Freedom N.Y., Inc.

10 February 2002

EXPRESS MAIL
EK194361604US

Honorable John Ashcroft
Attorney General
U. S. Department of Justice
10th and Constitution Ave., N.W.
Washington, DC 20530

Dear Mr. Ascroff

This letter is an addendum to the 28 Sept. 1998 letter to the Honorable Janet Reno, copy attached, and to advise you that your Department of Justice is for the **third time** unjustly defending the wrongs of the Department of Defense's (DOD) Defense Logistics Agency (DLA). This letter is to also place you on notice that the DLA is still wrongfully allowing multi-million dollar claims and liabilities to pileup and grow against the United States.

First, let me tell you of the first and second instances when your Department defended DLA's malfeasance without proper investigation of the circumstances. The first time was before Federal Court Judge Louis F. Oberdorfer in 1983 case # 83-2584 when Freedom sounded the alarm on contract discrimination within DLA. Freedom was being blocked from entering and participating in the Meals Ready to Eat (MRE) program under 10 USC 2304 (a)(16), an Industrial Preparedness Program (IPP) for mobilization, in the interest of national defense. The Department of Justice in defense of DOD was claiming that Freedom, a black owned company, was not needed and that the two existing white owned companies could ramp up and supply all the MRE combat food rations needed in the event of a national emergency or if WAR was declared by Congress. It was during this court hearing that DLA was forced to publicly disclose that it had allowed the U.S. Army to ***"run out of combat rations".***

Armed with this shocking information Freedom convinced the Reagan White House to support the House Armed Services Appropriations Committee Chairman, Joseph P. Addabbo, to increase the funding to the MRE IPP program so that Freedom, the 3rd MRE planned producer who was being kept on a cold production base, could be setup, established and maintained through the award of warm production base contracts in accordance with DAR 3-216.2 (i) (ii) (iii) (v) (vi) & (vii). In the event of WAR, Freedom would then be able to rapidly go to a HOT MRE production Base in M+90 days.

Soon after, The Office of the Secretary of Defense instructed the DLA in a 7 Feb. 1984 Determination and Findings (D&F) to award Freedom a warm base production contract and to ***"keep them available"*** in the interest of national defense. Freedom believing it's concerns had been met by this action of written D&F instructions, settled and dropped it's 1983 lawsuit.

DLA, now being watched by the Office of the Secretary of Defense and the House Armed Services Committee, awarded the

Freedom N.Y., Inc.
420 East
Martin Luther King Blvd.
Suite 100
Mt. Vernon, New York 10550
914 235 4811 Tel.
914 235 4811 Fax
SinBad99 @ AOL .COM

contract to Freedom on 15 Nov. 1984. At the same time DLA allowed rebellion in it's ranks in order to not comply with the instructions to ***"keep them available".*** First DLA allowed Freedom's contract to be mismanaged and the proper contract financing and government materials were allowed to be withheld by the Administrative Contracting Officer (ACO), Marvin Liebman, in New York. DLA knowing that Freedom was being held-up by these ACO caused problems, then allowed the Procuring Contracting Officer (PCO), Frank Bankoff in Philadelphia to replace Freedom by diverting Freedom's next contract award to Cinpac of Ohio, claiming that it was Freedom's fault it could not produce.

Freedom sued in Federal Court in New York case # 86-1363 before Chief Judge Constance Baker Motley. The Department of Justice (DOJ) defended. This was the **second** time, the Department of Justice was defending a wrong. The Department of Justice continued to defend this wrong, while knowing that the US Department of Labor (DOL) had already ruled on Freedom's complaint that Cinpac was not eligible for award of a MRE IPP contract as it had not qualified for an award under 41 USC 35 - 45. The Department of Justice, DLA and PCO, Frank Bankoff, withheld this DOL ineligibility determination of Cinpac from Chief Judge Motley. The DOJ at this point was helping DLA to obstruct Justice, and to hurt Freedom. Had the Court had this vital ineligibility information, Chief Judge Motley would have stopped this unlawful award to Cinpac and awarded the contract to Freedom, with DLA and The Department of Justice then prosecuting Cinpac for lying and false misrepresentation. Instead, the Department of Justice allowed FRAUD to exist and prevail in the U.S. procurement system. This fraud and contract diversion ultimately led to the wrongful default and the business destruction of Freedom in 1986, creating a racially segregated MRE IPP program.

Later in 1991 during Operation Desert Storm, Cinpac who had been unlawfully maintained on a warm production base since 1985 failed to deliver it's claimed MRE mobilization HOT Base combat ration amounts to our nations front line troops. This HOT Base production failure of Cinpac, caused DLA to be forced to request Freedom in a letter to restart it's MRE production lines after being out of business for 5 years. As a result when this proved impossible, DLA panicked and took drastic steps to use ***"off the shelf"*** food from our local supermarkets to feed our nations combat troops who were now at WAR. This ***"off the shelf food"*** delivery from our supermarkets warehouses, was never revealed to the American public or the real devastating impact this failure had on our nations TOP SECRET WAR plans and troop deployments in IRAQ. DLA just covered this up and DOD issued a 1995 Industrial Assessment of the MRE program. Cinpac also filed for Bankruptcy and DLA bailed them out with a $10 million payment to keep them in business. For PCO, Bankoff to know that Cinpac was not eligible for an award of a major WAR TIME mobilization contract, and then to have Cinpac fail to deliver during a HOT Base War mobilization and to then allow Cinpac to be bailed out with a $10 million gift payment to keep them in business, is to REWARD Cinpac for defrauding the Government, putting our troops in combat jeopardy and for breaking the laws of the United States.

Now after 15 years of wrongfully being held in and dragged through the legal system, by DLA, the Armed Services Board of Contracts Appeals, case # 43965, has ruled that Freedom's contract was BREACHED, financially mismanaged,

Freedom N.Y., Inc.

improperly defaulted and terminated in 1986. ***THUS, it was the DOD itself which prevented Freedom from performing and being successful.*** To correct some of the wrongs DLA has done to Freedom, the Armed Services Board of Contracts Appeals has now **awarded** millions in financial adjustments to Freedoms contract. This contract relief is over 15 years late and does not help restore Freedom as a viable Black owned business or bring back the 442 employees who wrongfully lost their jobs in the South Bronx of New York in 1986.

Now, in the year 2002, for the **THIRD** time here comes the Department of Justice, to the United States Court of Appeals for the Federal Circuit, case # 02-1105, to defend the wrongful actions of the DLA. The same DLA which segregated and made the MRE program a Whites only program in 1986 and which still remains racially segregated today in 2002. Someone should TWIST the Department of Justice's head around so it can see just what it's defending and helping to cover-up:

1. Fraud and contract diversions in the US procurement system.
2. Obstruction of Justice on Chief Judge Motley.
3. Contract racial discrimination & double standards.
4. Allowing policies and laws of the US to be broken at will.
5. Allowing our nations front line troops to go unprepared in violation of 10 USC 2304 (a)(16) & DAR 3-216.
6. A racially segregated and Whites only MRE IPP program.

Instead of defending DLA, the Department of Justice should launch a **criminal investigation** into the actions ACO, Liebman and PCO Bankoff had in victimizing Freedom and it's impact on our nations national defense.

The question I have for you is, "When will the Department of Justice take investigative actions and correct these wrongs of fraud, obstruction of justice, wrongful contract default, discrimination, business destruction and the breaking of Federal laws by Contracting Officers of DLA ?"

Freedom, the real victim in this case, eagerly awaits your response to this question. I will personally lead any discussions you wish to have.

Sincerely,
Freedom N.Y., Inc.

Henry Thomas
President

cc: ***President George W. Bush, White House, Washington, D.C.***
Hon. Donald H. Rumsfeld, Secretary of Defense, The Pentagon, Wash. D.C.
Mr. Cicero Wilson, AEI

Freedom N.Y., Inc.

September 28, 1998

Certified Mail

Honorable Janet Reno
Attorney General
U. S. Department of Justice P 538 852 089
10th and Constitution Ave., N.W.
Washington, DC 20530

Honorable James F. Hinchman
Acting Comptroller General P 528 851 324
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC. 20548

Dear Ms. Reno and Mr. Hinchman:

Discrimination raises its ugly head, does its damage, and then <u>hides</u> in many places including our legal justice system. Freedom was illegally put into the legal system to cover-up government wrong doings.

Freedom N.Y., Inc. a black owned business, first complained to the Department of Justice in 1988, that we were the victims of discrimination in the Industrial Preparedness Program (IPP) (10 USC 2304 (a)(16))***** and requested investigation and intervention. The Department of Justice dismissed our request and did nothing but refer us to the Armed Services Board of Contracts Appeals.

This letter is notice and to inform you that a large multi-million dollar liability is being incurred by the United States as a result of that discrimination, contract breach and fraud on the procurement system which victimized Freedom N.Y., Inc. *Freedom, after creating over 400 jobs in the South Bronx N.Y., and borrowing over $10 million to participate in this IPP program,* was and continues to be the victim, of an economic lynching and deliberate contract mismanagement which was used to remove and get rid of us from the *IPP program* by the Defense Logistics Agency (DLA), an agency of the Department of Defense.

In 1984, when our first Industrial Preparedness minimum sustaining rate contract No. DLA13H-85-C-0591 was awarded, as the result of D.C. Federal Court case # 83-2584, DLA officials were warned by Freedom and the DLA legal department that their contemplated actions was not warranted and would put Freedom on a collision course with contract failure and bankruptcy, they took no action to stop it.

As an example, in 1985, in order to remove our black owned business from the vital Industrial Preparedness Planned Producer Program, DLA officials deliberately placed, an ineligible white owned company, Cinpac, Inc., in this program, even though they were not qualified to participate or receive defense contracts. Then in the face of our protests, DLA proceeded to illegally award Cinpac, Inc. contracts to maintain them in business and get rid of us.

420 East

Martin Luther King Blvd.

Suite 100

Mt. Vernon, New York 10550

914 235 4811 Tel.

914 235 4811 Fax

FreeFoods @ AOL .COM

When Freedom tried to use the justice system to get equal treatment and prevent this fraud on the defense procurement system, DLA officials, ***before award*** of the contract to Cinpac, Inc., intentionally acting above the law, misled and lied to the General Accounting Office (GAO) in contract protest number B-219676. This misleading and wrong information led the GAO to render the wrong decision in that case and in follow on case B-219676-2 as well.

In 1986, ***after award*** of the contract to Cinpac, Inc., when Freedom went to Federal court to again prevent this fraud, DLA, again acting above the law, continued the deception and lies to circumvent justice and allowed the U.S. Attorney of the Department of Justice to use and give wrong information to N.Y. Federal Court Chief Judge Constance Baker Motley in case # 86-1363. During that case, the U.S. Department of Labor ruled on our protest and sent it's determination dated 23 May 1986, to the DLA, that Cinpac, Inc. ***did not qualify for award under the Public Contracts Act and was not eligible for award of a federal defense contract***. DLA officials took no corrective action and knowingly withheld this key and vital Department of Labor determination from Chief Judge Motley which exposed the earlier misinformation and lies which had been used at the GAO and now before Chief Judge Motley in Federal Court. DLA stood by and caused the U.S. Attorney to improperly allow Chief Judge Motley to dismiss our case. DLA again obstructed justice and allowed contract fraud and discrimination to continue.

Freedom complained and put high level Pentagon officials at the Department of Defense on notice of DLA's activities, however, they were negligent in their responsibility to investigate and prevent these wrongful and illegal acts and actions of breach from becoming claims against the United States. No one ever checked the validity of Freedom's complaints to see if what we were telling them about the wrongful acts of these field level officials were really true, they just took the deceptive story of the field level officials, and did nothing. Once having failed to prevent these claims, Pentagon officials then allowed arrogant and abusive DLA officials to use ***sham*** stories of default as a subterfuge to cover up and conceal the real discrimination by ***deliberately terminating our contract for default, while knowing we were not in contract default.*** This default action stripped us of our financial assets which economically bankrupted and destroyed our business and 400 jobs in the South Bronx N.Y. We were abandoned on the door step of the Armed Services Board of Contracts Appeals (ASBCA) for relief.

These untrue stories of default were a ***ruse*** which allowed DLA to get rid of Freedom by placing us in protracted default litigation so they could proceed with supporting and maintaining Cinpac, Inc. in the IPP program unchallenged with no competition.

In 1996, after **ten years of being buried in default litigation**, the Judge at the ASBCA saw right through one of these sham stories of deception and ruled that Freedom N.Y., Inc. ***was not in default back in 1986*** and **overturned** this illegally trumped-up default. The Judge then ordered Freedom, whose batteries are now dead, to put in its contract claims through the termination for convenience process, without giving any financial relief or resources to do so.

These same arrogant and abusive DLA officials, who's actions resulted in these claims, are once again ignoring that these damage claims exist and are again allowing field level officials to sweep these claims under the legal rug. DLA lawyers are knowingly trumping up a false claim in order to construct an improper road block to prevent payment of court ordered and awarded Equal Access to Justice Act legal fees. Even though these same

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DLA lawyers know that these EAJA legal fees are independent of any contract claim or cost , they still refuse to make payment. This kind of deliberate contempt of court, delay, obstruction of justice and blocking financial relief by the DLA must be stopped and corrected by the Comptroller General or the Attorney General of the United States.

In 1998, 12 years after having been before Chief Judge Motley, through the ASBCA discovery process, Freedom has obtained documents which confirm that Freedom's business was knowingly and deliberately destroyed and removed from the Industrial Preparedness Planned Producer Program in 1986. Thus, illegally replaced with Cinpac, Inc., the company which had been determined ineligible to receive defense contracts.

We believe we have sounded a valid cause for your agencies to take action and request your offices use its resources to investigate, prosecute and correct the manipulation, misuse and abuse of power by DLA to further criminal fraud and discrimination in the procurement system. We also request a review of the actions of the DLA officials and its attorneys which allowed and used sham stories to destroy our business and improperly bury us in 10 years of wrongful litigation, in order to cover up their criminal acts of fraud. This violated federal laws and our civil contract rights to participate equally in federal programs using federal funds.

These acts also placed our nations front line combat troops in a mobilization short fall for the vital military essential supplies of Meals Ready to Eat (MRE's) during Operation Desert Storm in 1991.

We are enclosing a copy of a "more definite statement" of our complaint for damages. This letter, with the above examples of wrongful Government actions, is a notice of our monetary claims of over $55 Million to date which is pending and on file at the Armed Services Board of Contract Appeals under # 43965.

We further ***request*** your agencies take corrective action to relieve the destructive financial impact of the improper default and help the victim, Freedom N.Y., Inc., get justice and at the same time limit the liability to the United States as a result of the wrongs done by DLA officials operating above the law.

Thank you in advance for your time in this matter.

Sincerely,

Freedom N.Y., Inc.

Henry Thomas
President

cc: ***President William J. Clinton, White House, Washington, D.C.***

* ***10 USC 2304 (a)(16)) is an exception to the competition rules and designed to remove vital military essential items from competition in order to maintain and keep selected companies in business in the event of WAR or a national emergency is declared by our President or Congress.***

ARMED SERVICES BOARD OF CONTRACT APPEALS
Skyline Six
5109 Leesburg Pike
Falls Church, VA 22041-3208

Appeal of

ASBCA Nos. 43965

Freedom NY, Inc.

Under Contract No. DLA13H-85-C-0591

MORE DEFINITE STATEMENT

In accordance with the Order of this court, dated 29 September 1997, and forbearance dated 27 April 1998, Appellant Freedom NY, Inc., being still under economic distress as a result of its business being destroyed by Government acts, and acting Pro se', **herewith files** its ***"more definite statement"*** of its complaint in the above entitled matter. What the Board will find is a real economic lynching, contract discrimination, rebellion in the ranks and an administrative beating which was administered to Appellant by the Defense Logistics Agency (DLA). This rebellion in the ranks was a direct response by DLA which disobeyed and dishonored the orders, finding and determinations of the Secretary of Defense to settle Freedom's 1983 Federal Lawsuit. DLA by 1987, had economically lynched and destroyed Freedom, N.Y., Inc.

Further, these wrongful actions seriously impacted our nations ability to properly respond with adequate military essential supplies, of Meals Ready to Eat combat rations, for our nations front line combat troops, during Operation Desert Shield and Operation Desert Storm in 1990.

Hopefully, the English ebonics and style used to tell these true facts will not upset the Board into dismissing this appeal for help.

1. Historically there has been a restricted base for the assembly of combat rations, because there is no commercial equivalent. The base of Meals Ready to Eat combat ration assemblers exists only to satisfy military mobilization requirements. In 1983 Appellant filed a Federal Lawsuit # 83-2584 against the Department of Defense and as a result, and in order to settle the lawsuit, the Office of Secretary of Defense took special steps to correct past discriminatory acts of the Defense Logistics Agency against Appellant. The Under Secretary of Defense, made a course correction ***"in the interest of national defense",*** that Appellant, ***"be awarded contracts",*** as a warm base Prime Contractor, ***"and be kept available***", with a minimum sustaining rate (MSR), ***"in the event of a national emergency"*** or if WAR was declared.

2. The contract DLA13H-85-C-0591 (“MRE-5") was awarded to Appellant as a result of a meeting of the minds and with the specific understanding, and was in the stated contemplation of the parties, that Appellant would be the 3rd active and mandatory planned producer of Meals Ready to Eat combat rations with a minimum sustaining rate (MSR) in the Industrial Preparedness Planned Producer Program. The contract to assemble these combat rations, as awarded, fell under the special statutory set aside provisions of 10 U.S.C. §2304(a)(16), as implemented by DAR §3-216, which allowed for procurement by negotiation rather than the competition bid process.

3. Under 10 U.S.C. §2304(a)(16), noncompetitive negotiations with planned producers was deemed necessary so that peacetime production of combat rations, would be used to maintain a warm base and keep existing planned producers in business, and their vital war facilities available for fast assembly of combat rations, in the event of a national emergency. The primary acquisition objective, therefore, was to make awards of the available peacetime requirements, using a minimum sustaining rate, to maintain and keep existing vital planned producers of war materials, on a warm production base, representing their planned mobilization assembly capacity as implemented by DAR 3-216.2 (i) (ii) (v).

4. The procurement was therefore restricted to existing planned producers who had Industrial Preparedness Planning (IPP) agreements with the Defense Personnel Support Center (DPSC), an agency of DLA. Appellant, an approved existing planned producer fell within the scope of this restricted authority.

BAD FAITH AND CLEAR ABUSE OF DISCRETION

5. DLA by using disparate treatment, improperly restricted the number of producers and had blocked Appellant from participating in the Industrial Preparedness Planned Producer Program for MRE’s 2, 3, and 4. As a result, of Appellants 1983 lawsuit, the Office of Secretary of Defense took steps to correct these past discriminatory acts. The Secretary of Defense ordered the necessary adjustments to the MRE 5 Determination & Finding which had been the device used to block and discriminate against Appellant. DLA ***surrendered*** to the Secretary of Defense’s order and allowed Appellant to be negotiated with and be awarded startup contract DLA13H-85-C-0591 (“MRE-5"). After award and during contract performance DLA ***returned*** to its prior pattern of disparate treatment against Appellant and used the MRE 6 & MRE 7 solicitations as devices to eliminate Appellant from the Industrial Preparedness Planned Producer Program for Meals Ready to Eat.

6. The entire record of performance by DLA officials both before, under and after the award of contract evidences a **“designedly oppressive course of conduct** “, on the part of respondent DLA. These oppressive acts include, but are not limited to, interfering in the business relations between Appellant and its suppliers and financiers;

interfering with the contractors rights to make basic management decisions for proper contract performance;, failing to pay progress payments or to pay them promptly;, failing to cooperate with Appellant during performance of the contract;, coercively exacting waivers of rights and entitlements;, micro-managing and, intentionally failing to provide GFM and failing to act on important issues within a reasonable time.

7. On Jan 18, 1985, just two months after award of this contract, Appellant put the Government on **Notice** that its actions could and will have "devastating repercussions" and on page 2 states:

> ***You, and you alone, must stand ready to be accountable for any devastating repercussions which might occur by your ill advised actions indicated in your letter if during this period of your indecision and inaction a National emergency is declared by our President or Congress and these military essential items, MRE's do not arrive to our armed services from Freedom Industries an approved Industrial Preparedness Planned Producer.***
>
> ***Please be advised that.....Freedom's productive capacity, as an existing Industrial Preparedness Planned Producer had been determined by the Department of Defense to be in the interest of national defense and that Freedom should be kept available to produce MRE's in the event of a national emergency. Be further advised that your apparent indecision to honor the Government's obligation, will prevent Freedom Industries and DPSC from meeting their responsibilities under 10 USC 2304 (a) (16).....***

8. The improper, destructive and illegal acts by DLA officials were taken after this **notice** was given, and in furtherance of DLA's prior repeated attempts to prevent Appellant from participating in the MRE Program, which resulted in a Federal lawsuit and a out-of-court settlement designed to maintain and keep Appellant in business.

9. In furtherance of this effort to destroy Appellant, Respondent knowingly and intentionally ***created*** a condition that would justify removal of Appellant from the MRE-5 contract minimum sustaining rate (MSR) allocation and thereby, circumvent Appellant from participating in future MRE MSR allocations, namely MRE-6, MRE-7, etc. Respondent's actions were taken in direct breach of the Determination and Finding mandate issued by the Under Secretary of Defense requiring that DLA award contracts to **existing** planned producers and that **these** producers "***be kept available for furnishing the MRE's in the event of a national emergency".***

10. Appellant was one of the three existing prime assembly contractors, with a 400,000 sq. ft. combat ration assembly plant, located in the South Bronx, N.Y,, intended by said Determination, the settlement and by the contract negotiations to be

kept available and in business. However in furtherance of its rebellion and removal agenda, Respondent's representatives caused a fourth contractor, Cinpac of Ohio, with a 55,000 sq. ft. regular plant, to be brought into the program in direct violation of the contractual specifications and requirements for participation. Additionally DLA officials violated the provisions of the Walsh- Healey Public Contracts Act and 41 CFR 50-201.101(a) (1). Even though all 3 of the existing prime assembly contractors, protested and objected, DLA officials in the face of notice and protest, violated public laws and public policy to transform an unqualified company, Cinpac Inc., into a illegally qualified producer to be awarded contracts and to **replace** Appellant.

11. DLA illegally waived all verification for Cinpac under the IPP solicitation which an offeror was required to submit to DLA for verification, which was a DOD Industrial Preparedness Program Production Planning Schedule, (IPP plan), identified as DD Form 1519 (Form 1519), indicating the maximum production capacity attainable with existing facilities from a cold base in the event of mobilization including its verified subcontractor DD form 1519's.

12. DLA officials improperly and illegally accorded Cinpac a waiver of the critical verification requirements for the IPP plan. DLA officials knowingly executed a fraudulent document which required agreement by a representative of the procuring activity, the Industrial Preparedness Representative (IPR) and the Armed Services Production Planning Officer (ASPPO), and which the signatories mutually agreed, in part, as follows:

> 'The signatures below attest that the information contained herein is true and correct in the judgment of the signatories at the time of signature. Further the signatures indicate (1) an awareness of the Government's dependence upon these data as a basis for appropriate and often costly measures ***to insure the adequacy of the US industrial base*** . . . "

13. Following the establishment of the procurement plan for the MRE VI procurement, the Contracting Officer, Maryrose Burns, prepared and executed a Justification for other than Full and Open Competition, (the Justification) required by regulation, which was approved by the Deputy Director, DLA, on June 20, 1985. Pertinent excerpts from the Justification as concerns new planned producers, and particularly CINPAC, read as follows:

> "Solicitations will be issued to all firms with current Industrial Preparedness Plans (IPP) or to firms who will have plans approved prior to the solicitation closing. ***Only planned firms can be employed to satisfy this requirement and to maintain the existing mobilization base thereby preventing an increase in the current mobilization shortfalls.*** There is no commercial

> equivalent to ration assembly and the existing ration assemblers exist only to satisfy military requirements. In addition, there is a limited commercial equivalent to the MRE ration, and the production of rations in retort pouches for the MRE is based on state-of-the-art technology that is still evolving. --***This field requires a substantial technical and financial investment in the planning stages alone. Many firms are unwilling or unable to expend the monies required due to the non-existent commercial market.*** As of 1 March 1985, the current IPP producers are Southern Packaging and Storage Company, Incorporated, of Mullins, South Carolina; Right Away Foods Corporation of McAllen, Texas; and ***Freedom Industries of Bronx, New York.*** Accommodations will be made to allow any new firm who has an approved, negotiated IPP agreement to offer on this solicitation. In addition to those who have written plans on file, ***CINPAC Inc.*** of Cincinnati, Ohio has expressed interest in MRE assembly and their IPP capability is currently being evaluated."

14. The Solicitation set forth a NOTICE to prospective bidders, entitled, "SPECIAL FACTORS RELATING TO THE PROCUREMENT APPROACH OF THE MEAL, READY-TO-EAT, RATION (MRE) INCLUDING THE MEAL, FLIGHT FEEDING, INDIVIDUAL (MFF)" which read in part, as follows:

> ***"Awards will be made on this acquisition based on price and the respective offeror's participation in the Industrial Preparedness Program (IPP),*** . . .The exact quantity each respective contractor is eligible to receive will be determined by its participation in the Industrial Preparedness Program in effect at the time of closing, and final evaluated price."

15. Section M of the Solicitation, entitled "Evaluation of Offers," details the procedure to be followed in the evaluation of offers:

SECTION M - EVALUATION OF OFFERS
EVALUATION PROCEDURES AND DEFINITIONS

A. THIS ACQUISITION IS LIMITED TO PLANNED PRODUCERS UNDER THE AUTHORITY OF 10 U.S.C. (2304)(C)(3) AND WILL DIVIDE REQUIREMENTS AMONG TWO OR MORE CONTRACTORS TO PROVIDE FOR AN ADEQUATE INDUSTRIAL MOBILIZATION BASE. CONSEQUENTLY, ***EACH OFFEROR MUST FIRST QUALIFY*** AS A PLANNED PRODUCER.

B. AWARD EVALUATION WILL BE PERFORMED AS FOLLOWS:

1. ***THE PROCURING CONTRACTING OFFICER (PCO) WILL DETERMINE*** IF AN OFFEROR HAS QUALIFIED AS A PLANNED PRODUCER WITH RESPECT TO THIS SOLICITATION, AND DETERMINE THE EXTENT OF EACH PLANNED PRODUCER'S PARTICIPATION. ***THIS DETERMINATION WILL BE BASED ON THE GOVERNMENT'S VERIFICATION AND APPROVAL OF THE SIGNED DD FORM 1519*** AND THE RECOMMENDATION OF THE ARMED SERVICES PRODUCTION PLANNING OFFICER'S (ASPPO) INDUSTRIAL PREPAREDNESS PLANNING (IPP) SURVEY. AN OFFERORS PARTICIPATION IN THE IPP PROGRAM MUST MEET OR EXCEED THE MINIMUM LEVEL OF ALLOCATED MRE ASSEMBLY CAPACITY AT M+90 AS SET FORTH IN TABLE "A" BELOW.

2 . ***BASED ON THE PCO'S DETERMINATION***, OFFERORS WILL QUALIFY FOR A MAXIMUM SHARE OF THE TOTAL REQUIREMENTS UNDER THIS SOLICITATION ACCORDING TO THE CORRESPONDING LEVEL OF IPP PROGRAM PARTICIPATION AT M+90 AS IN TABLE "A" BELOW.
* * *.
C. ***TO QUALIFY AS A PLANNED PRODUCER FOR THE PURPOSE OF THIS SOLICITATION, THE OFFEROR MUST HAVE FIRST COMPLETED AN IPP SCHEDULE (DD FORM 1519) FOR THE PERIOD OF 1 OCT. 85 THRU 30 SEP 87, AND MUST HAVE SUBMITTED ADEQUATE SUPPORTING DOCUMENTATION*** TO THE COGNIZANT ASPPO BY 10 JUNE 1985 IN ACCORDANCE WITH DPSC TELEX MESSAGE OF 24 MAY 1985. FAILURE TO HAVE TIMELY SUBMITTED DOCUMENTATION MAY DISQUALIFY AN OFFEROR UNDER THE TERMS OF THIS SOLICITATION.

D. M+90 ASSEMBLY CAPACITY IS DEFINED AS ***VERIFIED PRODUCTION CAPABILITY*** FROM A COLD BASE WITHIN A 61 TO 90 DAY TIME FRAME FOLLOWING NOTIFICATION OF AN AWARD UNDER MOBILIZATION PROCEDURES. THE EFFECTIVE PERIOD OR FISCAL YEAR INDICATED ON THE DD FORM 1519 NOTWITHSTANDING.

TABLE "A"

MAXIMUM QUANTITIES CORRESPOND TO ALLOCATED M+90 MONTHLY CAPACITY LEVELS AS FOLLOWS:

MONTHLY ALLOCATED IPP QUANTITY AT M+90 REQUIREMENT	MAXIMUM SHARE QUANTITY	% OF
1,800,000 - UNLIMITED	1,879,401	45%
1,200,000 - 1,799,999	1,461,756	35%
600,000 - 1,199,999	835,290	20%

16. In August 1985, Appellant protested to the PCO and objected to the inclusion of Cinpac in the plan. Appellant also lodged a formal protest to the GAO under # B-219676. In furtherance of DLA's mission to remove Appellant, the PCO misled and lied to the GAO as to the true qualifications of Cinpac, to Appellants defeat at the GAO.

17. In Sept. 1985, Right Away Foods Corporation also protested to the GAO the inclusion of Cinpac in the IPP program, and again the PCO misled and lied to the GAO.

18. In November, 1985, in the face of GAO protest, this discriminatory treatment was evidenced by such blatantly arbitrary and illegal acts as awarding Appellant's portion of the minimum sustaining rate for MRE-6 to CINPAC, when CINPAC:

a) was not eligible for award under the express terms of the governing Solicitation itself.

b) had never produced MREs or any of its United States Department of Agriculture (U.S.D.A.) components and did not have the costly U.S.D.A. production facilities capable of producing MRE components as Appellant was required to have.

c) was claiming production capacity at a U.S.D.A. facility located at 3444 East Commerce, San Antonio, Texas, which was at the time in question owned and operated by Star Food Processing, Inc. (Star Foods), which was itself then supplying retort pouch food items to Appellant and Right Away Foods Corporation (RAFCO), as well as directly to the government, such that its then-current obligation under mobilization base contracts absorbed all its productive capacity-- leaving none for use by CINPAC or any other entity.

d) CINPAC's IPP capability, to the extent it is shown on the DD Form 1519 submitted to DLA, did not exist and was a ***SHAM*** and a ***FRAUD*** and was totally dependent on the production capability of already committed subcontractors and other IPP producers who had no excess production capacity to support Cinpac.

In December 1985, Appellant, after the PCO wrongfully awarded the MRE 6 contract to Cinpac, again protested to the PCO the fact that Cinpac was a ***sham*** and a ***fraud*** and that Cinpac did not qualify for award under the Public Contracts Act and 41 CFR 50-201. 101(a)(1). The PCO again ignored Appellant's notices and protests.

19. The PCO's award to Cinpac and his determination that CINPAC was qualified as an IPP producer was arbitrary and inconsistent with the rules and regulations. This act was done in bad faith and intended to circumvent, deprive and rob Appellant of its expected continued involvement in the IPP program as part of the nation's industrial base. In short Cinpac had lied on its definitive eligibility criteria and the PCO knew it.

20. In January 1986, DLA issued a notice that only 3 awards was planned for MRE 7. Appellant commenced a Federal lawsuit # 86 civ 1363 in the Southern District of New York, Chief Judge Constance Baker Motley, gave Appellant leave to prove through discovery that Cinpac was not in fact eligible. The PCO lied in affidavits to the Court, that Cinpac did in fact qualify and that the Government needed Cinpac to be a part of the proceeding to prove this. Based on the long arm statutes Cinpac could not be brought into the New York Federal Court system before Judge Motley, **BUT** in her decision to dismiss she writes:

> ***" The relief requested hinges on a finding that the Government - - with Cinpac's collusion - - violated applicable laws and regulations in granting Cinpac the contract. While Cinpac's own interest in this litigation will be largely protected through the position of the Government defendant who argues strenuously that the Cinpac award was in accord with pertinent procurement laws and regulations, the interests of Cinpac and the Government are not congruent.***
>
> ***" For example, were the evidence during the course of this action to suggest that Cinpac had indeed lied on its eligibility statement, as plaintiff charges, the government might no longer remain such a vigorous ally, and could even find itself in the position of Cinpac's adversary in criminal or at least debarrment proceeding."***

21. During this New York Federal Court proceeding which was properly before Chief Judge Motley, The United States Department of Labor issued a ***"determination that Cinpac, Inc. did not quality for award under the Public Contracts Act and 41 CFR 50-201.101(a) (1)."*** . Thus Cinpac was not now needed to prove they were not qualified, because the U.S. Department of Labor has now ruled with a final determination that they were not qualified and was not eligible for award. **This vital and important ruling was intentionally withheld by DLA from Chief Judge Motley** and the PCO sat quietly by and allowed Judge Motley, without correction, to dismiss Appellant's complaint against the Government. The PCO in his mission to remove and replace Appellant with Cinpac as the 3rd planned producer in the IPP program had now added **"obstruction of justice"** to his long list of breaking Federal laws, procurement rules and regulations in order to hurt and get rid of Appellant.

22. But for this obstruction of justice and unjustifiable and wrongful action on the part of the government, Appellant would have been continued as the 3rd supplier in the program, and would have been entitled to reasonable profits from contracts it would have continued to get as one of three required sources of the nation's industrial base.

23. In March of 1986, while under heavy financial distress, and with its contract in financial shambles, as a result of a series of administrative [beating], Appellant filed a Certified Claim with DLA in the amount of $5,700,000.00 claiming that:

"when contract DLA13H-85-C-0591 was awarded in 1984 for $17.1 million dollars, to produce Meals Ready to Eat (MRE) food rations, it was not audited, administered nor financed by Marvin Liebman, the Administrative Contracting Officer (ACO), in New York under the same terms and conditions in which it was negotiated and agreed to with Thomas Barkewitz, the Government's Procurement Contracting Officer (PCO), in Philadelphia."

24. This claim contains all the wrongful administrative [beating], acts and actions of the Government up to this point in time in 1986, and is incorporated by reference into this complaint.

25. In March 1986, Appellant and the PCO could not agree on a settlement of this claim and the PCO referred the entire matter under dispute up to higher DLA headquarters for negotiation and resolution.

26. In March, April and May 1986, through high level negotiations at DLA, the claim was reduced to $3,481,768. and a side agreement to be placed inside a cover letter was to be attached to MOD 25, was agreed to by both parties. As a result of the negotiations, Appellant wanted in writing that Appellant would be maintained and awarded contracts. DLA headquarters, then had the PCO change the MRE 7 Solicitation, in writing, to reflect the number of awards agreed to during negotiations from 3 awards to 4 awards. DLA then requested Appellant to accept MOD 25 in good faith, with the side agreement attached and Appellant would thus stay in business **or** if Appellant did not accept this deal, the deal would be off the table on 30 May 1986 with the issuance of a cure notice, and shortly thereafter Appellant would be terminated for default by the PCO and out of business. It was a "take this workout deal **or** be destroyed".

On 16 May Appellant notified Respondent that $3,600,000 was over due in DD250 payments.

BREACH OF CONTRACT-- Fraud in the inducement of MODIFICATION P00025

27. On May 29, 1986, two days after Chief Judge Motley had dismissed Appellants complaint and with Appellant under serious financial distress, and on the eve of destruction, Modification P00025 was executed. The impetus for the modification was a certified "claim against DLA in the amount of $3,481,768, ***in addition*** to the original contract price of $17,197,928.40, resulting from the actions on the part of DLA."

28. As part of Modification P00025, Appellant and Respondent agreed that the negotiated settlement (*which contained Appellants consideration*) would be kept separate from, but attached to, the formally executed document, and left within the four corners of a written "cover letter of understanding", which was to be attached to, and was

attached to Modification P00025 and tendered to and was signed and accepted as one document by Respondent and Appellant.

29. Respondent failed and refused to convey any understanding of Mod P00025 inconsistent with that communicated by Appellant verbally, as a condition to submitting, the "cover letter of understanding to Respondent, and prior to signing of the formal document. Through his ***silence***, the Contracting Officer intentionally induced Appellant to sign the modification and relinquish its rights, and otherwise change its position for the worse, giving up a $3,481,768 claimed entitlement. ***If*** the PCO had no intentions of honoring the side agreement contained inside the cover letter where the consideration was for this exchange, ***then*** there is no exchange. On the other hand through his ***silence*** the PCO ***bound*** the government to the understanding of Appellant which was verbally expressed as well as expressed in writing in the attached cover letter.

30. Respondent willfully and intentionally embarked upon a course of conduct designed to deceive and mislead Appellant into believing that it intended to be bound by the terms of Mod 25's side agreement. Taking specific actions that followed the detail of the side agreement, Respondent moved before time to increase the number of prime contractor awards to be issued under the MRE-7 Solicitation from 3 awards to 4 awards, meaning that both CINPAC and Appellant would get contracts. He continued the subterfuge by alluding in writing that Appellant's "continued support in the Industrial Preparedness Program," was assured, which actions were all part of Respondent's plan to victimize and convince Appellant that the side agreement was in place.

31. Respondent had no intention of honoring Mod 25 at the time it was signed, and so added the 114,758 case requirement back to Appellant's contract without using proper regulatory purchasing procedures or procurement authority. Respondent further took no action to secure or supply the Government-Furnished Material necessary to support the 114,758 case add-on, ultimately causing the Appellant to shut down for lack of GFM, and the Government breaching the contract as then modified.

32. **Appellant and Respondent disputes the other's interpretation of Mod 25.** The ASBCA has shined a light on the fact that: ***If*** Mr. Thomas and Mr. Bankoff, who signed MOD 25 were not at the MOD 25 negotiations, ***then*** there was no meeting of the minds on the mutuality of consideration and thus no agreement reached at signing. So for claim purposes, we will use a 3rd party equity reading of what MOD 25 says in the 4 corners of just that document, which would be that there was *no consideration* received by Appellant to give up a $3,481,768 claim. ***If*** the side agreement, which contains the *consideration* in the mind of Appellant was for this exchange, is not honored, ***then*** Appellant received nothing. ***If*** the consideration as seen by Respondent as being the reinstatement of the 114,758 cases to the contract, ***then*** this consideration was never delivered to Appellant by Respondent to be horned as consideration. In any event Respondent was already obligated to reinstate the 114,758 cases under MOD # 20. THUS there is no consideration whatsoever inside MOD 25 to be used. ***We therefore at this point in time, leave this dispute and the real interpretation of MOD 25 with its consideration to be determined by the Board***. *(in any event, MOD 25 was later in*

*time, **breached**, thereby making the side agreement and **any release** a moot point and the $3,481,768 claim revived.)*

33. Appellant subsequently produced some 6,916 cases under the MRE-6 portion of the contract. The ACO never "determined and definitized" the price of the illegally reinstated cases, as required by the Contract, and Appellant was therefore, under a 3rd party equity reading of Mod 25, entitled to be paid at the original price per case under the MRE-5 configuration.

34. Appellant was unable to complete the remaining 107,842 cases under the add-on portion of its contract as a direct result of the Respondent's wrongful action in terminating Contract DLA13H-85-C-0591.

35. Respondent breached the agreement of Modification P00025 by:

a) failing and refusing to deliver sufficient GFM to allow Appellant to complete the 114,758 cases which the government claims is the consideration for Mod 25.;
b) failing and refusing to pay for MRE cases produced and delivered by Appellant, ***and accepted by Respondent thru DD250 invoices***.;
c) failing and refusing to allow Appellant to complete its contractual obligations by withholding of contract-required progress payments;
d) failing and refusing to live up to the mandate of 10 U.S.C. 2304(a)(16), as agreed, by developing and maintaining the company in the MRE program and making an award under MRE-7.
e) failing and refusing to apply for the guaranteed loan called for by the side agreement;
f) failing and refusing to pay 100% of the value of the MRE-5 delivery component;
g) failing and refusing to assist Appellant in obtaining traypack and pouch contracts under the SBA 8(a) program, as called for by the side agreement;

BREACH OF CONTRACT-- MODIFICATION P00028

36. On August 7, 1986, Modification P00028, was signed, after issuance of a "cure notice" for anticipated failure to meet the required delivery increment, by Appellant under the threat of termination and financial disaster and Appellant's written response claiming Government delay in providing Government Furnished Material.

37. The PCO also took advantage of Appellant by illegally and without Appellants permission added a provision to the MOD which altered the progress payment procedure and tied payments to deliveries. This provision was inconsistent with DAR 7-104.35(b). The Government must bear the impact of this ***unproven method*** which was done to financially hurt and hinder the Appellant.

38. Modification P00028, by its express terms, set progress payment entitlement at $15 million upon delivery to the Government of 490,038 cases of MRE, which delivery

was accomplished on October 16, 1986. The ACO failed and refused to make the required payment, even after Appellant met this illegal provision, notwithstanding the clear and unequivocal language of the contract as modified including the illegal tying of progress payments to deliveries. This is a Breach of their own illegally created and illegally imposed provision which was designed to hurt Appellant.

39. In September 1986, Appellant wrote letters to President Reagan and other Department of Defense officials complaining about this mistreatment and contract mismanagement by DLA. Also in September, the U.S. Senate, on hearing of this gross unfairness made committee adjustments to Bill S. 2827 in order to provide relief for Appellant.

"The Committee on Appropriations reports the bill (S. 2827) making appropriations for the Department of Defense for the fiscal year ending September 30, 1987, and for other purposes, and submits the following explanation of its recommendations.

COMMITTEE ADJUSTMENTS

Small business MRE Program. - To increase the number of Defense Industrial Preparedness Program (IPP) assemblers for the Meals-Ready-To-Eat (MRE) Program, the Army encouraged businesses to bid on MRE contracts. IPP assemblers are those who have the capability to assemble cases of MRE's rapidly during wartime. There are currently four such IPP assemblers. Over the past 3 years, two small businesses have been brought into the MRE Program. After having brought the first small business into the MRE Program, a year later another small business was allowed in. After only one contract, the Defense Department has decided to reduce the number of assemblers from four to three. This will have the effect of forcing one of the two small businesses out of the program with a large loss of jobs and skills. ***The Committee directs the Department of Defense to award contracts for MRE VII to those industrial prepared assemblers currently in the program.***

40. Despite the subsequent Senate Appropriations Committee directive instructing the Department of Defense to maintain all four contractors in the MRE 7 program, Respondent persisted in its attempt to force Appellant from the program by the acts and omissions complained of herein, which actions were arbitrary, capricious and discriminatory in both impact and intent.

41. The failure to make an award under MRE-7 cost Appellant its place, as the 3rd producer, within the Industrial Preparedness Program where an implied contract growing out of the express language of the authorizing statute existed "to maintain and develop" the three existing suppliers in peacetime in order to provide for an adequate

mobilization base in the event of war. Appellant is entitled to damages in the amount of the contracts it would otherwise have secured, together with reasonable profits, measured by the amounts of the contracts paid to CINPAC, Inc., as the 3rd producer.

GOVERNMENT DELAY OF WORK *and Business Destruction*

42. On Oct. 7, 1986, Modification P00029 revised the Contract delivery schedule as a result of delays encountered in receipt of GFM. It was executed by Appellant under Government caused financial duress, in that Respondent unlawfully made payment of progress payment monies called for by Modification P00028 contingent upon Appellant's execution of Modification P00029 while the ACO wrongfully withheld vital payments needed to make production progress under the contract.

43. Respondent's failure to pay the sums called for by Modification P00028 specifically, and in other instances generally, delayed and interrupted Appellant's performance under the Contract, and forced Appellant under duress, to execute the supplemental agreement and release contained within Modification P00029.

44. The Government's refusal and delays in making progress payments were unauthorized acts of the Contracting Officer in the administration of the Contract within the meaning of the "Government Delay of Work" clause. Such unauthorized and wrongful acts caused serious delay and higher costs, and were beyond the control and without the fault or negligence of Appellant, thereby excusing Appellant's nonperformance. As of October 1986, with the Government some $5 million in arrears in progress payments and over $1.9 million late in paying for DD 250 shipments of MRE cases, Appellant put the PCO on notice of ***conflicting demands*** on the MRE IPP war production plans.

45. In Oct. 1986, in addition to delay caused by failure to pay progress payments, Respondent's failure to timely deliver needed GFM also caused delay and work interruptions and **prevented** Appellant from performing. In a letter dated October 22, 1986, Respondent was advised that Appellant had completed production of the 505,546 MRE-5 configuration portion of the contract; that all Contractor Furnished Material required to begin producing the MRE-6 cases was on hand; and that the final assembly production operation was shutting down for **lack of GFM**, resulting in personnel layoff and turnover, and the additional stretch out of performance period with its associated increase in the cost of operation.

46. On Oct. 29, 1986, notwithstanding the fact that no Government-Furnished-Material was on hand to continue production, which was solely the fault of the Respondent, contracting officers took the drastic and deadly action of freezing and seizing all of Appellant's cash assets, and ordered liquidation of all outstanding progress payment requests at 100%, thereby suspending, abandoning and breaching the said contract. This was done in total bad faith with the intent to destroy Appellant. Through freezing its cash and financing had the effect of strangling the economic cash flow which

alarmed and frightened the banks into running away. Thus this action was designed to hold the Appellant frozen in place and time and is called an ***"economic lynching".*** , ***and is the root cause of our Claim for Business destruction of over $55,000,000.*** *to date*.

47. The nonpayment of progress payments and 100% liquidation of 34 DD250 invoices of $1,907,979.05 represents a financial **abandonment of mandatory contractual payment obligations** , which are not discretionary by the Contracting Officers, and is a ***material breach*** of the contract. Appellant's claim of total business destruction and our elimination from the Industrial Preparedness Planned Producer Program is ***bottomed*** on this fact of improper financial abandonment by respondent, ***and is in no way dependent on the success or defeat of Mod 25, 28 or 29.*** Respondent knew that Appellant was in line for a MRE 7 award and knew that Appellant's plant was shut down due to the lack of GFM and that it was a Government caused action, through no fault or negligence of Appellant.

48. By November 5, 1986, Appellant had completed and Respondent had accepted thru DD250's final delivery of the 505,546-case MRE-5 portion under the contract.

49. In Nov. 1986, with Appellant being economically frozen in place, and in furtherance of this removal effort, the PCO ordered a trumped up 2nd pre award survey in order to justify removal of Appellant from the MRE 7 award lineup. The PCO changed the number of **negotiated** MRE 7 contract awards previously increased to 4 awards back to 3 awards. The results of this resurvey was negative and was done strictly to remove Appellant from being awarded the MRE 7 contract.

50. In Feb. 1987, with Appellant being economically frozen in place, the PCO awarded the last MRE 7 minimum sustaining combat ration assembly contract to Cinpac, who should have been awarded a debarrment proceeding, for defrauding the U.S. Government. Instead, Respondent awarded Cinpac a U.S. Government contract, and then attacked Appellant, when Appellant rejected a "no cost" convenience termination.

51. Also in Feb. 1987, this lack of award of the MRE 7 contract for Appellant to continue in business along with the freezing of cash assets and the 100% liquidation of payments had a ***devastating*** ripple effect on Appellants banks, lenders, business associates and suppliers. It was seen as an abandonment and bankruptcy. This action caused a run on Appellants remaining assets with its assignee seeing the governments act as a default on the terms of its notes. Other lenders of funds saw this government act as threatening their assets and took repossession action to get control. ***This cause and effect cannot be understated and cannot and will not be under emphasized as to the harsh, devastating ripple effects it had on Appellants financial affairs at this point in time of this "economic lynching".***

52. These wrongful economic actions and the fact that the Government knew, of acts of ***fraud*** by Cinpac on the procurement system, and their allowing for conflicting

demands on wartime production capabilities, were the direct causes of ***the Department of Defense not being capable of responding with MRE rations for our Nation's front-line troops in Operation Desert Storm.***

53. On April 2,1987, with Appellant still being economically frozen in place, and as a result of the last MRE 7 maintenance contract having been awarded to Cinpac, Appellants assets went up on the auction block and with the PCO in attendance in the South Bronx, N.Y., he watched as Cinpac and others purchased Appellants production equipment and dismantled Appellants MRE combat ration assembly plant.

Breach of MOD 30

54. On April 23, 1987, with Appellant being economically frozen in place, the PCO signed Mod 30. This act of setting up and imposing a new delivery schedule was done to improperly set the stage for the contractor to be defaulted on created events and trumped up charges, **as retaliation**, for the rejection of the PCO's "no cost" termination request. The PCO knew that the delivery dates could not be met as he had personally watched Appellants 400,000 sq. ft. combat ration assembly plant be destroyed, and 442 Black and Hispanic jobs eliminated in the South Bronx of New York. Thus this MOD is not enforceable against Appellant because it was done in bad faith to hurt Appellant.

MOD 31 Termination for Default ---- ***done in BAD FAITH***

55. In June 1987, with Appellant still being economically frozen in place, the PCO default terminated the contract. This trumped up termination for default was the result of the rejection of the PCO's "no cost" termination request , for the wrongful acts of the Government and was in bad faith. It was also done to cover up the governments Breaches and wrongful actions and accomplishes the mission to **get rid of the contractor** and put the contractor out of the MRE IPP program. This is ***contrary*** to the fact that the Office of the Secretary of Defense had directed and ordered DLA, ***"in the interest of national defense",*** that Appellant, ***"be awarded contracts",*** as a warm base Prime Contractor, ***"and be kept available***", with a minimum sustaining rate (MSR), ***"in the event of a national emergency"*** or if WAR was declared. DLA had set out to economically hurt the contractors business and prevent Appellant from receiving future MRE contracts. DLA did, in fact hurt the contractor by putting the Contractors finances into shambles with its banking and business relationships. ***Thereby wrecking and leaving Freedom N.Y., Inc., lynched, broke, busted, penniless, out of business and thus blacklisted.***

56. In 1988, Appellant sent a complaint to the U.S. Department of Justice. DLA officials lied, misled and covered up the true facts of our complaint to the Justice investigators. The Department of Justice then referred Appellant to the ASBCA.

57. In Sept. 1990 the President of the United States declared a Military mobilization emergency and commenced Operation Desert Shield. The Office of Secretary of Defense then learned of the impact of DLA's acts against Appellant when the current planned producers including Cinpac, could **not** supply our nations front line troops with the military essential Meals Ready to Eat combat rations called for Under 10 USC 2304 (a)(16). DLA had to ***admit*** that there was a large shortfall of Meals Ready to Eat to feed this small force of 300,000 combat troops, when the warm base producers were to have the productive capacity at M + 90 days to respond with MRE cases for over 2,000,000 combat troops and continue.

58. In Nov. 1990, DLA reached out in desperation and contacted Appellant and then on Jan. 16, 1991 wrote a letter requesting help, in supplying these military essential items of combat rations, in order to support and close the large production shortfall of MRE needed for Operation Desert Shield. ***Cinpac responded by filing for bankruptcy when they could not mobilize under 10 USC 2304 (c) (3), while Appellant mobilized and responded with only a startup proposal.***

59. In May 1991, Appellant filed its 2nd claim for damages in the amount of $21,959,311.00.

60. In June 1991, even with the discovery of the true devastating impact of damages which their improper default actions had on Appellant, the PCO still refused to provide equity or give financial relief to Appellant. Instead, the PCO sent Appellant a Notice of Indebtedness to the United States Government for $1,630,747.28 in unpaid progress payments. The PCO then denied Appellant's claim as having no merit.

61. This Notice of Indebtedness is a further act of bad faith. The PCO knew that it was the government itself which ***prevented*** the contract from being completed, and that it was the Government itself which ***prevented*** progress payments from being repaid. The PCO knows that he can equitably adjust this contract ***at any time*** to recover this $1,630,747.20. This was done in Bad Faith.

62. In Feb. 1993, at the ASBCA hearing under appeal # 35671, in Bad Faith, the PCO offered to settle this dispute by offering a "crumb in a spoon" when Appellant was due the "whole loaf of bread". Upon rejection of this bad faith settlement offer, the PCO then took the stand and under oath, lied to the Board on the events surrounding the signing of MOD 25 & MOD 30. This was done to cover up and hide the true facts which the board would have used to give relief to Appellant.

Mod 32, *Bad Faith* Termination for the Convenience of the Government

63. On May 7, 1996 , the Board found that the government had improperly terminated the contract for default without the grounds to do so. The Board in ordering a termination for convenience, truly believed that the Government had an option to

termination for convenience, ten years earlier in 1986. This is not the case and the PCO knew it.

64. The PCO knew that he did not have the option, the right or the authority to terminate for the convenience of the Government. The PCO allowed the Board to improperly believe, **without correction**, that the Government did have this right or option, back in 1986.

65. On Sept. 26,1996, 5 months after the Boards decision, the PCO in signing MOD 32 converting the wrongful termination for default to a convenience termination, knew this would continue to hurt and hinder Appellant in getting the rightful Breach of Contract damages and relief it deserves. The PCO knows that he has the continuing authority to equitably adjust this contract ***at any time*** and not wait for the Board to overrule his illegal acts and force him to do the right thing. The PCO took advantage of the Board in terminating for the convenience, **to limit the governments liability damage**, when he knew that the government did not have this right. It was a clear abuse of his discretion to do this.

66. In December 1997, Appellant filed its convenience termination claim, which included a reservation for a necessary equitable adjustment in the contract price, in the net amount of $9,688,464.00. As of the present date, the Government has ignored this claim and has taken no action on it, thus ignoring the intent of this Board.

67. Also in April 1998, the Board awarded Equal Access to Justice Act Fees to Appellant, but in furtherance of its determination to continue to hurt Appellant and keep Appellant in financial distress, DLA legal counsel has informed Appellant and the Board that DLA will **not honor and will not pay** the award of legal fees to Appellant. Thus ignoring and disobeying the intent of this Board in awarding Appellant its legal fees.

68. As can be seen, the Defense Logistics Agency is accountable to ***no*** one. :

It has ignored the orders and directions of the Secretary of Defense.
It has ignored the binding agreements of this contract.
It has ignored the laws of the land and has misled and lied to the GAO.
It has ignored the laws of the land and has misled and lied to Federal Court Judges.
It has ignored the laws of the land and has illegally awarded contracts to Cinpac.
It has ignored the laws of the land and the direct directive of the U. S. Senate.
It has ignored the laws of the land and the intent of this Board to award EAJA fees.

This kind of bad faith conduct should not be allowed or tolerated, ***DLA is not nor should it be***, ***above the laws of the United States.***

This Board should make DLA toe the line, stand at attention and account for their wrongful acts, actions and the wreckage, which left Appellant broke, busted, penniless and out of business.

Breaches of the Governments Responsibility to the Contractor.

The Government Breached its duty: - to do equity to the contractor.
- to uphold Justice for the contractor.
- to perform those duties it promised to perform.
- to equitably adjust the contract in price.
- to not prevent or hinder the contractor.
- to fulfill its side of the deal it bargained for.
- to make mandatory payments when due.
- to exercise its discretion with care.
- to respect the rights of the contractor.
- to find the actual facts causing the dispute.

The Contracting Officer Breached his duty:

- to give his personal and independent decision in terminating the contract for default.
- to not discriminate against the contractor.
- against double dealing and faithlessness.
- to uphold the integrity of business relations.
- to uphold the integrity of the procurement system, and his duty of high standards of conduct.

69. The Contracting Officer Breached his duty to debar Cinpac from awards for 3 years in accordance with Section 3 of the Public Contracts Act 41 USC 35 - 45 (1982) there by causing an ***unjust enrichment*** to Cinpac, and ***losses*** for Appellant.

SPECIFIC PERFORMANCE

70. Under a mobilization contract (10 U.S.C. 2304(a)(16), delivery of supplies is incidental to the ***main purpose*** of the contract, which ***is to develop a source of supply to be available in time of national emergency.***

71. Respondent's failure and refusal to live up to the terms of Modification P00025, including the statutory, implied-in-fact and -in-law agreement to develop and maintain Appellant through the award of future minimum sustaining rate (MSR) allocation contracts was a direct violation of the duty imposed by 10 U.S.C. 2304(a)(16), and caused ***irreparable*** harm to Appellant. An award of money damages alone would be ***inadequate compensation*** for Respondent's breach. Respondent should be further compelled to ***specifically perform*** the agreement as was understood and in the contemplation of the parties, by ***reinstating Appellant*** to the Industrial Preparedness Planned Producer Program as an MRE Prime Contractor with sufficient funding to organize and operate its business according to the terms previously agreed upon.

Freedom N.Y., Inc., was an American Dream to participate as a Prime Contractor in the U.S. Department of Defense's procurement system on a equal basis, was totally mistreated and then destroyed. Appellant should be allowed by this Board to ***rise from the ashes*** of DLA's destruction.

WHEREFORE, as a result of the extremely extraordinary and unequal steps taken by the Government to destroy and cause ***irreparable*** harm to Appellant, Appellant seeks, the Board to take extraordinary steps to undo the destruction and ***put*** Appellant economically back where it would have been ***BUT FOR*** the Breaches and economic lynching caused by the Government. :

A. That the Board order the government to lift the 12 year ***contract lynching*** and suspension on payments, and instruct DLA to immediately pay the mandatory DD 250 shipment payments for MRE's delivered.; That DLA be instructed to in GOOD FAITH sit down and economically adjust the contract price,; That DLA be instructed to reinstate Appellant as a Prime assembly Contractor to the MRE program pursuant to the authority of 10 U.S.C. 2304(a)(16), as then known and called; that this Board by its own motion, withdraw its 7 May 1996 Decision to termination for the convenience of the Government and **hold** the Government in Default of Contract by BREACH in Bad Faith.

That the Board grant the relief and remedy that would have been granted by Chief Judge Motley in 1986, and ***BUT FOR*** the Governments **obstruction of justice** would have in fact been granted. In the alternative, we request you refer this matter back to Chief Judge Motley for her to fashion the appropriate remedy and relief for Appellant.

To do otherwise would allow the Government to walk away from its contractual obligations with impunity while at the same time allow them to discriminate, obstruct justice, lynch companies and break Federal laws at will.

We further request you forward your findings back to the criminal investigation division of the U. S. Department of Justice for criminal and civil rights violations in ***railroading*** Freedom N.Y., Inc..

That Appellant be awarded at least :

B. $11,386,057 as for its excess equitable costs and profit under MRE 5 (with added MRE 6 configuration items); less $1,697,593. progress payments for a net payment of $9,688,464.00.

C. Appellant as a result of the Government's Bad Faith and breaches lost its opportunity to significantly improve its position in the IPP industry and ***thus*** to generate substantial profits in the future. These lost profits which are the minimum sustaining rate profits on maintenance contracts awarded to Cinpac, based on the total contract

prices times Appellants negotiated profit rate of 14.9%, are hereby claimed in order to make Appellant whole.

- Cinpac's MRE 6 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 7 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 8 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 9 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 10 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 11 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 12 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 13 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 14 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 15 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 16 contract price x 14.9% profit rate = Appellants damage.
- Cinpac's MRE 17 contract price x 14.9% profit rate = Appellants damage.

and continue as long as Cinpac or its successors in interest are receiving the 3rd planned producer's minimum sustaining rate (MSR) under MRE IPP maintenance contract awards.

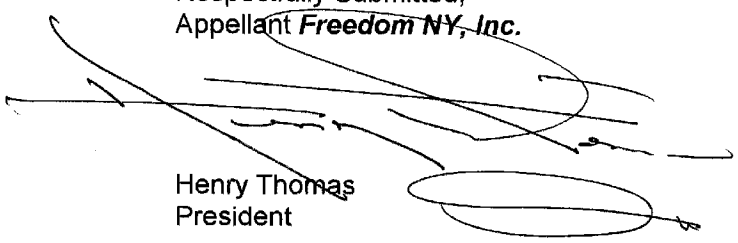
(Appellant conservatively estimates its business destruction damages at $55,498,549.29)

D. Interest accrued on monies claimed, from March 1986 and or May 1991 to present.
(Chart For demonstration purposes only)

YEAR	PERIOD	MONTHS	ANNUAL RATE	INTEREST	Loss MRE Profits	**BALANCE**
					May 1, 1991 Claim	$21,959,311.00
					MOD 25 Breach	$3,481,768.00
1991			%			**$25,441,079.00**
1991	MAY- JUN.	2	8.375%	$355,115.06		$25,796,194.06
	JULY-DEC	6	8.500%	$1,096,338.25		$26,892,532.31
1992	JAN- JUN.	6	6.875%	$924,430.80		$27,816,963.11
	JULY-DEC	6	7.000%	$973,593.71	$2,200,000.00	$30,990,556.82
1993	JAN- JUN.	6	6.500%	$1,007,193.10		$31,997,749.91
	JULY-DEC	6	5.625%	$899,936.72	$2,200,000.00	$35,097,686.63
1994	JAN- JUN.	6	5.500%	$965,186.38		$36,062,873.01
	JULY-DEC	6	7.000%	$1,262,200.56	$2,200,000.00	$39,525,073.57
1995	JAN- JUN.	6	8.125%	$1,605,706.11		$41,130,779.68
	JULY-DEC	6	6.375%	$1,311,043.60	$2,200,000.00	$44,641,823.28
1996	JAN- JUN.	6	6.000%	$1,233,923.39		$45,875,746.67
	JULY-DEC	6	6.000%	$1,339,254.70	$2,200,000.00	$49,415,001.37
1997	JAN- JUN.	6	6.000%	$1,376,272.40		$50,791,273.77
	JULY-DEC	6	6.000%	$1,482,450.04	$2,200,000.00	$54,473,723.81
1998	JAN- APR	4	6.000%	$1,015,825.48		$55,489,549.29
	TOTAL INTEREST			**$16,848,470.29**		**$55,489,549.29**

E. Such other and further relief as this court deems proper, including costs of pursuing this Appeal, reasonable attorney's fees under the Equal Access to Justice Act.

Respectfully Submitted,
Appellant ***Freedom NY, Inc.***



Henry Thomas
President

Kevin Seraaj
Sr. Vice President
Freedom N.Y., Inc.
420 East Martin Luther King Blvd.
Mt. Vernon, NY 10550
(914) 235 4811