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BEFORE THE
ARMED SERVICES BOARD OF CONTRACT APPEALS

In the matter of:)
Appeal of:) ASBCA No. 43965
FREEDOM NY, INC.)
Contract No.)
DLA13H-95-C-0591)

Kings County Criminal Court Building
120 Schermerhorn Street
Brooklyn, New York

Tuesday, May 16, 2000
9:30 a.m.

BEFORE:
DAVID W. JAMES, Administrative Judge

APPEARANCES:

For the Government:

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For the Appellant:

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
HENRY THOMAS, JR.	217			

E X H I B I T S

Number	Identified	Received
NONE		

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P R O C E E D I N G S

(9:30 a.m.)

JUDGE JAMES: Let the record reflect that this is day two in the hearing of Freedom, New York, Inc., ASBCA docket number 43965.

Appellant, have you got another witness you want to call?

MR. LUCHANSKY: Yes, your Honor. We will call Henry Thomas.

Whereupon,

HENRY THOMAS, JR.

a witness, was called by counsel for the Appellant and, having been duly sworn, was examined and testified as follows:

JUDGE JAMES: What I'd like you to do sir, is just state your full name for the record, spell your last name and give us your address.

THE WITNESS: Henry Thomas, Jr., T-h-o-m-a-s, 420 East Martin Luther King Boulevard, Mt. Vernon, New York.

DIRECT EXAMINATION

BY MR. LUCHANSKY:

Q Mr. Thomas, could you please explain to the Judge, back in the late 70's and early 80's, before the MRE program, what line of business was Freedom in?

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A Freedom was in the business of preparing foodstuffs for the United States Department of Agriculture in various school districts in the National School Lunch Program.

Q Freedom was a small business at that time?

A Yes, it was.

Q Was it successful?

A Yes.

Q We know already that Freedom submitted a bid for the re-procurement of A.P.F.'s portion of the MRE-1 contract.

A That's correct.

Q How did Freedom first become aware of A.P.F. and the MRE program?

A Freedom was doing a summer lunch program in 1980, in New York, and we had went to federal court before a judge and got an injunction against the Department of Agriculture for not being allowed inclusion into the bigger program. And as ramification of me getting a injunction against the United States government, highlighted and focused Freedom on the work just about.

What happened as a result of that was, the White House gave us a call. When there was some news footage in the news about these trucks and a minority

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1 business. And they gave us a call because they said that
2 we have checked you out and you were referred to us by
3 the United States Department of Agriculture, as being a
4 minority business who understood food processing
5 techniques, and that you are successful in it.

6 And the White House asked me to go to Chicago
7 for them and that there was a contract with the military
8 and a minority firm, and there appeared to be some
9 technical specifications of quality control problems that
10 was a problem.

11 And I traveled to Chicago when Pauline Snyder
12 and Jack Watson, from the White House, who was the Chief
13 of Staff to Jimmy Carter, asked us to intervene and step
14 into it. And I never even heard of an MRE. I didn't
15 know anything about it, and I didn't even know that the
16 military procured food. I thought the military -- I
17 thought it came from agriculture.

18 Q And did you try to provide assistance to
19 A.P.F.?

20 A Yes. We flew out. I took Marty Hoffman from
21 Hoff Foods, who was doing all the Kosher catering for
22 Eastern Airlines at the time, to Chicago with me.

23 There was a bit of a concern that Hoff Foods,
24 being a Jewish guy, and we found out that the people in
25 Chicago was Muslims, black Muslims, and there was this

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1 concern. And we was met at the airport by Nadah Ali and
2 Kevin Seraaj. And they were surprised that a black guy
3 from New York was coming to Chicago to help them, at the
4 bequest of the White House. So they were as surprised as
5 I was to meet them, and they met me.

6 Q Did you get a chance to provide any assistance
7 to A.P.F.?

8 A Yes. What I did was, I quickly analyzed the
9 problem that was going on at the A.P.F. plant and
10 realized that the specifications that they were using
11 under MRE-1 were different specifications that was being
12 used by Rafco and Sopakco subcontractors.

13 DPSC had not allowed the flow down of certain
14 waivers to be used by A.P.F., appeared to be withheld by
15 DPSC, and that's one of the problems.

16 The Department of Agriculture requirements for
17 let's say, food products to pass muster is like a 145
18 degrees centi temperature. That was more than what Nadig
19 Labs was requiring under the military spec.

20 So when the A.P.F. met the military spec and
21 passed, it was blocked by the Department of Agriculture.
22 So the fight wasn't between whether or not they could
23 produce. The fight was between really, the USDA telling
24 them, "We're not passing this." You can't move this
25 interstate. We're not giving you permission from point,

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1 you can move it around this plant if you want. But it's
2 not getting out of that plant.

3 So the biggest problem of all the meats that
4 they had -- millions of dollars of meat was being dumped
5 inside that plant as a result of not being able to go to
6 the next step because it didn't meet spec. And that
7 waiver had been given, as I found out, to Botney in
8 Seattle, to Rafco got it. Marnett Foods in South
9 Carolina got a waiver of some sort and anyway, it was
10 worked out.

11 Q Were the owners of A.P.F. black or white?

12 A Black, black Muslims.

13 Q As a result of your involvement with A.P.F. in
14 MRE-1, didn't Freedom develop some familiarity with the
15 MRE program?

16 A Yes, we did.

17 Q And that's when you, after your attempts to
18 assist A.P.F. didn't --

19 A Right. What happened was, as we were traveling
20 to Washington, D.C., to talk to the head of DLA, I think
21 it was Admiral Thomas at the time, we had to go to a
22 meeting with Congresswoman Collins. I think her name was
23 Coz Collins and Gus Savage from Chicago.

24 And a briefing was given to them and during
25 that briefing Jimmy Carter lost the election that morning

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1 or the day before or something like that. And Admiral
2 Thomas flat told them that, "You're out of here. I'm not
3 approving this. Do whatever you want."

4 The governor of Illinois, I think it was

5 Governor Thompson at the time, I called him and he told
6 them -- and I was standing there, "You're out of here."

7 Q Telling A.P.F.?

8 A They're gone. They're going to be terminated
9 for default. There's no saving them. They're getting
10 rid of them.

11 Q Okay. And so you bid for the re-procurement
12 and did not get it?

13 A What I did was immediately realize that there
14 was going to be a re-procurement. And I immediately
15 started taking steps to get the necessary control of the
16 A.P.F. plant in Chicago. A.P.F. had filed for
17 bankruptcy. And I had to deal with lawyers to get the
18 resources, get the plant, get the equipment, make sure
19 that we didn't lose that tremendous amount of investment
20 that I saw sitting there of almost \$25 million of
21 government money getting ready to go down the drain if
22 somebody didn't harness all of this stuff and keep it
23 going.

24 Q Ultimately, were you successful in getting the
25 A.P.F. equipment?

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1 A Ultimately, yes. Later on I saw that was a big
2 asset of money and resources there that was all
3 accumulated, so I did get that from the Economic
4 Development Administration in 1986.
5 Q And yesterday we had introduced into evidence,
6 FT-448. I think it's a packet of documents that you're
7 familiar with. I can show it to you again if you want.
8 A I'm familiar.
9 Q But does that reflect some of the documents --
10 Do those documents reflect your efforts in obtaining that
11 equipment?
12 A Yes.
13 Q And does FT-448 include the equipment list of
14 the equipment that Freedom eventually secured in March of
15 1986?
16 A Yes.
17 Q Now after Freedom didn't get the MRE-1
18 re-procurement, it then submitted a bid for -- Well, what
19 were the circumstances, did Freedom end up withdrawing
20 its MRE-1 re-procurement bid?
21 A Yes. What happened was, I think I became a
22 surprise to DPSC when we showed up there with a
23 re-procurement. They re-procured and Freedom put in a
24 proposal.
25 It caught Mike Cunningham and Tom Barkewitz

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1 totally by surprise that I had arranged to save the
2 A.P.F. plant and to bring it back in front of them. And
3 I think they believed that there was going to be another
4 mess here.
5 They knew it was a big argument, a big fight
6 going on, as well as the Court lawsuit, as far as the GFM
7 in the plant. It was a fight, and it became a big
8 Federal case as far as GFM and progress payments. That's
9 the standard right now.
10 Q Okay. You put in a bid on MRE-2, and didn't
11 get MRE-2, correct?
12 A Yes. What happened was, Mike Cunningham called
13 me up under MRE-1, and asked me to withdraw my
14 solicitation. And I said, "Why?" He said, "Well we
15 don't think you really have the capability to really pull
16 this off without our help." And I said, "Well, I think I
17 do." He says, "Tell you what, if you withdraw from the
18 MRE-1 solicitation, we will help you with MRE-2 and give
19 you everything you need to come in here." So I said,
20 "Okay."
21 They wrote me a letter. It's in the file here.
22 I'm not sure where it is but it --
23 Q Is it FT-003?
24 A I don't know what it is. They wrote me a
25 letter in, I think it's late '80 or early '81, January of

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1 '81, that basically reflects that conversation that they
2 will do everything to put me into MRE-2, if I withdrew.
3 I agreed to withdraw and I was waiting for
4 MRE-2 to come around to bring things to bear, and instead
5 of doing it in Chicago, I told them I will do it in New
6 York with their help. They said, "Fine." So I withdrew.
7 Q And then you solicited -- you bid for MRE-2 but
8 did not get a procurement for MRE-2, correct?
9 A To an extent, yes. But we were tricked. In
10 other words, what happened before that bid came out. Mike
11 Cunningham put in a D & F to Secretary of Defense, to
12 protect Rafco and Sopakco, without my knowledge.
13 What they did was, they got Carlucci, Deputy
14 Secretary Carlucci to write an MRE-2 D & F, that only
15 included an A-16 award that included Rafco and Sopakco.
16 That allowed Mike Cunningham to now go to Rafco and give
17 them 50 percent of the contract value. Go to the other
18 company, Sopakco and give them 50 percent and then say.
19 "Oops, I have nothing for you Henry Thomas. But guess
20 what? I've got some competition here for you. So I'm
21 going to have this open piece for you."
22 So we said, "Okay, fine." We bid on that but
23 the price -- What happened was, our price was here
24 because it was a small portion, maybe 600,000 cases.
25 Rafco and Sopakco had already gotten their overhead G &

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1 A, covered under the A-16 portions of this same time
2 frame.
3 So now they are now bidding on third shift
4 production. So their cost came down. But what we wanted
5 to point out at this period, is that what they had bid on
6 those was like, \$45 a case. Whereas, I was trying to bid
7 maybe, \$38 a case -- but on this open piece they were
8 able to come down below me.
9 So therefore, they claimed that these people
10 had a better price than I had. But everything was not
11 equal here.
12 JUDGE JAMES: Before you go ahead -- you keep
13 using the name, Mike Cunningham. Who is he? Do you
14 know?
15 THE WITNESS: Yes. Mike Cunningham was one of
16 the architects over Alan Koerber, designing the MRE
17 program with Captain -- I can't think of his name.
18 MR. LUCHANSKY: Mr. Thomas --
19 THE WITNESS: But it was the Navy captain that
20 was in charge of putting this thing in for Admiral
21 Rickover.
22 BY MR. LUCHANSKY:
23 Q At that point, Mr. Thomas, was Mr. Cunningham
24 the PCO?
25 A Yes, he was.

1 Q After Mr. Cunningham, the PCO became Mr.
2 Barkewitz?
3 A Right.
4 Q At some point --
5 A But both of them was running together as a team
6 with Cunningham being the PCO, and Tom Barkewitz being
7 either the buyer, or a PCO.
8 One of them was like, the chief of rations and
9 the other one might have been the contracting officer.
10 But Cunningham was the clear guy calling the shots.
11 Q Now, so if I understand you correctly, a
12 portion of the award was established directly for Rafco
13 and Sopakco and that was negotiated face-to-face?
14 A That was set aside for them. That's right.
15 Q And in that procurement for them were included
16 whatever balance of start-up costs --
17 A Right. They was able to negotiate their costs.
18 All of them, whatever they needed on that portion, at a
19 higher price than they was then able to come -- the very
20 next month and say, "Okay, fine. If you give us these
21 other cases here of MRE-2, that's the open procurement
22 that anyone can bid on --"
23 Q And then in that balance of the procurement you
24 had to compete against Rafco and Sopakco?
25 A I had to compete against them. That's right.

1 So that one was the competition that I was doing, bidding
2 against guys that were already set up under a set aside
3 program where their cost was already absorbed.
4 Q Now, did you write to Mr. Cunningham, in this
5 time period 1982/1983, to express a concern about how you
6 solve the start up problem?
7 A Right. Yes, I did. I'm not sure whether I
8 wrote that letter right away. I think what I did -- The
9 first thing I did was write letters to Congress and to
10 the Secretary of Defense, complaining about how they
11 allowed this flim-flam, I believe, to happen.
12 That it wasn't fair for me to be competing
13 against guys that would just all of a sudden all of their
14 costs was allowed to be absorbed under the A-16
15 contracts, and at the same time, compete with me based on
16 price. It was wrong.
17 Q And then you submitted -- Freedom submitted a
18 bid for the MRE-3 procurement, correct?
19 MS. HALLAM: Your Honor, we object to all these
20 leading questions. If Mr. Luchansky wants to testify, we
21 have no objection to him taking the stand.
22 MR. LUCHANSKY: Your Honor, all I would say is
23 --
24 JUDGE JAMES: I overrule the objection. Go
25 ahead.

1 BY MR. LUCHANSKY:
2 Q The question is Mr. Thomas, then Freedom
3 submitted a bid for the MRE-3 assembler procurement?
4 A No. I don't believe we did. I don't believe
5 we actually submitted one for three. I believe what
6 happened was, MRE-3 D & F came out again, and what
7 happened was, it allowed them again to award two
8 contracts, one to Rafco and one to Sopakco, without even
9 talking to me.
10 Now it may have been -- We attempted to submit
11 something but I'm not sure. I do recall saying that is
12 definitely not fair and by the time I heard about it, the
13 contracts were awarded. Okay. That's the way I recall
14 it. I recollect it like that. I'm not sure if we were
15 even solicited for three.
16 Q So if you take a quick look at FT-11.
17 A Let me take a look at it. I need to see it.
18 Q FT-11 in the record.
19 A Okay. This is D & F. Yes.
20 Q So Mr. Thomas, is FT-11, the D & F you were
21 referring to for MRE-3?
22 A Yes.
23 Q And does this indicate that procurement was
24 established or that authorization for procurement was
25 directed only for Rafco and Sopakco?

1 A Yes. They didn't have to come to negotiate
2 with me. They didn't have to even invite me.
3 Q Okay. So at that point what did you do?
4 A We immediately jumped up and challenged this
5 whole process. And ultimately, what happened, certain
6 people in Congress questioned the Secretary of Defense on
7 what's going on here? What is this program all about and
8 how can you get away from competitive bidding process by
9 doing this? What is this program?
10 And that's when we realized that this was a
11 specialized program that the Secretary of Defense -- a
12 plan that they had made in the interests of national
13 defense for maintaining capability in the event of war
14 was a special program. And in order to get in this
15 program you had to be on this D & F. And if you were not
16 on this D & F, they have, they do not have to come to
17 you.
18 So what we did was, we raised all kinds of
19 problems and objections and what have you. And to solve
20 this problem DPSC said, "Thomas, you're not a Walsh
21 Healey manufacturer. Your school lunches don't count.
22 We need somebody that's a Walsh Healey manufacturer."
23 And we said, "Well, how can we -- It's the chicken and
24 egg. How can we be a Walsh Healey manufacturer if we
25 can't get a contract to produce. We'll never be able to

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1 get in this program."

2 So they then directed or somebody -- somehow it
3 came out that DPSC set aside -- snapped their fingers
4 some kind of way and came up with a labor surplus area
5 award of two meat contracts for me. And all I had to do
6 was respond, which I did. And all of a sudden, here
7 comes the contracts. They just awarded me two contracts
8 almost to set me up to fail.

9 Q Well, did Mr. Cunningham say anything to you
10 about your continuing your school lunch work while you
11 were performing those contracts?

12 A Yes. We had a meeting with Cunningham and Mike
13 Durso, let's see. We had a meeting with Cunningham at
14 the time. We were doing this here but this is after they
15 had awarded the contracts. Okay.

16 The contracts was awarded and we were saying,
17 how do we now get into this program? How do we make the
18 leap from these retort pouch components over to the
19 assembly side?

20 Cunningham said that we have -- the DPSC has
21 had a major failure with Dry Mix in Mobile, Alabama. I
22 never heard of Dry Mix. So I had to do some research.
23 Who's Dry Mix?

24 It was a ration assembler that DPSC had the
25 MCIs I believe -- back up. As a result of logistics the

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1 whole railroad system on the east coast because of
2 peaches was in front of pears and so much stuff went into
3 Dry Mix that they couldn't find where the components was.
4 So therefore, the line couldn't run. They couldn't fill
5 the box because the peaches was up in the other side of
6 Georgia somewhere, stuck on a rail car. Now, this is a
7 major logistical problem at DPSC.

8 Q So how does this relate to your MRE-3 contract?

9 A Okay. One of the things he said is that Dry
10 Mix was doing this and doing that, and that he had had
11 another failure in Chicago. And that they felt that the
12 Chicago failure of -- where they lost \$25 million in
13 Chicago, - they had lost ten or \$15 million on Dry Mix.

14 Q Was Chicago the A.P.F. contract?

15 A Yes. And since they had these major screw-ups,
16 and that he felt that these people, these contractors was
17 doing other jobs and wasn't giving their full management
18 attention to the MRE program.

19 So he said that we want you -- in order for me
20 to go to the next step, Thomas, your school lunches to me
21 are a threat to this program. We don't know what's in
22 them. We don't know whether bugs are in them. We don't
23 know where this food is coming from. We're going to
24 segregate. And we want to segregate the MRE program from
25 anything else you're doing. So the only way we can do

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1 that is, I've got to get rid of the school lunch program.

2 So we told him that we'd be willing to get rid
3 of our other business if they give us the opportunity to
4 come into the program. He says, "That's the only way
5 we're going to allow you to support you to come in this
6 program -- is if you give 100 percent of your time and
7 your management time to this program. Not to your school
8 lunches and other things you're doing." And I gave them
9 that commitment that we would do that.

10 Q And did Freedom stop doing its school lunches?

11 A Yes, we did.

12 Q Because of that conversation?

13 A That's right. We turned into the wind and we
14 geared this entire plant in the Bronx, Hunt's Point, as
15 the Bronx ration, Hunt's Point ration assembly plant that
16 we were building. It's a two hundred thousand square
17 foot plant that I had -- I didn't need a 200,000 square
18 foot plant to do, 2 million or 2.5 million pouches. I
19 could have done that in a 20,000 square foot plant, a
20 20,000 square foot plant or smaller.

21 BY MR. LUCHANSKY: Your Honor, may I give the
22 witness some water?

23 JUDGE JAMES: Absolutely.

24 MR. LUCHANSKY: Thank you.

25 BY MR. LUCHANSKY:

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1 Q Now Mr. Thomas, you said that Mr. Cunningham
2 told you, you needed to become Walsh Healey certified --
3 qualified, in order to become an assembler. Did Mr.
4 Cunningham say anything about what would happen if you
5 were to become a Walsh Healey manufacturer through this
6 MRE-3?

7 A Yes. If we were successful at showing them
8 that we could manufacture retort pouches that would
9 qualify us as an assembler. And then, he would then go
10 to the next step of support for us.

11 But first, he has to -- Now, we have to get
12 over this next step of becoming a Walsh Healey
13 manufacturer. And that is a tough job because it means
14 that you've got to try and do retorts, which is something
15 that is -- A lot of people was having problems with
16 retort pouches at the time.

17 Q Nevertheless, you said that Mr. Cunningham --
18 it appeared to you that Mr. Cunningham had set you up to
19 fail. What do you mean by that?

20 A Yes. Normally, the pre-award survey that they
21 would do before they award you a contract is to verify a
22 lot of things. DPSC awarded me this contract without a
23 lease on the Hunt's Point plant. We didn't have one. We
24 just told them this is the plant we're going to use and
25 if you -- it was a chicken and egg situation. I can't

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1 get a lease unless I got a contract. And they usually
2 want to verify some form of financing. And that
3 pre-award for that retort pouch contracts -- there was no
4 commitments from any banks or anything for financing.
5 There was nothing there.

6 I went to First Woman's Bank, I believe it was,
7 that I didn't even have a bank account with and said that
8 if I get a contract I want them to do some financing. I
9 think they wrote me a letter saying if you get a
10 contract, we will consider giving you an 8-A loan
11 application. We'll consider your loan.

12 Q So you didn't have financing in place at the
13 time of the award of these MRE-3 contracts?

14 A No.

15 Q Did you know Dollar Drydock at that point? At
16 the time of the award?

17 A No, never heard of them.

18 Q When did you first encounter Dollar Drydock?

19 A After the award of these two contracts Dollar
20 Drydock sought me out. They found out that I had -- was
21 after the Hunt's Point plant. The City of New York --
22 Word got out quickly. It might have been George
23 Steinbrenner that mentioned it to a -- I was at a Chamber
24 of Commerce meeting I believe it was in the Bronx and
25 people was talking about this guy just got some military

1 A These documents reflect November 9, a --

2 Q And I'll ask you to take a moment to look
3 through all of them. Instead of describing them one by
4 one, I'd first ask you to take a look through all of them
5 and see if you can summarize.

6 A Okay. We were under the gun to get moving. If
7 you noticed, we cut a deal with the chairman of Dollar
8 Drydock. At least I did. I cut a deal with Dollar at
9 this time where just the chairman and myself was in this
10 huge room with about 50 chairs on one side, 50 chairs on
11 the other side, and him and I sitting down there.

12 And he said, "Well what do you need to get
13 started?" I said, "First of all, I need a partner in
14 this deal. I need somebody that's going to be a
15 stockholder. Not somebody that's going to pick up and
16 just loan me a little bit of money and then boogey at the
17 first sight of trouble because I'm going into virgin
18 territory." He says, "That's me. I'm your man." I
19 said, "Okay, fine." I said, "But I can't wait. I've got
20 to get started today. We got to get moving. I'm falling
21 behind schedule." "What do you need?" "I've got to get
22 something to the Department of Ports and Terminals to
23 lock up that building over there. I've got to get some
24 equipment moving. I've got to do this, I've got to do
25 that." "Okay, fine." We shook hands on the deal.

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1 contracts. And the next thing I know, Bill Wheeler, from
2 Dollar Drydock, the chairman, sought me out and said, "I
3 need to talk to you. I want to be a part of this."

4 I was telling him all about that Chicago had
5 six hundred jobs in the Bronx and I could make it happen
6 and I need some help and I was -- I had this big building
7 over there that was empty and it needs a lot of
8 renovation. But if I can pull this next phase off it
9 lines me up to become a prime contractor to bring major
10 jobs to the south Bronx. And the chairman of Dollar
11 Savings Bank at the time, Bill Wheeler, says, "I need to
12 talk to you. Come to my office in the Bronx. Come to
13 headquarters."

14 Q Roughly, which year was this?

15 A This was in late 1982, I believe it was.

16 Q In fact, I'll direct your attention, Mr. Thomas
17 -- if you could take a look at PT-16. I believe it
18 should be in the same volume as the document you were
19 just looking at a moment ago.

20 MS. HALLAM: What was that number? Could we
21 have that number again, please?

22 MR. LUCHANSKY: PT-16.

23 THE WITNESS: Okay. Okay.

24 BY MR. LUCHANSKY:

25 Q What do these documents reflect?

1 He called upstairs, a Vice-President called,
2 Mike Durso. He says, "Durso, I just shook hands on
3 Thomas. Make it happen. Give him whatever he needs
4 right now."

5 There's no stockholder agreement worked out.
6 There's nothing signed between me and Dollar. Based on
7 that Dollar Drydock started issuing letters of credit.
8 They didn't even have my social security number.

9 Q And why was Dollar willing to make that
10 investment?

11 A Because if I didn't make this leap or jump and
12 make this retort pouch contract happen, I would never
13 qualify for the next assembler contract and Walsh Healey.

14 Q And if you did make it happen, what was your
15 understanding?

16 A If we made it happen, Mike Cunningham said that
17 the government was going to support me in bringing me
18 online as a major -- as an active plan producer.

19 Q And did you share with Dollar Drydock, Mr.
20 Cunningham's statement to you?

21 A Yes, I did.

22 Q Approximately how much did you invest? First
23 of all, did the government provide you with any financing
24 for MRE-3 contracts?

25 A No, they did not.

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1 Q How much did you invest in outside financing to
2 perform the MRE-3 contracts?

3 A Totally, about -- we invested totally about
4 \$2 million, maybe a little bit more. Dollar actually --
5 in loans I think I actually drew down that I signed for
6 about \$1.4 million.

7 Dollar then extended itself another four or
8 \$500,000 in letters of credit that was, say, unconnected
9 between me and the letter of credit, let's say. But they
10 issued it on my behalf.

11 Dollar also got on the phone and jawboned to a
12 lot of suppliers, "We're behind Thomas. No problem, go.
13 We got his back."

14 Q Do the documents at FT-16 reflect Dollar's
15 investment in Freedom?

16 A Yes. As a matter of fact, the November 9,
17 1982, Exhibit 131 shows that Mike Durso --

18 Q I'm sorry. For the record. Bates stamp
19 number, page 131?

20 A No, I'm sorry. Bates stamp 00131, shows a
21 November 9 letter to me that I told him I needed to show
22 that they were in there and that they was going to be
23 backing me up. I needed something like a credit card in
24 my pocket. And what he did was, he immediately
25 established a \$200 line of credit so that I could start

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1 up my retort pouch food operation.

2 Additionally, he will accept and process
3 additional funding as the requirements consistent with
4 their credit policies. And this was enough for me to go
5 to the City of New York, and to lock up that building.

6 Q Okay. Well, if you can, explain to the Judge
7 about what you invested this money in. What did you buy?
8 What did you acquire with this investment?

9 A All right. Well, what I was doing was, I was
10 under the gun to get equipment to produce. I knew there
11 was equipment in Seattle, Washington, that was on the
12 auction block that day. And it was before this letter
13 here that Bill Wheeler authorized Dollar Drydock to give
14 to Jacene, my wife, who was with me at the time -- he
15 wanted to meet her because she's an American Indian and
16 he wanted Dollar to be involved in, for other reasons,
17 this company. Because one, Dollar Drydock had been
18 accused of red-lining in the south Bronx. And since
19 Dollar was accused of red-lining, Dollar needed this
20 project to show that they was going to plow money back
21 into the Bronx.

22 JUDGE JAMES: What does red-lining mean?

23 THE WITNESS: Red-lining means, when you are
24 discriminating against certain classes of people in
25 lending money to them. So you red-line a certain area

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1 and there's no loans from your bank going in. That's
2 called red-lining. Okay.

3 If you look at the next document which is --
4 there is no Bates stamp on this document I don't think.
5 Well, it must be part of 131. It's a group of checks
6 that's -- no -- it must -- it, maybe it says --

7 BY MR. LUCHANSKY:

8 Q If you're looking at the next page, it's about
9 two-thirds down the page and is the number 132. Is that
10 the page you're looking for?

11 A Oh, I see it. There it is. I'm sorry, you're
12 right. It's right down the page, it's 00132.

13 If you look at the date, what Durso -- I mean,
14 what Bill Wheeler did, was issue an official check
15 payable to the order of Jacene Thomas. They got it wrong
16 but that's okay, 'H' for \$75,000.

17 This \$75,000 was in a rush to get to Seattle,
18 so that I could get the retort pouch equipment from Nally
19 Fine Foods, that a retorter for Rafco was about to lose.

20 There was this Rafco's major subcontractor. It
21 was a minority company called, Fresh Flavor Meals.

22 We couldn't get this check. By the time it got
23 issued, we missed the flight. What I did was -- even
24 though I had the check I called a fellow called Zeb
25 Robbins, in California.

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1 I said, "Zeb, I've got \$75,000 from the bank
2 over here. I can't get it to there fast enough. Do me a
3 favor. Get on a plane, grab some cash, run up there,
4 stand in my stead, see this lawyer named, Levitson. Give
5 him 75 grand, and grab the rotor mats." He says, "Henry,
6 what am I doing?" I said, "You grab it in your name
7 then. Don't worry about it. I'll lease it from you."

8 He ran up there at 2:00 o'clock -- and he was
9 on the west coast. I was on the east coast. So he had a
10 3-hour advantage over me. So all he had to do was run to
11 Seattle, which he did. He stopped what he was doing, ran
12 to -- I think he -- I don't know how he did it but he got
13 the cash, he went up there and plopped down \$75,000 and
14 saved the rotor mats.

15 Q Before that point, had Mr. Robbins expressed
16 any interest in financing Freedom for the MRE-3 contract?

17 A Yes. He was the loser for -- Dollar Drydock
18 beat him out to be my stockholder. He played chicken
19 with me at a bargaining table and lost.

20 Robbins had said, his negotiators I should say,
21 came to the table and I had an investor in New York,
22 named, Rabbi Elbalm -- wanted to be involved in this as
23 well. And Rabbi Elbalm had introduced me to this guy,
24 this Bill -- well, multimillionaire named, William
25 Robbins, from California, who came to New York to meet

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1 me. I walked him through the Hunt's Point plant and told
2 him I'm trying to get this. He says, "Henry, I can make
3 all this happen, just give me 49 percent." I told him,
4 "No, you can't get 49 percent. I'm going in the SBA
5 program. You can have 30 percent maximum. That's the
6 maximum I'm going to give you."

7 Q I'm sorry, Mr. Thomas. I'm sorry to interrupt
8 you. I'm not sure the exact details of the negotiations
9 are particularly pertinent. What I wanted to make sure
10 -- I just wanted to ask whether Mr. Robbins had expressed
11 an interest previously, in terms of financing or going
12 into business with Freedom for purposes of the MRE
13 program. And the answer is yes?

14 A Yes, he had. And what happened was, at the
15 bargaining table one day, I gave them a deadline and I
16 said you've got until 2:00 o'clock to accept my terms.
17 Otherwise, I'm picking up and I'm going over to see the
18 chairman of Dollar Drydock. And they laughed at me
19 basically and said, "Yeah, sure."

20 So 2:00 o'clock came, I picked up, walked over
21 to Bill Wheeler, and said I got these guys over here
22 that, that da-da-da-da. He said, "Well, what do you want
23 me to take?" I says, "I need you to take 9 percent. I
24 have to have control, because I'm a minority person. I'm
25 going toward the SBA program. I can't give you any more.

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1 Anyone taking more than 9 percent becomes subject to have
2 to sign for the liabilities of the company." He says,
3 "Fine. In return, what else do I get?" So I said, "I'll
4 give you 30 percent, or 40 percent of the profits for so
5 long, but the maximum shares I'm giving you is 9
6 percent." He said, "Deal."

7 When we shook hands on it, I picked up the
8 phone and called Zeb Robbins and says, "You lost. I'm
9 walking away with Dollar Drydock, good bye." And that's
10 what happened.

11 So the next time I called him, I knew he was in
12 California. I knew he had available money and he went
13 and saved the rotor mats from Fresh Flavor Meals, which
14 affected Right Away Foods subcontractor supply line.

15 Q Mr. Thomas, I'd just like to move along just a
16 bit more quickly. I wanted to ask, after Mr. Robbins --
17 after you decided to use Dollar Drydock to finance MRE-3
18 instead of Mr. Robbins, was Mr. Robbins still willing to
19 provide financing if you need it?

20 A Yes, he was.

21 Q And his agreement to finance the purchase of
22 these retorts, was that part of his financing for the
23 MRE-3 contract?

24 A Yes.

25 Q And, then, how did Mr. Robbins provide these

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1 retorters to --

2 A What he did was, we then -- in order to --
3 since that's his investment now because I couldn't get my
4 own \$75,000 out there to them on November 1, then I
5 treated that as, okay, you got them, they're yours. I'll
6 lease them from you and you can make whatever money on it
7 as any normal lease on this equipment.

8 So we cut a lease with them -- with a company
9 called, No Name Record Corporation, out of California.

10 Q So he leased them to Freedom?

11 A Right.

12 Q Now, the facility, the equipment, the building
13 repairs that you put into Hunt's Point, in addition to
14 those things, did you also invest in obtaining MRE
15 technological knowledge on how to produce MREs? Did you
16 bring somebody in to provide that assistance?

17 A Yes. We did. Yes.

18 Q Who did you bring in?

19 A We knew that we could not get -- and we tried
20 to get it from Fresh Flavor itself, which we did get
21 some. But the main one we brought in was United Biscuits,
22 out of London. Which was a major company which owned a
23 company in Canada, called Majic Pantry Foods.

24 Majic Pantry was the recognized leader in the
25 North American continent on establishing commercial

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1 retort pouches throughout Canada and if some of them were
2 coming down here to the United States. They knew exactly
3 the tricks of the trade of starting up and retorting
4 these retorts, and I went into a contract of equipment
5 with them.

6 Q Okay. Mr. Thomas, this \$1.8 million investment
7 in this Hunt's Point facility. Was that simply for
8 purposes of developing the ability to perform the MRE-3
9 retort contracts you had?

10 A No.

11 Q Why did you invest in a 200,000 square foot
12 plant if it exceeded the capability for what you needed
13 for the MRE-3 retort contracts you currently had?

14 A Our target wasn't the retort pouches. The
15 target was to become a Walsh Healey. So we would be
16 getting ready for the major assembly contract. Because
17 if we were successful, it was a gamble.

18 If we are successful, Mike Cunningham is now
19 going to allow us to be put into this IPP program and
20 we're going to be set down face-to-face negotiated with
21 just like he was doing with Rafco and Sopakco.

22 Q And that was what Mr. Cunningham had told you?

23 A That's right. And as well as people at dealer
24 headquarters.

25 Q Okay. Did Freedom successfully produce under

1 this contract?

2 A Yes, we did.

3 Q Did Freedom itself, manufacture all of these

4 retort pouches?

5 A Freedom manufactured retort pouches itself.

6 But as a result of an accident leaving the Nally Fine

7 Foods plant in Seattle, one of the rotor mats fell off

8 the truck and got damaged.

9 So instead of me having the capability of three

10 rotor mats for the production that they had given me, I

11 only had two. So what I did was, I quickly subcontracted

12 with Southern Packaging, some of the diced beef with

13 gravy.

14 Q Okay. So you subcontracted some of this work?

15 A Right.

16 Q Did Freedom actually manufacture the balance of

17 this work?

18 A Absolutely.

19 Q And was that the majority of the work?

20 A Freedom subcontracted some to Southern

21 Packaging. Exactly how much, I'm not sure. Linda

22 Iglehart here, who just walked in, was the one that cut

23 that deal with them to do that.

24 Q Okay. Did Freedom manufacture enough MRE

25 retorts to qualify as a Walsh Healey manufacturer?

1 A Absolutely. And I put some of that in the

2 exhibits here where we had the retorts, the USDA

3 inspection, the actual things that was done under the

4 retort. The cook cycles is in there and everything else

5 is in the record for the Court to see that Freedom

6 itself, as well as the DD-250s that were shipped out

7 under that contract, from the Bronx assembly plant --

8 from the Bronx pouch plant.

9 Q Now Freedom then submitted a bid for the MRE-4

10 contract. Is that right?

11 A Right.

12 Q A pre-award survey was done of Freedom?

13 A Yes.

14 Q And what conclusion was reached in the

15 pre-award survey?

16 A Freedom, at that point, was ready. We received

17 a positive pre-award survey.

18 Q And was Freedom awarded an assembler contract

19 for MRE-4?

20 A No, we were not.

21 Q Were you given any reason why not?

22 A Yes. No. Well, Freedom wasn't even negotiated

23 with. Although they made a phone call and said we were

24 negotiated with but what happened was, as I recall it,

25 again, Mike Cunningham awarded one contract at 50 percent

1 to Right Away Foods on a set aside, and he awarded the

2 other contract at 50 percent to Southern Packaging.

3 Now at that time, Freedom had this huge, two

4 hundred thousand square foot plant. We got it ready with

5 the balance of the money that we got from Dollar Drydock

6 to set this thing up so that we would be a jump ahead.

7 So that we was ready to be negotiated with. And we had

8 Majic Pantry standing by down there working with us. We

9 had people from Chicago and Fresh Flavor Meals was there

10 as part of our team as well. So Freedom was ready to go.

11 except that no -- the PCO didn't talk to us.

12 Q Now, if you look at FT-18, which is the D & F

13 for MRE-4.

14 A Eighteen?

15 Q Yes.

16 A Oh, I'm sorry. Yes.

17 Q If you'll look at the second page of this

18 document, Bates stamp number 154.

19 A Right.

20 Q Under determination, you'll see that the

21 determination was made that it was in the interests of

22 national defense -- that it --

23 A What happened was --

24 Q Let me finish the question, please. That in

25 the interests of national defense and industrial

1 mobilization that at least two industrial preparedness

2 planning producers be awarded contracts.

3 A Right.

4 Q Now, what did Mr. Cunningham say about that?

5 A Okay. What happened, we didn't realize that

6 was in there until later on after we again, jumped up and

7 down and raised a lot of cane at the time. Cunningham

8 said, "Well the Pentagon gave us authority to put your

9 name in there Henry, that's what you wanted, so you was

10 named." And I says, "Yeah, I am in there as a one to be

11 negotiated with. But you didn't negotiate with me." He

12 says, "Well, it also says that I have the discretion to

13 award at least two. Well I did that. I awarded 50

14 percent to this guy, 50 percent to that guy. You get

15 nothing."

16 Q Mr. Thomas, how did Freedom's price on the

17 MRE-4 -- on Freedom's MRE-4 bid compare to Rafco and

18 Snopakco's price on their first MRE assembler contract

19 bid?

20 A Once again, Freedom's prices was lower than

21 theirs. Freedom never went in at \$45 a case on anything.

22 Right Away Foods was given \$45 a case early on for theirs

23 and they was negotiated with letter contracts and their

24 prices was defined, worked out, hammered out, and

25 negotiated face-to-face.

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1 My prices I had to guess what they would be, no
2 clue. And I was then about \$32 a case, so I was way
3 under them. But it yet -- because we had put our own
4 investment out there.

5 Q Okay. Were you being treated the same as Rafco
6 and Sopakco?

7 A We felt we were not. We felt that the A-16
8 program was allowing for discrimination for two companies
9 to be kept available in the interests of national
10 defense. Meanwhile, we were trying to get in and we were
11 being blocked. As Alan Koerber was saying yesterday,
12 that they actually blocked us.

13 Q Were the owners of Rafco and Sopakco white or
14 black?

15 A They were white.

16 Q Do you think that played a role in the
17 government's treatment of you?

18 A I believe that the history of the program and
19 their problems they had with the black company in
20 Chicago, played a role that they thought they were
21 walking into another somebody that didn't understand the
22 technical specifications.

23 But I did clearly understand everything. I
24 could explain it very well as to what was going on. I
25 gave briefings to Congress on it.

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1 Q Okay. What happened to Freedom's operations as
2 a result of not getting an MRE-4?

3 A What happened was we tried to at that point in
4 time to save the operation. Because everything, the
5 entire investment was up in the air. I could see that we
6 would be losing the 1.4 million that I'd signed for, the
7 letters of credit, the momentum. So what I did was, I
8 went to Congress and started to complain and just said,
9 "Wait a minute. Something's wrong here." I decided to
10 take everybody into Federal court.

11 Q Okay. Before we get to that, was Freedom able
12 to continue its operations after it did not get an MRE-4
13 award?

14 A No. Basically, everything came stagnant. We
15 had to lay off all the personnel. Dollar Drydock got
16 very scared that something is wrong here.

17 They had contacted Mike Cunningham. They had
18 went to meetings with me before they made this
19 investment. Mike Durso had traveled with me.

20 The City of New York had traveled to DPSC and
21 people from the City of New York had gone to Philadelphia
22 and to Washington. And everybody that was on my team was
23 revved up for MRE-4, and when MRE-4 came and there was
24 nothing, nothing. I got the door slammed in my face.
25 Everybody got discouraged.

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1 Q Now, we know that as a result of the
2 investment, Dollar's investment and Mr. Robbins
3 investment, that at this point, Freedom was left with a
4 negative net worth on its books, of about \$2 million.
5 Nevertheless, did Freedom develop any benefits from its
6 having performed the MRE-3 work?

7 A Yes. One of the things that I must try and let
8 people understand is that people that's in finance or
9 bookkeepers or finance people look at liability tickets
10 as being a liability on you because you've got to pay
11 this back of \$2 million. So they have to now post this
12 thing on your books and records which is true.

13 But at the same time, I was looking at this
14 thing as an investment and an asset to the Department of
15 Defense. That look what I've got now for you.

16 I got this huge building that has passed an
17 industrial preparedness facility survey -- where they
18 sent up DLA headquarters. Texas people came up, Southern
19 Packaging people from Georgia came up, and this whole
20 team for the Pentagon had surveyed this plant and said,
21 "This plant passes. We're putting you into the IPP
22 program with this particular plant and this capability."
23 That was an asset.

24 But even though it was a liability on one side,
25 it's something that I can't place on the top of the

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1 balance sheet as an asset, which I saw it as an asset.
2 But I don't know what Pat Marra would do you know, in
3 this case? How would he put that up there? As goodwill
4 I guess. I don't know how they use it. But anyway, I
5 needed that asset to go forward to show what I had done
6 and what I prepared and the heavy investment and risk I
7 took and Dollar took, on a leap of faith relying on
8 DPSC's PCO's leading us down the rosy path.

9 Q So did the production of MRES require a level
10 of expertise?

11 A Absolutely.

12 Q Is that reflected in the D & F's for example,
13 in the MRE-3 D & F, found at FT-11?

14 A FT-11 -- FT-11, yes.

15 Q How is it reflected in the D & Fs, that MRES
16 are a difficult product to produce and that it requires
17 expertise?

18 And if you could just point to the language Mr. Thompson.

19 A I think it's paragraph three and paragraph
20 four. It talks about that the Army has developed this
21 MRE to meet it --

22 Q You don't have to read it into the record, but
23 --

24 A It's based on the state-of-art technology
25 that's still evolving.

1 Q And were there other contractors who had tried
2 and failed at producing these MRES?
3 A Yes.
4 Q I know you mentioned A.P.F. was one of them?
5 A A.P.F. could not -- that's what started -- The
6 assembly wasn't a problem for them. They could have
7 assembled the cases. What was the problem was this meat
8 getting it into the pouch properly to meet Nadig specs
9 and meet USDA specs. That's where their hiccup was.
10 Q Were there other contractors who had tried and
11 failed to do retorting?
12 A From what I understand, yes. There were other
13 people who tried. And there was a lot of waivers that
14 had to be granted and a lot of things to try and figure
15 it out because this wasn't a military spec. It was an
16 LPP. Some sort of limited purchase description that they
17 were using at the time which is not a mil spec.
18 Q Okay. But as reflected in the pre-award survey
19 for Freedom for MRE-4, Freedom did successfully develop
20 the ability to produce these MRES?
21 A Absolutely.
22 Q Now, you've already described the impact on
23 Freedom of not getting an MRE-4. Was there also an
24 impact on the military's ability to -- well, the
25 military's defense capability?

1 A Yes. It was.
2 Q What was the effect? What happened?
3 A The effect was that by Cunningham, the PCO,
4 trying to block me, he was shooting the government in the
5 foot.
6 Q In what, how so? Was Rafco and Sopakco able to
7 produce all of the MRES necessary for mobilization?
8 A No, they were not. And that was the trick that
9 we said that the PCO erred in believing these two
10 companies saying that in the event of war, we can give
11 you 2 million cases. And the other guy says, "In the
12 event of war I can give you 2 million cases." So based
13 on that misrepresentation, Cunningham says, "Okay. Since
14 you can give me this in 90 days and you can give me this
15 in 90 days, you're qualified. I don't need Thomas'
16 600,000 cases."
17 I was not going to the government telling them
18 I could produce 2 million cases out of my plant. Even
19 though my plant was bigger than their plants.
20 Q Did you try to tell Mr. Cunningham and the
21 others at DPSC that?
22 A Absolutely. I tried to warn them just like I
23 tried to warn Frank Bankoff here in 1986, of what would
24 happen if Desert Storm -- if he didn't heed my warnings.
25 And sure enough, Desert Storm was a mess for them.

1 Q And after they didn't listen to you, you went
2 to court?
3 A Yes. What happened was, I went to court and we
4 told the judge exactly what was going on and we wanted a
5 temporary restraining order to stop them. I said, "I'm
6 going to get their attention and let everybody understand
7 that I know what time it is and what's going on here and
8 the production capability of these machines what's in the
9 United States and that somebody's being -- the wool is
10 being pulled over their eyes here."
11 So what happened was, in court when we went --
12 I think it was Judge Oberdorfer wanted to know what is
13 the rush and why are these affidavits coming to him
14 saying that, "Please Judge, don't stop this. If you stop
15 it, we're going to lose the war."
16 So, we explained to the Judge what it is that
17 on one hand they're saying they don't need me. On the
18 other hand they're telling you there's an emergency.
19 Please don't give them a TRO because this is such an
20 important program. So the Judge made a comment, "Well,
21 if what these affidavits are saying to him is that on one
22 hand that this is such a critical item and on the other
23 hand you've got Mr. Thomas standing here ready to save
24 the United States from disaster, what do you need the
25 Court for?"

1 Q And you're referring to the affidavits found or
2 the documents found at FT-24, which is --
3 A FT-24? Let me see if they're back here. Any
4 number?
5 Q FT-24, we're looking at C and D. I'm sorry, D
6 and E. Are those the affidavits you're referring to?
7 A Yes. Yes, these are the affidavits that Tom
8 Barkewitz as the PCO gave concerning why this program was
9 so important and they can't stop it. Please Judge, don't
10 give Henry Thomas a TRO like the judge in New York did,
11 basically.
12 Q Now, looking at FT-24, F. Was a hearing held
13 on your request for a TRO?
14 A Yes. And unfortunately, it -- The whole
15 document is not here and I think that if the Court
16 wishes, I think it needs to be put in here.
17 Q I think the whole document might be here.
18 A It's not here under F.
19 Q No? Okay. Well, under F, is a transcript of
20 the proceedings of September 7, 1983. During these
21 proceedings, did the government finally admit that it did
22 not have sufficient rations?
23 A Yes, they did.
24 Q Directing your attention to page Bates stamp
25 319.

1 A Yes.

2 Q Is that the section?

3 A Absolutely. This is where finally they had to

4 admit in court -- because I believe -- Yeah. They had to

5 admit in court because there were representatives from

6 the House Armed Services Committee in attendance there

7 watching this proceeding. That had shown up in this

8 courtroom watching what the government was saying.

9 Q Okay. And it was at this point that -- Well,

10 okay. After this court hearing, were you then invited to

11 get -- Well, all right. What happened after this court

12 hearing regarding --

13 A Well, as a result of this document where she

14 tells the Court that where it says the Court, "Are you

15 telling me that the United States Army has allowed itself

16 to run out of rations?" And the U.S. Attorney says

17 first, "I don't agree, I think -- yes, I believe that is

18 correct. I believed it actually. The United States Army

19 has run out of rations." The Court made a -- that's

20 news. He was very loud about it. He sat back in his

21 chair. Then he came back and says, "GAO ought to look at

22 more than just this contract." And then it took off from

23 there. But that's when the guy from the House Armed

24 Services Committee, I think, the Senate Armed Services

25 Committee said, "We need to talk to you, fella. Who are

1 you?"

2 Q Well, were you invited to give a briefing to

3 Pentagon officials?

4 A Yes. Absolutely. I gave a briefing to the

5 House Armed Services Committee where the chairman

6 attended and some of his close aides.

7 Q Who was the chairman?

8 A Congressman Joseph -- The chairman was

9 Congressman Joseph Addabbo, from New York.

10 Several other congressmen were in this meeting.

11 They called people over from the Pentagon came in. I

12 think it was Col. Kowalcheck was there. Col. Francois

13 rolled in -- retired. Several people from the Pentagon

14 were there that were interested in industrial resources,

15 and said that these are some serious charges here because

16 it impacts the secret war plans for mobilization.

17 Q Mr. Thomas, did you have any political pull

18 with Chairman Addabbo?

19 A No, I did not.

20 Q Was he even your congressman?

21 A No, he wasn't my congressman.

22 Q So what was his interest in the issue of

23 whether there was sufficient mobilization capacity to

24 meet the country's needs?

25 A Well, unfortunately I hate to have to say what

1 happened in the political arena was, that we -- the

2 military had been basically gutted during the Carter

3 administration. And what Reagan was trying to do was

4 rebuild the military build-up and everybody was made

5 aware of just how scattered our resources really was.

6 And this was an issue of where to put dollars. And

7 what's the -- Important things first. This was a very

8 important issue. This was a War Stopper whether or not

9 -- if no food was there to feed the troops, could we

10 actually move these things around.

11 And what we were saying was that Rafco and

12 Sopakco was making statements that they couldn't possibly

13 meet. And we were allowed to give them a complete run

14 down which ultimately was given to DLA headquarters. In

15 addition to that Dempsey wrote up -- He used all of my

16 language to give it to DLA headquarters as a more

17 definite or some sort of points and something in court --

18 more points and authorities on this thing.

19 Q Well, as a result of your briefing to these

20 Pentagon officials and the congressmen, did they take any

21 action to increase the procurement?

22 A Absolutely.

23 Q How much, if you know, was authorized for

24 procurement during MRES 2, 3, and 4?

25 A All right. On MRES 2, 3, and 4, there were 2.3

1 million cases authorized and that's why they gave 1.12 to

2 Rafco, and 1.12 to Sopakco as minimum sustaining rates to

3 keep them going.

4 I got everybody's attention to this problem.

5 Congress then authorized after -- yeah, they started

6 authorizing 3.2 million cases. Which was now increasing

7 their capability that they don't have to just award to

8 this one and this one. You can maintain those two, but

9 we want you to also maintain this other guy here in New

10 York.

11 So it went up to 3 million cases which was the

12 third spot. The third MRE producer was to be Freedom and

13 that was what they were solving the problem of Cunningham

14 saying I don't have enough because if I give enough. --

15 According to those D & Fs, if they had awarded and I came

16 in with a low price one of the two existing MRE plan

17 producers could be eliminated from the program as the D &

18 Fs say.

19 Q To the best of your understanding, could DPC

20 have sought the increase in this authorization before you

21 had to go to court and had to go to Pentagon officials?

22 A I believe that the PCO -- if he had asked for

23 an authorization -- didn't have the juice or the clout.

24 It probably would have got lost in the soup. But, yes.

25 They should have been asking for an increase and it would

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1 have got support.
 2 The problem is they didn't ask for it. It had
 3 to be from top down. They had to be told this was a
 4 problem.
 5 Q And where is that 3.1 million case figure
 6 reflected? Is it in a D & F? Is it in a --
 7 A Yes. In the D & F, the authorization. If you
 8 go to -- let's go to MRE-2, the first one.
 9 Q Okay.
 10 A Where is it at? I mean -- I'm sorry, not
 11 MRE-2. D & F for MRE-2.
 12 Q D & F for MRE-2 is at FT-4.
 13 A Oh, FT-4? This is the trick that I felt that
 14 DPSC -- the PCO had tricked me.
 15 Q Well, I don't want to revisit old territory,
 16 Mr. Thomas. All I want to do is find where these numbers
 17 are reflected.
 18 A Okay. In MRE-2, what they did was, they
 19 procured by negotiation.
 20 JUDGE JAMES: All right. What's the number,
 21 Mr. Thomas? How many cases?
 22 THE WITNESS: It's four point -- it's 4 million
 23 cases covering FY '91 and '92. For \$34 million.
 24 BY MR. LUCHANSKY:
 25 Q Okay. How does that correlate to the 2.4

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1 million cases you were talking about before?
 2 A All right. What they did here, was that --
 3 They had lost under MRE-1, this ability because of the
 4 re-procurement. So what they did was, they took two
 5 million and put it in the same one so that they could
 6 spread it out and try and catch up. They was behind
 7 schedule.
 8 Q So this figure included some of the overflow
 9 from MRE-1?
 10 A Right. Absolutely.
 11 Q And MRE-3, where is that figure?
 12 A Okay. MRE-3?
 13 Q FT-11.
 14 A In FT-11, it comes down -- Now that they've
 15 done their little catch up -- they require about 23
 16 million cases for the fiscal year '83, it's at 00097
 17 paragraph one -- 2.3 million cases. MRE-4 is at --
 18 Q FT-18?
 19 A FT-18, 00153 -- another 2.3 million cases.
 20 Q And what about for MRE-5?
 21 A Okay. MRE-5 was the deal that we worked out to
 22 drop our lawsuit.
 23 Q Mr. Thomas, if first you could just refer to
 24 where the number is. Are you referring to the JANUARY or
 25 to the D & F?

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1 A I'm looking for the D & F right now. The
 2 justification for authority --
 3 Q Try FT-29. Is that the document you're looking
 4 for?
 5 A Yes. This is the document.
 6 Q And how many cases?
 7 MS. HALLAM: I believe, your Honor, this is
 8 already in the F-Series.
 9 JUDGE JAMES: That's what he said -- FT-29.
 10 MS. HALLAM: FT?
 11 MR. LUCHANSKY: I'm sorry. Well, then, we'll
 12 refer to it as F-7.
 13 THE WITNESS: F-7.
 14 BY MR. LUCHANSKY:
 15 Q It's the same document. Mr. Thomas, you can
 16 look at that document. But for purposes of the record we
 17 will refer to it as F-9.
 18 JUDGE JAMES: It's a duplication?
 19 MR. LUCHANSKY: Pardon me, your Honor.
 20 JUDGE JAMES: It's a duplication?
 21 THE WITNESS: This is a duplication, yes.
 22 MR. LUCHANSKY: I couldn't hear you.
 23 JUDGE JAMES: It is a duplication?
 24 MR. LUCHANSKY: Yes, yes, your Honor. I
 25 understand. As I said, they physically hadn't been

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1 pulled out of the notebooks. But on my index it does
 2 reflect -- Now that I'm looking at my index it does
 3 reflect F-7.
 4 BY MR. LUCHANSKY:
 5 Q So under F-7, Mr. Thomas, certainly not FT-29.
 6 A All right.
 7 Q Does the MRE-5 D & F reflect an increase in the
 8 number of cases authorized from 2.4 million, to 3.1
 9 million?
 10 A Yes, it does. And it also gave clear
 11 instructions in this first paragraph that all the
 12 arguments that I was having with DPSC, over all their
 13 objections, was now being overcome by the Secretary of
 14 Defense by putting in there that contracts will be
 15 awarded based on the existing mobilization capacity of
 16 the contractors and a specific cost/price qualifier.
 17 That was put in there for me. Otherwise, I wasn't
 18 dropping a lawsuit for nothing. They're going all the
 19 way to court with this one.
 20 Q Okay. Now, looking at FT-28. Before the MRE-5
 21 D & F was issued, the one we were just looking at, we
 22 were just looking at a February 7, 1984, D & F issued by
 23 Dr. Wade, the acting Undersecretary of Defense, who as
 24 you said, directed that awards be issued to all three
 25 plan producers Rafco, Sopakco and Freedom.

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1 But in December of 1983, the DLA issued a D & F
2 finally acknowledging that the IPP quantities,
3 mobilization quantities available from Rafco and Sopakco,
4 were insufficient to meet the country's mobilization
5 requirements.

6 A Right. What happened in this document here is
7 between the lawsuit time and this document coming out,
8 Congress ordered Col. KowAlcheck, who said in front of
9 the committee that he would go back and verify whether or
10 not this is -- and other people at OST, industrial
11 resources for the Secretary of Defense that showed over
12 there -- said they was going to go back and check this
13 too. And if it's true, they're going to fix it.

14 So, after that I was invited to a private
15 briefing with the Secretary of Defense, Casper
16 Wineberger.

17 Q Who else was at that meeting?

18 A Colin Powell was there. General Powell was
19 there and Col. Stanford, the Executive Secretary. That's
20 who really the meeting was with them. They are the ones
21 that conducted it with me.

22 The Secretary Wineberger came in briefly
23 because he was being -- something else was going on when
24 the Board lit up. This was the day that we went into
25 Grenada. I was sitting there having coffee with them, at

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1 least they had given me some coffee and the Board lit up
2 and Camp Le June had shipped out to go into Grenada. And
3 I was sitting there that day.

4 Q Mr. Thomas, did you have any political pull
5 with General Powell or --

6 A I didn't even know him. I didn't know who he
7 was.

8 Q What was their interest in you?

9 A Okay. The chairman of the House Armed Services
10 Committee was so interested in this that he told them he
11 wanted to find out if what I was saying was true. And
12 they did. The balloon went up, as they call it, meaning
13 mobilization. Would this be a problem?

14 So what they said they were going to do was go
15 back and double check DPSC's method of what I was calling
16 discrimination as far as against black and white and
17 keeping me out. But it seemed to be a more of a
18 technical issue and what their problems was. So they
19 said they'll go back and verify this and do a study.

20 Now that study was done and after the -- I
21 never got a copy. But a study was provided to the House
22 Armed Services Committee. And the result of that study
23 was this document, as well as the D & F itself,
24 increasing the minimum sustaining rate that they're going
25 to procure each year to maintain contractors in the event

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1 of war.

2 Q So, did this meeting and this study occur
3 before the December 9, 1983, Billy Williams D & F where
4 it was concluded that current IPP quantities are not
5 adequate to meet the mobilization requirements?

6 A Absolutely.

7 Q Now, Mr. Thomas, if I can refer you to, again
8 back to F-7, the Wade D & F. You indicated that DPSC was
9 instructed to award MRE assembler contracts to all three
10 plan producers because two weren't enough to meet
11 mobilization capacity. Was DPSC also instructed to keep
12 Freedom available for furnishing MRES in the event of a
13 national emergency?

14 A Absolutely.

15 Q And what did you understand that to mean?

16 A One of the things that we had at a meeting on
17 October 3 at FTO-26 is this meeting here where General
18 Connelly himself showed up. And you've got the Deputy
19 Director of DLA sitting in a meeting with Henry Thomas, a
20 little guy from the Bronx, and that he had to report back
21 to some people. So this is a high meeting.

22 So this meeting that they're talking about here
23 is where they told me that they were going to perform a
24 review and a study and forward it to the chairman, a Mr.
25 Addabbo, as a result of his request and that they were

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1 going to do an industrial survey again on Rafco and
2 Sopakco.

3 And that was done. And as a result of this
4 study that's showing here in this document, initialed by
5 Tom Barkewitz, this study was then -- is what knocked out
6 that nonsense of them constantly keeping Rafco and
7 Sopakco.

8 And it was decided that okay, whatever their
9 objections were, we didn't want to get into any kind of a
10 fight of disconnecting these existing suppliers. They
11 just added some more to it so that we could become the
12 third plan producer.

13 Q Mr. Thomas, I just wanted to ask you whether
14 anyone from DPSC explained to you what it meant to keep
15 Freedom available for furnishing MRES in the event of a
16 national emergency?

17 A Not only was it DPSC, it was DLA headquarters
18 and it was -- I think it was Dick, maybe Dick Donnelly
19 from industrial resources at the Pentagon.

20 JUDGE JAMES: Listen to what your attorney is
21 asking you. He's asking you what does it mean to stay in
22 this status of emergency preparedness, I guess. What
23 does that mean to you?

24 THE WITNESS: Right.

25 BY MR. LUCHANSKY:

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1 Q To be kept available for furnishing MRES in the
2 event of a national emergency?
3 A All right. In other words, what they do is if
4 you give them capacity in the form of in ninety days you
5 can be ready and deliver to them so much product, they
6 will then give you so much peacetime award to keep you
7 available.

8 In other words, they're going to now restrict
9 anybody from coming into this program and if you're
10 giving them the capability to respond in ninety days from
11 the date of war or mobilization, you can give them say,
12 at least 600,000 cases -- we will give you this much
13 right here to keep you available. If you can give me
14 more -- such as a million five cases -- we're going to
15 give you even more cases. If you give me the most, we're
16 going to give you the maximum cases.

17 In other words, they made this linkage of your
18 capability as your qualification to come to either seat
19 one, seat two, or seat three.

20 Q So if I understand correctly, as long as you as
21 a plan producer, MRE qualified plan producer, had the
22 capability to produce you would get continue to get
23 contracts for MRES?

24 A Absolutely.

25 Q And then within those contracts, the amount of

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1 the award would depend upon the contractor's actual
2 capability to produce?

3 A To respond in ninety days, that's right. If
4 you can give them the most, you've got the most award
5 during peacetime.

6 Q And that's what is referred to as mobilization
7 capacity?

8 A Yeah. That was your planned mobilization
9 capacity that was agreed upon with DLA, DPSC, and a 1519
10 -- N1519-2 planning.

11 Q Mr. Thomas, I understand that shortly after the
12 Wade D & F was issued -- did Freedom qualify as an 8-A
13 Small Business Administration company?

14 A Yes, we did.

15 Q And directing your attention to FT-31.

16 A FT-31, yes. Here it is. Yes.

17 Q Is that the approval that Freedom received from
18 the Small Business Administration, approving its 8-A
19 status?

20 A Yes, it is. This is it along with a
21 participation agreement that they were letting us know --
22 This is the participation agreement that's attached to
23 it.

24 Q Well, let me -- Well, I'm going to ask you
25 about that in a second. Briefly, what benefits were

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1 there for Freedom to being an 8-A approved company?

2 A All right. That, this is an obligation now of
3 the United States government putting itself and its
4 resources behind you in a specific plan to bring you out
5 of economic poverty into the mainstream economic business
6 world.

7 So an 8-A contractor is basically where the
8 government is saying we accept your business plan and the
9 United States government is going to assist you in making
10 this plan happen.

11 Q Now, in addition to the benefit -- Well, in
12 consideration for the benefits that are provided, are
13 there also responsibilities that the contractor has in
14 order to maintain 8-A status?

15 A Right. This is a very, very, very, very
16 special designation. This means that the United States
17 government can set aside procurements earmarked only for
18 these companies that fit this criteria.

19 In other words, it's like a welfare program.
20 It's like a business welfare program.

21 Q I'm sorry Mr. Thomas. I asked a different
22 question. I just want to -- The question was, in
23 exchange for the benefits that are provided to the
24 company, are the responsibilities that the company has to
25 meet in order to continue to remain qualified as an 8-A

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1 company?

2 A Absolutely.

3 Q And that's what I wanted to ask you about. You
4 had referred to the participation agreement that's
5 attached and does that summarize the responsibilities?

6 A Yes. This is very critical because there were
7 so many companies being used as fronts at the time.

8 Q So, are there restrictions on what a company
9 can do if it's going to remain SBA qualified?

10 A Yes. And they gave you this because they want
11 you to know the criteria for program termination. If you
12 no longer are a socially and economically disadvantaged
13 company and somehow you become where you can go out and
14 you hobnob with Donald Trump, and you can on your
15 signature you can get \$7 million or \$8 million without
16 the need for this then you're out of here. You don't
17 need to be in this program.

18 Q Do you know where in this participation
19 agreement that's reflected? What you just said, that the
20 ability to get unrestricted, unlimited financing could
21 disqualify a company from this program, from the 8-A
22 program?

23 A Well, we've always looked at it and it's
24 somewhere in here -- somewhere else but that's a
25 violation. Because in order to get in this program, you

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1 have to show them that you do not have access to credit
 2 and capital, okay? And if you fail -- failure of the 8-A
 3 business concern to continue to meet the standards of
 4 eligibility set forth in the SBA regulations, so --
 5 Q Where are you referring -- where are you
 6 reading from?
 7 A I'm referring to 00456-A.
 8 Q So, 456 and the bottom --
 9 A A and B.
 10 Q Sorry. The bottom of the page, paragraph
 11 three?
 12 A Paragraph three, right.
 13 Q A and B?
 14 A Right. And it's really everything. It's three
 15 going all the way down to all of these things. All of
 16 these violations. Anything that I do I could get kicked
 17 out of the program.
 18 Q And who was the director of SBA at the time?
 19 A I think it was Henry Wilfong. Yeah. It was
 20 Hank Wilfong.
 21 Q Was Mr. Luke Moore involved in the SBA program?
 22 A Yes. Luke Moore was the person that actually
 23 ushered me through this whole process of being certified.
 24 Q And did you have conversations with Mr. Moore
 25 about remaining qualified as an 8-A company?

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1 A Oh, yes. They were having a lot of flack with
 2 people being fronts. People being -- stock being
 3 diluted. Companies -- It was a program that just
 4 everybody wanted to shack up with an 8-A contractor
 5 because they knew they could get set aside contracts.
 6 Q Did Mr. Moore ever caution you about the
 7 importance of remaining within the 8-A guidelines to
 8 remain an 8-A qualified company?
 9 A Yes, he did. One particular case was in August
 10 of 1984, when I was running around --
 11 Q Mr. Thomas, I'm sorry.
 12 A Yes, he did.
 13 Q Okay, fine. Your Honor, may we have just a
 14 five-minute break? I'm out of water.
 15 JUDGE JAMES: Okay, we may. But before you do,
 16 just one second. I'm looking at this 8-A authorization
 17 document, the 31 -- FT-31?
 18 THE WITNESS: Right.
 19 JUDGE JAMES: I'm wondering whether -- Do you
 20 know whether SBA gave you the 8-A qualification or status
 21 as a Native-American or as a Black American. Do you
 22 know?
 23 THE WITNESS: Well both. In other words, I'm a
 24 Black American and my name was on there. And Jacene is
 25 an American Indian. They were both checked. We don't

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1 know which one they did it under.
 2 JUDGE JAMES: Okay. Let's go off the record.
 3 Let's take a five-minute break.
 4 (Recess.)
 5 JUDGE JAMES: All right. Let's go back on the
 6 record ma'am.
 7 BY MR. STEIGER:
 8 Q Mr. Thomas, I'd like us to move on to the MRE-5
 9 contract. First I'd like us to look at --
 10 JUDGE JAMES: Excuse me for a second, Mr.
 11 Steiger. Are you picking up his voice now?
 12 MR. STEIGER: How's that? Thank you, your
 13 Honor.
 14 BY MR. STEIGER:
 15 Q I would like you to refer to document F-7.
 16 Also FT-029, but for the record F-7. Are you familiar
 17 with this document?
 18 A Yes, I am.
 19 Q What is it?
 20 A This is a determination in findings issued by
 21 the Undersecretary of Defense.
 22 Q And what is a D & F for?
 23 A It's to allow the Defense Personnel Support
 24 Center to set aside or to negotiate face-to-face or to
 25 negotiate for a class of combat rations.

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1 Q Is there any substantial difference between
 2 this MRE D & F, and the one that was previously discussed
 3 in the questions that were previously given to you?
 4 A Yes. I would say that, yes. The major
 5 differences here are in paragraph one, and the actual
 6 determination itself.
 7 Q Would you describe those differences?
 8 A This D & F is something that we worked out with
 9 the office of the Secretary of Defense to resolve the
 10 problems that DPSC was having in awarding Freedom a
 11 contract.
 12 It took away their discretion to discriminate
 13 against us. It took away their ability to claim that our
 14 price was higher or lower, I should say higher than Rafco
 15 and Sopakco's price. So therefore, they can't award us a
 16 contract.
 17 It directed them in paragraph one that there
 18 was to be a specific cost/price qualifier earmarked for
 19 us in here, which is for 600,000 cases of rations.
 20 It further, in the determination, took away
 21 their ability to award at least two. They were now to
 22 award all three based on my existing capability of
 23 sitting in my living room. I know longer had the Hunt's
 24 Point plant. I've lost my investment and I told them
 25 that I am now sitting in Mt. Vernon in my conference

1 room.

2 So I have to now be brought back and all my
3 costs have to be put back on the table because I don't
4 know what I can salvage out of the Hunt's Point plant.

5 Q What made them believe that you had the
6 capability at this point to do the job?

7 A Two things: They came up, as I said before,
8 and had surveyed the Hunt's Point plant and found it
9 ready to go. And they brought in the Texas plant plan
10 producer people, and somebody out of Georgia came up, and
11 DLA headquarters had sent up Frank McBride and I believe
12 a person, I can't think of his name, from the Inspector
13 General's office came up as well.

14 Q Did they believe you were technically and
15 managerially qualified to do this work?

16 A Absolutely.

17 Q And on what basis?

18 A In one of the meetings I had a group of people
19 all around the table. I was there. Linda Iglehart was
20 there. And they said, "Okay. We want -- Are these your
21 employees?"

22 I said, "No, this is a consultant, this is a
23 consultant, this guy's from Majic Pantry, this guy's from
24 that one. But they are all the people I need for my
25 team."

1 They said, "All right. We want to know what
2 Freedom has and you and your employees. Is Linda
3 Iglehart and employee?"

4 I said, "Yes."

5 They said, "Okay. Everybody that's consultants
6 get up and leave."

7 So I now had seven or eight people in the room.
8 And they said, "Okay. Now we want to talk to your team,
9 your company without all these consultants to see whether
10 or not you can do this and who you are."

11 So I said, "Okay, fine. That's fair. Tell you
12 what I want you to do. Who's first? I want everybody
13 else to get up and get away from this table. And now
14 let's deal with the first things."

15 So the first thing they brought was quality
16 control. I says, "Okay. Have a seat." They then
17 grilled me and Linda on all the quality control aspects
18 of this program -- of this spec. We ran right through
19 them, no problem. They realized that I had it. Linda
20 had it. We had it.

21 The next one that came down was production
22 people. We sat them down. So we did this all day long
23 until everyone of them was satisfied that I knew what I
24 was talking about. If not me, Linda.

25 Q Where had you acquired this expertise?

1 A Basically, from doing the research that the
2 White House had asked me to do on A.P.F. for one. I read
3 every specification on this program, got the retort pouch
4 capability from Majic Pantry, where I had went up to
5 their plant and spent about maybe a month, actually
6 working their plant so that I knew every aspect of this
7 retort pouch all their problems. I was in production up
8 there in Canada, so I knew exactly how to manufacture
9 since we was doing it in our plant -- that end of it.

10 I had went back to the Chicago plant and
11 reviewed all of the proposed A.P.F. plans for their
12 assembly operation. So I got everything down to a
13 science.

14 Q Were the people who issued this D & F aware at
15 the time they issued it, of the capabilities that you had
16 that you just outlined to the Board?

17 A Absolutely.

18 Q Let me ask you this. Based on your
19 understanding, with respect to a future award on MRI-5,
20 what was the government's obligation under this D & F?

21 A All right. They were obligated to sit down and
22 negotiate a fair and reasonable price with Freedom based
23 on Freedom's costs in the Bronx. Not based on Southern
24 Packaging's costs in South Carolina, or Right Away's
25 costs in McAllen, Texas. These costs had to be based on

1 New York costs as fair and reasonable.

2 Q Okay. Is there anything in this D & F that
3 says anything about having to compete with any other
4 contractors?

5 A No. None whatsoever. There's no competition
6 here. It is strictly where they will award to the
7 existing IPP plan producers, which one is Freedom in
8 accordance with finding one above. That was very
9 important for me when I negotiated this here. I wanted
10 to make sure that this thing is linked back to finding
11 one, above. And that's what they did -- and he kept
12 available.

13 In other words, the actual determination is.
14 "It is in the interests of the national defense and
15 industrial
16 mobilization --"

17 Q Please don't read from the document. May I ask
18 you this? In your opinion, or rather from what you knew,
19 were there circumstances that would have denied you a
20 contract under this D & F?

21 A Yes.

22 Q What were they?

23 A If I didn't reach a fair and reasonable price
24 or couldn't agree with a fair and reasonable price in
25 DPSC's eyes, then they did not have to award me a

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1 contract and I knew that. So the main thing was for me
2 to do was to challenge them on their cost and how they
3 arrived at it and my cost, and how we arrived at it.

4 Q Did it come to pass that you could not agree
5 with them ultimately, on the final price to be awarded in
6 this contract?

7 A Ultimately, we agreed. But on two occasions we
8 walked away from the table twice.

9 Q I said ultimately.

10 A All right. We walked away.

11 Q Now let me ask you this. Was there a pre-award
12 survey done on this contract?

13 A Yes.

14 Q Was there a pre-award survey done relatively
15 right before the award of the contract?

16 A No.

17 Q When was the last pre-award survey done
18 relative to the award of the contract? Approximately how
19 many months before?

20 A About four.

21 Q And what was the bottom line result of that
22 pre-award survey?

23 I'll repeat the question. What was the bottom
24 line result of that pre-award survey?

25 A Positive award.

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1 Q So then, let us -- If you don't mind, summarize
2 for us what the circumstances were and the only
3 circumstances that you felt would deny you award under
4 this MRE.

5 A The only thing that would deny me an award
6 under this MRE D & F is that, they had to award me a
7 contract based on my existing capability.

8 Q What about the pre-award?

9 A My existing capability was: I was in a
10 negative net worth position. I didn't have access based
11 totally to credit and capital because I am an 8-A
12 contractor now. I can't just walk out there on my
13 signature and sign for a lot of money. Otherwise, I do
14 have access to credit and capital. So that was a major
15 concern of our business plan. And the only other way was
16 that if we just could not agree on a price.

17 Q And if you got a negative pre-award, Mr.
18 Thomas?

19 A A negative pre-award based on my existing
20 capability only meant that, that is true in fact. That's
21 my existing capability. I'm in the hole as a result of
22 you putting me in the hole. That's why I'm there.

23 Q Okay. Now, what I'd like to do is turn your
24 attention to another document and that is the
25 solicitation document for this particular contract,

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1 designated as F-1, Exhibit 32, I believe.

2 A Yes.

3 Q It's also FT-030. It might be easier to pull
4 that out.

5 JUDGE JAMES: Which document is it, Mr.
6 Steiger?

7 MR. STEIGER: It's the solicitation, the RFP.

8 JUDGE JAMES: Right. What's the number?

9 MR. STEIGER: F-1, Exhibit 32. Do you see
10 that, sir?

11 JUDGE JAMES: Is it F-132?

12 MR. STEIGER: Well, we're checking it out now.
13 I might not be able to read my co-counsel's handwriting.
14 What is that? Your Honor, please refer -- let's change
15 that. G-2, your Honor, G-2.

16 MS. HALLAM: I think you mean Rule 4-2?

17 MR. STEIGER: Yes. Rule 4-2. It's the
18 proposal with the solicitation document.

19 JUDGE JAMES: We're talking now about the
20 government's Rule 4, Tab 2?

21 MS. HALLAM: Yes.

22 BY MR. STEIGER:

23 Q I would call your attention to page two of 96.

24 A Yes.

25 Q Without reading this, what is your

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1 understanding of the intent of that provision?

2 A This intent is to put everybody on special
3 notice of the factors that's going to be used to buy the
4 MRE ration. These are special factors involved here.

5 Q Does it say anything about or did you intend --
6 did you believe that it limited the participation to
7 independent, to industrial, to the IPP producers?

8 A Absolutely. This is the restriction that I was
9 talking about earlier.

10 Q Your understanding of this solicitation, was
11 there a progress payments clause?

12 A Absolutely.

13 Q And what was the progress payment rate
14 prescribed in this solicitation?

15 A Well, there are two rates prescribed but for me
16 -- I had to look at the one that's for small business
17 which was -- the rate was 95 percent because I was a
18 small business concern. And it was under DAR-7, 104.35B.

19 Q And what was that percentage?

20 A 95 percent.

21 Q I'd like to call your attention now to page --

22 JUDGE JAMES: Before you go any further, I'd
23 like to see where in the solicitation there's a reference
24 to this DAR clause that Mr. Thomas just testified to.
25 And counsel, if you can help him, by all means do.

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1 BY MR. STEIGER:
 2 Q Would you turn to page 81 of 96?
 3 A All right. Yes.
 4 Q Would you take a look at the clauses referenced
 5 on that page?
 6 A Yes.
 7 Q Would you point out the particular clause you
 8 were referring to?
 9 A Clause HO-57104.35B, progress payments for
 10 small business concerns, 1982 September.
 11 Q Thank you.
 12 A It's x-ed, it's marked, it's checked.
 13 Q Thank you again. Would you kindly take a look
 14 at page 66?
 15 A Yes.
 16 Q I'm referring to the article referred to here
 17 as L-4.
 18 A Right.
 19 Q Do you know where this -- and I'm particularly
 20 talking about the language of this clause after it talks
 21 about first articles. Picking up essentially in the
 22 sixth or so line where it says, "after acceptance."
 23 A Right.
 24 Q Now, with respect to the language that follows
 25 in this L-4, do you have any idea where this clause came

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1 from or how it was originated?
 2 A Yes. I asked about this clause and, and the
 3 explanation was given to me of why they put this in here.
 4 And I asked them where do I find background on this L-4?
 5 I couldn't find it in the master solicitation. I
 6 couldn't find it anywhere. The only place I could find
 7 this was right here in this -- on this page. So I needed
 8 to find out where it came from.
 9 Q I'm sorry. Did you look at the DAR? Did you
 10 look through the DAR clauses? I believe it was DAR-52,
 11 at the time. Did you look through those to see if this
 12 clause was there?
 13 A Yes. I looked everywhere to find this.
 14 There's no reference to it. We don't know where it came
 15 from.
 16 Q And did you ask the people at DPSC where the
 17 clause came from?
 18 A Yes.
 19 Q What did they tell you?
 20 A They said as a result of a prime contractor not
 21 letting the cash flow down or third-basing costs or
 22 third-basing payments. Because at the time the interest
 23 rates were so high that if they didn't pass it through
 24 that they could -- I think the rates were like 20
 25 percent, 18 percent on money, that they wanted to make

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1 sure that we gave them a cash flow showing how the
 2 sources and uses of this were going to be and how it was
 3 So it called for a cash flow to be given to
 4 them to show how we expected progress payments and how
 5 progress payments was to then flow down.
 6 Q Were they referring to you as that contractor
 7 or --
 8 A They claimed they was doing it for all three
 9 contractors in order to get progress payments. Although,
 10 Southern Packaging didn't need progress payments because
 11 they was a big business and they didn't ever take them I
 12 understand. But, Rafco had pulled a fast one a couple of
 13 times or something like that. I'm not sure what happened
 14 but this was put in there and it was the first time I'd
 15 ever seen it. I had never seen this in any solicitation
 16 prior to this one -- something new.
 17 Q Now, with respect to -- as it indicates there
 18 in about the tenth line from the bottom it refers to a \$9
 19 million ceiling or 50 percent of the contract value. Do
 20 you see that?
 21 A Yes.
 22 Q Did that remain the same up until the time you
 23 received the award or was it ever changed?
 24 A Yes, that was changed.
 25 Q When was it changed?

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1 A We changed this at -- It was actually changed
 2 in writing at the contract award. But where this was
 3 actually negotiated out of this was in September 7 or
 4 September 5, I think it was. Or between September and
 5 November is where we got a clear-cut, get rid of this.
 6 Q And what was it changed to? Do you recall?
 7 A It was changed to -- it went up from 50 percent
 8 all the way to whatever we needed at the time. So we
 9 showed that we needed by cash flows -- as a result of the
 10 cash flows being at the 82.6 percent liquidation rate --
 11 \$13 million, I turned positive.
 12 Q Well, when the contract was issued was there
 13 not an L-4 in it?
 14 A Yeah, L-4 was still there, but --
 15 Q And, I'm sorry -- and I'm asking you what was
 16 the 9 million and the 50 percent still in that L-4 that
 17 was in the contract when you were awarded it?
 18 A The way we looked at it was. We had overcome
 19 this by giving them the --
 20 Q Please, answer my question. Were those two
 21 figures in the contract, do you recall?
 22 A It was never taken away from this solicitation.
 23 Q No. But when you were awarded the contract --
 24 the final -- the contract itself, were these two figures,
 25 the figures that were in the final contract?

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1 A No.

2 Q Okay. Do you recall what the two figures were
3 that were in the final contract that you were awarded?

4 A That L-4 was now modified to \$2 million after
5 the first 100,000 and another \$2 million after the second
6 100,000.

7 Q Did you regard those as increases in the amount
8 available for progress payments?

9 A Absolutely.

10 Q Was it your understanding that the ceiling was
11 a finite ceiling that could never be increased?

12 A No.

13 Q What was your understanding of what this was?

14 A What this was, was a show of need. If you show
15 me or if you show the PCO that you need the money, and
16 I'm not just going to take the money and put it in a bank
17 account so I can get interest on it, and I truly need it
18 for operations, you get it, up to the contract price.

19 Q Thank you. Would you look at the language of
20 this clause, seventh line from the bottom? What was your
21 understanding of what the sentence beginning with,
22 "Increases to this ceiling," meant?

23 A If you show a ceiling and you show a need in
24 the cash flow analysis that you genuinely need the money
25 for your operations we will give it to you.

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1 Q Did it come to pass during the course of the
2 contract that you reached the ceilings that had been
3 established in L-4?

4 A Yes.

5 Q Did it come to pass during the course of the
6 contract that you wrote to the government expressing your
7 need for additional increases to that ceiling?

8 A Yes, we did.

9 Q Approximately, how many times did you write the
10 government asking for that?

11 A Numerous times we asked in writing. Numerous
12 times we called Frank Bankoff and told him what was going
13 on. We tried to explain to him that the impact of the
14 82.5 percent liquidation rate had a direct relationship
15 to this ceiling.

16 If they had told me up front at the
17 negotiations that I wasn't -- that the 82.6 percent was
18 not going to be allowed for me to keep and that they
19 wanted it 95 percent. Then that ceiling would not have
20 been at thirteen. It would have been at 14.9 million or
21 higher.

22 Q Let me ask you this. When you wrote these
23 letters asking for increases based upon your need, did
24 you provide a cash flow analysis dealing with the impact?

25 A Yes, we did. We provided it and we tried to

1 tell Frank Bankoff what had happened and what he was

2 doing to us but he wouldn't listen. He wouldn't listen.

3 And we're choking to death up here and we're telling him
4 as hard as we possibly can.

5 Q Thank you. Would you turn now please, to pages
6 73 and 74?

7 A Yes.

8 Q Can you explain what this is?

9 A Yes. Seventy-three and seventy-four is the
10 proposal outlines that we were directed to complete in
11 order to be in compliance with the solicitation. And we
12 had to give them complete manpower build-up charts. We
13 had to give them the milestones -- the purchase orders.
14 We had to give them -- I think you've got two pages in
15 this thing -- two seventy-threes.

16 And on 74 specifically, the financing data that
17 we had to give them included sources and uses of funds
18 for this project.

19 Q No need to read it. With respect to -- You
20 mentioned cash flows, I believe?

21 A Yes.

22 Q I don't want to review with you the cash flow
23 worksheets that we went into so much detail with Mr.
24 Marra. But I would just ask you to talk to some of the
25 items that were discussed.

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1 First of all, did you provide these documents?

2 A Yes. We gave them a monthly cash flow for the
3 entire project, as called for in 4-D. And we gave them
4 the monthly income statement for the entire project and
5 income that we showed as coming from them, which were
6 progress payments, is where that money was coming from.

7 Q Now, how did your intended performance on this
8 job relate to what it was that you gave them?

9 A The intended, repeat that question.

10 Q Well, let me rephrase the question. With
11 respect to what you gave them, did you rely on those
12 documents in connection with your intent to perform this
13 contract?

14 A Absolutely. We relied on those documents.

15 Q Give me a few examples of the documents that
16 you submitted and how you relied on them.

17 A All right. The cash flows took into account
18 all cost for this job. Everything as a result of our
19 being left sitting in my living room, as I was telling
20 the people at the Pentagon, that I would now need because
21 I had a bank that had just dumped all this money and we'd
22 just trashed it or left it in the Bronx in Hunt's Point
23 section. I'm going to now need all costs to be put into
24 this contract, all new start-up costs. New computers,
25 new everything has to now be re-acquired because the

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1 vendors in the Hunt's Point plant who had spent \$1.8
2 million. I've got to give it back to them. Everything
3 that I had was being disconnected in Hunt's Point as we
4 were speaking right then.

5 So I have to have a brand new set of let's go
6 money and I was told in September, - by Captain Parsons
7 and Tom Barkewitz, "Put it in there, into the G & A costs
8 and into your manufacturing overhead, all your start up
9 costs. We can pay you for it 100 percent."

10 Q I'm sorry. Did you intend to manage and run
11 your job in accordance with the documents and information
12 you've provided on those documents?

13 A Absolutely. That's the only way the government
14 can manage me is to see if I'm doing something based on
15 those cash flows.

16 Q So these were not performer documents in any
17 sense. They were real --

18 A Absolutely. These are real management tools
19 that I have now submitted to the government and according
20 to this solicitation, is the way this contract has to run
21 and the money has to come from the sources that it
22 claimed in there.

23 MR. STEIGER: Your Honor, we are approaching
24 within a few minutes the time that you indicated.

25 JUDGE JAMES: That was yesterday's time.

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1 MR. STEIGER: Oh, that was yesterday. Okay.
2 Should we go on until 12:00 today, your Honor?

3 JUDGE JAMES: Sure. As you please.

4 MR. STEIGER: Okay, okay.

5 BY MR. STEIGER:

6 Q You were here listening to the testimony of Mr.
7 Marra yesterday when he discussed the various proposals
8 that were submitted.

9 A Yes.

10 Q So there were more than one. Is that correct?

11 A Absolutely.

12 Q Okay. I don't want to review and go over what
13 Mr. Marra testified as to those proposals but I want to
14 focus on one of them with you. May I refer you to
15 FT-047?

16 A Yes.

17 Q What is the date of that proposal?

18 A August 2, 1984.

19 Q Now this particular proposal for \$34.81 that I
20 have in front of me. What was the length of performance
21 of the job contemplated by this proposal?

22 A The length of time contemplated by this
23 proposal --

24 Q You may refer to the sheets.

25 A -- was 24 months.

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1 Q Ultimately, when you negotiated the contract
2 what was the duration of performance prescribed in the
3 awarded contract?

4 A It went from 24 down to 14 months. We cut 10
5 months of costs out of that contract, out of this
6 proposal. Ten months is what we cut out.

7 Q You said you cut costs. Therefore, are you
8 saying there are additional costs associated with a
9 22month program?

10 A Yes. There are in the solicitation
11 requirements for the contractor to continue after the
12 last delivery to maintain quality control, inventory,
13 residuals. It's all in there. And once the contract
14 deliveries were completed on this case -- I'm not sure
15 when it was but whenever the final, yeah, direct labor
16 here stopped on this project according to 00646 cash
17 flow.

18 Direct labor and production stopped in 9/85.
19 But we had to take it out as a result of the requirements
20 in the solicitation, all the way out to eight more months
21 to cover ourselves to make sure that we had the coverage
22 for the requirements of the solicitation.

23 Q Now, you just testified there were several
24 proposals I believe or maybe you didn't but I'll ask you.
25 Was there more than one proposal, leading up to the final

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1 award?

2 A Yes, there was.

3 Q Now, can you tell us if there were any common
4 conditions with respect to your proposals that you had
5 insisted upon from the beginning?

6 A Yes.

7 Q What might those be?

8 A That all pre-production costs and even we was
9 talking about pre-contract costs should be included. But
10 we settled with just the pre-production costs of G & A
11 and manufacturing overhead must be in here and allow
12 payment at 95 percent of those costs before production
13 started. Those are the start up costs.

14 Q What else? Were there other conditions that
15 you recall that followed through on all your proposals?
16 What about progress payment rate for example?

17 A On this particular one here we have -- the rate
18 is at 95 percent. I'm not sure if this one has the
19 limitation. Oh, yes it does. Okay. This one had a
20 limitation on it, yes.

21 Q A limitation?

22 A No, it had a rate of 95 percent progress
23 payments.

24 Q A rate of 95? And essentially that was a
25 condition that flowed through the proposals, all of them?

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1 A Yes, absolutely, absolutely.
 2 Q What about liquidation rate -- what flowed
 3 through the proposals there?
 4 A I don't know what the liquidation rate --
 5 Q Tell us the concept.
 6 A -- in here, all right. The liquidation rate
 7 came about from talking to DPSC and how we can lower our
 8 costs because we were struggling with figuring out how to
 9 lower our costs. But the liquidation rate that we were
 10 using was I think 82.6 percent or 84.6 percent. We was
 11 using different liquidation rates --
 12 Q Depending on what?
 13 A -- for them to continue to help fund this
 14 contract.
 15 Q What were these various liquidation rates
 16 dependent upon, do you recall? In their calculation?
 17 A It was dependent -- Well, it had to do with a
 18 formula that the government used about your profit. Your
 19 95 percent progress payment based on your profit rate
 20 equaled another rate that you could liquidate at.
 21 Q Right.
 22 A So that gives you more money to keep. In other
 23 words, the government has already given you 95. They're
 24 just not going to snatch it back from you quick.
 25 Q Did any of these proposals contemplate a

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1 liquidation rate of 95 percent?
 2 A No. Not that I could say. I know that. I
 3 can't see it in here, but I do know that in the September
 4 meeting we had with Captain Parsons and Tom Barkewitz,
 5 they told us about the -- I think Pat Marra and them was
 6 talking about this. And then Pat put it into the
 7 spreadsheets -- a liquidation rate to show the impact on
 8 cash flow.
 9 So you gave us the money at 95. Don't strip it
 10 away from us so quickly. Ease it away from us. Let us
 11 give it back to you in cases. That's how you get your 95
 12 back. Don't take the money from us. So that's a form of
 13 financing.
 14 Q And during the course of your negotiations of
 15 all your proposals did any government representative ever
 16 point out to you that the liquidation rate should be 95
 17 percent?
 18 A No. Specifically, what they said to me in
 19 Philadelphia was -- Barkewitz said, "Henry, whatever rate
 20 you're using, you can't determine that rate until we
 21 establish what your profit is."
 22 So I said, "Well, okay. What is the profit?"
 23 So they said, "Well, once we finish
 24 negotiations we're going to do a progress, a weighted
 25 progress --" something they were doing. Keith Ford had

1 to go and write up this formula.
 2 And based on this formula of him putting costs
 3 all over the place gave us a 14.9 percent profit rate.
 4 At that point, we could then figure out what the
 5 liquidation rate would be.
 6 Q Do you recall the testimony with Mr. Marra
 7 yesterday?
 8 A Yes.
 9 Q Do you recall our testimony with respect to
 10 what you've just said?
 11 A Yes.
 12 Q Does that conform to what really happened with
 13 respect to the liquidation rate that was agreed upon?
 14 A Absolutely. Without that liquidation rate
 15 being 82.6 percent, the \$2 million at 100,000 cases in
 16 the contract on page 7, and the other \$2 million would
 17 not be \$2 million. It would be 3 million and 3 million
 18 or 1.5, I mean -- 2.5 and 2.5 -- whatever the number is.
 19 To figure this out all you have to do is go back to the
 20 cash flows, take the 82.6 out, put 95 let it ripple
 21 through and see what the real need at that time would be.
 22 And it wouldn't be 2 million. It had to be more than
 23 that.
 24 Q If you had agreed to a liquidation rate of 95
 25 percent, how would that have been reflected in the

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1 negotiated price that had been established --
 2 conceptually, Mr. Thomas?
 3 A How would it have been put in the price? I
 4 think the price -- the price would have made -- it might
 5 have and I don't know this -- I'm just speculating it.
 6 Q Well, if you don't know, don't speculate,
 7 please. If you don't know, please say, "I don't know."
 8 A All right.
 9 Q Thank you. You had testified about Dollar
 10 Drydock and your relationship with them. Would you bring
 11 us up to date in that relationship as it approaches or
 12 comes into the period of time that this contract was
 13 negotiated?
 14 A Yes.
 15 Q What I'm talking about is the August,
 16 September, October, November 1984 time frame. What was
 17 your relationship and tell us about that?
 18 A The chairman, Bill Wheeler had cut a deal with
 19 Drydock Savings to merge. And Bill Wheeler introduced me
 20 to the president of Drydock, Bob Steel. Bob Steel used
 21 to be a congressman from Connecticut. We went out to
 22 lunch to the New York Athletic Club and I told him my
 23 vision of what we're doing and Steel said, "Okay. I'm on
 24 board with this. Let's continue to make it happen. What
 25 do we have to do?"

1 Because Wheeler was getting a lot of flack
2 because of this project that he had ushered through --
3 brought Mike Durso up said, "Make it happen." And
4 everybody on the Board was behind it. He was catching
5 flack because on their books they had just invested in me
6 that I signed for 1.4 million. They had issued letters
7 of credit without my signature for maybe another four or
8 five hundred thousand dollars. Plus they got it on the
9 phone or these letters from Mike Durso that's in there
10 had encouraged other people to come to the table and give
11 me in good faith extensions of credit because Dollar is
12 behind me.

13 So Dollar was catching a lot of heat from
14 everybody wanting to know the Hunt's Point plant is gone
15 -- where do we want our money. So the break in
16 production of MRE-4 had a ripple effect on everybody in
17 cash demands.. Everybody wants to keep going. So
18 therefore, Dollar was under a lot of heat and Wheeler
19 said, "Henry, we're going to back you up on this. Write
20 me a letter telling me what you need." Which I did write
21 him a letter and right before the General Connelly
22 meeting and I told him I needed Mike Durso to go down
23 there and let them know that you guys are still on board
24 and haven't walked away and everything's cool between us
25 and he said, "Fine."

1 So Dollar says, "Okay Henry, that's very good. If your
2 price is up here and we give it to you up here and then
3 they lower the price down here, that's not a liability
4 ticket for us, is it?"

5 That's exactly, that's what they told us so
6 let's give it to them. That's what we did.

7 Q Okay. Now, let's go back a second. We
8 acknowledged that there was a deficit on your books at
9 that time. Who was the principle creditor regarding that
10 deficit?

11 A Well, from a financial standpoint I'm going to
12 have to go again. Even though you're saying a creditor,
13 the creditor is Dollar Drydock.

14 Q I know -- I know -- I know you're -- right.
15 Okay.

16 A Okay. In my eyes they are an investor. And
17 that it's an investment. That's not something that's --
18 I'd lost.

19 Q On your books Mr. Thomas, on your books. Who
20 was your principal creditor?

21 A Dollar Drydock Savings Bank.

22 Q Did it behoove Dollar Drydock then to support
23 you in the award of this contract?

24 A Yes, it did.

25 Q Did they make that clear to you?

1 So he dispatched Mike Durso to a meeting of a
2 catch-22 meeting with General Connelly. I had to go down
3 to Washington.

4 Q What's a catch-22 meeting?

5 A Well, a catch-22 was the New York office saying
6 we want to see capability of money before we give you a
7 contract. And the bank is saying we want to see a
8 contract before we give any money. So I'm sitting here
9 now I need the contract here or I need the financing
10 here. It's a catch -- It's a chicken and egg situation.
11 Which came first? And in the true sense if you asked me
12 right now since a chicken has to hatch the egg but the
13 egg creates the chicken, which one did come first? I
14 don't know. So that's why it's a catch-22. You can't
15 win. Or someone has to explain to me which came first,
16 the chicken or the egg. I don't know.

17 Q Did the parties acknowledge that this was a
18 catch-22 situation?

19 A General Connelly solved this problem by saying,
20 "Okay New York, what do you need?"

21 And Bill Stokes and them went down there and
22 Marv Liebman and says, "If they give us a letter that
23 says in the event of this, we will do that."

24 So that doesn't create a liability ticket for
25 them. Especially if they don't award it at that price.

1 A Absolutely. And they was behind us 100
2 percent.

3 Q Would it have made any sense for them to drop
4 their support of you at that time?

5 A No. None whatsoever.

6 Q Was there any indication that they were going
7 to drop their support of you?

8 A None whatsoever, none.

9 MR. STEIGER: Your Honor, with your permission
10 I would like to break right now because I'm going into an
11 area that will take some time.

12 JUDGE JAMES: Good. Fine. Let's go off the
13 record.

14 (Whereupon, the hearing was recessed, to
15 reconvene later this same day.)
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AFTERNOON SESSION

BY MR. STEIGER:

Q Mr. Thomas, you started to tell us how it came about that you received a letter from Dollar Drydock concerning financing. Would you just go over that a little bit for us, what led up to that?

A Okay. The heat that was being generated as far as our credibility because of the MRE-3 investment into this program, and then the MRE-4 abandonment where we got absolutely nothing and not even talked to led the City of New York officials that supported me to pull a \$20 million building --

Q I don't want you to go back that far. I'm talking about the financing requirements for this MRE contract and leading up to your involvement with Dollar on this particular contract.. Could you pick it up from there?

A We were in a catch-22 and I went to the chairman of the Board and told him the problem I was having. I told him I had made a -- meeting with the head of DLA headquarters to explain this problem and I didn't know how to solve it. I needed him to --

Q You referred to a catch-22.

A Right. I didn't know how to solve this chicken and egg situation or what Stokes wanted -- what Siegert

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wanted. They both wanted the same thing.

So I asked him to dispatch Mike Durso to a meeting with me on 30 July, I think it was '84m to DLA headquarters. At that meeting General Connelly wanted to know what was bringing me back to his doorstep at this time, and we talked about it. I brought up -- I brought to their attention a couple of things. One of them being the requirements of Stokes and also I brought to their attention the Mike Cunningham letter of I think it's 1982 or 1983, where I'm saying that there's a dilemma here where the solicitation is requiring us to give them mobilization capability for an out period of some-many years in advance and that's what the qualification is for. I've got to have this to show I can do it, but yet and still, I'm asked to provide a price on the current years' production.

So I had to have from them -- tell me how do I lay out G & A manufacturing overhead when I don't have a multi-year contract? So that became a problem that I had to try to resolve and it was something that we had to resolve between myself, Captain Parsons, Captain Austin whom I remember talking to about this and the industrial specialist, Frank McBride at DLA headquarters, from mobilization.

In the meeting they decided to -- and they

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brought down a lot of people from New York at this meeting. And New York was saying to them, "We need to have something that says in the event of award of a contract at the current proposal, \$21 million Drydock would do this."

And we said, "Okay, fine. Mr. Durso is here. He's dispatched down here by the chairman of the bank. He's here today."

And Durso stood up and said, "That's right. We are behind Henry Thomas 100 percent. We'd like to get some contracts."

But the catch-22 -- So they resolved it and DLA gave us the number that we are supposed to come back with and it was for \$7.2 million.

Now I knew from a week earlier or a few weeks earlier in my spreadsheets that I tried to deliver to Mr. Liebman and to Mr. Stokes, that the \$7.2 million came to 7.1. But what I was actually trying to show them that it was \$5.8 million.

Q Okay. So where did the 7.2 come from as far as you understood? Do you know?

A Yes. The \$7.2 million was arrived at by Bill Stokes telling me that as a result of his reading of clause L-4, that the PCO had not at this time raised that ceiling. And unless I can show him how I can get over on

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the back end of the contract the first \$9 million, he's saying, "We're giving you this 9 million with 95 percent and we're going to stop. Because that's what this clause says, Mr. Thomas. And the only way you can get this clause raised is to get the PCO to raise it."

And I said, "Well I haven't talked to him about it as far as that."

He says, "Well since he hasn't raised it I'm bound to stop you, and I can't qualify you as a responsible bidder on this solicitation because it says \$9 million until he raises it. Now if he raises it, this is a plug figure."

Q Meaning?

A Meaning? It's the difference between 95 percent from the beginning of the contract with all costs incurred, up to 50 percent of the contract value.

Now, the contract value at that time was 21 million. It wasn't at 18. So, it was 50 percent or \$9 million. So 50 percent of 21 million would have been up, over \$10 million -- 10.5 million. But it says, "50 percent of the contract value or \$9 million, whichever is lesser."

So we were stuck at the \$9 million level to get past him for qualifications of pre-award survey.

Q So he then assumed that L-4 would never

1 increase. That the amounts were not going to be
2 increased?
3 A For that point right there -- for me to get a
4 positive pre-award I have to show him how I'm going to
5 get -- if the government awards the contract today
6 without any negotiations, "If it's awarded today, Henry,
7 how are you going to cover the back end of this contract
8 with the other 50 percent of the cost?" I said, "Well I
9 don't know." So I said, "Well, what do I need?" He
10 says, "I'll give you the formula."

11 So he and I sat down and on one of the
12 spreadsheets attached to the August submission or right
13 before that labeled July 31 -- we had pre-done this --
14 that showed that it was 5.8 million according to Pat
15 Marra and my spreadsheets.

16 Stokes says, "Oh no. That's not going to --
17 I'm not interested in that number. I need to know how
18 you're going to get over this 9 million for the back end
19 of the contract."

20 So I said, "Okay, fine. What do I need to do?"
21 That's where it came from. But the number he gave me
22 that I wrote down was \$7.1 million at that meeting. And
23 I got it on the spreadsheet.

24 Q Now the meeting you referred to earlier where
25 it was agreed that a plug number would be obtained -- was

1 Q Yes, it does.

2 A All right. So I don't need this one.

3 Q So, the two letters can be found in six and
4 seven. I'm sorry -- Rule 4-5 and Rule 4-6. May we look
5 at that first letter. The one August 9.

6 A All right.

7 Q Would you please describe the circumstances
8 under which this particular letter was written?

9 A Yes. After my meeting with DLA headquarters.
10 they gave us a boiler plate that said 7.244 which is the
11 number that Marvin Liebman's team from New York used and
12 gave it to us. When I saw it I said, "That's not the
13 number that Bill Stokes has as 7.1 and change."

14 And they said, "Well, we refined it."

15 Okay, so this is the boiler plate basically,
16 that I had given to Dollar Drydock. Dollar Drydock
17 changed it from addressed to Henry Thomas, which in my --
18 I went back after the meeting and talked with the
19 chairman, wrote him a letter and told the chairman that
20 here's what the Department of Defense gave me.

21 They said it would not be a liability ticket
22 for the bank and that if they said these words they could
23 walk away in the event the contract was not awarded for
24 \$21 million.

25 So since there's no liability, give me the

1 Mr. Liebman at that meeting?

2 A No.

3 Q Was Liebman at any meeting where the 7.2
4 financing was discussed?

5 A At DLA headquarters in Washington in front of
6 General Connelly -- he was there.

7 Q When was that approximately?

8 A 30 July '84.

9 Q 30 July 1984?

10 A Right.

11 Q I'm going to show you two letters now which I
12 would like to discuss. They appear in F-12 and the
13 original Rule 4-6, 0006.

14 A Okay. And the second one?

15 Q The second one was G-6.

16 A Oh, G-6.

17 JUDGE JAMES: Was it Rule 4, Tab --

18 MR. STEIGER: Rule 4-6, right.

19 JUDGE JAMES: Rule 4-6, not G-6.

20 MR. STEIGER: Pardon me. Rule 4-6.

21 BY MR. STEIGER:

22 Q Do you have the two letters?

23 A Yes, I do. I think the one that's in this F-12
24 is also in front of the G-6. G-5 and G-6 covers them
25 both, I think.

1 letter. And he dispatched Siegert down in Drydock
2 commercial upstairs and said, "Make it happen."

3 Q As far as you're concerned does this letter
4 have a condition attached to it.

5 A Yes.

6 Q And what is that condition?

7 A The condition here is that in the event that
8 Freedom is awarded a contract in the amount of
9 \$21,593,000 exactly, we shall upon assignment by Freedom
10 of all claims due give them such credit as in their
11 judgment may be required.

12 Q All right. You don't have to read it.

13 A But the condition is \$21,500,000. In the event
14 of that event they will then, in their judgment, give me
15 some sort of money.

16 Q Did you have a proposal on the table at that
17 time that you were negotiating with the government?

18 A The proposal amount that I had on the table
19 with the government was \$21,593,000 I believe.

20 Q In other words, the same number as here?

21 A Yes, it is. That's the number.

22 Q Okay. Now I want you to focus your attention
23 if you would, on the very next letter written on August
24 10.

25 A Right.

1 Q Now, I would like you to describe the
2 circumstances under which this letter was written.
3 A All right. When I picked up the August 9
4 letter from the chairman's office I immediately ran to
5 various -- I started writing letters to everybody getting
6 it out to them.
7 One of the people that I visited that afternoon
8 as well as the Mayor's office at the City of New York, I
9 ran over to 26 Federal Plaza and went up the Small
10 Business Administration and slapped this on the table
11 because there was pending in front of them a -- I believe
12 it was a pre-award or COC that I was trying to overcome.
13 When I showed this letter to Derwood Saunders
14 and Luke Moore, they looked at this letter and says, "Do
15 you know that this letter doesn't have any kind of
16 clarification that you, a socially and economically
17 disadvantaged business; needs our help to help you? This
18 means that your condition must have changed, Mr. Thomas.
19 You're no longer a socially and economically
20 disadvantaged person. Can you get \$7 million on your
21 signature?"
22 So I said, "No. I need government contracts."
23 They said, "Okay. You don't need us?"
24 I said, "Of course I need you."
25 "Then this says otherwise."

1 I says, "Not a problem. What do I need for
2 this to say?" "Well anybody who's willing to help you
3 has to do it in conjunction with whatever business
4 programs are available for small and disadvantaged
5 businesses." So I said, "Okay, fine."
6 So I ran back, wrote a letter to Siegert and, I
7 don't know where the letter is but --
8 Q We'll get to that letter.
9 A Okay, okay. Well, that's what happened. The
10 reason I sent the letter to Mr. Siegert telling him that
11 I could get disbarred or kicked out of the 8-A program if
12 my 8-A status has changed.
13 I then went back and read the program
14 termination criteria that Luke Moore and them had pointed
15 out to me.
16 Q Let's focus on the second paragraph. What is
17 the -- in the context of what you just said what is the
18 meaning of that second paragraph?
19 A That Dollar Drydock is going to look at me and
20 contemplate any money that they're going to give me in
21 conjunction with my status as a socially and economically
22 disadvantaged business. They're not just going to roll
23 up and give me unlimited funding because that's a program
24 violation that once I am no longer disadvantaged as for
25 into the marketplace. I'm eliminated right out of that

1 program.
2 Q So what I believe you're saying and please
3 verify this, is that this statement was made in
4 connection with the anticipation of additional 8-A
5 contracts or in anticipation of receiving 8-A contracts?
6 A Yes. In other words, the government became my
7 partner in the 8-A program. When they pulled me in there
8 -- they are the ones that will give me business
9 development funds. They will give me all kinds of
10 technical assistance. They will go out and get contracts
11 from the Department of Defense, the Department of
12 Agriculture, and then subcontract those to me at a
13 different price.
14 In other words, the SBA will take a contract
15 from, let's say Mr. Bankoff, over here or someone and
16 says, "Okay. You give me a contract for 15 million." Or
17 either he issues a contract to the SBA for 15 million.
18 The SBA will take that contract and say, "Okay, Thomas,
19 what do you need?" "Well I can't do it for 15 million."
20 "Fine. We've got some BDR funds here called
21 business development funds. We'll give you an additional
22 \$3 million to make it 18 million." That's your contract
23 and that's what they do.
24 Q Does this paragraph say or is it intended to
25 mean that the government would guarantee the repayment of

1 any loan made to you by Dollar Drydock?
2 A Absolutely not. I wrote this. I drafted this.
3 I wrote this. I'm the one that drafted this. He lifted
4 this -- well, words to this effect right out of my letter
5 to him. He was complying with what I was trying to get
6 straightened out with Luke Moore.
7 Q In fact, didn't you write a letter on that very
8 day to Mr. Siegert? And I'm now referring to the very
9 next exhibit G-7.
10 A Yes. This is my letter.
11 MS. HALLAM: Rule 4-7.
12 MR. STEIGER: I'm sorry.
13 MS. HALLAM: Rule 4-7.
14 BY MR. STEIGER:
15 Q Rule 4-7. Pardon me, Rule 4-7.
16 A Yes. This is the letter that I wrote to Mr.
17 Siegert the moment the SBA mentioned to me that I have
18 just now crossed the line and I am no longer economically
19 disadvantaged since it appears that I can get \$7 million
20 on my signature without them.
21 Q Is there anything in this letter that indicates
22 that you believe that it was -- that the meaning was that
23 Dollar Drydock was guaranteed to be paid back its loan
24 from the U.S. government?
25 A No, no.

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1 Q Did not, in fact, you have some concern about
2 this issue from the beginning? And did you write an even
3 earlier letter to the government on this particular
4 issue?

5 A Yes.

6 Q I believe its July 9, and it's FT-41.

7 A Yes. Yes, I did. Same thing.

8 Q Is there anything in this letter that you wrote
9 that was intended to mean that Dollar Drydock would be
10 guaranteed the repayment of its loan from the U.S.
11 government?

12 A No. What I was doing here was simply alerting
13 Mr. Blower that this catch-22 they put me in was
14 requiring me to do something other than what I was
15 capable of doing.

16 In other words, if I'm a socially and
17 economically disadvantaged business, you can't expect me
18 to roll up here and have access to credit and capital and
19 --so Mr. Blower says he clearly understands this. He
20 looked at the problems we were having. I even told him
21 that the SBA had required Dollar Drydock to back off of
22 the stock agreement.

23 I had to have to be into this program the clear
24 ability to control their shares of stock. So Dollar
25 Drydock, before I got into the SBA program -- and this is

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1 what I'm telling Blower here and I can see the
2 attachment, the share agreement -- where before I got in
3 the SBA program, they made me and Dollar execute that I
4 had the right to buy back their shares of stock at a set
5 price.

6 This was a real big dilemma. Once you became
7 an 8-A contractor we were targets for everybody. Because
8 we were the ones that now could be propped up as puppets
9 for white contractors, okay. And those white contractors
10 would then puppetize a black contractor and rip off the
11 government with contracts. That's exactly what happened
12 to Witteck. And I would not allow it to happen to me.

13 So that's why I'm telling everybody that you're
14 putting me in a catch-22 here.

15 Q Now, Mr. Thomas --

16 JUDGE JAMES: Before we get any further along
17 this line of questions. The contract in issue before us,
18 the 0591 contract is not an 8-A contract, is it?

19 THE WITNESS: No, it's not. No.

20 JUDGE JAMES: It was not awarded to -- SBA
21 subcontracted to his firm, was it?

22 THE WITNESS: No, it was not.

23 MR. STEIGER: No, it was not awarded as an 8-A

24 --

25 JUDGE JAMES: Where are you going with this

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1 line of questioning?

2 MR. STEIGER: The line of questioning is going
3 in this particular direction. We're trying to explain
4 what the meaning of the second letter was which the
5 government has alleged, constituted a withdrawal of the
6 financing from Dollar Drydock. It's very significant.
7 your Honor, I believe, to explain --

8 MS. HALLAM: I don't believe the government has
9 alleged that, but go ahead.

10 MR. STEIGER: I believe it is important to
11 explain what the meaning of that letter was and that it
12 was not what the government has claimed it was.

13 JUDGE JAMES: Go ahead.

14 BY MR. STEIGER:

15 Q Mr. Thomas, one more thing about this. This
16 second letter, the Rule 4 letter 6, did you make that
17 letter available to the government, the August 10 letter?

18 A Yes, I did.

19 Q How did you do that?

20 A I gave this to the same person I gave the first
21 one. That was Bill Stokes.

22 Q Bill Stokes? Are you aware if Mr. Barkewitz,
23 the PCO, ever saw this letter?

24 A Yes he did.

25 Q And makes you aware of that?

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1 A His signature is on Rule 4, G-7, I believe it
2 is, or it's in the top right in the top corner is TB
3 8/22/84 -- this letter was received from Noel Siegert.
4 Siegert sent it to Barkewitz with the --

5 JUDGE JAMES: Which document are you talking
6 about?

7 THE WITNESS: The August 10 letter to Noel
8 Siegert.

9 MR. STEIGER: well, it's not in the G-7 version
10 of that letter. It must be in the FT version of that
11 letter.

12 JUDGE JAMES: We're getting this record very
13 confused. Are we talking about Rule 4 now? We're not
14 talking about G documents are we?

15 MR. STEIGER: We're talking about Rule 4, the
16 Rule 4--

17 JUDGE JAMES: All right. Now are we talking
18 about the August 10 Drydock, or are we talking about the
19 August 10 Freedom?

20 MR. STEIGER: The August 10 Drydock.

21 JUDGE JAMES: Okay. And your question to him
22 was did the government contracting officer see the
23 Drydock letter? Is that the question?

24 MR. STEIGER: That was the question.

25 JUDGE JAMES: It's addressed to Berkewitz,

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1 right?

2 MR. STEIGER: Pardon?

3 JUDGE JAMES: It's addressed to Berkewitz,
4 right?

5 MR. STEIGER: No. It's addressed to -- Yes, it
6 is addressed to Berkewitz, yes. Okay.

7 BY MR. STEIGER:

8 Q Did you receive -- You testified that you
9 received a positive pre-award survey. Do you remember
10 when that was?

11 A Yes. After we went to DLA headquarters and DLA
12 told us to write them this letter I did that. And there
13 was now no more excuses for New York to give me a
14 non-positive financial because we had now complied with
15 the "in the event of --," that they were requiring at
16 that point in time.

17 We got a positive pre-award based on a letter
18 conditioned on a \$21 million award.

19 Q Now this positive pre-award that you just
20 mentioned. Did it note that you had a deficit on the
21 books of about \$2 million?

22 A I'm sure. Yes, it did. I'm not sure what the
23 number is but it is a deficit of at least 2 million.

24 Q Now, is it your belief that this deficit as it
25 existed on the books -- Well, let me ask it this way.

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1 Let me change that question.

2 Is it your conclusion that this deficit in no
3 way impeded your ability to complete the contract?

4 A No way, absolutely.

5 Q Why is that?

6 A Because Dollar Drydock was a partner in the
7 deal and Dollar says that I don't have to worry. They're
8 not going to bother us as far as that I could -- we made
9 a deal I think with the chairman. In one of my letters
10 it says that this \$2 million profit that we got, now will
11 allow us to pay them at the end of the contract out of
12 these profits or start paying them back.

13 So Dollar would not bother us during the course
14 of the contract. They would wait until the profits
15 rolled in order for me to start giving back money.

16 Q Do you recall what the survey said about your
17 accounting system?

18 A My accounting system was fine and that I was
19 planning on using a computerized accounting system.

20 Q Did it indicate specifically that the
21 accounting system was adequate for the purpose of
22 progress payments?

23 A The manual system was adequate for progress
24 payments, it said. And it noted that I was going to use
25 a computerized system which would give a lot more

1 control.

2 Q Okay. Let us move on now to the actual final
3 negotiations.

4 A All right.

5 Q Let me ask you this about the spreadsheets and
6 attachments that were referred to in Mr. Marra's
7 testimony. How detailed were those with respect to labor
8 -- to projected labor costs? Do you recall?

9 A Okay. We had to give the PCO. According to
10 the solicitation criteria, again, we had to show him
11 sources and uses of funds for the project and the monthly
12 cash flows of how it was going to be done.

13 So what we did was, we went and broke out
14 according to them -- which was also the milestones inside
15 those cash flows of when we were going to achieve certain
16 things -- when we were going to start our direct labor,
17 when we were going to start production, when we were
18 going to do the shipping, when we were going to end.
19 It's all there in those spreadsheets. So in those
20 spreadsheets were the milestones called for.

21 Q You mean -- What do you mean by milestones?

22 A Well, they asked for milestones. We told them,
23 "We can give you certain milestones based on when we're
24 going to need the money. And here's what we --"

25 Q Okay. Are you talking about achievable events?

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1 A Yes.

2 Q What about the production tasks themselves?
3 How was that broken down? Do you recall?

4 A Oh, tasks -- okay. We had to -- when we were
5 meeting with them, we told them that we needed
6 pre-contract long-lead time items that we got to make the
7 plant get ready. So our get-ready tasks included G & A
8 costs for quality control equipment. We had to have
9 ramp-up time for personnel. We had to go find the
10 people. I had to find everyone.

11 Q Mr. Thomas, I don't think you heard my
12 question. May I repeat it?

13 A Sure.

14 Q My question was with respect to production
15 labor in your proposal, how did you break out by tasks
16 what had to be done? Do you recall?

17 A I believe we have -- if you're talking about
18 the cracker, the accessory --

19 Q Yeah. The various tasks.

20 A -- and the various people. Those tasks are
21 broken out in the September spreadsheets in the back and
22 we attached it to the negotiation on 6 November. Those
23 line items are in there as far as people and man-loading
24 charts and things like that.

25 Q It included the hours for each task that had to

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1 be done? Do you recall? If you don't, just say --

2 A No, I don't. I really don't. I can't say.

3 Q What about production equipment? Did you
4 identify the specific production equipment that you
5 intended to use in the job?

6 A No. We didn't. We did tell them what
7 equipment we had but it wasn't audited for some reason.
8 The rush to get this thing done -- there was no one from
9 DCASMA production came to us to identify the specific
10 equipment itself at this time. But we put a number, 1.5
11 million dollars for production equipment and that would
12 be the number we would be using to --

13 Q Did you identify by name the specific equipment
14 that you intended to use in production?

15 A We did, yes. We said we were going to use
16 Do-Boy packaging equipment, Koch multi-vacs
17 state-of-the-art, International Paper Machinery,
18 everything that we felt the other assemblers had that was
19 successful as far as production equipment including the
20 new, the newest state-of-the-art Koch machines.

21 Q Were your labor estimates prepared based upon
22 using that specific equipment?

23 A My agreement at the 6 November face-to-face
24 negotiations of me accepting \$811,000 for direct labor
25 was based on my ability, and meetings I had had with Koch

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1 and Cutter on that and that I knew that, what was
2 attainable so we accepted, yes.

3 Q Now, if you had been forced, or if this
4 equipment was not available and you -- Well, let me ask
5 you this, Was it possible to use other equipment to do
6 these tasks?

7 A It was possible to use other equipment but
8 other equipment would have been more labor-intensive --
9 much more labor-intensive.

10 Q So, the labor estimates that you projected, the
11 number of hours for the tasks and stuff, were predicated
12 on using these particular items of production equipment?

13 A Yes. That's right. That's why we came up with
14 -- That's why we agreed to the number of \$811,000 for
15 direct labor.

16 Q Now you mentioned Do-Boy. I think you said,
17 Koch. What are these things, just briefly? What's a
18 Do-Boy?

19 A Do-Boy is a proven MRE, meal bag machine that
20 has been used by the assemblers Rafco and Sopakco to
21 successfully seal the bag without any problems. As a
22 result of early problems in the first MRE, they sorted
23 this thing out and figured out that this equipment's no
24 good, this is no good, this is the one. Do-Boy itself
25 specifically modified this band sealer for the MRE

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1 program and that became the machine to use. So we jumped
2 on that particular equipment.

3 Q And you said there was other equipment to this.
4 So would it have to be done by hand or what?

5 A There were other band sealers and manufacturers
6 trying to get in on getting a piece of selling equipment
7 to a new manufacturer and I had everybody at my doorstep.
8 But we decided to go with Do-Boy because DPSC realized,
9 Barkewitz, that yes, we can vouch for this type of
10 machinery. We know it works.

11 Q You mentioned something about Koch?

12 A Yeah. Koch multi-vacs were a brand new,
13 state-of-the-art machine that was just coming out as far
14 as them modifying the bag integrity of pulling a vacuum
15 -- pulling a form that was giving Nadig some problems.
16 But Nadig had just basically approved this machine for
17 use in the MRE program and I was going to be one of the
18 first ones to use it. It cut the labor by two-thirds or
19 better. It cut the labor in the cracker and accessories
20 by at least two-thirds. This thing was great.

21 Q All right. Let us now move to what you said
22 was the face-to-face negotiations of November 6, 1984.
23 And I would like to put before you -- well, let me put it
24 this way, take us through that negotiation settlement
25 process beginning on that date or a reasonable time near

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1 that date.

2 A All right. I would like to just go from the
3 \$30.12 or the \$21 million. I'd like to just bring in the
4 next one.

5 What happened was, Captain Parsons brought us
6 down, I think, on 5 September to DPSC and says, "Okay.
7 You guys got a positive pre-award. We're released to
8 talk to you. The problem is your price is not in the
9 window that I want."

10 So Mr. Barkewitz did not want to give us the
11 window of what he was looking for but Captain Parsons
12 says, "I was instructed to give you that the window is
13 \$27. You come in with \$27 you're going home with a
14 contract."

15 I said to him, "Well, listen you've got to
16 remember that my deal with Dollar Drydock is \$21 million.
17 Otherwise, you know, we got to fix this."

18 So we discussed -- and it's in writing in one
19 of the memorandums from the government, where they said
20 to me when we started the discussion on progress
21 payments, that we needed -- if they wanted us to drop our
22 price we needed 100 percent progress payments on all
23 costs. Meaning that the L-4 clause had to disappear and
24 we wanted the full 95 percent. Not 100 percent but a 95
25 percent on -- no limitations on it.

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1 Captain Parsons broke in and says that he can
2 give me extraordinary progress payments. Which means
3 that there was some DAR restrictions. And after we
4 thought about it, we told them we didn't need anything
5 extraordinary. Just give me what the regulation says.

6 At that point in time he says, "Well, okay. We
7 can give you progress payments for all costs." And I
8 told him again, I needed to make sure that I got my start
9 up costs. I needed all my machinery and all my equipment
10 because we had just gotten destroyed at Hunt's Point.
11 And -- and I've got to have this. Otherwise, we cannot
12 drop our price -- impossible.

13 So Captain Parsons, at that point in time I
14 believe, tried to offer us a letter contract to get us
15 started. The ceiling on the letter contract was \$28 a
16 case or something like that. And I says, "I'm at I think
17 -- \$34 and you want me to come down to twenty-eight --
18 that's your window. No, not interested." And he says,
19 "Well, wait a minute. Do you know that we had to go up
20 to DLA headquarters and get this whole thing approved to
21 give you a letter contract?" I says, "Yeah, but you went
22 up there and got a price that I'm not going to agree to.
23 So therefore, I'll go up there. Send me up there. Let
24 me get the right price for you."

25 So the letter contract was rejected by us

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1 because we didn't know what the cost was. I didn't know
2 if my cost would come in at \$28. "I think my cost --
3 according to my troops is \$34 a case. And until somebody
4 can show me a lower price, I'm not doing it." So he
5 says, "Okay, fine. What do you need to lower your
6 price?" I said, "Well, we've got to eliminate this
7 financing. If we can eliminate this financing I can drop
8 my price." "Well, how much is that?" "Well, I think for
9 this \$7 million you guys want. Pat got rolled up in
10 there four or five hundred thousand dollars for that \$7
11 million." "Well, we can eliminate that," he says. "We
12 will do the financing." "Okay."

13 At this particular meeting there is a document
14 -- if you've got it, I'd like to just take a look at it.
15 The 5 September 1984, meeting at DLA -- I mean the DPSC
16 with Captain Parsons, Barkewitz and everybody.

17 Q What date did you say?

18 A 5 September '84.

19 Q We believe it's FT-51A. Yes. FT-51A. You
20 have it?

21 A No, I'm sorry. Give me the number?

22 Q FT-51A.

23 A Okay, yes. Yes, this is the meeting we were
24 at. At this meeting there was quite a bit of going back
25 and forth. We had with us an experienced contract --

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1 government contracts lawyer by the name of Neal
2 Rodenberg. Neal -- Neal told them in here words to the
3 affect that -- and I mean -- this document is pretty
4 clear about what is going on -- where it points out that
5 Parsons told us the window of \$27 as the highest and that
6 I've got to get in there at -- somewhere around that
7 ballpark and that they had a drop dead date. But there
8 was something in here where we started -- it says that
9 Freedom -- oh -- on page four.

10 Q Page four, third paragraph.

11 A It says, "Freedom started a discussion on
12 progress payments."

13 Q Please don't read it.

14 A I -- it says it.

15 Q Okay.

16 A My recollection is Neal Rodenberg started a
17 discussion on progress payments. But since he's from
18 Freedom it wasn't, you know -- Neal -- Neal started that.
19 And that's when it all came back -- when Captain Parsons
20 said there that we could receive 100 percent, which was
21 fine.

22 We also wanted to know why we couldn't get this
23 thing put under the 8-A program. And Captain Parsons
24 stated that it could be. And we started talking about a
25 lack of money and things like that. And we told him that

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1 SBA was behind us 100 percent and we can get this thing
2 done if they would put it out there.

3 The end result is that the government agreed
4 since I had told -- I think at this time I had dropped
5 their letter contract. I'm not sure if it was before
6 this or after this but they started and offered to the
7 SBA 620,000 cases under the 8-A program. So it did go to
8 8-A.

9 Q Then what happened?

10 A They, they didn't tell me the number that was
11 given it to SBA at. I believe they offered it to SBA at
12 \$15 million. So when SBA came to me telling me, "We've
13 got a contract for you for \$15 million."

14 I said, "No, you don't have a contract for me
15 for \$15 million. I'm at a different price. I'm at 21
16 million. Are you guys going to give me the difference?"

17 They said, "No."

18 I said, "We've got nothing to talk about."

19 So we rejected the SBA, 8-A offer. So somebody
20 was going to have to get me -- to show me that I can do
21 this for that \$15 million. There was nothing to talk
22 about. So SBA was rejected.

23 Now, either -- At this point the government
24 went out to -- after I rejected the SBA they either
25 brought the letter contract I'm not sure. I'm not sure

1 when it was, but it's somewhere in these documents --
2 where the government offered me a letter contract. They
3 went up to the --

4 Q Take us forward.

5 A All right. So at this meeting Captain Parsons
6 tasked us with giving him a viable offer. So Neal
7 Rodenberg, Pat Marra and I, went out to see how we could
8 make this happen. And one of the things that we were
9 talking about was the things that they had done to get
10 the other assemblers up and running.

11 Col. Francois was on -- Col. Francois was a
12 Joint Chief's of Staff, J-3 level colonel when he retired
13 from the Pentagon. And Col. Francois took me down to the
14 Pentagon and we was trying to figure out how do we
15 resolve this dilemma of getting this thing squished into
16 a way of solving my problem of going forward with
17 multi-year costs over a contract that appeared to be one
18 contract -- one-time costs.

19 So to make a long story short of how we
20 resolved it -- I was shown, given I should say, at the
21 Pentagon a document that said that DPSC had allowed all
22 these costs for Rafco and Sopakco. It was a letter that
23 -- a draft of a GAO report that says, here's what they
24 did. This is how we did it, and I got it.

25 So armed with that I says, "Well, wait a

1 Our price proposal included all the start up
2 costs, all the equipment that I could possibly think of
3 that I would need, everything including the kitchen sink.
4 We had for future purposes put in, I think Pat put in a
5 million five in equipment that obviously they didn't have
6 time to audit, the DCAA or DCASMA.

7 So that number of the production equipment was
8 an unauditable number but we said we'll settle on a
9 number because I'm not sure if I'm going to buy it or
10 lease it. So we took the September spreadsheets and the
11 \$30.12 a case spreadsheets that we had to give to the
12 PCO. We didn't give them back to New York at all. We
13 gave them to the PCO. And with those spreadsheets
14 showing our milestones of events and things we were going
15 to do, they said, "We're going to now negotiate you on a
16 line-by-line item of these costs right here and hammer
17 out a deal on these spreadsheets." And we said, "Fine."

18 So we set out to argue or negotiate
19 line-by-line on that day as to their audit report and
20 what they had found, and what we're saying. And we
21 hammered out a deal on a line-by-line item of those
22 spreadsheets right there of how we came to it.

23 Q May I show you that FT-062 so you can have that
24 in front of you?

25 A Yes.

1 minute. I can do certain things and I want you, the
2 government -- and I issued another letter, a mailgram to
3 the Defense Personnel Support Center, telling them that
4 since the \$34 a case has been totally rejected by them
5 I'm putting a new offer on the table of \$30.12 a case and
6 I'm conditioning it on them giving me all the equipment,
7 all the money, all the start-up, everything.

8 I don't know where that letter is but it's
9 sometime around, I think, 7 or 8 September. It's a
10 mailgram. That was a condition of me going in with a new
11 offer. Letting them know that the Dollar Drydock letter
12 is for \$21 million and it's conditioned on that -- and
13 here's my new offer. I need to see that offer if you
14 found it.

15 Q What offer are you talking about?

16 A There's an offer that -- Well, they rejected my
17 \$34 a case price.

18 Q I'm really asking you to zero-in on the events
19 leading directly up to the November 6 negotiation. Would
20 you take us there, please?

21 A Okay. Since the offer of \$30.12 was the only
22 thing on the table that we put on there on October 16, as
23 a result of the September meetings, the government
24 dispatched DCASMA New York and DCAA to audit our price
25 proposal.

1 Q Do you have it, Mr. Thomas?

2 A Yes, I do.

3 Q When you were referring to hammering out
4 line-by-line the items, is that what resulted in this
5 memorandum of understanding?

6 A Yes, it did.

7 Q Is that what you're saying?

8 A Yes.

9 Q And what about these spreadsheets that are
10 attached? There are ten exhibits that we have included
11 here. What do they represent?

12 A These represent a line-by-line basis of all my
13 costs and when I'm going to incur these costs and what
14 I'm basing my acceptance of these cost on in a
15 month-by-month period starting in November.

16 The reason why we can't have any other costs is
17 because they are considered out-of-period costs. So
18 anything that -- in the old spreadsheet that we used that
19 was from September or October is out.

20 And these here represent the salaries that we
21 discussed, the utilities and how I projected it, my
22 occupancy cost, quality control equipment, my automated
23 building management equipment, when I'm going to need the
24 money to make that happen. When I'm going to need money
25 for salaries. When I'm going to need money for travel

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1 and office supplies, accounting, legal.
 2 In these months my activities are going to
 3 spend this kind of money on milestones to meet the goal
 4 of starting the production at a certain point in time.
 5 This is it. And based on us agreeing on this, and them
 6 showing me certain things, we agreed on a line-by-line,
 7 month-by-month incurrence of these costs.

8 Q Those spreadsheets you have in front of you,
 9 Mr. Thomas, how do they relate to the memorandum of
 10 understanding?

11 A These are the back up support documents that
 12 builds up to it.

13 When you take the memorandum of understanding
 14 and look at the total material costs and read carefully
 15 what the top says, that this a breakout of the cost
 16 elements as determined by the government's negotiating
 17 team. These are the elements and at what point in time
 18 these elements make up the blowout as attached was
 19 determined by the spreadsheets that we negotiated.

20 Q So you can track those -- from those
 21 spreadsheets you can track these numbers into those
 22 spreadsheets?

23 A Absolutely. You can track everything that I'm
 24 going to do on a milestone basis and what I need in money
 25 back to this right to these spreadsheets.

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1 Q Now we discussed yesterday with Mr. Marra, the
 2 fact that these spreadsheets showed that you would be
 3 receiving progress payments. Is that right?

4 A Yes. Yes.

5 Q At what rate?

6 A 95 percent.

7 Q And when would those progress payments begin?

8 A Immediately.

9 Q And, in fact, did you submit a progress payment
 10 immediately?

11 A Yes, I did. Immediately.

12 Q Now according to the agreed upon schedules and
 13 everything. When was it contemplated that you would
 14 begin to incur actual direct material costs?

15 A According to Exhibit 3, 00911, direct labor you
 16 said?

17 Q I said material.

18 A Materials on this one was incurred in May.

19 Q Are you looking at the final spreadsheets? The
 20 beginning of material not labor, material?

21 A I'm looking at Exhibit 00911 on here.

22 Q I'll go to the preceding one are you ready?

23 A Yeah.

24 Q What's the first month that shows material
 25 costs incurred?

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1 A Let me go back to for that purpose, 00910

2 Schedule 2.

3 Q Schedule 2, what does it show the first month?

4 A It shows that we're going to receive materials
 5 in house on February, in February.

6 Q Thank you. When were you intended to start
 7 your actual direct labor efforts on this job?

8 A May.

9 Q Were you going to incur costs before these two
 10 periods on this job?

11 A Yes, we were. Absolutely.

12 Q Give us an idea what you would be doing.

13 A We had to have -- to meet Health Services
 14 Command requirements of the facility to bring in the GFM.
 15 CFM -- I showed them a lease of a building that was a big
 16 warehouse in the Bronx that had 50 interior truck loading
 17 bays. You drive tractor trailer into the building, pull
 18 it up and back it up. And I could pull fifty of them in
 19 there at one time -- and had all these loading bays.

20 All those bays had to be sealed. All of these
 21 bays had to meet certain specifications. The whole
 22 building had to be transformed from an old warehouse into
 23 a ration assembly plant for the military. It had rail
 24 siding where they hadn't used the rails in years or the
 25 doors or what have you. I had to go in there and make

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1 this meet Health Services Command requirements.

2 So before we went to negotiate, they dispatched
 3 General Connelly or somebody from DPSC, dispatched a new
 4 team from -- not the same -- not the Hunt's Point plant
 5 that they had approved for me because I'm no longer in
 6 that building. I done jumped ship and went from Hunt's
 7 Point over to Bronx Dale Avenue. So we got a new
 8 facility as well.

9 They dispatched a new IPP team up there along
 10 with Health Services Command. Health Services Command is
 11 saying, "I want this done, I want this done, I want this
 12 done. I want this done."

13 Now I'm running around with them jotting down
 14 all the stuff that they say has to be done for this
 15 facility for them to approve it.

16 Q For this contract or any other?

17 A For this contract right here. Otherwise,
 18 they're not approving it. Them and my contractor went
 19 around there and based on everything they still say wrong
 20 with it, came to \$650,000.

21 So I said, "Okay." I grabbed the six fifty. I
 22 wrote Barkewitz a letter and says, I've, I've complied
 23 with the Health Services Command people or sent them a
 24 letter to that affect and said I think it was 2 August or
 25 something, no, not 2 August, November sometime before

1 negotiations -- that I'm going to need \$650,000 to fix
 2 this building to the way Lt. Col. LaFontaine and them
 3 wanted. So to meet that spec under this contract, it was
 4 going to cost \$650,000.
 5 So going into negotiations I was looking at
 6 getting \$650,000 from them as the cost to meet a
 7 specification. So I was armed with that set of goodies.
 8 During the negotiation they said, "Well, we can't give
 9 you all \$650,000." I said, "What can you give me?" They
 10 said, "We can give you \$177,000," or something along
 11 those lines, \$145,000.

12 And in my notes I have where we calculated
 13 certain costs for something that went up to \$177,000 for
 14 building repairs, I believe it was.

15 Q Why don't we just go to that break out if I
 16 can?

17 A So they gave me either a hundred forty-five
 18 thousand, or a hundred and seventy-seven thousand for
 19 building repairs and we can easily find that by going to
 20 spreadsheet. Here it is.

21 If you go to 00917. It has a line down right
 22 under occupancy costs, it has building repairs. The
 23 first month I'm going to spend \$3,500. The next month
 24 I'm going to spend \$30,400. I'm running up -- In the
 25 beginning of this early phase I'm spending serious money

1 fixing the building. All the way to it looks like
 2 187,500. I'm sorry. Yeah, that's what that line is.
 3 It's right under the rent. The rent for this period is
 4 \$1,560,552. And the number that we agreed upon for
 5 building repairs according to this was \$187,500. And
 6 that's the way it fell out in Pat's numbers. I have in
 7 marking next to that is 160,000, that's my handwriting.

8 Q Excuse me, excuse me. By the way, your Honor,
 9 the letter he referred to explaining the 650,000 appears
 10 in FT-060D. FT-060D is the letter he was referring to.

11 JUDGE JAMES: 0607

12 MR. STEIGER: 060D.

13 BY MR. STEIGER:

14 Q The \$650,000 letter that you referred to.
 15 Please go on, Mr. Thomas.

16 A Okay. This letter -- can I go back to this
 17 letter or can I go forward?

18 Q Well, I just wanted to point out that you had
 19 mentioned the letter and I wanted the record to reflect
 20 that it was there and what it was but you don't have to
 21 go back to it unless you want to.

22 A Thank you. Your Honor, I just want to just
 23 point out that this letter is addressed to Tom Barkewitz.
 24 It's addressed to Col. LaFontaine, Col. James somebody,
 25 out of Ft. Sam Houston, who came to my plant, I believe

1 he was. And it's talking about a letter of discrepancy
 2 of September, when they came -- was dispatched up there
 3 by the Pentagon to review this building.

4 This letter says that they gave me a letter of
 5 discrepancy and there was an October 4 approval letter
 6 for it. In order for me to be approved, this had to be
 7 in there. So I'm saying based on that, I wrote them back
 8 and told them that in order for me to meet mil standard
 9 668-E and USDA regulations, here's the list of
 10 improvements that the Army told me I had to do to that
 11 building.

12 Now, I had already fixed the Hunt's Point plant
 13 to the military specification using Dollar Drydock's
 14 money that I lost. So therefore, this is brand new money
 15 that I'm going to need to start all over again. I just
 16 dumped put a million eight or better over in that
 17 building that I've got to walk away from.

18 Q How much did they say they would allow for
 19 this?

20 A Oh, for this? They gave me in this 00917,
 21 \$160,000 is what I'm saying is there. I see Pat's got --
 22 he wasn't holding to the numbers. He somehow rounded
 23 around and what he did in this number -- but I remember
 24 shaking hands saying, okay, 160,000. I wrote that.

25 The \$54,000 that's my handwriting is exactly

1 what Pat picked up, the 54,000 on this list for
 2 maintenance equipment, I think that is. That's
 3 maintenance equipment or either quality -- I'm sorry,
 4 it's quality control equipment.

5 So all the quality control equipment that I
 6 need, tensile testers, burst testers, everything that I'm
 7 going to need to buy is going to -- I'm going to start
 8 buying it spending \$18,000 a month starting in February,
 9 March and April. So I'm going to have this equipment in
 10 before the raw materials get in. So I'm going to have
 11 the quality control equipment in.

12 That is agreed to at 54,000. I told them I
 13 needed maintenance equipment, special cleaning equipment.
 14 That came to \$25,380. They agreed to that.

15 Building repairs even though Pat has in here in
 16 writing, it's his handwriting, is \$187,50. My number
 17 that I remember agreeing to between me and the PCO. was a
 18 hundred and sixty.

19 Pat has for automated building management and
 20 control system he has \$75,000.

21 Q Were all these costs, Mr. Thomas, included in
 22 the figures set forth in the MOA?

23 A Absolutely. If you look at each one of these
 24 bottom lines and go to manufacturing overhead on this
 25 page -- look at the number at the bottom. It's equals

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1 \$3,627,530. And if you go to the memorandum of
2 understanding and look at the overhead number it's six
3 million -- I mean -- I'm sorry, \$3,627,530. That's the
4 number. This is the blowout of that number.

5 Q But the items you talked about -- The specific
6 individual items you talked about, were they contemplated
7 within the figures on that sheet?

8 A Absolutely. This is how we made up that 3.6
9 million for G & A. And the salaries -- I'm sorry -- that
10 was manufacturing overhead of 3.6.

11 Then we dropped down and blew out the general
12 and administrative. All the salaries I'd need -- all the
13 people -- and when I am to incur these costs on a
14 milestone basis. So the salaries have a separate
15 schedule that I'm going to show you later -- because
16 that's my manning chart of when I'm going to do and who
17 I'm going to do.

18 In the same chart 00917, we have about \$72,000
19 -- I think it is for travel and subsistence that I have a
20 budget for 72 seventy-two grand. Office supplies,
21 there's another one for office equipment. On this is
22 listed computers and copiers as the office equipment.
23 That number is \$80,000. So I was allowed that. I was
24 going to incur right away in December, \$20,000 to get
25 computers, copiers, twenty, twenty, twenty all the way

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1 right up front before any product came in the door,
2 before direct labor. I had computers to work with and
3 programs to run this accounting system, to run this whole
4 job. So my computers I needed and then I'm basing the
5 computers coming in on the salaries of the people who are
6 going to be needed to program them.

7 Q Were there any other contracts that you had
8 where this work possibly could have been done for the
9 benefit of?

10 A No. Absolutely not. I had nothing else, no
11 work. This is all. Everything was in keeping with the
12 agreement with DPSC, "We want you to be 100 percent
13 focused on this contract." We were now 100 percent
14 focused on this contract with nothing else. And my 8-A
15 was put aside. I think we had to write a letter to SBA
16 saying why we was not pursuing the 8-A business. And I
17 had to write them and specifically tell them that this is
18 my deal with the government. I can't accept any 8-A
19 stuff unless it comes through and is all agreed upon.
20 But you can't roll up on me or come to me and say,
21 "Henry, we got some school lunches for you." We went out
22 and did this. I had to put that whole business plan on
23 hold.

24 Q Let me confirm one more thing about these
25 sheets and the agreement.

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1 A Okay.

2 Q Let me confirm and ask you with regard to
3 progress payments, what was the anticipated liquidation
4 rate upon which these cash flow number were based?

5 A Okay. Go to Schedule Exhibit 3, 00911.

6 Q Okay.

7 A The total cost of November would be \$208,000.
8 Giving 95 percent of the \$208,000 we showed that \$198,244
9 was coming from the United States government. That's the
10 95 percent. My exposure was \$10,433, looks like, that
11 first month. As long as I showed up with ten grand in my
12 hand, I had my obligation. I had my in to incur
13 \$208,000.

14 I was told by Neal Rodenberg, at one of the
15 meetings that the policy of the United States government
16 -- and he covered this. Rodenberg covered this quite
17 clearly with Tom Barkewitz in that meeting of September
18 5, the progress payments, that the current policy is to
19 pay this within five to ten days and the answer was yes.
20 And we said okay, we're going to expect this in five to
21 ten days and we also said we want it bi-monthly. We want
22 it twice a month -- is my offer of the \$30.12, is what we
23 said, covered in there.

24 JUDGE JAMES: Mr. Thomas, let's go back. The
25 question was, where does this show your liquidation rate?

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1 That was the question that was asked.

2 MR. STEIGER: Right.

3 THE WITNESS: Oh, Okay. Liquidation rate, huh?

4 JUDGE JAMES: Yes.

5 MR. STEIGER: 009 -- Take a look at 00912, Mr.
6 Thomas, please.

7 THE WITNESS: 009?

8 BY MR. STEIGER:

9 Q 00912.

10 A Oh, okay I see it. Okay. In this particular
11 Exhibit 4, this exhibit shows two things. Number one,
12 the heading on the side is Bank Financing. We dropped
13 Dollar Drydock. This no longer says, Dollar Drydock
14 financing. It says, Bank Financing, okay?

15 Q What did that mean?

16 A In your earlier one it said Dollar Drydock.

17 Q I know but what did it mean, you dropped --

18 A It means that I don't have -- We're not relying
19 on Dollar Drydock no more.

20 Q It didn't mean that you couldn't?

21 A It just said any bank.

22 Q What did it mean about -- did it mean that you
23 had absolutely dropped them and wouldn't consider them in
24 the future?

25 A No, no, it didn't mean that. It means that I

1 have to now, because I have not gone back to Dollar
2 Drydock like I told them I was going to do, I had to go
3 back and talk to the chairman. I've got to convince the
4 chairman that is a solid deal. And I got a sales job to
5 do to get Dollar on board. So we did not put Dollar
6 Drydock on it. We just got bank financing.

7 What we did was we looked at DPSC progress
8 payment clause on the side there on your, where it says,
9 "progress payments 95 percent sales, 82.6 percent."

10 Q Is that the liquidation rate?

11 A That is the progress payment liquidation rate
12 that was given to them and accepted.

13 Q Now let me ask you this. You dropped Dollar
14 Drydock out of the heading.

15 A Yes.

16 Q Did that mean that Dollar Drydock was not
17 willing to finance at that point?

18 A No. It meant that I -- listen I was very
19 honest with everybody. I told them I cut a deal with the
20 chairman and also with General Connelly. Here's the deal
21 to get around that
22 catch-22. I got to go back and I put the letter in the
23 file here to the chairman of Dollar Drydock, that I'm
24 coming back to him. Now if he doesn't want to finance it
25 doesn't mean that I can't go get some fresh financing.

1 So when I wrote the letter to him on 7 November, or 8
2 November, it clearly tells him --

3 Q FT-064.

4 A Absolutely. This is it. On November 8, after
5 we had this deal cut with the government we were off to
6 get this thing blessed by Drydock. But I assured
7 Barkewitz that I would have absolutely no problem
8 financing this. So if Drydock comes or they don't come.
9 It doesn't make a difference.

10 So he said, "Fine. That's your problem."

11 I said, "Fine, okay."

12 I go to Bill Wheeler, write him a letter
13 telling him -- giving him what happened to the
14 government. That there was a limitation. That it went
15 up to thirteen but then they gave us a profit rate of 15
16 percent and this was an outstanding deal. Also, I told
17 him that we can now -- or Freedom has finally "delivered
18 the bacon."

19 So I was giving it back to him that I -- you
20 sent me on a mission to get a contract for jobs in the
21 Bronx. I'm bringing four hundred jobs to the Bronx.
22 Thank you, Mr. Wheeler. I've delivered the bacon.

23 Q As far as you were concerned, Mr. Thomas, was
24 Dollar Drydock going to be your first choice to finance
25 this contract?

1 What I had put in place and I told this to Tom Barkewitz,
2 I said, "I got some private investors who is chomping at
3 the bit to get back into this deal. One of them is Zeb
4 Robbins in California. The one that bought those rotor
5 mats. This guy will give me \$2 to \$3 million if I need
6 it. The only thing I need you guys to do is confirm
7 these documents that this is the deal. You confirm these
8 documents to anybody, I'm home free. We are in like
9 Flynn." So, "Not a problem, Mr. Thomas. This we can
10 confirm." "Okay, fine."

11 So this was the deal that we discussed and I
12 also went back and discussed this financing with Richard
13 Penzer, who had also agreed to finance me if I needed it,
14 but I'm going to now stick to my partner. I done got my
15 partner in a mess. I'm not going to abandon Dollar
16 Drydock. I quickly rush back after these documents were
17 -- the memorandum of understanding -- and wrote Bill
18 Wheeler a letter telling him, okay, in your letter -- in
19 the meeting with you, when you sent Mike Durso down to
20 DLA, I told you that I would come back to you and here --
21 because he told me when he gave me the letters to Bill
22 Wheeler. Bill Wheeler said to, "Henry, you've got to now
23 deliver the bacon."

24 In other words, all obstacles of bank financing
25 is out of your way. Go down there and deliver the bacon.

1 A Absolutely. Dollar Drydock -- I'm here as a
2 result of Dollar Drydock spending all that money to get
3 me ready for the MRE program. And we got blown away in
4 the Hunt's Point plant.

5 I had to go to the Secretary of Defense. I had
6 to go to the White House. I had to go to Congress. I
7 had a mess on my hands.

8 Q Did you feel you owed them an allegiance to
9 deal with them first to get that financing?

10 A Absolutely. Then that's the reason why I'm
11 saying to them that we can turn this thing around by the
12 end of 1985 because the profits are here. I wasn't
13 trying to run away from Dollar.

14 Q At the time you wrote the letter did you have
15 any indication that they were not going to finance you?

16 A No, no, no. Bill Wheeler immediately set up a
17 meeting with Noel Siegert. Matter of fact, I think we
18 gave him two sets of -- an extra copy. Because when I
19 told him I'm coming he asked me for an extra copy. So I
20 gave him an extra copy.

21 So we wanted his assistance at expediting the 5
22 percent working capital loan that we needed and the
23 equipment financing through Siegert. So he says, "Okay.
24 Go deal with Siegert."

25 Q Let me ask you this. We heard a lot --

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1 MS. HALLAM: Sorry for interrupting. We only
 2 have a page one. Is there another page to that letter?
 3 THE WITNESS: 00924?
 4 JUDGE JAMES: It's a two-page letter, ma'am.
 5 MR. STEIGER: Yes, we do have another page.
 6 Would you like to -- can I show it to you and provide you
 7 with a copy a little later?
 8 MS. HALLAM: Thanks.
 9 JUDGE JAMES: But before you do, take a look at
 10 your next Tab just to make sure it hasn't gotten
 11 misfiled.
 12 MS. HALLAM: Yeah, we did. We thought of that.
 13 JUDGE JAMES: Okay. Go ahead, Mr. Steiger.
 14 BY MR. STEIGER:
 15 Q Mr. Thomas, we heard a lot about financing
 16 yesterday in both cross examination and direct
 17 examination of Mr. Marra. I'd like you to tell me what
 18 your thoughts were about how you were going to finance,
 19 to what extent -- what was your understanding regarding
 20 how you were going to manage financing?
 21 A This was my first big contract with the
 22 government. Aron Rocusin was one of my attorneys and
 23 Rodenberg. And they said, "Henry, if you nail down a
 24 firm fixed-price contract and sign it with the
 25 government, it's now up to you to run this thing as lean

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1 and as mean as you possibly can to get the most money out
 2 of it. If you run it shabbily, you could lose your
 3 money. If you run it lean and mean you can make money."
 4 So I set out to run this as a business and to
 5 use these cash flows as my limiting factors for making
 6 things happen. I did not want to borrow a lot of money
 7 from Dollar Drydock because Dollar Drydock's rates were
 8 pretty high back then. Nobody asked me -- I mean,
 9 nobody's asked what Dollar Drydock's rates were. They
 10 were trying to make a lot of money. So Dollar Drydock
 11 saw me come walking in the door. I looked like chicken
 12 and dumplings on a plate. And I said there's no way. I
 13 can get better rates at Broadway.
 14 So unless I had somebody that's going to say,
 15 "Henry, I'm going to give you this financing at 9 percent
 16 --," Siegert would have said, "You've got your financing
 17 at 17 percent, Thomas." What?
 18 So I had to balance. Now I got this guy
 19 Robbins in California that I taught a lesson. When you
 20 come to the table with me, I want you to sharpen your
 21 pencil and listen very carefully. So Robbins this time
 22 says, "Okay. I'm prepared to finance you, Thomas. I'll
 23 beat any rate Dollar can do. I want to get in on the
 24 deal." I said, "Fine."
 25 So Robbins in California was ready to finance

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1 and, but I told him I'd get back to him and I was dealing
 2 with Noel Siegert.
 3 On 13 November, I don't know where that letter
 4 is. But there's a 13 November meeting with Noel Siegert
 5 that we went down at the instruction of the chairman of
 6 the Board here, that he set up for, and I set up for Pat
 7 Marra to educate Siegert, who is a loan officer, a stiff
 8 you know, kind of guy and not in step with the efforts of
 9 what Bill Wheeler and Bob Steel and we are trying to do
 10 to get jobs in the Bronx and the economics and all that
 11 kind of stuff.
 12 Siegert was instructed to make it happen. So,
 13 we told Siegert that we had just put in a progress
 14 payment. This is November 13, no, not that.
 15 We were going to be putting in a progress
 16 payment and that he should be expecting at least \$100,000
 17 of which Mike Durso could use to reopen our checking
 18 accounts that were closed. So as soon as this \$100,000
 19 come in, that means the government is moving out right
 20 sporty and you don't have to be afraid of them. Because
 21 one of the things that the government said, "Henry, we
 22 sent Mike Durso to Washington, D.C., we sent him to DPSC.
 23 we sent him to DLA in '82 and '83." And all this
 24 happened and we got left holding the bag. So I said,
 25 "Well, I tell you what you do. You don't have to do

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1 nothing. Just wait until the first progress payment
 2 comes in and then we'll move. As soon as the 95 percent
 3 that I got in comes, we'll open a checking account and
 4 we're off and running to the races."
 5 Well, bless Peter, we've submitted a progress
 6 payment, wait five to ten days, nothing happened.
 7 Instead the progress payment came flying back at me.
 8 Talking about you didn't dot the "i", you didn't cross
 9 the "t". We need you to dot the "i" and cross the "t",
 10 because this is an automated process. "Oh, okay."
 11 So in the meantime, Pat Marra's down there
 12 giving Marvin Liebman a layout of what's going on with
 13 these numbers and what the negotiations meant and we was
 14 at the same time with Dollar Drydock, giving them. So
 15 we, Dollar Drydock told us to put together the 5 percent
 16 loan we wanted for SBA and they'll process it
 17 immediately.
 18 So I think it was 29 November, we issued them
 19 a, we issued Dollar Drydock the guaranteed loan stuff.
 20 So this is all after contract award. And we're still
 21 negotiating with them.
 22 Q I would like -- I asked the question, yes, but
 23 if you want to, I'd like you to focus a little bit more
 24 on the exact question I asked which was, in relation to
 25 at time of award of the contract how, and to what extent

1 did you believe you were going to be financing this job?
 2 A Okay. I was going to finance this job using
 3 my, my credit and using the available funds that I could
 4 get in conjunction with the SBA and letting them know,
 5 keeping them in step with what I'm doing and borrowing
 6 money based on this contract proceeds and the profits,
 7 leveraging the contract in order to get started. But the
 8 main thing I needed was good faith from the United States
 9 government to send the first progress payment to me.

10 Q Did you have access to these sources of
 11 financing?

12 A Oh, yes, absolutely.

13 Q What, what were they again?

14 A Okay. I had Dollar Drydock, the chairman okay,
 15 and the president and, and three or four other board
 16 members that I knew that we were all working together
 17 with Peggy Rockefeller, from the Rockefeller Foundation
 18 to create jobs and bring to the Bronx. And I had
 19 Broadway Bank in New Jersey, which had done all the
 20 financing on my school lunches in New Jersey. We had
 21 Clarence Stanley from Citi Bank that loaned me money from
 22 Citi Bank when I was doing school lunches in the early,
 23 late, 70's, back in the 70's. I had money but the only
 24 thing I had to do was, show that the deal that I'm
 25 telling them is my exposure, is my exposure, and the

1 government has to say that 95 percent of this financing
 2 is their risk. And then we work out, "who's on first."

3 Q So on that basis of, of showing how the risks
 4 were intended to be divided per the contract, are you
 5 saying then, that you had access to funding, access to --

6 A Absolutely. Absolutely. My landlord, Richard
 7 Penzer had said to me because I told him that -- because
 8 a deal with him was, "Henry, I want, I'll give you the
 9 building, but I want to make sure that you give me the
 10 rent and security right away."

11 And I said, "Okay, fine. I'm going to put a
 12 progress payment in immediately and in five to ten days I
 13 should get it and you are off and running to the races."
 14 I said, "You can check with my lawyer, Rodenberg," which
 15 he did.

16 And Rodenberg said, "Yes, five to ten days is
 17 what the current policy is. But you've got to give them
 18 a little more time or something like that maybe the first
 19 time."

20 And so Penzer says, "Okay, Henry, I can finance
 21 this if you need. If you need any, anything let me
 22 know."

23 But he wanted to finance it at a default rate
 24 of 24.9 percent and I said, "You'd eat up all my
 25 profits." Okay? Because the lease had a default rate in

1 it that if I didn't pay him it automatically went to 24.9
 2 percent.

3 Q Mr. Thomas, by any stretch of the imagination
 4 did you need \$7.2 million to finance this \$17 million
 5 contract?

6 A No.

7 Q Mr. Thomas, by any stretch of the imagination
 8 did you even need \$3.5 million to finance this contract?

9 A No. We did not need 3.5 million but Pat Marra,
 10 I believe in his doing all of this and covering the
 11 United States government, which I'm telling him again. I
 12 can't carry -- don't make me something I'm not.

13 And if the Court doesn't mind, I'll give them
 14 exactly what I told him. "Don't try and turn me white.
 15 White folks can go do that, I can't. I got to stick to
 16 the script. I got to get 5 percent from me and the SBA.
 17 and the 95 percent has got to come from the government.
 18 Don't try and make me, this company out here -- because
 19 Pat wasn't looking at the 8-A. He was out here doing his
 20 accounting, conservative stuff. And I'm telling him
 21 that's not me.

22 So the difference of opinion between me and Pat
 23 on how he laid it out would get me in trouble if I'm
 24 trying to do these things and I'm trying to show that I
 25 need money from the government.

1 Q But the fact of the matter as you're saying is,
 2 that if the government had done what they were supposed
 3 to do, right?

4 A Absolutely. If Liebman had sent the first
 5 progress payment in, it would have made a believer out of
 6 Dollar Drydock. And instead of that, him sending the
 7 first progress payment he turns around and -- well,
 8 before he did it something else happened.

9 Around 30 November '84, Dollar Drydock --

10 Q I haven't gotten to the award yet, so please.
 11 Let's take this in steps so that everybody can understand
 12 it. I'm going to be only a few more minutes, your Honor,
 13 with this witness and then we could perhaps take a little
 14 break.

15 I want to bring it up now to the actual award.
 16 We discussed the pre-award, how we got there, the
 17 negotiations, the settlement, and now I just want to just
 18 close a couple of things on the contract itself.

19 Your Honor, I don't want to go into the details
 20 of what the contract called for because the agreed upon
 21 findings cover all that. The amount, the CFM, GFM --

22 JUDGE JAMES: Just ask your question, Mr.
 23 Steiger, that's enough.

24 MR. STEIGER: okay. So I really don't want to
 25 do that.

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BY MR. STEIGER:

Q But anyway, just for the sake of clarification, tell us what was expected of the government with respect to government-furnished material on this particular contract.

A The government was supposed to give us \$8 million no, that's in my -- that's government-furnished.

The government, on government-furnished material was supposed to give us a schedule of when GFM was supposed to come in and we were going to coordinate that with our building repairs to H, to the Health Services Command requirements.

So, therefore, since the government had allowed me so much money to repair the building and I had cut a deal with Gemini for about \$300,000 of investment in this because they were going to do that work for me and they were going to get theirs out of profits first, on the back end of the contract. We had to have the building ready for this GFM to come in. And, their obligation was to time the GFM to our repairing the building using these progress payments as a source of funds.

Q And if they were late or didn't provide it as, as was set forth in the schedules, what impact did that have on your job?

A If anyone missed any of these milestones or

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events that I had told them that I needed to make happen, and if I didn't have the dollars from them then I couldn't hire the people, I couldn't pay the rent, I couldn't make things happen. Then it's on them as far as any delay claims or delay costs and that was for my technicians to keep track of and work out.

Q We discussed in connection with the solicitation, the clause called L-4.

A Right.

Q Now again, when it came to the award of the contract, did L-4 remain in the contract?

A Yes.

Q Was it changed at all?

A Yes, it was.

Q And again, tell us how it was changed.

A All right. On page 7 of 7 --

Q What are you looking at?

A I think it's FT-068.

Q FT-068?

A Yeah.

Q You have mine.

A Now, this, this contract might be somewhere else.

MS. HALLAM: Rule 4, Tab 10.

MR. STEIGER: Rule 4, Tab 10.

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JUDGE JAMES: Well, 068 has got a page seven of seven on Bates 937, so --

THE WITNESS: Right. I like this Bates. I like that.

JUDGE JAMES: I'm following what he's saying.

THE WITNESS: On page seven of seven, and there's really another page to this, seven A, of seven. Number two, "It says clause L-4, page sixty-six of ninety-six of solicitation." The limitation that they put on L-4, on the progress payments would increase by \$2 million after the first delivery of 100,000 cases. And the government was assuming an additional \$2 million after the second delivery.

So the \$9 million limitation went to thirteen. There's no more, no more 9 million, it's 13. The calculation for this 13 is directly driven by the 82.6 percent liquidation rate. If it's not 82.6 percent liquidation rate and it's a different rate these numbers right here have to change. They cannot stay at two and two because the timing of this money is tied to the timing of money, of liquidation.

So if, if when they changed the 82.6 percent liquidation rate on the cash flows. When Liebman just disregarded what we was telling him and then later on the new PCO, Frank Bankoff, ignored what we kept trying to

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tell him we had disaster on our hands. The Titanic was going to sink.

BY MR. STEIGER:

Q Did the language, Mr. Thomas, still retain the ability to get increases based on need?

A Absolutely. That stayed and we looked at that and said okay, fine. Even if it has this and I didn't sign this thing, I mean, let's say, it was signed. When I got down there and I didn't have to sign it I should say, all I had to do was show a need.

Now, I talked this over with Barkewitz and I asked him I said, "Now listen, I don't know whether or not I'm going to actually be able to meet everything that we've projected and talked about. The progress payment clause clearly says to me that I'm to get 95 percent of the total cost of the contract, up to the contract price. That means, that if my cost ran up to \$17 million the government has to give me \$165.2 million."

He said, "Yeah, that's right. The total contract price. Well, all you have to do is just show me a need. Just ran a cash flow and I'll approve it." "Okay, thank you."

Q Are you familiar with how the progress payment rate in what was then the DAR, and now the FAR, is established? Do you have any idea?

1 A No, I had no idea. I think it's established by
2 probably, it's driven by the economy of the United
3 States, the need of money on defense contracts. I'm sure
4 it's established by the President or the monetary -- I
5 don't know who establishes it.

6 Q Is it your understanding that any agency could
7 establish its own progress payment rate as it saw fit?

8 A No. That cannot happen. You would need a
9 deviation from the DAR regulations to impact the progress
10 payment rate.

11 Q Were you aware of any deviation that was
12 granted in this particular case?

13 A No. There was no deviation granted. There
14 was, there was a deviation granted with, with DAC, D-A-C
15 something, that, that I think told them that they've got
16 to pay within five to ten days. That's what Neal
17 Rodenberg told me.

18 He says that this progress payment rate -- He
19 pointed it out to me about a policy that was issued to
20 the DCASMAS, or to somebody called DAC something. He had
21 that with him when we was talking to or somewhere around
22 the early stages that we was to rely on this, this DAC
23 that he said, I think, modified the progress payments to
24 cause five to ten-day payments. Now, we were looking for
25 that five to ten day --

1 Q That was an expectation you really didn't --
2 did you build into your cash flow five days for payment?

3 A No. Pat Marra built in, I think, 30 days.

4 Q Reasonable, yes.

5 A Pat said five, I mean, -- Pat Marra built in,
6 he'll get the money over here like, white folks get it.
7 I told him I needed it in five to ten days because I'm
8 not going to go borrow any money. Why should I go borrow
9 money and pay to borrow money when I can get it in five
10 to ten days? So if the United States government's
11 obligated to give it to me, let me get the progress
12 payment in there, tell Liebman to give me the five to
13 ten, to give me my money so I can get rolling.

14 All that was thrown out the window. So when
15 Liebman said he wasn't bound by it, I went back to
16 Rodenberg. And Rodenberg told me that's nonsense. I
17 think he might have written a letter to him or something
18 like that.

19 Q One final question. After you shook hands on
20 the award was there any question in your mind that the
21 government did not understand the conditions that you
22 laid out for the award of this contract? And I am
23 referring to the liquidation rate, to the treatment of
24 costs, to the progress payment rate. Is there anything
25 that you know, where, which would have led you to

1 conclude that the government didn't understand this?

2 A No. They even told me that I could not put in
3 progress payment until the contract was awarded. Matter
4 of fact, I think I had told them that when we cut the
5 deal and shook hands on the 6th of November, that I was
6 going up there and put in a progress payment. They said,
7 "Not so fast. You can't do it until the contract's
8 awarded."

9 So I told Pat Marra, I said, "Pat, get that
10 progress payment ready. We're going to roll up on
11 Liebman the minute I get back."

12 Now, of course, I didn't get back until late
13 that night, or whenever but the next day, the very next
14 day, 16 November was a Friday. We was in front of Marv
15 Liebman's desk with the progress payment shoving it to
16 him.

17 Marv Liebman says -- I had the progress
18 payment, Pat Marra had these cash flows and we were in a
19 rush. We did a bum rush on him.

20 He rejected us and said, "I have to receive the
21 contract through official channels before I can receive
22 your progress payment." So I said, "Well, here it is."
23 "I have to get it through official channels." So he
24 rejected it. I left the progress payment on his desk and
25 said, "Here it is. When it comes in, pick it up."

1 It's my understanding that it showed up 29
2 November, because that's when he, that I officially gave
3 it to him. I'm telling him, "No. I gave this to you on
4 16 November. The next day is when I gave it to you."

5 But of course, if he said he received the
6 contract from the PCO through official channels on that
7 day I had no way of knowing. In other words, I can't be
8 the messenger from the PCO to him, and he was in no hurry
9 to get it. He didn't pick up the phone and call them and
10 say, "Overnight it to me, quickly. Henry's here with the
11 progress payment."

12 So he rejected the progress payment until 29
13 November where he keeps saying, officially received by
14 the ACO on this date. That's not true. He received it
15 the next day.

16 Q Thank you.

17 JUDGE JAMES: Is it your desire to take a break
18 now?

19 MR. STEIGER: It is, sir.

20 JUDGE JAMES: All right, let's go off the
21 record and take a little break.

22 (Recess.)

23 JUDGE JAMES: Government ready to proceed?

24 MS. HALLAM: Yes.

25 JUDGE JAMES: Okay. Let's go back on the

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1 record, please.

2 BY MR. LUCHANSKY:

3 Q Mr. Thomas, I want to ask you about Mr.

4 Liebman's involvement in the negotiation process. What

5 he knew prior to the time of contract award. First of

6 all, was Mr. Liebman present at that July 30 meeting

7 with, with DLA that you described?

8 A Yes, he was.

9 Q At FT-43, is there a sign-in sheet that shows

10 all of the people who were present? Looking at Bates

11 stamp page --

12 A Yes, I see it. 626, Marvin Liebman, New York.

13 ACO is, is right on top of General Connelly.

14 Q Okay. And does this accurately reflect who was

15 present during that meeting?

16 A Yes. It even shows Mike Durso, Sr.

17 Vice-President, Dollar Drydock is there.

18 Q Okay. All you have to answer is yes or no, to

19 a yes or no question.

20 A Yes, it does.

21 Q Now, after this meeting Freedom submitted an

22 August 2, 1984 price proposal. Is that correct?

23 A Yes.

24 Q Now, there were two reports, two reviews

25 performed of that price proposal. One by DCAA and one by

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1 DCASMA. Is that right?

2 A Yes, it was.

3 Q And FT-47B, reflects the DCAA report that was

4 done to review your August 2, 1984 cost proposal. Is

5 that right?

6 A B?

7 Q Forty-seven, "B" as in bravo.

8 A Don't have a B. Oh, yes I do. I'm sorry.

9 Yes, this is the --

10 Q Is that the DCAA report that was, audit report,

11 that was performed of the August 2 price proposal?

12 A Yes.

13 Q Okay. Was this report performed at the request

14 of Mr. Liebman, to the best of your knowledge?

15 A It was performed by they sent it back to the

16 DCAA people there. To the best of my knowledge, yes, the

17 New York office wanted this done.

18 Q Well, was it your understanding that Mr.

19 Liebman was involved in the, in coordinating the review

20 of your cost proposals by DCAA and DCASER?

21 A Yes.

22 Q And looking at FT-47 C, as Charlie, is that the

23 DCASER review of Freedom's August 2, 1984, price

24 proposal?

25 A Yes, this is it.

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1 Q And to the best of your knowledge, did Mr.

2 Liebman coordinate the DCASER review or, coordinate

3 receiving DCASER's review on behalf of DCASMA?

4 A Yes. It was requested by the ACO for this to

5 be performed.

6 Q Okay. Now, you have reviewed both of those,

7 the audit report by DCAA and the review by DCASER?

8 A Yes.

9 Q And did they review all of the costs that

10 Freedom had proposed in its August 2, 1984 cost proposal?

11 A Yes, they did.

12 Q And did the August 2, 1984 cost proposal

13 include all of the costs for this contract including

14 office equipment, quality control equipment and supplies,

15 automated building management and control systems, all of

16 those costs as direct to the contract?

17 A Yes. It was included in there and it was

18 refined further in other proposals.

19 Q Okay. Moving on to Freedom's October 16, 1984

20 price proposal which we have reviewed before, similar

21 questions.

22 Did Mr. Liebman coordinate the, well, or DCAA

23 audit reports and a DCASER report also generated after

24 review of your October 16, 1984 price proposal?

25 A Yes.

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1 Q And to the best of your knowledge, did Mr.

2 Liebman coordinate the conduct of those audit, those

3 reviews?

4 A Yes, he did.

5 Q Now, looking at FT-060 F, as in Frank. Is that

6 the DCASER report reviewing your --

7 A 060?

8 Q Yes, FT-060 F.

9 A Okay. Yes. Yes, they are.

10 Q Okay. And at FT-060 G, is that the DCAA audit

11 report of Freedom's --

12 MS. HALLAM: Is that Rule 4, Tab 11?

13 JUDGE JAMES: Please don't interrupt. What is

14 your question?

15 MR. LUCHANSKY: The question is whether the

16 document found at FT-060 G, is the DCAA audit report of

17 Freedom's October 16, 1984 cost proposal?

18 THE WITNESS: Yes, this is it. This is it.

19 BY MR. LUCHANSKY:

20 Q To the best of your knowledge, did Mr. Liebman

21 coordinate the conduct, or at least coordinate assembling

22 the results of these reports for DCASMA?

23 A Yes. We believe he did.

24 Q Now once again, did these reports evaluate all

25 of the cost elements that had been proposed by Freedom in

1 its October 16, 1984 cost proposal?

2 A Yes, it did.

3 Q Now, you've reviewed both the audit report at
4 060-G, and the DCASER report at F?

5 A Yes.

6 Q These reports do question the amounts of some
7 of the costs that you had proposed. Is that right?

8 A Yes, it did.

9 Q To your knowledge, do either of these reports
10 disallow any of the cost elements from your proposal?

11 A No.

12 Q In your proposal did you include all of those
13 cost items that I had mentioned for August 2, 1984,
14 including office equipment, quality control equipment and
15 supplies, automated building management and control
16 systems. All of those costs, those were included in your
17 price proposal?

18 A Yes.

19 Q Looking at the DCAA audit found at 060-G, which
20 we were referring to a moment ago. Is there any
21 reference in this DCAA audit report, well, turning to
22 page nine which is Bates stamp 00894.

23 A All right.

24 Q Does the, does DCAA break out in its report,
25 all of the cost items for manufacturing overhead that

1 looking at note twelve, that was only because they
2 represented out-of-period costs?

3 A Right.

4 Q Lockers, I'm sorry. Automated building
5 management and control systems. Were those questioned at
6 all?

7 A Not even questioned.

8 Q Lockers, were those questioned?

9 A Not even questioned.

10 Q Start up supplies, were those questioned?

11 A No. Not even questioned.

12 Q At the, on page, on page fifteen of the report,
13 which is Bates stamp number nine hundred, what conclusion
14 does DCAA reach regarding Freedom's accounting system?

15 A They said that Freedom's accounting system --

16 Q Well, let me ask you this, this question. They
17 acknowledge that Freedom is on a double-entry accounting
18 system, correct?

19 A Right.

20 Q They also acknowledge that the system does not
21 provide for a segregation of cost by job. Is that
22 correct?

23 A Right. That's right.

24 Q Did they indicate that that's a problem for
25 Freedom on this contract?

1 Freedom had included in its proposal?

2 A Yes, it is. It's what we proposed.

3 Q And were any of the costs for such capital type
4 items as quality control equipment and supplies,
5 maintenance equipment, receiving and warehouse equipment
6 which includes rent. Were any of those costs even
7 questioned by the auditors?

8 A The building repair was questioned by \$6,000.

9 Q I didn't ask about building repair, Mr. Thomas.

10 A Oh, I'm sorry.

11 Q The three items, three items, quality control
12 equipment and supplies, maintenance equipment, and
13 receiving and warehouse equipment.

14 A No they weren't even questioned.

15 Q Okay. Occupancy costs of \$1,726,059. That was
16 only questioned in the amount of one hundred sixty-five
17 thousand?

18 A I believe that was for out-of-period, I'm not
19 sure what -- I thought that was out-of-period, but --

20 Q Okay. If we look at note eleven to this
21 schedule found on Bates stamp 895.

22 A Yes. That was for the out-of-period cost that
23 we corrected in the, at the face-to-face.

24 Q Okay. And under building repair you had
25 proposed \$90,000 and only 66,000 was questioned. And

1 A No. Because they say that we're going to get a
2 computerized job order costing system that will enable us
3 to track and identify all costs from receipt of material
4 to finished product. That's what they said we were going
5 to do and that's we told them we were going to do and
6 they agreed with it.

7 Q Is that computerized job order costing system
8 included in the elements of cost listed on page nine of
9 the report, which is Bates stamp 00894?

10 A Four? It's included in two places. It would
11 be in part of the automated building management system
12 and in 00897, let me see where is the other one -- office
13 equipment, 80,000.

14 Q Okay. And what would --

15 A Two places.

16 Q And what would be the two components of that
17 system that would lead to it being included in two
18 different line items?

19 A Well, basically, the accounting side that I
20 needed was I think I was looking at an AT&T system. I
21 had that for the accounting. I called it office
22 equipment. But then we had other computers that was
23 going to be for lot tracking and what have you that's
24 down in part of the automated building management
25 tracking systems that we had.

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1 Q So you needed computer hardware and you needed
2 computer software?
3 A Yes.
4 Q Now, under, turning back to page fifteen, Bates
5 stamp number 900. DCAA also reviewed Freedom's financial
6 condition at the time. Is that correct?
7 A That's right.
8 Q Now at this point, and again, while this report
9 is dated December 3, 1984, are you aware of when Mr.
10 Liebman and DPSC picked up the results of these reports?
11 A Yes, I am.
12 Q When was that?
13 A The day before the negotiation on 5 November,
14 they traveled to New York and got this report verbally
15 from DCAA.
16 Q So, Mr. Liebman and DPSC, the negotiating team
17 had this information prior to their negotiation of the
18 final contract amount?
19 A Right. They had all this information, right.
20 They had it.
21 Q Now at that point and to the best of your
22 knowledge, was DCAA reviewing both the DD-633s that
23 Freedom had submitted, as well as the cash flows
24 accompanying the October 16, 1984 proposal, in order to
25 perform this audit?

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1 A Yes. Everybody looked at these cash flows.
2 When they showed up at our doorstep we gave them a
3 complete rundown as to exactly what and where these costs
4 hit, when we were going to incur them, and the kind of
5 money we was looking for.
6 Q Now DCAA, now turning back to page fifteen,
7 Bates stamp page 900, under "Other Matters to be
8 Reported." DCAA notes under financial condition that the
9 contractor in their opinion is insolvent. First of all,
10 do you agree that Freedom was insolvent at the time?
11 A No.
12 Q How would you characterize the \$2 million debt
13 on Freedom's books? Did that create insolvency for you?
14 A Well, in my opinion. I called it an investment.
15 They were calling it insolvency for whatever they wanted
16 to, for accounting purposes.
17 So, however they want to deal with it, it's up
18 to the PCO to make a determination of whether or not I
19 had the where with all, using the government's money of
20 course, because if they give me --
21 Q Okay, fine. With respect to this point, DCAA
22 identified to the negotiating team and to Mr. Liebman,
23 the day before final negotiations, its concern about
24 your, Freedom's financial condition and recommended that
25 financing arrangements be put in place, correct?

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1 A That's what they recommended but --
2 Q During negotiations, did anyone at the
3 negotiating team express to you a requirement that
4 additional financing other than what was discussed to
5 perform the contract, that additional financing would be
6 necessary in order to address Freedom's insolvency
7 concerns?
8 A No way, no. Absolutely not.
9 Q The financing that was discussed with the
10 negotiating team was expressly and solely for purposes of
11 financing the performance of this contract?
12 A This contract, right.
13 Q And that was with this information in hand?
14 A Right.
15 Q Mr. Thomas, you started to testify earlier
16 about the actual submission of progress payments to Mr.
17 Liebman.
18 A Right.
19 Q We just reviewed what Mr. Liebman knew, what he
20 coordinated, the information he had prior to contract
21 award. Now I want to step forward to actual contract
22 award which is November 15, 1984.
23 A Right.
24 Q You testified that you submitted progress
25 payment number one, which is found at FT-422, and as for

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1 the benefit of both parties and the Board as well as the
2 witness, FT-422 is a collection of the progress payment
3 information and broken down by Tabs, labeled by each
4 progress payment. And to the extent that I now refer to
5 Tabs relating to progress payment number one or PP number
6 two, those are all references to FT-422.
7 A Right.
8 Q Okay. Do you have FT-422, Mr. Thomas?
9 A Yes.
10 Q If you turn to Freedom progress payment number
11 one. Tab A. Is that the --
12 MS. HALLAM: Your Honor, I'd like to object.
13 We have all these in the Rule 4 file, A, B, and C under
14 this Tab. I thought it was our understanding that if
15 they're duplicate Tabs we'll refer to them as what was
16 already in the record.
17 JUDGE JAMES: Okay. Let's track that.
18 MR. LUCHANSKY: Your Honor --
19 JUDGE JAMES: He hasn't gotten up to A yet. A.
20 being a DLA document and B, being a DCAA audit report,
21 and C, being another DCAA audit report. He hasn't got up
22 to those yet. He's still talking about the frontice
23 piece I take it. Is that right?
24 MR. LUCHANSKY: Yes, your Honor. And there
25 are, I will admit for sure that there are duplicates that

1 some of the progress payment requests, and some of the
2 audit reports were included in the first record but it
3 would be impossible -- but a lot of what I've included
4 under 422, is not included anywhere in the original file.
5 To jump back and forth would be absolutely impossible.
6 And so for the benefit of everybody involved, --

7 JUDGE JAMES: Well, I think that's a little
8 overstatement. I don't think it would be impossible. I
9 think it would be tedious. Proceed, I'll overrule the
10 objection for the moment.

11 MR. LUCHANSKY: Thank you, your Honor.

12 JUDGE JAMES: And I apologize. I see you got
13 multiple sets of A, B, C in this document, including
14 under progress payment number one at least, and others
15 so, of all the various A, B, Cs, which are you on?

16 MR. LUCHANSKY: Well, the A, B, Cs follow each
17 Freedom PP number Tab. I'm now looking at Freedom PP
18 number one, which I'll refer to as --

19 JUDGE JAMES: They also precede that too, don't
20 they?

21 MR. LUCHANSKY: Not to my knowledge, your
22 Honor. Not in my set and it certainly wasn't intended
23 to.

24 JUDGE JAMES: Well, all right.

25 MR. LUCHANSKY: The way I have FT-422, your

1 Honor, is FT-422, which is followed by a progress payment
2 chart at Bates stamp 2869 and 2870.

3 JUDGE JAMES: All right. No, you've got a
4 re-submission I follow you. Go ahead. You're talking
5 about the initial submission, right?

6 MR. LUCHANSKY: In fact, if I may, your Honor,
7 if there's someplace I can set up the progress payment
8 chart, we've made a blow up of it which may be of
9 assistance. Perhaps I could just put it up and refer to
10 it, if it's of help?

11 JUDGE JAMES: This is now going to be a blow up
12 of Bates 2869?

13 MR. LUCHANSKY: Yes, your Honor, and 2870.

14 JUDGE JAMES: All right.

15 MR. LUCHANSKY: It will be two separate put
16 together on this one page. I apologize that it's as
17 small as it is but it's the best we do to get it on the
18 same page. Would it be helpful to bring it closer?

19 JUDGE JAMES: It would, but the stand that
20 you've got may be a little awkward for doing that. So be
21 it.

22 MR. LUCHANSKY: If I can figure out something
23 for tomorrow if we're still on this issue then I will try
24 to do that.

25 BY MR. LUCHANSKY:

1 Q Okay. Mr. Thomas, turning to Freedom progress
2 payment number one, exhibit A, or Tab A. Is this the
3 first progress payment that Freedom submitted to Mr.
4 Liebman on November 16 as you testified before?

5 A Yeah. It went down the next day, on the 16th.

6 Q What liquidation rate is reflected in this
7 progress payment?

8 A 82.6 percent.

9 Q What costs are included in this progress
10 payment request?

11 A Rent and taxes.

12 Q Are those costs that were included in all of
13 the underlying data that supported the negotiated price?

14 A Yes. If you do back to --

15 Q Well that, yes, is fine.

16 A Yes.

17 Q If you will look at Tab C, still under Freedom
18 progress payment number one, Tab C.

19 A Right.

20 Q You had testified before that Mr. Liebman told
21 you that he will not acknowledge that first progress
22 payment until it's, oh, I'm sorry. Tab C is the wrong
23 one. It's F-20, Tab

24 F-20. I know it's here somewhere. Does F-20 indicate --

25 A Hold on a second, I'm sorry. I had FT -- Yes.

1 Q Does that indicate from Mr. Liebman, his claim
2 that he received the progress payment from you on
3 November 29?

4 A That's what it says here.

5 Q Okay. Is that actually true?

6 A No. He got that progress payment immediately.
7 Just like Barkewitz told me, "Go up there and give it to
8 him."

9 Q And to the extent that he didn't process it
10 beginning on November 16, that was a two-week delay in
11 the time that he began processing it?

12 A Yes, it was. And that's when we felt it should
13 have been paid. Ten days was --

14 Q He wrote you that letter on November 30. Now
15 returning to FT-422, the progress payment documents we
16 were looking at, if you turn to Tab B, you see a December
17 7, 1984 memo from DCAA, from Vito Sorzano, the branch
18 manager.

19 A Right.

20 Q This indicates well indeed, in F-20, Mr.
21 Liebman stated to you that he was going to do a -- the
22 request was going to be audited?

23 A Yeah, he said due to the need for review and
24 due to -- He said it would be done on or about a certain
25 date.

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1 Q You know that Mr. Liebman submitted all of your
2 progress payments to DCAA for audit, correct?
3 A Yes. Every month he did that.
4 Q Okay. He did that to every progress payment
5 during the course of this entire contract, didn't he?
6 A Every one of them.
7 Q Now, on December 7, 1984, at Tab C, Tab B, did
8 DCAA accept and approve payment for your progress payment
9 request?
10 A No, they did not.
11 Q They rejected it because they believed that
12 progress wasn't being, that -- Well, for the reasons set
13 forth?
14 A Yeah, there was no fair value they said. In
15 other words, just because I incurred the rent and taxes
16 means nothing.
17 Q And they claimed that these costs are indirect
18 in nature? Looking a paragraph C, the one with the "X"
19 in it.
20 A Oh, yes, there. Indirect, right. They're
21 saying, they're saying it's indirect in nature, right.
22 Q Now, were in fact the costs that you incurred
23 for progress payment number one, were they indirect?
24 A No. They was direct for this contract.
25 Q And why were they considered direct?

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1 A Because it was the only contract we had. There
2 was no other contract.
3 Q And were they expressly negotiated to be
4 direct?
5 A Yes, they were.
6 Q Now, turning to Tab C, still under Freedom
7 progress payment number one.
8 A Right.
9 Q It's a December 10 letter, December 10, 1984,
10 from Mr. Liebman requesting a legal opinion from legal,
11 about your progress payment request number one, correct?
12 A Right, it is. It certainly is.
13 Q Does he indicate the specific reason he
14 believes he needs a legal opinion? Just other than
15 possible legal implications involved?
16 A No, that's it. I just, it's some possible
17 legal implications. I don't know what that could mean.
18 Q During the course of your negotiation of this
19 contract and the agreement by the government that they
20 would pay progress payments on that first month of rent
21 and salaries, did anyone indicate to you from DPSC that
22 there would be legal implications involved?
23 A No. None whatsoever.
24 Q In fact, Mr. Thomas, in response to DCAA's
25 claim that the requested amount is not supported by the

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1 fair value of any work accomplished under the contract,
2 did the incurrence of rent and salaries constitute
3 progress under this contract?
4 A Absolutely. That's progress. I was sitting in
5 my living room one day and the next day I'm in a building
6 ready to go. That's progress toward getting this thing
7 set up and ready to go.
8 Q Now after this point of as you said, this was
9 not paid immediately and it didn't even begin processing
10 until the end of the month, at that point, at the
11 beginning of December, had Freedom incurred additional
12 costs that it wanted to submit as a second progress
13 payment?
14 A Yes, we did. We told them --
15 Q Then did you speak with Mr. Liebman about that?
16 A Yes, we told him we were coming in with another
17 progress payment and hurry up and get that one because
18 the second one was coming.
19 Q Okay. And what did Mr. Liebman tell you about
20 the first progress payment when you started talking to
21 him about these additional costs? Did he tell you that
22 anything about whether they should be processed
23 separately or together?
24 A No. He said that to just bring them down and
25 re-submit them on another one. Just add them into one

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1 and give it to him. He'll get them going. So that's
2 what we did. We didn't realize he was going to withdraw
3 the first one. And what he did with Pat, was told him to
4 just put it on one and re-submit it. In other words, the
5 time wouldn't change like, he's still going to get it out
6 but he didn't.
7 Q So, did you think that by taking Mr. Liebman's
8 suggestion and combining the amounts from the original
9 \$100,000 and now these additional costs, did you think
10 that would delay the processing of the \$100,000 request
11 at all?
12 A No, no we thought it would -- since DCAA had to
13 come out there we figured that they would -- it was
14 simple, it was no big deal. No, we didn't think it was
15 going to delay. We thought he was going to move out in
16 five to ten days and get payment.
17 Q If you'll look at now, the next Tab, Freedom PP
18 number one re-sub, which is Freedom progress payment
19 number one re-submitted.
20 A Right.
21 Q Bates stamp 2877, is this the re-submitted
22 progress payment that now combines the original \$100,000
23 cost and these additional costs you just described?
24 A Yes. This is it.
25 Q And this is dated December 7, 1984, correct?

1 A Right.
 2 Q And it's identified as one, re-submitted.
 3 A Right.
 4 Q Which we'll refer to this one in that way then.
 5 What's the liquidation rate that this request reflects?
 6 A 82.6 percent.
 7 Q What additional costs for this progress payment
 8 request -- did you submit additional back-up to support
 9 the request for progress payment?
 10 A Yes, we did. We gave him the breakout of the
 11 calculations of the costs of how we arrived at the costs.
 12 He already had a copy of the leases from Penzer and
 13 Freedom.
 14 Q Okay. Let me ask you first, the total amount
 15 requested in progress payment number one re-submitted is
 16 now \$252,150? Is that correct?
 17 A Yes. That's what it is, \$252,150, right.
 18 Q And that's determined by applying 95 percent to
 19 your total costs of \$265,421?
 20 A Yes.
 21 Q So is that consistent with the agreement with
 22 government to pay 95 percent progress payments on total
 23 costs?
 24 A Yes.
 25 Q Now you mentioned the additional costs that are

1 submitted the leases to Mr. Liebman prior to this. The
 2 arrangement, the leasing arrangement for Freedom involved
 3 a sublease. Is that right?
 4 A Yes, it did.
 5 Q Who was the original lease between?
 6 A The original lease was between Richard Penzer
 7 and H.T. Food Products.
 8 Q Okay. And who was the sublease between?
 9 A Between H.T. Food Products and Freedom
 10 Industries.
 11 Q And is that information that Mr. Liebman had
 12 prior to these progress payment requests?
 13 A Oh, yes, yeah. They had to be submitted back
 14 in September of '84, for IPP purposes to show that we had
 15 a building, and the building had to be inspected and it
 16 had to be approved for IPP, and it had to be approved for
 17 the Health Services Command.
 18 Q And is September 1984, when these two leases
 19 were entered into?
 20 A Yes, it was. September 12 and September 14.
 21 Q And without the need to refer to it right now.
 22 Just for reference, those are Tabs FT-52 and FT-53. Now,
 23 so Mr. Thomas, how did the billing work for the purposes
 24 of Freedom's incurrence of costs having to do with the
 25 lease? H.T. Foods was the lessor and Freedom was the

1 included in progress payment number one re-submitted,
 2 that are in addition to the \$100,000 in original progress
 3 payment number one. What are those additional costs?
 4 What type of costs are those? Additional salary costs?
 5 A Yeah, we've got G & A costs, manufacturing
 6 overhead is in here.
 7 Q Well, specifically, those are costs for
 8 additional salaries.
 9 A Right. It's for salaries. I'm hiring people
 10 now. I'm obligating -- Under the contract I'm starting
 11 to hire people. I'm starting to incur insurance costs,
 12 legal and accounting. I'm recruiting people, telephones,
 13 I'm beginning to. It's very nominal money but it's
 14 something that we wanted to show in good faith to Mr.
 15 Liebman, and we popped it in there for him.
 16 Q And is all of that work necessary for the
 17 performance of the contract?
 18 A Absolutely.
 19 Q And did that constitute progress under the
 20 contract?
 21 A It certainly did.
 22 Q The additional costs for progress payment
 23 number one, re-submitted included rent?
 24 A Yes.
 25 Q Now, you mentioned a moment ago that you had

1 sub-lessor. Did H.T. Foods -- H.T. Foods was billed by
 2 Mr. Penzer's company?
 3 A Right. He billed H.T. Food Products and we
 4 turned around and billed Freedom Industries. What we did
 5 was to just show that there was a full pass-through.
 6 That there was nothing here -- nothing being skimmed off
 7 the top as somebody had said. It was to show that
 8 Penzer's bill to H.T. was a straight pass-through,
 9 straight, directly to Freedom Industries.
 10 Q Okay. Was this lease and sublease arrangement
 11 entered into for business reasons having nothing to do
 12 with the administration of this contract?
 13 A Right, it was.
 14 Q Now, indeed when you submitted the back up for
 15 progress payment number one re-submitted, did you include
 16 the invoices showing both of those steps in the billing?
 17 A Yes, we did.
 18 Q Mr. Penzer's bill to H.T. Foods, and then H.T.
 19 Foods pass-through invoice down to Freedom?
 20 A Yes, we did. That's what's here, yes. It's
 21 all included and we were submitted this way so there was
 22 no need for DCAA to come out. It was given to Mr.
 23 Liebman. He could have done a desk audit. The DCAA had
 24 to then come to Freedom to see this of which they brought
 25 it with them and then sat down and, and when they sat

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1 down and looked at all this stuff, they then left and it
2 took them a long time to write up a report and then get
3 back to Liebman.

4 This was just not the five to ten days that we
5 were told or the five to ten days that Neal Rodenberg
6 negotiated with DPSC or talked about to DPSC. We even
7 include I see -- in this thing here at 2882 -- the
8 progress payment vouchers to be considered invoices.

9 Q Well, that's what I wanted to ask you, Mr.
10 Thomas. At 2882, I believe is the set of documents
11 consisting of three pages that you had referred to before
12 in terms of a -- I don't know if you called it a DAC --
13 but a change in the payment policy so that this was a
14 contract that should be paid within five to ten days. Is
15 this the document you were referring to?

16 A This is what Neal Rodenberg had with him when
17 he was down in Philadelphia.

18 Q Did you actually submit this to Mr. Liebman
19 with the progress payment request?

20 A Yes. It was included in here. It was either
21 right behind the top sheet. I see it somehow got put in
22 a different, you know, two pages below this -- but you
23 know in copying -- but it was really up front so he could
24 see it -- of what his obligations were.

25 Q Okay. Now, were there any costs that Freedom

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1 had incurred for which it was requesting progress
2 payments that it didn't submit back up for in this
3 re-submitted progress payment number one?

4 A No. We gave them everything we had and Pat
5 Marra, I told him -- I said, "Give them to him. Give
6 them everything they need."

7 Q That's fine. Now turning to Tab A.

8 A All right.

9 Q You had testified earlier about the rejection
10 of progress payment number one. Is this the letter by
11 which Mr. Liebman rejected progress payment number one
12 because of the automated progress payment system
13 problems?

14 A Yeah, that's what he said. That if I didn't
15 have it just so-so, that the system would reject it. So
16 we were then -- we brought it back and we were --

17 Q Now this, let me ask you. This letter is dated
18 December 18, 1984, correct?

19 A Right.

20 Q So, in fact, as he said here, this was a
21 rejection of progress payment number one re-submitted
22 which was the \$252,000.

23 A Right.

24 Q This is the progress payment that had the first
25 progress payment rolled into it and that was now going to

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1 be

2 reprocessed, correct?

3 A Right.

4 Q Which you didn't realize at the time that he
5 told you to do that?

6 A Right.

7 Q Now, the specific items or reasons for which
8 progress payment number one re-submitted were rejected
9 included these items listed here which included item
10 number five, the --

11 A Yes, yes. There was just a rounding effort
12 there and blanks. He didn't want us to put -- he wanted
13 a zero instead of a blank.

14 Q Okay. So that's item 14-E, right? Zero in
15 lieu of blank? That's what you're referring to?

16 A Yes, right.

17 Q Item five, because the \$17 million contract
18 number ended in \$928 and he wanted you to put in \$929
19 because you're supposed to round up. Is that right?

20 A But if it was going to round up it would go to
21 30. I mean, okay, I don't understand that, but anyway,
22 yeah.

23 Q Well, I'm fascinated enough to actually look
24 back to the first page of Freedom progress payment number
25 one re-submitted, the actual request at 2877, and in item

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1 five, that's the box that says, contract price,
2 \$17,197,928.

3 A Right. That's what we agreed to -- that
4 number. We didn't agree to it to be more than that.

5 Q And he wants you to put in \$17,197,929?

6 A Right. I'm not, I didn't get an extra dollar
7 from the government.

8 Q Now item six indicates that Mr. Liebman wants
9 you to put in 95 percent in lieu of 82.6 percent.

10 A Right.

11 Q Does that refer to your liquidation rate?

12 A That's not the one that we agreed upon and we
13 told him that.

14 Q I understand. But is item six from your
15 progress payment request, does that refer to the
16 liquidation rate?

17 A Yes, it does. That's box, item six, is the
18 liquidation rate box.

19 Q And you're, as you've testified to quite
20 extensively, was that the liquidation rate that you had
21 agreed to with DPSC?

22 A Yes, the 82.6 percent was liquidation rate that
23 DPSC calculated after we decided on what the profit rate
24 would be.

25 Q And not the 95 percent that Mr. Liebman --

1 A Not the 95 percent.
2 Q Okay. And the rest of the examples here are
3 obvious. Now, Mr. Liebman says that the reason for all
4 of these critical changes in your progress payment
5 request are because in order to allow payment through the
6 automated progress payment system, correct?

7 A Yeah, that's what he said, right.

8 Q Now that's a system that is designed to pay
9 progress payment requests more quickly, correct?

10 A That's what I heard it was. So we, we said,
11 "Fine. Let's get in this system and get, get going."

12 Q Now, in fact, were any of Freedom's progress
13 payment requests ever processed with the automated
14 progress payment system?

15 A No. Every Freedom progress payment was what I
16 call, third-based in his office. He wouldn't even let it
17 go to the finance office. He held it, ran it to DCAA, ran
18 it to this one, ran it to the janitor, he ran it to
19 everybody and then he turned around and if the DCAA said
20 pay, and this one said pay, and the janitor said don't
21 pay, he relied on the janitor, and I'm not kidding about
22 that. Anybody that said, no, he decided he got a no from
23 somebody in there. Even if they had no authority to say,
24 no.

25 Q Mr. Thomas, in light of Mr. Liebman's professed

1 can always go back and fix that because that doesn't
2 apply to anything until down the road when we get in
3 July. That's when that's going to affect it so, we'll
4 wait until we get to down there and you guys should have
5 internally have fixed all this and resolved these
6 issues."

7 So we put him on notice about that this is
8 something that we're going to have to revisit but, but
9 we're not acquiescing to our 82.6 percent agreement with
10 DPSC.

11 Q Okay. Well in fact, if you look at the -- do
12 you recall that there was a post-award meeting with Mr.
13 Liebman, on December 14, 1984?

14 A Yes, I do recall. There was a meeting.

15 Q And do you remember that on the Monday
16 following that meeting, Mr. Marra called DCASMA in order
17 to tell them that Freedom had an 82.6 liquidation rate?
18 If you'll refer to FT-076 bravo.

19 A FT-076 B.

20 Q FT-076 bravo. I'm sorry, alpha. FT-076 alpha.

21 A Yeah.

22 Q This is a conversation record of a call from
23 Mel Zitter to Keith Ford. Who was Mel Zitter?

24 A Mel Zitter was Marvin Liebman's assistant or
25 something, yeah.

1 concern here to get you paid through the automated
2 progress payment system, which you just testified didn't
3 actually happen, I know, was this letter hand-delivered
4 to you?

5 A I don't know. I don't remember.

6 Q I note here that it says, "return receipt
7 requested, certified mail." Do you remember receiving
8 this letter? Do you remember how you received this
9 letter?

10 A No, I don't.

11 Q That's so, the only information you have would
12 be what's reflected here in this document. That it was
13 sent certified mail to you?

14 A Right, right. But it would have got to me if
15 it was so --

16 Q Okay. Whenever it was that you got this
17 letter, did you then turn around and make the changes
18 that Mr. Liebman requested?

19 A I believe we did.

20 Q To the best of your knowledge, did you also
21 change the amount of the liquidation rate requested?

22 A Well, due to the fact that if there was
23 something that they had to do on their side to make it
24 happen, and we wanted to get this thing done we said,
25 "Fine, Mr. Liebman. Here it is. Anything you want, we

1 Q Okay. And Mr. Ford was one of the buyers for
2 DPSC?

3 A He was the one that negotiated the contract.

4 Q And this conversation records that Mr. Zitter
5 called Mr. Ford and was talking about a "alternate
6 liquidation rate of 8.26 percent has been proposed." Now
7 this is the Monday following that Friday meeting.

8 A Well, it is no longer proposed. It's actually
9 existing now in effect, as far as them accepting it at
10 the negotiations so it had been proposed, and it has now
11 been accepted by the government.

12 Q Well, that was going to be my question. And
13 Mr. Thomas, at least according to Mr. Zitter's report,
14 does he indicate here that the contract according to him
15 and his department, DCASMA, the contract would actually
16 have to be modified to include this 82.6 percent?

17 A That's what this says. We knew nothing about
18 this.

19 Q Okay. So to the extent that you changed the
20 liquidation rate in subsequent progress payment requests
21 from 82.6 percent to 95 percent, was that because of your
22 agreement that the 95 percent liquidation rate was the
23 one actually in effect?

24 A No. The one that's in effect is 82.6, but
25 until Liebman and Bankoff and Barkewitz I mean, get their

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1 internal processing together, Liebman rejected it and he
2 said he can't accept it so, I'm showing him how we did it
3 but it's up to them. So they said they'll go to DPSC.

4 Q Okay. Now this is December 17, one month after
5 contract award and at this point, you've incurred at
6 least \$252,000 in costs and how much have you been paid
7 so far?

8 A Paid out?

9 Q From the government.

10 A I haven't got nothing. I've got no money.
11 They haven't given me a dime.

12 Q Did that play a role in your accepting
13 Mr. Liebman's --

14 A I wasn't trying to create a problem for him --

15 Q Okay. Let me just finish the question. Did
16 that play a role in your decision to put down 95 percent
17 liquidation rate on your progress payment requests until
18 you could get this thing worked out?

19 A Absolutely. We wasn't doing anything other
20 than saying, "Okay, we'll give you what you want but yet
21 and still, you've got to go back and get DPSC to
22 acknowledge what we discussed and how we arrived at the
23 82.6 percent."

24 Q Mr. Thomas, did you hear anything else about
25 progress payment request number one or one re-submitted,

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1 from Mr. Liebman until you received the letter on January
2 4, 1985, telling you that he was considering suspending
3 progress payments?

4 A No. I don't think we did. We were busy making
5 ready and talking to people and, and getting things done.
6 I don't think I heard from him. I'm not sure though.

7 Q Okay. Now, I want to discuss for a moment this
8 December 15 post-award meeting. Were you aware that the
9 government -- and tell me the purpose of that meeting on
10 December 15, 1984. Where did it take place?

11 A I believe that's the post-award meeting?

12 Q Yes, and I'm sorry. If I referred you to
13 December 15, I apologize. I believe it's December 13 and
14 14. December 13 was a government-only meeting and
15 December 14 was Freedom's meeting.

16 A Right. The post-award meeting at 14 December
17 was at Freedom Industries, in our conference room.

18 Q Now, where did that take place?

19 A It took place at Freedom, 1600 Bronx Dale
20 Avenue, in the conference room. We had about thirty
21 people in there according to this.

22 Q As I mentioned, were you aware that the
23 government conducted a meeting first, the day before this
24 meeting with you?

25 A I knew that they were coming in to organize to

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1 come up and talk about the award of the contract and tell
2 us certain things and what they expected and what have
3 you.

4 Q Okay. Now, at the meeting at Freedom on
5 December 14, 1984, there were actually two stages to the
6 meeting, correct?

7 A There was two what?

8 Q Two stages to the meeting?

9 A Yes, there was.

10 Q There was a general meeting first.

11 A Right.

12 Q And then there was a meeting of just the
13 financial people for Freedom with Mr. Liebman and the
14 DCASMA representative. Is that correct?

15 A Right.

16 Q At any point during the initial meeting, the
17 general meeting or the financial meeting, did Mr. Liebman
18 indicate to you that there was any problem whatsoever, in
19 the government's mind with paying Freedom's progress
20 payments, the ones that had been submitted so far?

21 A No. No. It says under review and decision
22 would be coming, I believe.

23 Q Did he tell you that at that point, even as of
24 December 14, 1984, that he was actually considering not
25 paying Freedom at all?

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1 A No, no. If he had said that -- the PCO was
2 sitting in the room. If he had said something we could
3 have easily had the two negotiators that were there, I
4 think Captain Parsons was up here too, at that meeting --
5 but I do see that Keith Ford was there and I believe the
6 PCO, and I believe Captain Parsons. Matter of fact, I
7 know they were there.

8 Q Can I ask what you're referring to, Mr. Thomas?

9 A The sign-in sheet 0947, at Freedom. The 14
10 December '84 meeting, Barkewitz, Liebman, let's see, Ford
11 --

12 Q Could you give us a Tab, please?

13 A Oh, I'm sorry. FT-083, I'm sorry, 073. FT-073.

14 Q Okay. FT-073 is a handwritten sign-in sheet.
15 two handwritten sign-in sheets. One from the 12/13/84
16 post-award conference, that's labeled "Government
17 Meeting," correct?

18 A Yes, it is. That's right.

19 Q Two pages later, at Bates stamp 947, appears to
20 be the Freedom Industries post-award sign-in sheet from
21 December 14.

22 A Right.

23 Q The pages that follow, the handwritten notes
24 that are dated December 14, 1984, do you know whose
25 handwriting that is?

1 A We got this out of Marvin Liebman's file. I
2 believe it was Marvin's writing. This looks like it.

3 Q Okay. So to the best of your understanding,
4 are the notes that Mr. Liebman took at the post-award
5 meeting?

6 A Yes. This is Marvin's, looks like, -- yeah,
7 this is his handwriting.

8 Q Now I'd like to direct you to FT-074. Did DPSC
9 prepare a report of travel also? Well first of all, DPSC
10 was also represented at the meeting?

11 A Yes, they were.

12 Q Did DPSC prepare a report of travel recording
13 what happened at those meetings?

14 A Yes, they did, yes.

15 Q If you'll turn to FT-074.

16 MS. HALLAM: Again your Honor, this document's
17 already in the record. I believe it's at F-125.

18 JUDGE JAMES: F-425, Ms. Hallam?

19 MS. HALLAM: I think it's F-125, is what I had
20 written down. F-1, Sub-tab 25.

21 JUDGE JAMES: F-125 has got a 15 April '86
22 memorandum, ma'am.

23 MS. HALLAM: Now there's an F-1 that has a
24 number of Sub-tabs. The first F, F-1, Sub-tab 25 is a
25 report of travel, December 18.

1 MR. LUCHANSKY: Your Honor, thank you.

2 JUDGE JAMES: F-1 in my collection is just a
3 big glob of papers. It has no sub-tabs.

4 MR. LUCHANSKY: Yes, your Honor. There used to
5 be sub-tabs. They weren't included here. The version
6 that's an exhibit to number one is even a worse copy than
7 the one we have here in FT-422 and we just thought it
8 made sense to -- or, at FT-074 -- we thought it made
9 sense to put in a legible copy.

10 BY MR. LUCHANSKY:

11 Q Mr. Thomas, looking at FT-074, this is the
12 report of travel to New York reported by Keith Ford, the
13 buyer for DPSC. Now this was the buyer who, this is the
14 buyer who worked with Mr. Barkewitz in negotiating the
15 contract with Freedom?

16 A Yes, he is.

17 Q Now, if you turn to page two, at the top of
18 page 961, you see that Mr. Ford reports that there was a
19 topic that was discussed that caused the most heated
20 debate of the day. Once again, this was at the
21 government-only meeting the day before Freedom, correct?

22 A Yes. This is absolutely the meeting that we
23 heard about but didn't have anything until after we got
24 this document to find out what was really going on. We
25 heard about what went on.

1 Q And when you say you heard about it, do you
2 mean to say that you knew that the meeting occurred.

3 A Yes, I knew it occurred. And I knew that, that
4 there was --

5 Q But you hadn't received any information about
6 specifically what had been discussed at the day before?

7 A Well, Captain Parsons did say to us that the
8 auditors was trying to not pay or not to do something and
9 that DPSC is not going to stand for it.

10 Q Okay. When did Captain Parsons say that to
11 you? Was that at the next day, or later on?

12 A I think it was. I believe it was but I can't
13 say for sure. I can't say for sure. But I do recall
14 Captain Parsons --

15 Q Okay. And did Captain Parsons lead you to
16 believe -- well, let's look first at what the problem is
17 at least according -- as it's reported by Mr. Ford.
18 There's an indication that Freedom had submitted its
19 first progress payment and that no decision had been made
20 yet on it, whether to pay it. This is now December 13
21 and your first progress payment had been submitted
22 November 16, correct?

23 A Right.

24 Q Now, he indicates that DCAA auditors and legal
25 are sharply divided over whether Freedom's progress

1 payments are eligible or should be paid.

2 A Right.

3 Q Now at this point Mr. Sansone is one of the
4 DCAA auditors?

5 A Yes.

6 Q He indicated that because Freedom was
7 insolvent, it was not financially stable and, therefore,
8 ineligible for progress payments, correct?

9 A Yes.

10 Q Other than incurring the additional costs in
11 connection with making progress on this contract, had
12 Freedom's financial condition changed from the time of
13 award, November 15 to now, December 13?

14 A No, no. It had not changed. We were in the
15 same condition that we were in when we were negotiating
16 the contract. The same condition financially as when
17 they awarded the contract. On the day of the award of
18 the contract we were in the same condition.

19 JUDGE JAMES: Mr. Luchansky, I've got to warn
20 you of this. That you're asking this witness, and so is
21 your brother, about various government communications
22 either in documents or verbally as to which, they're here
23 in the record but there's no foundation laid as how this
24 man at the time, could possibly have known of these
25 communications. Now, I'm just telling you, I'm listening

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1 patiently to what he's saying, but I'm going to put very
2 little probative weight on it.

3 MR. LUCHANSKY: Okay. Your Honor, just the
4 point is only to bring out what was discussed there to
5 find out whether that was --

6 JUDGE JAMES: What was discussed is in the
7 record at least according to the man who wrote this, all
8 right? But this man, Mr. Thomas, wasn't even there at
9 the meeting on the 13th, so far as he's testified. So
10 what he could possibly know, I don't understand how you
11 can even ask him.

12 MR. LUCHANSKY: The question is only whether he
13 was informed of these facts the following day. That's
14 the only point, your Honor and I don't know how else to
15 identify the facts that I'm asking him whether he was
16 informed of it the following day unless I identify, in
17 the record, what those conversations are. That's the
18 only reason I'm identifying them, your Honor.

19 BY MR. LUCHANSKY:
20 Q At the December 14 meeting, the Freedom
21 post-award meeting, were you told that DCAA had taken the
22 position that Freedom shouldn't be paid any progress
23 payments at all until direct labor and raw material costs
24 were incurred?
25 A I don't think they told us that at that

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1 meeting. I don't believe that we was informed of it on
2 the 14th. Everything was going fine. We were informing
3 them of our progress, what we were doing and what my
4 steps were, and who I was talking to for financing.

5 Q Tell me about what happened on December 14, at
6 the post-award meeting of the financial people. The
7 second stage of the Freedom post-award meeting. Did you
8 discuss with Mr. Liebman and the government people, the
9 fact that Freedom was considering not using Dollar
10 Drydock for financing at that point?
11 A Yes, we did. We gave them a 30 November
12 article in the newspaper that said that five big banks in
13 New York had landed in the red. And we saw that, and
14 there was going to be a shake-up going on we understood
15 or something, but we understood that Dollar Drydock had
16 landed in the red and that I decided that -- told them
17 I'm considering not using Dollar Drydock. That I'm going
18 to probably be using Broadway Bank instead of Dollar.

19 JUDGE JAMES: What is this phrase, "landed in
20 the red," mean to you?
21 THE WITNESS: It meant that they lost a lot of
22 money over a period of time and that somebody is putting
23 them in a category that they're in a loss of money mode.
24 They landed in the red is what the article says.
25 JUDGE JAMES: So the banks are insolvent?

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1 THE WITNESS: No, the bank is not insolvent,
2 no.

3 BY MR. LUCHANSKY:
4 Q Did you submit to Mr. Liebman, a newspaper
5 article reflecting the fact that Dollar Drydock had been
6 reporting as suffering recent losses?
7 A Yes, I did. And that could impact on their
8 lending ability to community-based type programs which
9 ours were.

10 Q Your Honor, I know it's in the record when I
11 have the opportunity to identify it I will do that. But
12 you presented that article to Mr. Liebman?
13 A Yes. Yes, we gave it to him.

14 Q Now to the best of your knowledge, at that
15 point, December 14, 1984, was Dollar unavailable to you?
16 Let me ask it this way. Had Dollar indicated to you that
17 they were not willing to provide financing in any way?
18 A No. Dollar was waiting for the progress
19 payment monies that I told them that we had submitted to
20 the government to be paid so that they could reopen our
21 checking accounts.

22 Q Okay. If you had wanted to use Dollar Drydock
23 at that point, was it your understanding that you could?
24 A Sure. Absolutely.
25 Q And that they would be willing to reach a

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1 lending agreement with you?
2 A Absolutely. I mean, there still our partner.
3 They still own stock in Freedom.

4 Q At that point, December 14, 1984, had Dollar
5 indicated to you that there were any additional, or new
6 conditions to issuing a loan to Freedom than what had
7 been discussed before?
8 A No. Nothing at all. Everybody was just
9 waiting for the progress payment, good faith, or the
10 progress payment obligation of the government to come in
11 so that the, everything could get started.

12 Q Now there was a discussion at that meeting,
13 December 14, that Dollar had indicated a desire to make
14 an arrangement, for Freedom to make an arrangement with
15 its creditors, according to Mr. Liebman's handwritten
16 notes. Do you remember a discussion along those lines?
17 A No, I don't.
18 Q Okay.
19 A Oh, it's at -- it's at the back of, I'm sorry.
20 Here it is.

21 Q You can take my word for it for the moment. If
22 you don't remember it, you don't remember it. But based
23 upon your relationship with Dollar and your business
24 experience, what do you understand an arrangement with
25 your creditors, and now I'm speaking specifically about

1 the creditors Freedom had on this date, what do you
2 understand an arrangement with your creditors to be?

3 A I could always make arrangements with anyone to
4 pay them. Everybody would like to have their money. So
5 whenever I tell them I'm coming with dollars is the
6 arrangement that -- I'm the one that's got to make the
7 payment. So, since I've got to make the payment, I'm the
8 one that would go to them and tell them, "Here's when you
9 will receive 'X', here's when you will receive more, and
10 here's when you're going to do it."

11 Q Now to the best of your recollection, had
12 Dollar indicated to you at this point that making an
13 arrangement with your creditors was in any way a firm,
14 fixed condition to advancing you a loan?

15 A I don't believe so. We didn't know anything
16 about Dollar's anything, until about a few weeks later.

17 Q You testified earlier about some of the
18 alternative sources of financing that you were
19 considering, Broadway Bank, Richard Penzer, Zeb Robbins,
20 Clarence Stanley at Citi Bank?

21 A Right.

22 Q Were you considering some of these alternative
23 sources of financing at this time, December 14?

24 A No. No, I don't believe I was. I don't think
25 so, except Broadway Bank. That's the only one I told

1 their money. They can keep their money. I will go over
2 the bridge and borrow the money for 9 percent from Dick
3 Lanza.

4 Q And Dick Lanza was the President of Broadway
5 Bank?

6 A I think he was the Vice-President, the E.V.P.
7 But Dick Lanza was, definitely wasn't going to be
8 charging us no 15 or 20 percent or whatever the rate was
9 that Siekert was talking.

10 Q Now when you raised this point at the financial
11 meeting, at the post-award meeting, did anyone for the
12 government throw up their hands and express an alarm that
13 somehow Freedom no longer had financing from Dollar?

14 A No. Absolutely not. There was nothing. We
15 knew absolutely nothing, nothing.

16 Q Did Mr. Liebman say anything about questioning
17 Dollar's commitment or how, what kind of problems there
18 were?

19 A No.

20 Q Did Mr. Liebman give you a certain amount of
21 time to make a decision on which bank or which source of
22 financing Freedom was going to use?

23 A No. We told Mr. Liebman we needed the progress
24 payment so we could go and show them that here's how the
25 deal works. And you walk in the door with \$100,000 to

1 them. I said I'm considering not using Dollar, I'm
2 considering using Broadway. That's all I said to them.

3 Q Okay. So Broadway Bank was the alternate
4 source of financing that you were actively considering at
5 that time?

6 A Yes, because their rates were cheaper.

7 Q And although you weren't actively considering
8 some of the other sources we just listed, were you aware
9 that they had all expressed some willingness to extend
10 credit for this contract if you needed it?

11 A Yes. Mr. Luchansky, in past years I have had
12 money out of Freedom National Bank, Citi Bank, several
13 lenders all at the same time. Depending on what I'm
14 doing and what phase of my operation, I could have credit
15 card accounts, I could have all kinds of bank account
16 loans open.

17 Q Well, let me ask you that question. As a
18 businessman, why would you consider alternative sources
19 of financing if you already have one source of financing
20 who you believe to be available?

21 A It's a, you've got to understand it. Dollar
22 Drydock was not a commercial bank or you know, they were
23 not, they were trying to make money I guess, and their
24 rates were higher. I'm not going to give, just because
25 they're my partner and they want 15 percent, I don't need

1 start an account with one of these banks and you get the
2 red carpet rolled out.

3 Q Mr. Thomas, you explained to Mr. Liebman and
4 the crew your understanding that Freedom no longer need
5 \$7.2 million in financing, at this meeting?

6 A Absolutely. That came across loud and clear at
7 that meeting. The 7.2 was down, 5 percent was in, 95
8 percent was his end and between him and Pat Marra, they
9 discussed something like \$3.3 million which is the gross
10 amount of the 1.5 plus Pat's 1.3 or 1.4 or 1 point
11 something.

12 Q Did anyone for the government express alarm at
13 that discussion?

14 A No. Nothing.

15 Q Did anyone say, "What are you talking about,
16 you don't have \$7.2 million in financing?"

17 A Nobody said anything, no.

18 Q Did anyone tell you that the government relied
19 on \$7.2 million in financing to award this contract, what
20 are you talking about?

21 A No, there's nothing. We had nothing, nothing
22 at all.

23 Q Did Mr. Liebman or anyone for the government
24 tell you at that meeting that they wanted to contact
25 Dollar personally to discuss what Dollar's intentions

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1 were?

2 A It didn't matter. I told them I'm considering

3 not using Dollar.

4 Q But I'm asking you, did --

5 A Nobody said nothing, no. They didn't say

6 anything about ever calling or contacting Dollar or

7 anything.

8 Q Did they ask you if they could have permission

9 to contact Dollar if they wanted to?

10 A No, they didn't.

11 Q Now, on December 17, 1984, were you aware that

12 four officials in Mr. Liebman's office, Mr. Liebman, Col.

13 Hein, I think it's Mr. Gut Fleiche and Mr. Stern,

14 conducted a speaker phone telephone conversation with

15 Dollar Drydock, with Noel Siegert?

16 A Did I know it at the time?

17 Q You're aware of that now, correct?

18 A I'm aware of it now, yes.

19 Q Okay. Were you aware at the time on December

20 17, did anyone call you on December 17 telling you that

21 discussion between the government -- those four people at

22 the government and Noel Siegert, was taking place?

23 A No. Absolutely not.

24 Q Now on December 18, 1984, Mr. Liebman wrote you

25 a letter and I'm sorry the reference escapes me for a

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1 moment. The Court's indulgence, your Honor. G-12.

2 A G-12, okay.

3 Q Now this letter is dated December 18, 1984.

4 This is the same date that Mr. Liebman sent out that

5 request for correction on progress payment number one,

6 re-submitted, correct?

7 A Yes, I believe so, right.

8 Q In this letter, G-12, Mr. Liebman is asking you

9 for a number of items of information. The first one --

10 JUDGE JAMES: Well, Mr. Luchansky, we've got a

11 disconnect. The Board's copy of G-12, G-12 is a letter

12 probably from this witness, Mr. Thomas.

13 MR. LUCHANSKY: I made the same error that my

14 co-counsel has been making in which I told myself I

15 wouldn't make. I mean, government Rule 4-12. No letter

16 designation in front of it.

17 Before the trial exhibits were submitted, we

18 had been referring to the government's exhibits as "G"

19 and it's become a habit.

20 BY MR. LUCHANSKY:

21 Q Mr. Thomas, do you have in front of you

22 government's Rule 4, Tab 12?

23 A Yes.

24 Q This is the letter you received from Mr.

25 Liebman?

1 A Yes.

2 Q And in the first two items, Mr. Liebman asks

3 you how much funding you need in addition to progress

4 payments, how much is needed for the contract, and where

5 do you propose to get it from.

6 A Right.

7 Q Now, what did you think Mr. Liebman -- what was

8 your reaction to this letter? What did you think Mr.

9 Liebman -- what did you understand the reason that Mr.

10 Liebman was asking for this information?

11 A I don't know. I remember that I was a little

12 befuddled by it but I quickly got my crew team together

13 and we responded to it to tell him -- to educate him to

14 what had happened, and what was going on, and how we were

15 doing it.

16 Q Let me ask it this way. Mr. Thomas, is the

17 same information that you had just discussed with Mr.

18 Liebman, just a couple of days ago on that Friday at the

19 post-award meeting?

20 A Yes, it is. I mean, that's right.

21 Q So was it surprising at this point to the get

22 the letter from Mr. Liebman, again, asking for that

23 information?

24 A Absolutely. This is like, we just discussed

25 this about how much money we needed, where I was going --

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1 to Broadway Bank, everything we had discussed he's now

2 putting in writing and asking me to put it in writing to

3 him.

4 Q Okay. At the meeting on Friday, had Mr.

5 Liebman indicated to you that he was going to do this?

6 That there was a need to just put all this in writing?

7 A No.

8 Q At letter "I" in Tab 12 that we're looking at,

9 Mr. Liebman asks about the status of Dollar Drydock's

10 \$7.2 million commitment letter.

11 A Right.

12 Q Is that something you'd also discussed at the

13 post-award at last Friday?

14 A Yes. We told him that, that had been basically

15 negotiated away at the table. That there had been an

16 increase to the L-4 clause. We showed him the cash flows

17 that Pat Marra had, and that, that 7.2 was now whatever

18 the numbers was, and we were going in a different

19 direction.

20 Q At this point, had Mr. Liebman told you that he

21 had contacted Dollar Drydock the day before?

22 A No, he hadn't told me nothing.

23 Q Okay. On December 20, 1984, you had a meeting

24 with the Dollar Drydock people, correct?

25 A Right.

1 Q Is that something that they called, do you
2 recall?

3 A Yes. I believe, let me see, the 20th -- I
4 believe Dollar Drydock -- yes, Mike Durso told me that he
5 had been -- Mike Durso called us, I think. That's it,
6 that's what happened. I think Mike Durso called us.

7 Q Okay. That's all I'm asking you for right now.
8 Mike Durso called you and called this meeting. During
9 this meeting -- and we'll get into the substance in just
10 a moment, but did anyone at Dollar indicate to you during
11 that meeting that they had been called by Mr. Liebman on
12 Monday, a couple days before?

13 A I believe --

14 Q To the best of your recollection?

15 A I'm not sure, but I think that's where Mike
16 Durso just told me that I'm going to have to deal with
17 Siegert because he's been told to stand down, parade
18 rest, on the Freedom Industries project.

19 Q Okay. Well, let me direct you to Exhibit F-27.

20 No, that's not the right reference, I'm sorry, FT-83.

21 MS. HALLAM: It's at Rule 4, Tab 14, I believe.

22 MR. LUCHANSKY: No, actually that's not the
23 letter that I was looking for.

24 MS. HALLAM: Okay. I apologize.

25 BY MR. LUCHANSKY:

1 Q FT-83. Let me know when you have it, Mr.
2 Thomas.

3 A All right. FT-83 right here. Okay, yeah, same
4 document.

5 Q Okay. Mr. Thomas, this is a December 27 letter
6 from Mr. Siegert to Freedom Industries. It's addressed
7 to "Dear Sirs"

8 A Yes.

9 Q Had Mr. Siegert written letters to you at
10 Freedom before?

11 A I believe, yeah, yeah. He never was so formal.

12 Q Had he ever addressed letters to, "Dear Sirs"
13 before?

14 A No.

15 Q Here he records, he purports to record
16 information that was discussed between Freedom and
17 Dollar, at the December 20 meeting that we were just
18 talking about.

19 Does this information now reflect additional
20 points that Dollar now wants to discuss with respect to
21 the financing it would be willing to provide to Freedom?

22 A Yes, it does.

23 Q Was that December 20 meeting the first time
24 that you had, that Dollar had raised the points that are
25 included in this letter?

1 A Yes, it is. They was, it's like I had told
2 them that, what financing was needed. We told them that
3 a progress payment was coming and it didn't come and the
4 financing that Pat Marra and I had told them was
5 necessary and negotiated, was all of a sudden, well the
6 government is telling them that it's something different.

7 Q Were you willing to accept all of the factors
8 that Dollar was now including in this letter as part of a
9 loan agreement with Dollar?

10 A Yeah, I could work with them on this. I told
11 them that there's certain things I will do and certain
12 things I'm not going to do. I know they wanted a certain
13 rate, they wanted certain things, and they wanted us to
14 all of a sudden waive back salaries and we told them, "No
15 we're not doing that. Our men have worked all this time
16 and put this thing together." We're not doing certain
17 things.

18 Q So there's certain elements that were
19 unacceptable to you?

20 A Absolutely.

21 Q But at that point, were you still optimistic
22 that you might be able to get financing from Dollar and
23 work out the points?

24 A Yes, I could have worked it out with them.

25 Q And that is assuming that in the end, you

1 hadn't worked out financing with one of the other sources
2 of financing?

3 A Absolutely.

4 Q By this point, by the time you received this
5 December 27 letter, had anyone told you that Mr. Liebman
6 had contacted Dollar with the three other people on that,
7 "squawk box," as Mr. Liebman calls it, back on December
8 17?

9 A No. I don't believe we knew it. I just knew
10 that Mike Durso told me that he been told to stand down,
11 parade rest, and that I had to go through Siegert. But
12 one of the things that Bill Wheeler also had told me is
13 that I would have to now deal with a Mr. Steel. And
14 Steel is the one that's right, Bob Steel is the one that
15 says, "Henry, deal with Siegert now." And they had took
16 Mike Durso off of this project.

17 Q Okay. And did you then write to Dollar
18 Drydock, to Noel Siegert in response to this letter we
19 were just looking at, and tell him that you thought that
20 Freedom could meet the conditions that he had laid out
21 and that you would still try to work out a deal with
22 them?

23 A Yes. I thought this was all a negotiation
24 posture in order to wriggle around or do some things in
25 the company and talking about partners that I had and

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1 what have you. Because we went in there with an equity
2 partner, Majic Pantry, that was part of my team that
3 helped put together some of the technical stuff.

4 Q You answered my question, Mr. Thomas. Around
5 this time, December 26, 1984, did Mr. Liebman then
6 request a subordination agreement from Freedom?

7 A December, what?

8 Q December 26, 1984.

9 A He may have.

10 Q F-26.

11 A Yes, yes, and we gave it to him. We gave him
12 what he wanted.

13 Q Okay. And I had stated the date was December
14 26 and I'm wrong. It's December 27, but it is at F-26.

15 Again, at this point were you surprised to see
16 Mr. Liebman asking for subordination agreements?

17 A Yes, I was. I wasn't sure why, you know, this
18 puts me -- if I've got to now go to Dollar and say, "I
19 owe you \$4 million I want you to subordinate." It, it
20 puts me in an awkward position to run around to creditors
21 now because it give a condition that in order for me to
22 move with the government, I've got to now go deal with
23 them.

24 Q Okay. During your negotiations with -- now
25 this says, Mr. Liebman is asking for the subordination

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1 agreements because of Freedom's questionable financial
2 condition. At that point, did you understand what he
3 meant by questionable financial condition?

4 A Well, no. Because everybody knew that Freedom
5 was put in the hole as a result of the government's
6 actions. So therefore, it's something that everybody
7 knew.

8 Q Okay. At this, by this point, December 27, or
9 whatever date you received this letter from Mr. Liebman,
10 had Mr. Liebman or anyone from the government indicated
11 to you that they believed that Dollar Drydock had now
12 pulled out its financing from Freedom?

13 A No, I don't believe, I don't believe they had
14 said anything at this point. I'm not -- I don't believe
15 so.

16 Q During your negotiations with DPSC, did anyone
17 at DPSC require Freedom to enter into subordination
18 agreements with its creditors as a condition to awarding
19 you this contract?

20 A No, it didn't. Absolutely not.

21 Q Now, yesterday we had looked at government Rule
22 4 file, Tab 13, which is your response, which is a letter
23 describing your potential alternative sources of
24 financing.

25 A Yes. In reply to his letter of the 18th, I --

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1 Q Okay, well, that's the question, Mr. Thomas.

2 Yesterday, during cross-examination of Mr. Marra, on this
3 document there was only a discussion about this December
4 26 letter itself. Is this letter a response to Mr.
5 Liebman's December 18 letter to you, at government's Rule
6 4, Tab 12?

7 A Right.

8 Q Is this your response to that letter?

9 A Yes, it is.

10 Q And at this point, as you're responding to his
11 request about how much, to describe how much funding you
12 think you need for the contract and where you think
13 you're going to get it from, has anyone from the
14 government indicated to you this concern or fear that you
15 didn't have any funding at all, and that you didn't have
16 any funding at all?

17 A No. No, that's why I put in there that the
18 funding, we were counting on 95 percent progress payment
19 as the funding from the government and, that I had
20 private financing of 5 percent.

21 Q Did you firmly believe that the funding sources
22 and the funding amount that you put in your December 26
23 letter would be sufficient to finance Freedom's
24 performance of this contract?

25 A Absolutely. I had every bit of financing I

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1 needed in order to do this contract the way I negotiated
2 it.

3 Q Now if Mr. Liebman -- did Mr. Liebman respond
4 to this December 26 letter by telling you that he
5 disagreed and thought that the amounts that you laid out
6 here, or the sources that you had discussed here were
7 unacceptable to him?

8 A I don't believe, I'm not sure. I don't know.

9 Q Okay, well -- let me rephrase that for you, Mr.
10 Thomas. To the best of your recollection, did Mr.
11 Liebman, well, did Mr. Liebman call you up and say, "I
12 got your December 26 letter and I've got some concerns
13 about what you're laying out here. I kind of think that
14 you need more financing than the \$415,000. Come in and
15 talk about it." Any phone calls like that?

16 A No, no. He never said nothing like that.

17 Q Any letters suggesting that he had a concern
18 and that you guys should talk about it and --

19 A No. He did not. So we just left it like that
20 and we thought that was it until later on when no money
21 was coming.

22 Q Well, in fact, the next contact that you had
23 from, from Mr. Liebman, was a letter dated January 4,
24 1985, telling you that he was considering holding
25 progress payments in abeyance, considering returning your

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1 progress payments, and considering suspending progress
 2 payments. Is that right?
 3 A That the next time I believe that he did in
 4 fact write something to me was the 4th of January.
 5 Q What was your reaction to that letter, Mr.
 6 Thomas?
 7 A Totally befuddled. Totally twisted. Couldn't
 8 understand why he was saying that evidence available to
 9 him, that we were in such unsatisfactory financial
 10 condition was -- couldn't believe it. We were in the
 11 same condition we were when the contract was awarded.
 12 Plus we were incurring the costs and financing the
 13 contract to boot.
 14 Q And what do you mean by, you were financing the
 15 contract?
 16 A We were carrying the cost of the rent, the
 17 taxes, and everything with my creditors and my lenders.
 18 All the people that was on board with me was carrying
 19 this contract.
 20 Q Your Honor, if I may inquire in terms of time.
 21 I'm just wondering how late that -- 5:00?
 22 JUDGE JAMES: If it's acceptable to the Board.
 23 MR. LUCHANSKY: Okay, because I was -- I'm
 24 about to enter an area that will include longer than
 25 fifteen minutes worth of examination, the DCAA report and

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1 the suspension letter. I'm happy to start it now if the
 2 Board would like or wait until tomorrow since it's a
 3 block of examination.
 4 JUDGE JAMES: If you can start it now and get
 5 started it will be perfectly acceptable.
 6 MR. LUCHANSKY: Fine.
 7 BY MR. LUCHANSKY:
 8 Q Mr. Thomas, I'd like you to now take a look at
 9 government's Rule 4 file, Tabs 15 and 16.
 10 A Yeah, okay. Right.
 11 Q Tab 16, that's the letter that we were just
 12 talking about, that Mr. Liebman sent to you proposing
 13 suspension of progress payments?
 14 A Yeah. There's a better letter than this
 15 somewhere but this one is the one that Tom Barkewitz, I
 16 guess, had in his file because I see his initials over
 17 here. So this one was extracted from the PCO file and I
 18 see it's got a lot of markings and things on it. But,
 19 yes, this is the sum and substance of that letter.
 20 Q Now G-15 is a January 4th, an audit report
 21 dated January 4, 1985, by DCAA.
 22 A Right.
 23 Q To the best of your knowledge, is that the
 24 report that Mr. Liebman based his January 4th letter on?
 25 A Yes. Yes, it is.

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1 Q Okay. I'd like to take a look at the proposed
 2 suspension letter, okay, well, let me -- okay, let's take
 3 a look at the proposed suspension letter. Mr. Liebman
 4 directs your attention to progress payment request number
 5 one, re-submitted.
 6 A Right.
 7 Q Pardon me.
 8 A Right.
 9 Q Okay. Does he make any reference here, to the
 10 fact that you had submitted an original progress payment
 11 request back on November 16?
 12 A No, he didn't say anything about that. He
 13 doesn't say anything -- that he had it and that --
 14 Q Now, he notes that there was an original
 15 progress payment request number one that was received
 16 November 29. You testified to that before, that it was
 17 actually presented earlier than that, correct?
 18 A That's correct.
 19 Q It says you subsequently withdrew this progress
 20 payment request and you testified to that before. Did
 21 you voluntarily withdraw this request?
 22 A No. It was -- he told us --
 23 Q At whose suggestion did you withdraw it?
 24 A Marvin Liebman. He told us, "This is what you
 25 do. Withdraw this one and put this one in its place."

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1 Q He notes that you submitted, that Freedom
 2 submitted progress payment number one, re-submitted,
 3 which was dated December 7, 1984, at the post-award
 4 conference on the 14th.
 5 Did, did Freedom actually submit the December 7
 6 progress payment one, re-submitted earlier, on the date
 7 --
 8 A Oh yeah, absolutely. Yeah, I think he might
 9 have asked for another copy or something and we gave it
 10 to him. But I'm sure it wasn't -- Pat Marra said that he
 11 was getting this right down to Marvin.
 12 Q Did you have more than one occasion on which
 13 you had submitted progress payment requests to Mr.
 14 Liebman, and followed up and found out that Mr. Liebman
 15 said he didn't have it?
 16 A Yes. Yes, we certainly did.
 17 Q To the best of your recollection, was this one
 18 of those times?
 19 A Yes, it is.
 20 Q Now at the post-award conference did you raise
 21 the issue of progress payment number one, re-submitted?
 22 A At the --
 23 Q Post-award conference of December 14?
 24 A I believe we did. I'm not sure. I'm sure we
 25 were talking about it because we wanted the money. We

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1 were trying to get bank accounts started and everything
2 because we told everybody what the condition was and how
3 we had got disconnected as a result of the Hunt's Point
4 mess.

5 Q And then, no matter how it happened, whether he
6 asked for it or whatever the story was, you re-submitted
7 it then and he returned it to you on December 18 for
8 those reasons we discussed.

9 Now, Mr. Liebman lays out a number of reasons
10 in this letter as to why he is considering returning
11 progress payment request number one re-submitted, unpaid
12 and suspending progress payments.

13 A Yes, he does.

14 Q The first reason he gives, is the second
15 paragraph on page one of this letter where he says that
16 information available to him is that Freedom is in
17 unsatisfactory financial condition. It specifically says
18 that Dollar Drydock has stated what it says in this
19 letter, that there is no credit forthcoming until an
20 arrangement is in place to settle amounts owed by
21 Freedom.

22 To the best of your knowledge, had Dollar ever
23 imposed upon you prior to this point, a condition that an
24 arrangement be in place to satisfy creditors -- well,
25 let's put it this way. Before the December 26 or

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1 December 27 letter that you got from Mr. Siegert before
2 your December 20 meeting with Dollar, had Dollar ever
3 expressed as a condition to any financing that an
4 arrangement --

5 A No, they had not. They had never done it up
6 until the point of this phone call of alarm that the
7 DCASMA people called Dollar Drydock, telling them they
8 wanted to see \$7.2 million, which was in direct
9 contradiction to what Pat Marra and myself had went in
10 there telling them, that we needed 5 percent plus
11 equipment financing.

12 So we're saying one thing to Dollar and Liebman
13 snuck them, snuck everybody or ambushed everybody from
14 behind and went in there telling them a different story.

15 Now what that did was, Dollar Drydock, in their
16 minds is saying, "My God, Henry Thomas told us a story in
17 1982, that he could go get these contracts and if we put
18 all this money he's going to get more contracts. We
19 bought into that story. It didn't happen. And then all
20 of a sudden Henry Thomas is coming in here with Pat Marra
21 with a contract telling us that these are the cash flows
22 and here's the government's obligation, and as soon as
23 Henry Thomas walks away we get three people, or four
24 people from the United States government calls us up and
25 says, it's not what Henry Thomas has got on those

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1 documents. It's \$7.2 million."

2 So all of a sudden Dollar Drydock is looking at
3 me like I'm a fool. That I am now tricking them or
4 something when I'm telling them, "No, this is what I
5 really negotiated with the people in Philadelphia. It's
6 no longer 7.2 million."

7 This is when we really -- Mike Durso was taken
8 off the case. Bill Wheeler was kicked out of there as a
9 chairman of the Board -- I hate to say it like that, but
10 the point is, everything at Dollar started turning now.
11 This is a major problem that Liebman is putting on us and
12 that bank.

13 Q Are you saying that these events, people
14 getting kicked off the Board, happened after Mr.
15 Liebman's call to Dollar Drydock?

16 A As I saw it, everything was fine and all of a
17 sudden this is a major problem at Dollar. That Wheeler
18 and them had backed me up -- Durso. They are now told to
19 stand down, parade rest, on the Freedom project.

20 Liebman caused serious problems by claiming
21 that \$7.2 million was still needed today. That's wrong.
22 That was totally wrong.

23 Q Now you didn't have all of this information
24 that you were just describing at that time, did you?

25 A I was getting bits and pieces because Dollar

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1 didn't even want to talk to me. They was exiting left
2 quick, fast, and in a hurry.

3 Q Now Mr. Liebman states that this condition --
4 what he's calling a condition, of making an arrangement
5 with creditors is contrary to the conditions of the
6 August 9 and 10 commitment letters of Dollar Drydock,
7 which were relied upon by the government in the award of
8 subject contract. Do you agree?

9 A No, absolutely not. We told Captain Parsons,
10 in September 5, or September that we, that Dollar -- if
11 he wanted to price down, they've got to come up with the
12 money. The price is not moving unless I know where the
13 money's coming from. So we refused to lower the cost.
14 We refused to do anything unless the government stepped
15 up to the plate for the financing. And that's what I
16 conditioned my \$30.12 price on.

17 Q So, Mr. Thomas, do the extent that any of what
18 is included in paragraph number two, may in any remote
19 sense be true, what is your understanding as to who's
20 responsible for the change in Dollar's position?

21 A Right now?

22 Q Yes.

23 A The change in Dollar's position was based on
24 Tom Barkewitz and Captain Parsons wanting a lower price.

25 Q No, I'm sorry. I'm now back in January 4,

1 1985. As of that point --
 2 A Oh, the change of them not even wanting to talk
 3 to me is as a result of, "Henry, we believe that the
 4 government is right. We believe that they want us to
 5 finance \$7.2 million, and they told us that they're not
 6 going to finance anything until month seven," that's what
 7 happened.
 8 Mike Durso called us --
 9 Q Okay. I withdraw the question.
 10 All right, Mr. Thomas, I want to look at page
 11 two of this January 4 letter and review the next
 12 paragraph that indicates a claim that costs for which
 13 Freedom was requesting payment in its progress payment
 14 requests, were incurred by H.T. Food Products and not by
 15 Freedom. Was that true?
 16 A No. Freedom's the one with the contract. All
 17 costs was being incurred by Freedom for this contract.
 18 Q Did H.T. Foods -- H.T. Foods did have a role in
 19 the --
 20 A Yes, H.T. Foods did. H.T. was only giving them
 21 a bill.
 22 Q Okay. So, who incurred the costs directly?
 23 A Under this contract Freedom incurred the cost
 24 for rent and everything.
 25 Q And who did Freedom incur the costs to?

1 turns around and hands it to them and says, "This is your
 2 bill for what you just incurred. This is your
 3 obligation." So he passed it right through.
 4 Q Is there any indication in this letter from Mr
 5 Liebman, that he recognizes that Freedom had submitted to
 6 him invoices from H.T. Foods to Freedom?
 7 A I just, the page closed. Which one was I on?
 8 I'm sorry.
 9 Q It's Tab 16, page two.
 10 A Is there anything here that, what?
 11 Q Does Mr. Liebman acknowledge that there was an
 12 invoice in the back up that you provided, that shows that
 13 H.T. Foods in turn billed Freedom for these costs, guard
 14 service salaries, insurance occupancy costs?
 15 A He claiming that it wasn't invoiced to Freedom.
 16 but instead --
 17 Q And was it?
 18 A Of course it was. I mean, he could look at it
 19 and tell.
 20 Q Okay. Your Honor, perhaps now would be an
 21 appropriate time to stop if it's 5:00.
 22 JUDGE JAMES: Acceptable to the Board. Okay.
 23 Let's go off the record, let's adjourn for the day.
 24 (Whereupon, at 5:00 p.m., the hearing was
 25 recessed, to reconvene, Wednesday, May 17, 2000.)

1 A Well, Richard Penzer is the one that gave us
 2 our lines of credit. We gave them their lines of credit.
 3 But the cost was incurred on behalf of the contract.
 4 Q Well, I understand. We're looking at guard
 5 service salaries, insurance occupancy costs. Were these
 6 all costs that were incurred under the original lease
 7 between Mr. Penzer and H.T. Foods, and then --
 8 A No, no. This, this was --
 9 Q Were these costs that were then passed through
 10 to Freedom?
 11 A No. The cost was incurred by Freedom and the
 12 financing was provided by Penzer, through H.T. Foods to
 13 Freedom. But the incurred cost was by Freedom.
 14 Q I'm sorry, I had it backwards. So did Freedom
 15 bill H.T. -- I had it backwards. I misunderstood. Did
 16 Freedom bill H.T. Foods for these costs?
 17 A No. Freedom did not bill H.T., H.T. Foods
 18 billed Freedom.
 19 Q Okay. In the back up, in support of progress
 20 payment number one, re-submitted, are there invoices that
 21 show bills to H.T. Foods for these costs which -- and
 22 then another invoice that shows a bill from H.T. Foods to
 23 Freedom?
 24 A Yes. In other words, we gave the complete flow
 25 of how it was being financed by Penzer to H.T., and H.T.

1 CERTIFICATION OF TRANSCRIPT
 2
 3 This is to certify that the attached
 4 proceedings before Administrative Judge DAVID W. JAMES,
 5 Department of Defense, Armed Services Board of Contract
 6 Appeals, in the matter of FREEDOM NY, INC., at Brooklyn,
 7 New York, on Tuesday, May 16, 2000 were had as therein
 8 appears, and that this is the original transcript thereof
 9 for the files of the Department of Defense.
 10 We, the undersigned, do hereby certify that
 11 this is a true, accurate and complete transcript prepared
 12 from the tape made by electronic recording by Donna
 13 Hughes, Official Reporter, on the aforementioned date,
 14 and have verified the accuracy of the transcript by
 15 comparing the typewritten transcript against the verbal
 16 recording.
 17 Date: 7/4/00
 18 _____
 19 Transcriber
 20 _____
 21 Proofreader
 22
 23
 24