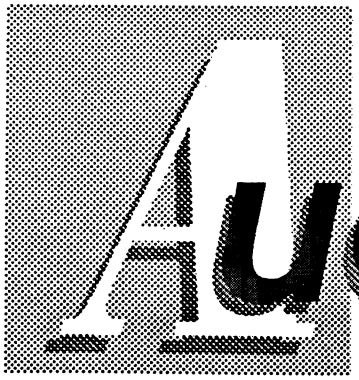

OFFICE OF THE INSPECTOR GENERAL

CONTRACTING PRACTICES FOR DEFENSE FUEL REGION-SOUTH FUEL DELIVERY CONTRACTS

Report No. 97-034

November 27, 1996

Department of Defense

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Acronyms

DFR-S	Defense Fuel Region-South
DFSC	Defense Fuel Supply Center
DTMR	Defense Traffic Management Regulation
MTMC	Military Traffic Management Command
MTMC-EA	Military Traffic Management Command-Eastern Area

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Report No. 97-034 November 27, 1996

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE FOR LOGISTICS
DIRECTOR, DEFENSE LOGISTICS AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit of Contracting Practices for Defense Fuel Region-South Fuel Delivery Contracts (Project No. 6LB-5040)

Introduction

We are providing this report for your information and use. The audit was requested by Representative Herbert H. Bateman, Chairman of the House Subcommittee on Military Readiness. Representative Bateman expressed concern regarding alleged discriminatory treatment of one Defense Fuel Region-South (DFR-S) barge towing company, Stapp Towing Company, Incorporated (Stapp), in favor of another. Stapp has been a DoD bulk fuel carrier since 1983. DFR-S spent about $10.8 million in FY 1995 to transport bulk fuel products by barge. The Military Traffic Management Command-Eastern Area (MTMC-EA) negotiates bulk fuel delivery contracts for DFR-S. Effective June 1, 1996, DFR-S, a Defense Fuel Supply Center (DFSC) subordinate command, became Defense Fuel Region-Americas.

Audit Results

The overall Stapp claim that it had been unfairly treated was not substantiated. The DFR-S issuance of letters of warning to Stapp for equipment-related deficiencies was proper. Stapp's disqualifications from moving DoD bulk fuel shipments and its designation as a nonresponsible bidder under a solicitation for bulk fuel delivery services were also proper. However, DFR-S processing of Stapp claims for demurrage and accessorial charges was not timely.

In a July 22, 1996, letter to Headquarters, Military Traffic Management Command (MTMC), requesting relief from its 1-year disqualification, Stapp acknowledged its history of service failures on DoD bulk fuel movements. Specifically, Stapp stated that it was wrong to insist that service failures, such as the ones it had experienced, are inherent in the barge towing business and that other carriers had experienced similar service failures.

Audit Objectives

The audit objective was to evaluate the award and administration of DFR-S fuel delivery contracts. We placed special emphasis on those contracting issues related to the Stapp allegations of unfair treatment--selection of carriers, monitoring of carrier performance, and payment of carrier invoices for demurrage and accessorial services. We also reviewed the management control program as it applied to the audit objective.

Scope and Methodology

Scope and Methodology. We identified and reviewed DoD policies, procedures, and practices for negotiating and administering contracts for barge transportation of bulk fuel products. We focused our efforts on the selection and monitoring of barge fuel carriers and the payment of carrier claims for demurrage and accessorial services. We reviewed documentation prepared by Stapp in support of its overall claim that it has been unfairly treated. We discussed Stapp's allegations with DFSC, DFR-S, MTMC Headquarters, MTMC-EA, Environmental Protection Agency, and U.S. Coast Guard officials. We met with Stapp officials to obtain additional perspective regarding the allegations. We held discussions with commercial bulk fuel suppliers, brokers, transporters, and barge carriers on contracting and carrier performance issues raised during our review of the allegations.

To assess the validity of the allegations, we evaluated data from materiel inspection and receiving reports representing 250 DFR-S bulk fuel movements by barge made from January 1, 1994, through December 31, 1995. We reviewed letters of warning and related documentation issued during the same time period detailing carrier performance deficiencies involving Stapp and other DFR-S barge carriers. We reviewed documentation related to MTMC Headquarters and MTMC-EA carrier review board actions to disqualify Stapp from participating in DoD bulk fuel movements. We reviewed contract files for the long-term, Federal Acquisition Regulation-based contract awarded to a Stapp competitor and evaluated bulk fuel movements under the DoD standard tender that were awarded to Stapp and other DFR-S barge carriers during FYs 1995 and 1996. We analyzed the revised DoD standard tender for barge movements approved for use on July 1, 1996, and compared it with both previous DoD standard tenders and commercial tenders for similar transportation services. We reviewed U.S. Coast Guard marine safety activity data for the period January 1992 through March 1996 for Stapp and other DFR-S barge carriers. We analyzed Stapp demurrage and other claims made from January 1994 through December 1995 that remained unpaid as of April 1996.

Audit Period, Standards, and Locations. This economy and efficiency audit was performed from April through August 1996. We conducted this audit in accordance with auditing standards issued by the Comptroller of the United States as implemented by the Inspector General, DoD. We included tests of management controls considered necessary. We did not use computer-processed data or statistical sampling procedures for this audit. Enclosure 4 lists the organizations visited or contacted.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987[1], requires DoD managers to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of those controls. We reviewed management controls related to the award and administration of DFR-S contracts for barge transportation of bulk fuel products. Specifically, we reviewed controls over the selection of barge carriers, monitoring of carrier performance, and payment of carrier claims for demurrage and accessorial services. We did not identify any material management control weaknesses.

Prior Audits and Other Reviews

We did not identify any audits or other reviews in the past 5 years involving barge transportation of bulk fuel products.

Background

Barge Movements. Bulk fuel products (such as jet aircraft fuel and diesel fuel) are moved by barge as an alternative to, or in conjunction with, moving the products by pipeline, rail car, or tanker truck. At DFR-S, most bulk fuel movements by barge are from supply points in Louisiana and Texas to military installations on the Gulf of Mexico and storage facilities on the Mississippi River. Barge movements are accomplished using Federal Acquisition Regulation-based contracts, guaranteed traffic agreements[2], or DoD standard

[1]DoD Directive 5010.38 has been revised as "Management Control Program," August 26, 1996. The audit was performed under the April 1987 version of the Directive.

[2]A guaranteed traffic agreement is a rate and service agreement negotiated on behalf of DoD shippers with commercial carriers under which carriers commit to provide transportation services in return for the right to all traffic from and to certain locations, regions, or geographic areas for a specific length of time.

tenders[3]. Receipts and issues of bulk fuel products are documented in material inspection and receiving reports; any carrier deficiencies noted during the fuel transfer process appear in the reports. For movements under guaranteed traffic agreements and DoD standard tenders, DoD is required to compensate barge carriers at an hourly rate for certain delays experienced at fuel transfer points. The cognizant transportation office must certify the resulting demurrage claims for payment. Demurrage claims generally are not payable under Federal Acquisition Regulation-based contracts because the Government has already negotiated exclusive use of designated carrier equipment for the time period specified by the contract and, as a result, compensation for lost time is unnecessary.

Carrier Performance. The DoD carrier performance program is outlined in the Defense Traffic Management Regulation (DTMR), chapter 42, "Carrier Performance Program," July 31, 1986, a joint services publication that was in effect during the period covered by the Stapp allegations. The carrier performance program establishes specific elements of service that are key indicators of carrier performance, establishes minimum levels of satisfactory performance for those elements, and prescribes procedures for denial of DoD freight shipments to carriers that fail to maintain a minimum level of satisfactory performance. The DTMR states that a letter of warning will be sent to a carrier for failure to provide proper or adequate equipment, or failure to pick up or deliver shipments as scheduled. The DTMR assigns to MTMC Headquarters the responsibility for overall management of the DoD carrier performance program. Transportation officers are assigned responsibility for monitoring and evaluating carrier performance and reporting carrier service failures. The DTMR grants activity commanders, the MTMC area commands, and MTMC Headquarters authority to suspend and disqualify carriers when, in their judgment, such actions are warranted. The disqualification authority of activity commanders is limited to two specific types of service failures--failure to provide proper or adequate equipment and failure to pick up or deliver shipments as scheduled.

The DTMR and certain other transportation-related publications are being revised and consolidated to become DoD Regulation 4500.9-R, "Defense Transportation Regulation." Part 2 of the regulation, "Cargo Movement," became effective on April 22, 1996 and provides DoD carrier performance program guidance previously contained in DTMR, chapter 42. The guidance retains the basic structure of the carrier performance program but is less

[3]A DoD standard tender is a voluntary or negotiated offer by a qualified carrier to provide transportation service to the Government at specified rates or charges and submitted by the carrier to a central authority for official acceptance and authorization for use to route traffic.

prescriptive, allowing responsible officials increased flexibility in administering the program. For example, the regulation no longer requires that a letter of warning be sent to a carrier for certain specific service failures.

Discussion

Stapp, in documentation provided to the Subcommittee on Military Readiness, made seven specific allegations in support of its overall claim that it had been unfairly treated. The allegations involved the award and administration of contracts for barge transportation services. They were specifically related to the selection and monitoring of carriers and payment of carrier claims for demurrage and accessorial services. Enclosure 1 provides our complete audit response to each allegation. Enclosure 2 provides a chronology of significant events related to the allegations. A summary of the allegations and audit responses follows.

Allegation 1. The DFR-S issued Stapp letters of warning for "minor" equipment deficiencies (such as a gasket leak that is caught by the drip pan below the valve, corroded nuts on a flange, and similar deficiencies) that did not qualify as safety-related under the DTMR.

Audit Response. The allegation was not substantiated. The DFR-S determination that Stapp's "minor" equipment deficiencies were safety-related was reasonable. As a result, the deficiencies met the DTMR definition of inadequate equipment and DFR-S issuance of letters of warning for those deficiencies was proper. Further, Stapp's "minor" equipment deficiencies represented only a portion of the deficiencies for which it was cited. Stapp also experienced more serious equipment deficiencies and violated both the DoD standard tender and applicable transportation regulations.

Allegation 2. Stapp received letters of warning for deficiencies for which other carriers did not receive letters of warning.

Audit Response. The allegation was partially substantiated. For certain types of deficiencies, Stapp did receive letters of warning for which other carriers did not receive letters of warning. DFR-S officials defended their actions by citing the frequency and severity of Stapp's deficiencies, and its lack of corrective action when deficiencies were noted. Although DFR-S officials issued letters of warning inconsistently both to and among barge carriers, such inconsistency did not form a basis for Stapp's claims of unfair treatment.

Allegation 3. The improperly-issued letters of warning for "minor" equipment deficiencies caused Stapp to be disqualified three times from participating in DoD bulk fuel movements.

Audit Response. The allegation was not substantiated. As stated previously, the letters of warning Stapp received were not improperly issued. Further, the letters of warning and other documented service failures adequately supported the disqualifications. Finally, we noted no substantive procedural errors by DFR-S, MTMC-EA, or MTMC Headquarters in carrying out the disqualifications. For those reasons, we found no basis for challenging the propriety of Stapp's disqualifications.

Allegation 4. The letters of warning issued for "minor" equipment deficiencies caused MTMC-EA not to award Stapp a long-term contract to transport DoD bulk fuel products even though it submitted the lowest bid. Additionally, MTMC-EA did not attempt to compare Stapp's record of 81 U.S. Coast Guard violations in a 10-year period with industry norms.

Audit Response. The allegation that the letters of warning for "minor" equipment deficiencies caused Stapp not to be awarded a long-term contract was not substantiated. Stapp was the initial low offeror in response to a solicitation, issued under Federal Acquisition Regulation guidelines, for transportation of bulk fuel products. However, Stapp was determined to be a nonresponsible bidder and failed to obtain a certificate of competency from the Small Business Administration. As a result, a competitor received the award. We found no evidence directly linking the equipment deficiencies Stapp considers "minor" with the MTMC-EA determination that Stapp was a nonresponsible bidder. The allegation that MTMC-EA did not compare Stapp's history of U.S. Coast Guard violations with industry norms was substantiated but did not affect contract award.

Allegation 5. The eventual successful offeror under the long-term contract was not required to have its equipment inspected by the Government before award as Stapp was.

Audit Response. The allegation was partially substantiated but had no effect on the contract award. Although the eventual successful offeror was not required to have its equipment inspected before award as Stapp was, the offeror's equipment recently had been inspected upon arrival for loading at a major area fuel supplier and no significant problems were noted. Because Stapp's equipment was conditionally approved for use as a result of the inspection, the inconsistent application of preaward inspection requirements did not affect contract award.

Allegation 6. The DFR-S has delayed processing of Stapp demurrage and other claims.

Audit Response. The allegation was partially substantiated but there were mitigating circumstances. DFR-S processing of Stapp demurrage and other claims that remained unpaid at the start of our review was not timely.

However, several factors may have combined to extend processing times for the claims. For instance, actions Stapp took after DFR-S processed the claims effectively precluded actual payment of the certified amounts. As of July 31, 1996, DFR-S had either certified for payment portions of the unpaid claims or denied them entirely.

Allegation 7. The Houston barge towing industry is reluctant to move Government bulk fuel shipments.

Audit Response. The allegation was partially substantiated. However, none of the reasons barge towing companies cited for not moving Government bulk fuel shipments were related to DFR-S personnel or practices. Additionally, while competition existed for DFR-S bulk fuel movements, such competition was sometimes limited by time-sensitive requirements or restrictions placed on solicitations for barge transportation services.

Conclusion

In a July 22, 1996, letter to the MTMC Headquarters carrier review board requesting relief from disqualification, Stapp acknowledged that it was wrong to insist that service failures, such as the ones it had experienced, are inherent in the barge towing business. Stapp also acknowledged that it was wrong to assert that other carriers had experienced similar service failures. Additionally, the letter described corrective actions Stapp took during the disqualification period to prevent future service failures. In response to the letter, the carrier review board requested that Stapp provide documentation of corrective actions it had taken and directed Stapp to obtain a "sponsor" with a legitimate need for the company's service and specifically requests the company as a responsible carrier that could meet its needs.

Stapp's voluntary acknowledgment of its service failures confirmed our conclusion that its allegations of unfair treatment were unsubstantiated. Stapp experienced service failures between January 1994 and December 1995. The number of service failures Stapp experienced and their adverse effect on DoD fuel customers was clearly unacceptable. Additionally, none of the other carriers experienced service failures that were as frequent and severe as Stapp's.

Other Matters of Interest

Revised DoD Standard Tender. In early 1996, MTMC Headquarters revised the DoD standard tender for barge transportation services that was used during the period covered by Stapp's allegations. The revised DoD standard tender

became effective on July 1, 1996, and incorporates changes that MTMC and DFSC personnel developed that are intended to more adequately protect the interests of the Government. Among other changes, the revised tender:

o clarifies procedures for carrier issuance of notice of readiness to load or discharge and computation of demurrage,

o establishes a maximum hourly demurrage rate of $250 per hour for certain types of delays,

o requires carriers to maintain cargo insurance at least equal to the value of the cargo, as well as public liability and pollution liability insurance,

o prohibits the payment of certain accessorial charges, and

o establishes carrier appeal procedures for decisions responsible DoD organizations make concerning the provisions of the tender.

In addition to more adequately protecting the interests of the Government, the revised DoD standard tender should help prevent disputes related to payment of demurrage and accessorial charges, similar to those that contributed to the untimely DFR-S processing of Stapp claims.

Commercial Practices. Government contracting practices for bulk fuel movements by barge generally reflect those of commerical transporters (refineries, cargo forwarders, etc.). Specifically, both the Government and commercial transporters move bulk fuel products by barge using a combination of long-term contracts for repetitive movements and short-term contracts for one-time or nonrepetitive movements. When applicable, commercial transporters reimburse barge carriers, as does the Government, for certain delays experienced in the loading and discharging of bulk fuel products. In addition, both the Government and commerical transporters maintain a quality control function over bulk fuel transfers that includes an inspection of carrier documentation, equipment, and personnel at loading and discharge points.

We noted differences between the Government and commercial transporters in the selection of barge carriers for bulk fuel movements. Unlike the Government, commercial transporters are not necessarily required to select the lowest cost qualified carrier when moving bulk fuel products by barge. Most commercial transporters maintain a database, developed using a carrier qualification process and performance histories, of eligible barge carriers and their equipment. If a particular carrier or piece of equipment does not appear in the database, or if the transporter questions the ability of the carrier to move its cargo safely and in accordance with applicable requirements, the transporter is under no obligation to use the carrier. In other words, commercial transporters consider factors other than cost in determining whether to award a bulk fuel

movement to a particular barge carrier. The Government, on the other hand, has not developed a carrier qualification process for barge carriers and awards bulk fuel movements to the responsible offeror submitting the lowest evaluated bid.

Management Comments

We provided a draft of this report to you on October 11, 1996. Because the report contains no findings or recommendations, comments were not required, and none were received. Therefore, we are publishing this report in final form.

We appreciate the courtesies extended to the audit staff. For additional information on this report, please contact Mr. John A. Gannon, Audit Program Director, at (703) 604-9427 (DSN 664-9427) or Mr. Edward L. Grimm, Jr., Audit Project Manager, at (703) 604-9449 (DSN 664-9449). Enclosure 5 lists the distribution of this report. The audit team members are listed on the inside back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Enclosures

Detailed Audit Responses to Stapp Allegations

The following provides our detailed responses to the seven allegations Stapp made in support of its overall claim that it had been unfairly treated.

Allegation 1. The DFR-S issued Stapp letters of warning for "minor" equipment deficiencies (such as a gasket leak that is caught by the drip pan below the valve, corroded nuts on a flange, and similar deficiencies) that did not qualify as safety-related under the DTMR.

Audit Response. The DTMR defines inadequate equipment as:

> ...equipment which, in the opinion of the TO [transportation officer], cannot be used to safely transport DoD freight. Examples: holes in equipment which permit moisture to enter, equipment that cannot be properly secured to prevent pilferage, or similar types of discrepancies.

Stapp claimed that the vast majority of deficiencies cited in the letters of warning did not call into question the ability of its equipment to safely transport DoD freight. In other words, Stapp contended that leaking gaskets, corroded nuts, and other "minor" equipment deficiencies did not preclude its barges from safely loading, transporting, and discharging DoD bulk fuel products. DFR-S officials, on the other hand, claimed that Stapp's "minor" equipment deficiencies were indeed safety related because the cargo being transported was flammable. They asserted that such equipment deficiencies could cause a fire or other incident resulting in cargo loss, property damage, injury, or death. Because of the potential for such occurrences, we did not take exception to the DFR-S definition of inadequate equipment.

It should be noted that Stapp's "minor" equipment problems represent only a portion of the total number of deficiencies for which it was cited. In addition to more serious equipment-related problems (such as holes in barges and faulty steering mechanisms), other deficiencies represent noncompliance with applicable transportation regulations or violate the DoD standard tender under which the fuel movements in question were accomplished. For example, the DoD standard tender states:

> Equipment tendered shall be suitable to load intended cargo, be equipped for complete discharge of cargo at carrier expense, have permanent gauge point marks, and have certified calibration charts to include strapping charts and trim tables which shall be readily available to Government representatives....In the event the equipment

> tendered is determined by the Government inspector to be unsuitable for loading the intended cargo, carrier has the option to perform further cleaning at his expense and substitute equipment....

The DoD standard tender also requires carriers to provide a 24-, 12-, and 3-hour notice to responsible parties before arrival at fuel transfer points. Additionally, United States Code, title 33, chapter 1321, prohibits the discharge of bulk fuel products into navigable U.S. waters.

Our review of Stapp's performance history for calendar years 1994 and 1995 under DFR-S bulk fuel movements identified numerous citations by Government quality assurance personnel for barge contamination, inadequate gauge point markings and calibration charts, and failure to provide required arrival notices. We also identified several occurrences of fuel spills into navigable waters involving Stapp. The DTMR defines compliance with transportation regulations and compliance with tender provisions, as well as adequacy of equipment, as elements of service under the carrier performance program. Carriers are required to maintain a minimum level of satisfactory performance for those and other elements of service defined by the DTMR. By focusing on "minor" equipment deficiencies in its allegations of unfair treatment, Stapp failed to acknowledge the full magnitude of the service failures it has experienced. For carrier performance purposes, service failures, such as the ones just discussed, can be used as a basis for subsequent adverse actions just as failure to provide adequate equipment can be. As a result, we believe that Stapp's position is unsupported and lacks perspective.

Allegation 2. Stapp received letters of warning for deficiencies for which other carriers did not receive letters of warning.

Audit Response. To evaluate the allegation, we obtained material inspection and receiving reports representing 250 bulk fuel movements from January 1994 through December 1995 involving Stapp and other DFR-S barge carriers operating along the Gulf Coast and the Mississippi River. We then categorized the carrier deficiencies noted on the reports (and in letters of warning) by type and tallied the number of each type of deficiency attributable to the carriers. Finally, we noted the number of letters of warning and letters of concern the carriers received for each type of deficiency. The detailed results of our review of carrier deficiencies are in Enclosure 3.

Our evaluation showed that, for certain types of deficiencies, namely, contaminated barges; failure to give arrival notice; and pumping problems, Stapp received letters of warning while other carriers did not. For example, Florida Marine Transporters, Incorporated (Florida Marine), was cited 7 times in material inspection and receiving reports, and JAR Assets, Incorportated (JAR Assets), was cited 13 times, for presenting barges unfit for loading because they did not meet applicable cleanliness requirements. No letters of warning were issued to either carrier. Stapp, on the other hand, was cited 24

times for the same deficiency and received 8 letters of warning. In a few cases, other carriers received letters of concern, but letters of concern are less serious than letters of warning and, by themselves, cannot be used by activity commanders as a basis for disqualification under the DTMR. We also noted 92 deficiencies involving both Stapp and the other carriers for which DFR-S officials failed to issue letters of warning when, based on the DFR-S definition of inadequate equipment, such action appears to have been warranted. The deficiencies involved pump problems and other equipment failure and are categorized in Enclosure 3. Inconsistencies in issuing letters of warning represent a technical noncompliance with the DTMR, which requires that a letter of warning be issued when a carrier provides inadequate equipment.

The DFR-S officials stated that their treatment of Stapp was based on the frequency and severity of Stapp's deficiencies, and its lack of corrective action when deficiencies were noted. For example, the Commander, DFR-S issued a letter of warning to Stapp on July 27, 1994, citing numerous fuel spills and leaks over a 4-month period. The letter of warning was based on applicable material inspection and receiving reports and a letter from a Louisiana refinery stating that, from March 7 through July 17, 1994, Stapp had spilled or leaked fuel on 5 of 11 tows. The letter offered that, for comparative purposes, only 1 of about 200 tows from the same period not operated by Stapp involved a spill. Our evaluation of carrier performance data showed that Stapp spilled fuel onto the barge deck or into the water 38 times between January 1, 1994, and December 31, 1995. Florida Marine and JAR Assets, on the other hand, experienced a combined total of 5 fuel spills during the period even though they made nearly double the number of fuel movements Stapp made (162 fuel movements versus 88).

Additionally, many of Stapp's noted deficiencies resulted in significant delays and inconvenience at fuel transfer points. For example, Stapp's frequent spills into the water interrupted fuel transfer operations while cognizant U.S. Coast Guard detachments conducted required investigations and cleanup operations. Stapp's history of presenting barges that were unfit for loading based on applicable cleanliness standards also caused significant delays and inconvenience. Letters of warning issued to Stapp on August 11, August 18, and October 4, 1995, for example, cited delays of 12, 16, and 72 hours, respectively, because Stapp barges were rejected for loading at Louisiana refineries. We identified 95 delays of varying lengths attributable to Stapp between January 1, 1994, and December 31, 1995, compared with a combined total of 51 delays attributable to Florida Marine and JAR Assets.

The DFR-S officials contend that, because the purpose of a letter of warning is to initiate corrective action by the carrier that will prevent recurrence of noted deficiencies, their issuance of letters of warning for deficiencies Stapp considers "minor" was justified by the repetitive nature of the deficiencies and lack of

corrective action. We therefore believe that, although DFR-S officials may have issued letters of warning inconsistently among its carriers, such inconsistency does not represent unfair treatment of Stapp.

Allegation 3. The improperly issued letters of warning for "minor" equipment deficiencies caused Stapp to be disqualified three times from participating in DoD bulk fuel movements.

Audit Response. Stapp was disqualified from participating in DoD bulk fuel movements three times from January 1, 1994, through December 31, 1995. The Commander, DFR-S imposed the initial disqualification, which ran for 30 days beginning on November 15, 1994. In his November 1, 1994, letter of disqualification, the Commander, DFR-S, cited 5 letters of warning issued to Stapp during the previous 4 months that demonstrated Stapp's failure to provide adequate equipment. Stapp's disqualification was in accordance with the DTMR, which grants commanders authority to disqualify carriers based on inadequate equipment. Stapp appealed the disqualification to DFSC and requested that the U.S. District Court for the Southern District of Texas temporarily enjoin the disqualification. Both the appeal and the request for injunction were denied.

Stapp's second disqualification, which a MTMC-EA carrier review board imposed on March 28, 1995, was for 90 days. However, 60 days of the disqualification were suspended, allowing Stapp to operate on a probationary basis during the disqualification. The carrier review board cited Stapp's failure to provide proper and adequate equipment, give proper notification to the customer before discharging, update calibration charts after barge modifications, and notify the U.S. Coast Guard of spills and leaks when required. Again, Stapp's disqualification was in accordance with DTMR guidelines. On May 18, 1995, MTMC-EA vacated the 60-day suspended disqualification based on an incident at a Louisiana refinery in which Stapp's use of incorrect loading procedures resulted in a spill of at least 100 gallons of fuel into nearby waters.

Stapp's third disqualification, which a MTMC Headquarters carrier review board imposed, was for 1 year beginning on December 22, 1995. The carrier review board determined that Stapp's management procedures were insufficient to satisfactorily transport DoD bulk fuel products and to ensure that service failures were not recurring. MTMC Headquarters convened the carrier review board based on three movements tendered to Stapp in August and September 1995 involving equipment failure, product spillage, and barge rejection. The carrier review board dismissed Stapp's claim that service failures, such as the ones it had experienced, are inherent in the barge towing business. We concluded that Stapp's disqualification by the MTMC Headquarters carrier review board was reasonable and in accordance with DTMR guidelines.

Allegation 4. The letters of warning issued for "minor" equipment deficiencies caused MTMC-EA not to award Stapp a long-term contract to transport DoD bulk fuel products even though it submitted the lowest bid. Additionally, MTMC-EA did not attempt to compare Stapp's record of 81 U.S. Coast Guard violations in a 10-year period with industry norms.

Audit Response. The solicitation in question (DAHC21-95-B-0002), which MTMC-EA issued on November 16, 1994, was for the transportation of bulk fuel products between locations on the Gulf Coast and Mississippi River for 1 year with two renewable 1-year options. The procurement was a small business set-aside and only those barge carriers qualifying as small businesses were requested to submit bids. Stapp's total bid for the 3 years covered by the solicitation was $18,671,534. JAR Assets, the only other responsive bidder under the solicitation and the eventual successful offeror, bid $19,848,828, or $1,177,294 higher.

In January 1995, the Defense Contract Management Area Operations, San Antonio, Texas, performed a preaward survey of Stapp. The preaward survey showed that Stapp lacked an effective environmental compliance and safety program. Additionally, Stapp did not provide documentation showing that it had certified, trained personnel to transport hazardous materials and did not have the required hazardous materials regulations. On March 22, 1995, the MTMC-EA contracting officer determined that Stapp was a nonresponsible bidder. In addition to the preaward survey findings, the contracting officer's determination was based on Stapp's history of U.S. Coast Guard violations and fuel spills and its unacceptable performance under Government contracts. The contracting officer did not compare Stapp's record of 81 U.S. Coast Guard violations over a 10-year period with industry norms. However, we do not believe that the failure to do so would have affected the determination that Stapp was a nonresponsible bidder.

In response to the MTMC-EA determination that Stapp was a nonresponsible bidder, Stapp requested a certificate of competency from the Small Business Administration. The Small Business Administration, Dallas Regional Office, reviewed Stapp's operations, and, on June 6, 1995, announced that it intended to issue Stapp a certificate of competency. However, MTMC-EA (at DFR-S request) appealed the Small Business Administration's decision to issue a certificate of competency based on Stapp's continuing performance problems under Government contracts. On August 9, 1995, the Small Business Administration Headquarters in Washington, DC, which processed the MTMC-EA appeal, reversed the decision of the Dallas Regional Office and declined to issue a certificate of competency. The Small Business Administration Headquarters determined that Stapp had not completed the installation of fuel level gauges and had not acquired the training barge it promised to use under the long-term contract. In addition, the Small Business Administration Headquarters found Stapp's record of fuel spills to be

unacceptable. Stapp appealed the decision to the U.S. Court of Federal Claims, which concluded that, although the fuel level gauges and training barge were not required under the contract, the number and frequency of Stapp's fuel spills provided a reasonable basis for denial of the certificate of competency. The MTMC-EA contracting officer chose not to reverse the earlier determination that Stapp was a nonresponsible bidder and, on September 27, 1995, awarded the contract (DAHC21-95-C-0006) to JAR Assets. We found no basis for Stapp's claim that the letters of warning DFR-S officials issued for "minor" equipment deficiencies caused it not to be awarded the contract.

Allegation 5. The eventual successful offeror under the long-term contract was not required to have its equipment inspected by the Government before award as Stapp was.

Audit Response. Provisions for inspecting carrier equipment were included in the MTMC-EA solicitation. Specifically, item L.18 of the solicitation states:

> ...motor vessel and barges will be inspected by DFSC prior to award...all cargo and vent lines must be drained of previous product and flushed with hot water. Cargo tanks and bulk heads must be free of water, loose rust, sludge, mud, silt, and foreign objects. A sample of rust will be taken from the inside of the cargo tanks and tested...The contractor will prepare barges for inspection at its own expense.

Stapp presented its barges to DFSC (namely, DFR-S) for inspection as required by the solicitation. Stapp claims that it spent at least $200,000 to prepare for the inspection. Although problems were noted that needed to be corrected before award, it was determined that the equipment was suitable for use under the contract. The inspection was used as a basis for the initial Small Business Administration decision to issue Stapp a certificate of competency.

JAR Assets, on the other hand, was not required to have its equipment inspected to the extent prescribed by solicitation item L.18. Instead, DFR-S officials relied on previous inspections of JAR Assets equipment that were performed at a Louisiana fuel supply point by Government and supplier personnel to satisfy the preaward equipment survey requirement. Such inspections are routinely performed at loading and discharge points on all equipment carrying DFSC-owned fuel products and are more limited in scope and duration than the inspection called for in the solicitation. DFR-S officials stated that JAR Assets' equipment was not subjected to as rigorous an inspection process as Stapp's because they were familiar with the quality of JAR Assets' equipment and it had been inspected in the past month with no significant problems noted. In addition, both MTMC-EA and DFR-S officials stated that they did not want to further delay award of the contract because not having carrier equipment under

contract had resulted in increased use of more expensive transportation methods, such as spot movements, to satisfy DFR-S bulk fuel transportation requirements.

We do not question MTMC-EA and DFR-S judgment in subjecting Stapp to a more rigorous inspection process than JAR Assets. Stapp equipment had been inspected at the same area supplier during the same period as had JAR Assets, but, unlike JAR Assets, Stapp experienced problems getting some of its equipment approved for loading. It should also be noted that the more rigorous inspection did not play a part in the MTMC decision to award the contract to JAR Assets because Stapp's equipment was conditionally approved as a result of the inspection.

Allegation 6. The DFR-S has delayed processing of Stapp demurrage and other claims.

Audit Response. We identified 52 Stapp claims for demurrage and accessorial charges from calendar years 1994 and 1995 that remained unpaid as of April 1996. The total amount claimed was $418,000. For the 48 claims for which sufficient documentation existed, we calculated an average of 181 days between the date the claims were submitted to DFR-S for certification and the date DFR-S informed Stapp of the results of the certification reviews. Processing times for individual claims ranged from 3 days to 536 days. DFR-S questioned all the claims, either partially or entirely, and certified for payment $95,422 of the $418,000 Stapp had claimed.

The DFR-S officials acknowledged the delays in processing Stapp claims for demurrage and accessorial charges but cited extenuating circumstances that increased processing times. According to DFR-S officials, a backlog of unprocessed claims existed in early 1994 because of personnel turnover. Additionally, processing of the claims was affected by the nature of the claims themselves; DFR-S questioned the validity of each of the 52 claims, either partially or entirely. Specifically, DFR-S concluded that Stapp had incorrectly calculated amounts due under the claims because it disregarded applicable tender provisions for calculation of demurrage and payment of accessorial charges. When DFR-S officials attempted to resolve the claims through discussions with Stapp, the discussions became contentious and were stopped. At one point, according to DFR-S personnel, a Stapp official accused DFR-S of attempting to disrupt the company's cash flow and threatened to "bury the Government in paperwork." Because the claims could not be resolved through discussions with Stapp, DFR-S personnel had to perform additional research to ascertain pertinent factual data. They also had to coordinate with DFSC, MTMC, and other responsible organizations regarding the questionable nature of the claims and strategies for resolving them.

Actions that Stapp took after it had been informed of the results of the demurrage claim reviews further increased the time taken to affect payment of the claims. For example, DFR-S informed Stapp that, for claims that had been certified for lesser amounts, it could submit invoices reflecting those amounts and file additional claims at a later date if disputed amounts were subsequently determined to be valid. However, Stapp chose not to do so. Instead, it appealed many of the claims, in addition to other claims that remained unpaid at that time, to the Armed Services Board of Contract Appeals. It was later determined that the Armed Services Board of Contract Appeals lacked jurisdiction because Stapp did not operate in international waters. Meanwhile, DFR-S, MTMC, and the Defense Finance and Accounting Service negotiated an agreement that allowed Stapp to receive partial payments under claims that were not certified in their entirity. DFR-S then provided Stapp with certified amounts for claims for which it had not already done so. As of July 31, 1996, all of the claims in our review that had not been rejected entirely were approved for partial payment. In July 1996, Stapp expressed its intent to appeal the disputed claims to the General Services Administration, which represents the proper appeal process for such claims.

While DFR-S processing was untimely for Stapp demurrage and other claims that remained unpaid as of April 1996, we acknowledge that the nature of the claims and the adversarial relationship between DFR-S and Stapp contributed to the delays. We are encouraged by the positive actions DFR-S, MTMC, and other responsible parties have taken to expedite processing the claims. We are also encouraged by the July 1, 1996, revision to the applicable DoD standard tender that clarifies provisions related to demurrage and accessorial charges. The changes should help to prevent disputes such as the ones that contributed to the delays experienced in processing Stapp claims. When we met with Stapp in May 1996 to discuss its allegations of unfair treatment, company officials downplayed the continued significance of its allegation related to processing of demurrage and other claims. Based on recent efforts to ensure that Stapp is paid those amounts to which it is entitled, as well as Stapp's announced intent to follow proper appeal procedures for amounts that remain disputed, we concluded that DFR-S processing times are no longer a significant issue.

Allegation 7. The Houston barge towing industry is reluctant to move Government bulk fuel shipments.

Audit Response. We discussed the issue with several Houston-area brokers and barge towing companies. Most of the officials we contacted cited excessive paperwork, bureaucratic practices, and slow payment (or the perception thereof), as reasons for not actively pursuing Government business. In addition, 3 towing companies stated that cleanliness requirements for barges presented

for loading DoD bulk fuel products were excessive. Nothing peculiar to DFR-S was cited as a reason for the reluctance of some Houston-area towing companies to pursue Government business.

Additionally, we reviewed a judgment sample of DFR-S bulk fuel movements under the DoD standard tender from FYs 1995 and 1996 to determine the extent of competition for the movements. Although competition existed for all but 2 of the 25 movements reviewed, no more than five towing companies submitted bids for any of the movements. For 18 of the 25 movements, three or fewer towing companies submitted bids. DFR-S and MTMC personnel suggested that competition for some bulk fuel movements is limited because the movements are time-sensitive and required carrier equipment may not be available on short notice. Further, Stapp and JAR Assets were the only bidders for the MTMC-EA contract for long-term barge transportation services that was awarded to JAR Assets. However, the procurement was a small business set-aside and only those barge towing companies qualifying as small businesses were invited to submit bids. In other words, competition existed for DFR-S bulk fuel movements but was sometimes limited by circumstances or contract provisions.

Chronology of Significant Events

The following is a list of significant events related to Stapp's allegations of unfair treatment. The list extends from March 1994 through August 1996.

July 27, 1994	Commander, DFR-S issues letter of warning to Stapp. Letter cites five fuel spills at a Louisiana refinery between March 7 and July 17, 1994, and a crossover hose leak at a Florida discharge point on July 17, 1994.
October 19, 1994	Commander, DFR-S issues letter of warning to Stapp citing high rust and water content in a barge Stapp presented for loading at a Houston-area refinery on September 15, 1994.
October 24, 1994	Commander, DFR-S issues letter of warning to Stapp for barge leak and failure to produce a valid corrosion certificate at a Houston-area refinery on October 19, 1994.
October 26, 1994	Commander, DFR-S issues letter of warning to Stapp. Stapp's fuel pumps leaked jet fuel onto the barge deck at an Arkansas storage facility on August 24, 1994, resulting in a 2-hour delay.
October 26, 1994	Commander, DFR-S issues letter of warning to Stapp. A Stapp tugboat leaked hydraulic fluid into the water while positioning to load at a Louisiana refinery on October 20, 1994.
November 1, 1994	Commander, DFR-S disqualifies Stapp for 30 days beginning November 15, 1994.
November 3, 1994	Stapp appeals DFR-S disqualification to DFSC. Appeal is denied.
November 9, 1994	U.S. District Court denies Stapp request to enjoin DFR-S disqualification.
November 16, 1994	The MTMC-EA issues solicitation for long-term contract.

November 22, 1994	Commander, DFR-S issues letter of warning to Florida Marine. On November 22, 1994, a fractured weld caused fuel to spill into the water at a Louisiana refinery.
December 22, 1994	Commander, DFR-S issues letter of warning to Stapp. Stapp experienced leaks on two barges while discharging at a Houston-area storage facility on December 18, 1994.
January 1995	Defense Contract Management Area Operations-San Antonio recommends that the long-term contract not be awarded to Stapp based on its lack of an effective environmental compliance and safety program.
February 8, 1995	Commander, DFR-S issues letter of warning to Stapp. Stapp presented two barges for loading at a Louisiana refinery on February 7, 1995, that contained unacceptable levels of rust and other particulates.
February 14, 1995	The DFR-S transportation specialist issues letter of concern to Stapp. Twice in January 1995, Stapp did not have accurate, certified strapping charts for one of its barges as required by the DoD standard tender.
February 15, 1995	Commander, DFR-S issues letter of warning to Stapp. The letter involved three movements and cited a crossover hose leak, a failure to provide a 3-hour notice of arrival, an inoperable pump engine, a defective pump engine gasket, and a pump engine failure that caused a fuel leak onto the barge. Delays were documented on all three movements, which occurred between January 23, 1995 and February 8, 1995.
March 8, 1995	Commander, DFR-S issues letter of warning to Stapp. Stapp presented for loading two barges containing unacceptable quantities of rust and other particulates at a Louisiana refinery on March 7, 1995, causing a 20-hour delay.

March 22, 1995	The MTMC-EA determines Stapp to be a nonresponsible bidder under solicitation for long-term contract.
March 24, 1995	Stapp, MTMC, and DFR-S officials meet with congressional representative from Stapp's district to discuss adverse actions taken against Stapp.
March 28, 1995	The MTMC-EA carrier review board disqualifies Stapp for 90 days with 60 days suspended.
April 1, 1995	The DFR-S operations officer issues letter of concern to JAR Assets. Fuel pump filters on a JAR Assets barge had to be changed during operations on two occasions, resulting in a combined 10-minute delay. Also, gauge reference points on four JAR Assets barges were worn off.
April 17, 1995	Commander, DFR-S issues letter of concern to JAR Assets. On April 6, 1995, a JAR Assets barge was rejected at a Louisiana refinery because it contained an unidentified product from a previous load.
May 10, 1995	The DFR-S preaward equipment survey recommends award to Stapp, subject to certain conditions.
May 18, 1995	The MTMC-EA vacates Stapp's 60-day suspended disqualification based on an incident at a Louisiana refinery in which Stapp's use of incorrect loading procedures resulted in a spill of at least 100 gallons of fuel into nearby waters.
May 31, 1995	Commander, DFR-S issues letter of warning to JAR Assets. On May 31, 1995, a JAR tankerman caused an overflow of 3 gallons of fuel into the water at a Louisiana refinery, resulting in a 2-hour delay.
June 6, 1995	The Small Business Administration, Dallas Area Office, issues notice of intent to issue Stapp a certificate of competency.

July 18, 1995	The MTMC-EA appeals the Small Business Administration certificate of competency determination as requested by DFR-S on June 8, 1995.
August 9, 1995	Small Business Administration Headquarters reverses the Small Business Administration, Dallas Area Office, decision to issue Stapp a certificate of competency.
August 9, 1995	The DFR-S determines that JAR Assets equipment meets the needs of the Government, in accordance with preaward survey requirements for long-term contract.
August 11, 1995	Commander, DFR-S issues letter of warning to Stapp. An internal bulkhead leak was noted in a barge Stapp presented for loading at a Louisiana refinery on August 10, 1995, causing a 12-hour delay.
August 18, 1995	Commander, DFR-S issues letter of warning to Stapp. On August 12, 1995, Stapp presented two barges for loading at a Louisiana refinery that were rejected, causing a 16-hour delay. One barge was rejected for a disconnected stripping valve rod; the other, for corroded nuts and bolts on the fuel loading line.
August 21, 1995	Commander, DFR-S issues letter of warning to JAR Assets. On August 19, 1995, a JAR Assets barge leaked about 5 gallons of fuel into the water at a Louisiana refinery. The spill was caused by a small crack in a weld in one of the barge compartments.
September 27, 1995	The U.S. Court of Federal Claims denies Stapp request to overturn Small Business Administration decision not to issue a certificate of competency.
September 27, 1995	The MTMC-EA awards long-term contract to JAR Assets.

September 29, 1995	The DFR-S Operations Officer issues letter of concern to JAR Assets. JAR Assets improperly discharged at an Arkansas storage facility, causing 521 barrels of fuel to remain on the barge. No financial loss to the Government resulted.
October 4, 1995	Commander, DFR-S issues letter of warning to Stapp. On September 12, 1995, Stapp presented two barges for loading at a Louisiana refinery that were rejected because they contained unacceptable levels of rust and still had diesel fuel on board from previous loadings. A 3-day loading delay resulted. When loading finally began on September 16, a Stapp tankerman overfilled one of the barges, causing 126 gallons of jet fuel to spill into the water.
November 14, 1995	Commander, DFR-S issues letter of warning to Stapp. On November 8, 1995, Stapp was unable to load 5,000 barrels of jet fuel at a Louisiana refinery because the barge could not hold the entire 75,000-barrel shipment. In addition, Stapp arrived at the refinery 5 days late.
December 22, 1995	MTMC Headquarters carrier review board disqualifies Stapp for 1 year.
February 2, 1996	Stapp appeals MTMC Headquarters carrier review board disqualification to MTMC Headquarters Deputy Chief of Staff for Operations. Appeal is denied.
March 7, 1996	Chairman, House Subcommittee on Military Readiness requests Inspector General, DoD, review of Stapp allegations and associated contracting practices.
April 2, 1996	Inspector General, DoD, announces Audit of Contracting Practices for DFR-S Fuel Delivery Contracts.
July 22, 1996	Stapp requests relief from MTMC Headquarters carrier review board 1-year disqualification.

August 19, 1996	MTMC Headquarters requests additional information from Stapp regarding request for relief from disqualification.

Carrier Deficiencies for Selected DFR-S Barge Carriers

The following table shows carrier performance deficiencies for selected DFR-S barge carriers, including Stapp, that moved DoD bulk fuel products in the Gulf Coast and the Mississippi River area from January 1, 1994, through December 31, 1995. The deficiencies were identified using material inspection and receiving reports completed by quality assurance personnel and letters of warning (and letters of concern) issued to the carriers. Florida Marine, JAR Assets, and Stapp, the primary transporters of DoD bulk fuel products in the area during the period, made 28, 134, and 88 movements, respectively. We excluded area carriers with relatively few fuel movements during the period. The table also identifies the number of letters of warning and letters of concern the carriers received for each category of deficiency.

	Florida Marine		JAR Assets		Stapp	
Deficiency	No. Identified	Letters[1] Sent For	No. Identified	Letters[1] Sent For	No. Identified	Letters[1] Sent For
Barge contamination	7	O	13	1C	24	8W
Delays	19	O	32	2W	95	9W
Marking problems	11	O	11	1C	4	1C
No arrival notice	5	O	7	O	3	1W
Other deficiencies[2]	6	O	12	1C	18	3W
Other equipment failure	7	1W	12	O	14	2W
Pump problems	7	O	15	1C	43	3W
Spill in water	2	1W	2	2W	8	4W
Spill on deck	0	O	1	O	30	4W
Total[3]	**64**	**1**	**105**	**5**	**239**	**14**

Enclosure 3
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Carrier Deficiencies for Selected DFR-S Barge Carriers

[1]Refer to letters of warning (W) and letters of concern (C) issued to the carriers.

[2]Other deficiencies included:
short-loading of product,
carry-away of Government product remaining on board,
carrier damage to dock facility, and
absence of required documents.

[3]The total number of letters sent may be less than the sum of the number of letters for each category because some letters include more than one deficiency.

Organizations Visited or Contacted

Department of the Army

Military Traffic Management Command, Falls Church, VA
  Military Traffic Management Command-Eastern Area, Bayonne, NJ
Office of the Judge Advocate General, Arlington, VA

Other Defense Organizations

Defense Finance and Accounting Service, Indianapolis, IN
Defense Logistics Agency, Fort Belvoir, VA
  Defense Contract Management Command, Fort Belvoir, VA
    Defense Contract Management Area Operations, San Antonio, TX
  Defense Fuel Supply Center, Fort Belvoir, VA
    Defense Fuel Region-Americas, Houston, TX
      Defense Fuel Office, Fort Dix, NJ

Non-Defense Federal Organizations

Environmental Protection Agency, Washington, DC
U.S. Coast Guard, Washington, DC
  Marine Safety Office, Houston, TX

Non-Government Organizations

Dixie Carriers, Inc., Houston, TX
Exxon USA, Houston, TX
Inland Towing Company, Ashland, KY
L & R Chartering, Inc., Houston, TX
QMC, Inc., Houston, TX
Seahull, Inc., Houston, TX
SeaRiver Maritime, Inc., Houston, TX
Shell Oil Company, Houston, TX
Stapp Towing Company, Inc., Dickinson, TX

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