 20036-5188  
Attn: Mr. Douglas J. Cole

Dear Mr. Cole:

In response to the agency protest filed on behalf of your client, DND, Incorporated (DND), this agency's position is that its solicitation and award of the contract were in compliance with the applicable laws and regulations.

DND's contract with the National Credit Union Administration (NCUA) terminated on September 30, 1988. NCUA elected not to exercise its option to renew, but instead rebid the contract. NCUA properly sought bids on the contract by publishing in the Commerce Business Daily. In addition, NCUA informally notified Mr. Jack Telford in May or June 1988 that it would not be exercising its option to renew and that it would be rebidding the contract.

The last paragraph, page 2 of your letter suggests actions NCUA should have taken if it were acting in "good faith." They are: (1) attempted to terminate for convenience, (2) notified DND of actual deficiencies in its performance and allowed it an opportunity to cure, or (3) notified DND that a procurement was ongoing to replace the contract and then allowed DND a fair and reasonable opportunity to compete again."

When possible, NCUA complied with your suggestions. NCUA could not terminate for convenience because the contract by its terms terminated on September 30, 1988 (see page 64, Section M.1. Period of Contract). NCUA did not notify DND of deficiencies in its performance because performance was not in question. NCUA did notify DND orally that its option to renew would not be exercised and that it was rebidding the contract. It published the solicitation in the Commerce Business Daily on August 1, 1988.

Based on an investigation of the facts, your protest is denied.

Sincerely,

A handwritten signature in cursive script that reads "Benny R. Henson".

BENNY R. HENSON  
Contracting Officer

OIS/JV:1  
January 22, 1988  
12:29:22  
security.doc

TO:                    George Mintz

FROM:                 Joe Visconti *J.V.*

SUBJ:                 Security Documentation

DATE:                 January 22, 1988

I have previously discussed my concerns with the slow to non-existent progress on the Security System Documentation and I must insist that this system be documented functionally and programmatically on a priority basis.

Until you receive the documentation that is acceptable to you and meets minimum office standards, no additional work assignments are to be made to DND. Work will be assigned to other contractors as needed.

Please give this matter your immediate attention and provide your written report by OAS 1/27/88.

Distribution

Suspense for 1/27/88



Page 1

TO: Jack K. Telford, Project Leader  
DND

FROM: Delores Martin, DBA  
OIS

SUBJ: Security Documentation

DATE: January 22, 1988

I received a memo from Joe Maconti today, expressing his concerns about the lack of documentation of the security system. Based on the information in his memo I am informing you as of this date that no more work assignments will be issued to DND. Any new work will be assigned to other contractors as needed.

If you want to further discuss this matter with me and/or Joe, please let me know.

I know you have given me an initial cut of what you are doing, but I need more detail of the complete system. I would appreciate it if you would give me something by COB 1/26/88.

Thanks.

TO: Joseph Visconti, Director  
Office of Information Systems

FROM: William A. Fiore, Director  
Data and Telecommunications Center

SUBJECT: System Security

DATE: February 18, 1988

During the past several months we have held several conversations both in and out of staff meetings concerning security on the Tandem system. Everyone agrees that we need the same high degree of security on the Tandem as we have enjoyed on the Honeywell system but our inexperience with the Tandem computer has forced us to rely heavily on contractor advice. It is becoming glaringly apparent that this reliance on our major contractor, namely DND, has been an error in judgement on all our parts and we should do whatever we can, immediately, to end this reliance.

Several incidences occurred that lead me to this recommendation. The first of which was the insistence on DND personnel on using the SUPER.SUPER userid and password for applications development. This userid/password combination was given out and used by all DND personnel, no matter how trivial the project. When the userid was finally restricted to the NCUA systems support group, the DND projects did not appear to suffer any setbacks.

There are still, to this day, several pieces of code on our computer that have been lifted, by this same contractor, from other projects their personnel have worked on - namely FAA and Navy SLICE. On one occasion, it was brought to our attention by two independent, and substantiated, sources that NCUA had returned the favor by having its code loaded on the FAA computer by this same contractor. In addition to NCUA code, it had been reported that Tandem proprietary code, which may have been taken from our site, was also involved in the FAA event.

After repeated conversations with DND personnel, especially Jack Telford, concerning our non-unique security requirements, there seems to be no effort being made to maintain minimal security in applications being designed and programmed. In recent weeks, it came to the attention of Hung lu and Frank Augustosky that one system was being designed and programmed with the DCF.MGR userid and password imbedded. This is a rudimentary no-no, but not to DND. We can only conclude either incompetence or a blatant disregard for our security.

More seriously, and more recently, we in the Data Center have become aware of the problems with the tightly coupling of applications systems to the Guardian userid/password facility.

As a result of DND design, there has to be a unique Guardian userid assigned to each application user. This password/userid combination must be given to the System Support Center and placed in a file.

If the spawner program is to be used, it must read the system userid/password file. This would open up a major back door to the security system. The major strength the spawner program has going for it is the fact that it is readily available and already lifted from another site. This is obvious since DND claims to have only the object code for the programs. We have also discovered, on our system, a version of the source code. Magnetic media copies of the software we suspect to be carried here from other sites have been preserved in our tape library.

On an annual basis, we should change all Guardian passwords. This practice would be made more difficult since all application passwords would have to be changed at the same time.

One recent program put into production, PCTOOORR, requires individual Guardian userids and passwords. The Guardian userid must also be stored in the application (Pathway) security file. The Pathway and Guardian password must be the same for the application to work. This procedure opens up the Guardian security file to any contractor required to work on the application. It is yet to be explained to our satisfaction why this system requires them when PS-MAIL has been developed to do a similar task without such access to the Guardian logon. The IXF and EDIT functions of PS-MAIL require a Guardian logon, but a group ID can be used. The user would have no knowledge of this userid and password.

The most recent demonstration of DND's lack of security concern was demonstrated to me by several project managers in the System Support Group, using a newly entered employee userid and password. With minimal "hacking" into the system it was proven that all employees entered into the system since December or January were given access to security screens through dynamic navigation, which will allow that user to change his/her own security level. This weakness grants full access to the Tandem security system and allows the new user to access all passwords within the system and have total access to all systems. I do not know the significance to the timing of the change.

On Tuesday, February 16, one of the contractors was having difficulty accessing the DDL. When we looked at the file, it was being accessed by DCP.MGR using IXF. A printout of the information was done. This proved that Jack Telford, or someone with DCP.MGR usage was stealing the DDL. We have no idea how long this practice was going on, nor how much else had been taken. This may indicate how the NCUA software was transported to the FAA.

I have been told by several persons that security of non-critical data, such as we have at NCUA, will require the same types of protection given to critical data. Such will be the law of the land. If we are to be responsible for safeguarding NCUA computer files, we must begin now and either rid ourselves of those individuals who are not capable of helping us with the required safeguards - or be prepared to suffer the consequences.