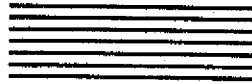


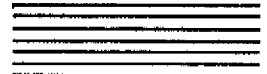


# FREEDOM, NY, INC.



(914) 664-0900

243 CALIFORNIA ROAD  
MT. VERNON, N.Y. 10552



TWX 510 100 1911  
FREEDOM UD

October 4, 1989

*File MRES*

Honorable Dick Cheney  
Secretary of Defense  
U.S. Department of Defense  
The Pentagon, Room 3E-880  
Washington, DC 20301-8000

RE: DLA13H-85-C-0591

Dear Mr. Cheney:

In 1983, Freedom **sued** the Department of Defense (DOD) in Federal Court. The problem was corrected by Dr. James P. Wade, Under Secretary of Defense - R&E, by including Freedom as a Prime Contractor in the Defense Logistic Agency's (DLA) Meals-Ready-to-Eat procurement process.

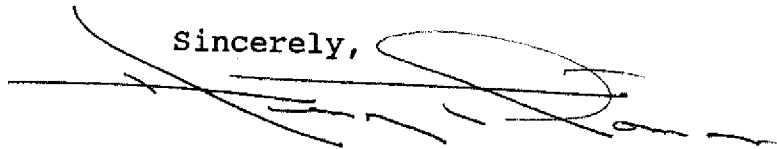
In 1986, Dr. Wade was **once again** trying to correct DLA's contract mismanagement. Unfortunately for us, he departed DOD before it was corrected.

We believe that after investing \$10,000,000 and 8 years, is enough of being **IGNORED, ABUSED and DISCRIMINATED** against by DLA, and for this to continue any longer would be a slap in the face of all Black owned businesses and a further endorsement for DLA to continue its **Racism, Discrimination and Double Standards** against Black Contractors. Enclosed please find the History of DLA13H-85-C-0591.

We request a meeting with you as soon as possible to find a solution to **finally correct** this unfortunate situation.

Thank you for your time in this matter.

Sincerely,

  
Henry Thomas  
President

cc: Honorable Sam Nunn, Chairman, Senate Armed Services Committee  
Honorable Les Aspin, Chairman, House Armed Services Committee  
General Colin Powell, Chairman, Joint Chief of Staff  
Dr. William Gibson, Chairman, N.A.A.C.P.  
Dr. James P. Wade Jr., Chairman & CEO, Defense Group, Inc.  
Mr. Maurice Gross, Chairman, Bankers Leasing Association, Inc.  
Mr. Robert H. Steele, Chairman & CEO, Dollar Dry Dock Saving Bank



***FREEDOM N. Y., Inc.***



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*LEADERS IN FOOD PROCESSING*

243 California Road  
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(914) 665-0098 - TEL  
(914) 667 5185 - FAX

**Chapter 7**

**THE LYNCHING**

( Hanging without due process of law )

OF

**FREEDOM, N.Y., INC.**

**A BLACK PRIME CONTRACTOR**

AND

**ITS DEFENSE CONTRACT**

# DLA13H-85-C-0591

BY THE

**DEFENSE LOGISTICS AGENCY**

**U.S. DEPARTMENT OF DEFENSE**

( For trying to participate in its WHITES ONLY MRE Industrial Preparedness Program)

*For additional information contact:*

Henry Thomas, President  
(914) 665-0098 - 11 Oct. 1988

HISTORY OF FREEDOM, N.Y., INC.  
A BLACK PRIME CONTRACTOR  
AND  
ITS DEFENSE CONTRACT #DLA13H-85-C-0591  
WITH THE  
U.S. DEPARTMENT OF DEFENSE

SHORT SUMMARY

10/88 \*

An American tragedy has been perpetrated against Freedom, N.Y., Inc., a Black Department of Defense "Prime" Contractor from New York and is continuing to this very day. The tragedy, as simply stated, is 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.

We believe the Government's ACO, Marvin Liebman, breached the contract in the interest of himself and jeopardized the interest of National defense. He brought our Nation close to violating, if not actually violating, its war reserve levels of Meals, Ready-To-Eat Combat Rations (MRE's). To Freedom's demise, the Government was required to take emergency action, to avoid or cure this violation.

These actions and the fact that the Government knew of acts of fraud on the procurement system, of 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 frontline troops in the event of war or mobilization as required by the Congressional mandates and procurement laws that these contracts were awarded pursuant to.

We further believe the ACO, Marvin Liebman, was racially bias and refused to **develop** this Black contractor as permitted and required by DAR 3-216 and as was negotiated for in the interest of National defense with the PCO, Thomas Barkewitz, in Philadelphia.

This contract was awarded to Freedom after three years of being **discriminated** against in the Defense Logistics Agency's (DLA) MRE procurement process by their use of double standards and DLA allowing Freedom's competitors to exaggerate their war time mobilization production capacity in order to qualify for all the peace time contracts. This **procurement discrimination** caused Freedom, who had borrowed from Dollar Dry Dock Saving Bank over \$2,000,000 for MRE plant start-up costs to seek relief in Federal Court.

Dr. James P. Wade, Under Secretary of Defense, **corrected this DLA procurement discrimination** by signing a Determination and Finding (D&F) on 7 February 1984 **ordering DLA to award a contract to Freedom** with a "reasonable price differential," thus settling Freedom's Federal lawsuit against the Department of Defense. [ **see EXHIBIT # 1** ]

There was an immediate **rebellion in the ranks** of DLA over Freedom's **inclusion** in this Industrial Preparedness Program (IPP) that set the stage for over three years of destructive behavior by DLA even though Congress had seen the need to appropriate funds to develop an MRE industrial base to respond in the event a war was declared by our President or Congress. **The Office of Secretary of Defense (OSD) had issued a "Determination and Findings" (D&F) dated February 7, 1984 naming Freedom Industries as an existing Industrial Planned Producer to be developed and kept available as a prime contractor in the event of war or troop mobilization.** [ **see EXHIBIT # 1** ]

Freedom and its 400 Black and Hispanic employees became the victims of DLA's rebellious acts, its **racial and contract discrimination** and its internal squabbling over the way Freedom's contract was to be financed by the Government, **while at the same time**, DLA properly and promptly paid "white owned" prime contractors in the same

program, for not only setting up their businesses which included capital costs and all other development costs but also timely monthly progress payments.

The PCO, Thomas Barkewitz, in Philadelphia agreed that Freedom was to receive the same treatment given to the white owned companies the Government had already set up in the program. However, the ACO, Marvin Liebman, in New York discriminatory refused to follow the financing and development agreement that was legally binding on the U.S. Government.

**NOTE:**

*( See attached charts on the financial impact of the Governments breach of contract by failing to finance the contract and pay its bills on time.)* [ see EXHIBIT # 2 ]

**Racism, Discrimination**

**and**

**Double Standards**

**are alive and well**

**within the**

**Defense Logistics Agency**

**U.S. Department of Defense**

## MRE 5 CONTRACT

### HISTORY

Solicitation DLA13H-84-R-8257 (the "Solicitation") was issued on February 15, 1984 pursuant to the D&F. The Solicitation limited participation in the MRE V Program to planned producers having approved IPP Plans.

In response to the Solicitation, Freedom Industries, Inc. (Freedom) submitted its IPP Plan on a DD Form 1519, "DoD Industrial Preparedness Program Production Planning Schedule," dated April 11, 1984. The Government approved Freedom's IPP Plan which included 200,000 square feet with over 3 million cubic feet of continuous storage and assembly space which was required by the Justification for Authority to Negotiate (JAN) under 10 USC 2304 (a)(16), a standard Freedom was required to meet in order to qualify.

In March 1984, Freedom Industries, Inc. was certified by the US Small Business Administration (SBA) as a socially and economically disadvantaged small business under Section 8(a). Freedom's SBA application was processed through the SBA by the law firm of Biaggi and Ehrlich. During this period, Freedom was being pressured by the law firm of Biaggi & Ehrlich to give them 10% of Freedom stock in return for "representation" before the U.S. Small Business Administration and the New York City Department of Ports and Terminals, Freedom's landlord. Freedom refused and was threatened that "all hell would break loose because Freedom did not turn over the stock".

In April 1984, Freedom submitted a proposal (the "Proposal") in response to the Solicitation at a price of \$25.70. Between April and August 1984, various audits, price analysis and a pre-award survey were conducted.

Since Freedom was now a certified 8(a) concern, it requested that the PCO, Thomas Barkewitz, place this contract with the SBA under the 8(a) Program for financial and technical assistance. The PCO, Thomas Barkewitz, agreed and offered the contract for Freedom to perform, to the SBA for \$15 million. The PCO, Thomas

Barkewitz, reasoned that SBA would use its business development funds to assist Freedom as an 8 (a) contractor, under the contract. SBA took no action on the PCO's contract offer.

It should be noted that at the same time the PCO, Thomas Barkewitz, offered the contract to the SBA, a Defense contractor, to wit: Wedtech, who was also represented by the law firm of Biaggi & Ehrlich, wanted Freedom's building space for its Navy pontoon contract. We later found out that the administrator for Small and Disadvantaged Business at SBA was working 100% on projects that benefited Wedtech and he knew of Wedtech needing Freedom's building site and knew that the City of New York would not lease Freedom its building if Freedom did not have a Defense Contract thus the SBA took no action on behalf of Freedom. Without a defense contract, Freedom would no longer need the building that Wedtech needed.

Because of the conflict Wedtech provoked, Freedom secured another building facility in the North Bronx for performance of the Contract. The PCO, Thomas Barkewitz, then withdrew the contract offer for Freedom from the SBA and proceeded to set up face to face negotiations directly with Freedom.

Freedom noted that the clause for progress payments DAR 7-104.35b was included and gave small businesses 95% progress payments based on costs being incurred. Freedom understood the purpose of progress payments was to provide working capital to small businesses who are performing under a defense contract. Freedom also noted that Clause L-4 of the Solicitation limited progress payments to 50% of the contract price or \$9 million dollars. In order to pass the pre-award survey Freedom had to show the preaward survey team that it was responsive to the Solicitation as written with this 50% progress payment ceiling limitation. Freedom requested it's equity stockholder of 9%, Dollar Dry Dock Savings Bank, (Dollar) to give Freedom a \$7,244,000 line of credit, which would cover the other 50% of working capital not covered by the Solicitation based on Freedom's price being \$34.81 per case or \$21 million dollars. If the Government wanted a lower price, then the Government would have to agree and remove the 50% progress payment limitation and allow the full 95% financing as called for under DAR 7-104.35b as well as give Freedom the necessary QC and office equipment to be used under the contract.

On August 2, 1984, Freedom submitted a Best and Final Offer of \$34.81 per case for a total price of \$21,593,000.00. To support this new price, Freedom submitted a new cost proposal, cash flows, milestones and other documentation. A pre-award

survey was performed on Freedom by DCASMA-NY. The DCAS financial analyst, William Stokes, in his August 30, 1984 preaward survey report on Freedom's financial capabilities, which received the concurrence of the Chief of the Financial Services Division, states that Freedom had a deficit working capital and that the projected \$7,244,000 needed under the contract, was a plug figure to cover the cash shortfall start-up position and to further cover the difference between the solicitation's restriction of 50% progress payment receipts and cash outlays. Freedom met the test of financial adequacy to perform under the contract and received a positive pre-award survey and a recommendation of complete award at a case price of \$34.81.

On September 7, 1984 with the Government insisting on a lower price, Freedom revised its offer to \$30.12 per case and conditioned it upon:

1. The Government's agreement to paying progress payments on a bi-weekly basis, at 100% of all incurred costs as defined by the Defense Acquisition Regulations, (DAR) including the purchase of equipment, machinery and all tangible fixed assets necessary for performance under the solicitation
2. The Government giving Freedom an economic price adjustment (EPA)
3. The Government setting aside through SBA 8(A) the first 200,000 cases of additional MRE's planned to be purchased under MRE 5
4. The Government committing follow-on contracts to Freedom.

With Freedom being a certified SBA 8(a) economically disadvantaged small business, these special "one-time" arrangements were essential to Freedom's successful performance of its "first" prime contract. Freedom had basically no assets, and certainly no working capital of its own to finance the start-up and operations of this contract and was relying on the Government to finance at least 95% of all negotiated costs in accordance with DAR 7-104.35b. These circumstances were well known to the Government. Freedom's automated building management system was a modern computer integrated personnel and material handling tracking system for bar code scanning to capture personnel movement and product identification, tracking the product, scheduling, sequencing and pacing production thus totally controlling the movement of millions of units thru the plant and into cases. This system would help Freedom with its task to properly orchestrate the timely delivery and receipt of thousands and millions of units of MRE components of different parts and materials



from GFM and CFM vendors. Then to synchronize the manufacture and quality inspection of sub-assembly units thru final assembly and Government acceptance of cases.

On September 11, 1984 the Government sent a wire acknowledging receipt of Freedom's revised offer of September 7, 1984 but still insisted that Freedom further reduce its case price. Freedom responded by requesting that the PCO, Thomas Barkewitz, raise the progress payment ceiling which was restricted by the Solicitation to 50% of the Contract price or 9 million dollars. The PCO, Thomas Barkewitz, requested Freedom to submit cash flow projections with milestones as required by the solicitation in order to determine that it was a need for "higher" Government progress payments to be used under this contract.

On November 2, 1984, Freedom advised the PCO, Thomas Barkewitz, that a price below \$29.90 per case was not fair and reasonable and could endanger performance of the contract.

During face to face price negotiations, Freedom maintained its position of the necessity of a Government commitment of follow-on contracts in order to depreciate over time with other contracts, the immense start-up costs of production equipment, special quality control tooling, automated building management equipment, building rehabilitation and computers. Freedom stood steadfast on this position since it was uneconomical to negotiate a "one-time" contract, which eliminated an outlet for future depreciation of capital cost investments. Freedom told the PCO, Thomas Barkewitz, that it could not raise the investment money for capital equipment without follow-on contracts to depreciate the costs against.

The PCO, Thomas Barkewitz, agreed during the negotiations with Freedom, that the proposed cash flow projections submitted by Freedom showing "higher" Government financing was necessary in order to permit Freedom to have working capital for pre-production, start-up and production costs and increased the progress payment ceiling from 50% to 95%. The PCO, Thomas Barkewitz, would not agree to commit to follow-on contracts but did agree that all costs negotiated in advance would be treated as "direct costs" under the contract, eligible for progress payments. On a line by line basis, the PCO, Thomas Barkewitz, and Freedom negotiated all costs to be included as "direct costs" and eligible for progress payments -- including equipment costs, a computerized accounting and manufacturing system, Quality Control and Inventory Control sub-systems, quality control equipment, automated building management

system, building renovations - repairs, lockers, office computer equipment and a telephone system, all normally charged indirectly and recovered through depreciation -- **as one-time direct costs against the Contract.** The PCO, Thomas Barkewitz, stated that with certain costs being fully paid by the Government under this contract, Freedom would not be able to charge any of the costs to any future contract if awarded by the Government, and the Government, by paying these start-up costs now would receive lower prices in the future.

Additionally, the PCO, Thomas Barkewitz, modified Clause L-4, page 66 of 96 of Solicitation DLA13H-84-R-8257, "The Limitation of Progress Payments" by raising the ceiling to 13 million dollars.

Based on the negotiations and the PCO's advance agreement with Freedom, Freedom agreed to drop all other case price conditions and contingencies and reduced its case price to a firm, fixed price of \$27.725, and agreed not to charge any fully paid costs to any contract in the future if a contract were to be awarded

With all special accounting and/or unusual cost elements resolved, in accordance with FAR 31.109, so that there would be no later misunderstandings as to the agreements made between the "PCO, Thomas Barkewitz, and Freedom, a "Memorandum of Understanding" was memorialized and executed, setting forth the negotiated accounting cost categories approved by the PCO, Thomas Barkewitz, as qualified direct costs eligible for progress payments under the contract. [ see EXHIBIT # 3 ]

The agreed upon increase of the progress payment ceiling was memorialized on page 7 of 7 of the "Award of Contract" dated November 15, 1984. Freedom's cash flows and financial plans, which were well known to the PCO, Thomas Barkewitz, would not enable Freedom to perform without having its capital equipment and office equipment costs payable directly as progress payments and without having progress payments be payable for 95% of costs up to \$13 million.

On November 15, 1984, ten months after Dr. Wade signed the D&F, DLA **awarded** Freedom a 14 month production and assembly contract for 620,304 cases of MRE's in

the interest of national defense, to be completed by December 1985 for a price of \$17,198,928. Freedom's profit was fixed at a rate of 15% or \$2,200,000. The Contract included standard clauses entitled "Progress Payments," "Changes," "Government Delay of Work," "Default," "Prompt Payments Act," and "Disputes."

Upon conclusion of the negotiations and award of the contract, Freedom immediately started performing its obligations under the Contract. The financing and administrative contract authority was transferred to Marvin Liebman, ACO, DCASMA New York who was still thinking there was a 7.2 million dollar line of credit from Dollar Savings Bank to be used by Freedom under this contract to cover the other 50% of working capital. Freedom and the PCO, Thomas Barkewitz, informed the ACO and DCAA that in return for a lower price the Government raised the progress payment ceiling from 50% to the full 95% and with a 13 million dollar ceiling and that progress payments were to include start-up and certain equipment costs as "one time" direct costs and that Freedom was to only finance 5% or \$748,000.

The DCAS-NY ACO, who was the same ACO for the Defense Contractor Wedtech, said that the senior partner of the law firm of Biaggi and Ehrlich, who happens to also be a U.S. Army Two Star General, had "cornered" him at a Wedtech meeting and had said "very bad things" about Freedom.

The DCAS-NY ACO, Marvin Liebman, then claimed the Government's PCO, Thomas Barkewitz, "screwed up" in agreeing to fund the start-up and capital equipment costs as well as paying 95% progress payments based on "direct incurred costs". The DCAS-NY ACO, Marvin Liebman, claimed there should have been milestones put into the contract and that he should not be exposed to openly finance up to \$2 million dollars before first articles were approved, and then up to \$9 million dollars of U.S. Government money before the first case was delivered. The ACO, Marvin Liebman, said this was too much money to put into the hands of a young Black contractor from the South Bronx of New York without protection for him as ACO. The ACO, Marvin Liebman, told Freedom the story of what happened to the ACO on a contract with American Pouch Foods, Chicago, Illinois, where the ACO gave that Black contractor over 12 million dollars in Government progress payments and "no" MRE cases were delivered.

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The DCAA auditor, Guy Sansone, claimed the Government should not be putting a young Black man in business by financing his company's equity and capital equipment costs with such a "high profit" and that the advance agreement reached between the young Black man and the Government is not fair to him as a white man, and he, the DCAA auditor, should also be put into business by the Government with a "high" profit. This position of the DCAA auditor was stated at meetings with Freedom's staff and Government meetings as well.

All the aforesaid clearly demonstrates a pattern of racial animosity by the ACO, Marvin Liebman, and DCAA auditor, Guy Sansone.

On November 29, 1984, Freedom submitted Progress Payment Request No. 1 for \$252,150 to the ACO. DCAA audited Progress Payment Request No. 1 and -- despite the PCO, Thomas Barkewitz's, agreement to permit Freedom to charge certain costs as direct costs -- the DCAA auditor stated in a memorandum dated December 7, 1984 that the request should be denied as Freedom was "requesting monies for costs which are indirect in nature." and the DCAA auditor further stated "We recommend that \$0 be paid on the subject request. ...The contractor has not started production and therefore does not qualify for progress payments. We cannot perform any progress payment audits until such time as the contractor starts production and qualifies for progress payments."

This position of the DCAA auditor, Guy Sansone, is totally contrary to the PCO, Thomas Barkewitz's, direction that progress payments were to be based on "direct and incurred costs" and not "starting of production" which everyone knew was 8 months after contract award.

In order to prevent this contract from moving forward, DCAA was attempting to put Freedom in a "Catch 22" position whereby, knowing full well that if Freedom did not receive any progress payments until it was producing, it would be impossible to set up its plant to produce.

On December 10, 1984 the ACO, Marvin Liebman, requested legal opinion from Defense Counsel on paying a progress payment request from Freedom when there was no physical progress on the contract as stated by DCAA.

On December 26, 1984 legal counsel responded to the ACO in a memorandum: [ see EXHIBIT # 4 ]

**"...4. It is our understanding that this contract, as negotiated by DPSC, provided that all costs incurred by the contractor which would ordinarily be considered indirect costs (G&A), overhead expenses, are to be treated as direct costs. This arrangement was apparently made in recognition of the fact that this is Freedom Industries' only current contract, either Government or commercial and all its allowable expenses be charged to that contract. ....**

**...6. Based upon the DAR definitions and the progress payment guidelines set forth in the clause, it is not required that there be actual physical progress on a contract in order for a progress payment request to be valid. The contractor need merely incur costs that are directly allocable to the contract. ...."**

**"...8. For your information, this opinion had been coordinated with DCASR-NY-HC, DPSC Office of Counsel, DLA Contracts, and DLA Office of Counsel.**

After this legal ruling the ACO, Marvin Liebman, and his team knew he could not stop progress payments as they had been doing and shifted their discriminatory tactics.

On or about December 26, 1984 the ACO, Marvin Liebman, and his N.Y. Commander, Colonel Hein, contacted Dollar Dry Dock Savings Bank and advised them that the Government was looking to Dollar to support Freedom's contract with \$7.2 million Dollars and not just 5% or \$748,000 as Freedom states was required. This was two completely different stories being told to Dollar.

On December 27, 1984 Freedom complained to the PCO, Thomas Barkewitz, about the confusion being caused by the DCAA and on December 28, 1984 the PCO advised the DCAA, in accordance with DAR 3-811 of the negotiations held with Freedom and gave DCAA a copy of the Price Negotiation Memorandum. The PCO then advised Freedom that the DCAA knew how to read.

On January 4, 1985, the ACO, Marvin Liebman, advised Freedom that he was considering returning Progress Payment Request No. 1 unpaid and suspending progress payments under the Contract because "evidence available to me indicates that Freedom Industries is in such unsatisfactory financial condition as to endanger performance of the contract." without Dollar Dry Docks' \$7.2 million back in the deal.

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On January 7th and 10th, Freedom again requested Dollar and the SBA for the \$500,000 loan it had agreed to provide after contract award. The SBA held several meetings with Dollar Dry Dock Savings Bank and then took no action on the loan. Dollar would not process the loan request until it was verified that the ACO, Marvin Liebman, would pay 95% of the negotiated contract costs, and that Freedom was only to finance 5% or \$748,000.

Freedom had by this time already obtained other private financing to cover its 5% end of the costs. In addition, in order to raise additional working capital for Freedom Industries, Inc. to use under the contract, H.T. Food Products, Inc. sold its building purchase option for \$400,000. and agreed to lend it to Freedom for its working capital.

On January 16, 1985 Freedom wrote a letter to the ACO, Marvin Liebman, explaining that his position was wrong and was misleading Freedom's financial backers as to the financing procedures and was further restricting Freedom's effort to conclude financing arrangements with banks, suppliers and equipment manufacturers. The letter told the ACO that Freedom was telling the following story to financial backers on how the cash flow would work and how their money would be protected through an Assignment of Claims, DAR Section 7-103.8.

**Freedom Story:** *Freedom will incur line item allowable costs on the MRE project in accordance with our "Memorandum of Understanding" dated 6 November 1984 and further detailed in Freedom's full blown cash flow sheets. Once incurred costs are recorded on our books and records, Freedom will generate a Request for Progress Payments (Form 1443) requesting 95% of all incurred costs. Freedom will be paid within 5 to 10 days in accordance with DOD policy dated August 14, 1984 signed by Dr. R. D. DeLauer, Under Secretary of Defense, in response to OMB Circular A-125.*

**BUT** *when Freedom's financial backers called the ACO, Marvin Liebman, in New York they are told a different story!*

**ACO Story:** *When Freedom incurs direct labor and direct material costs an overhead rate will then be applied and Freedom will receive payment only then.*

The financial backers then asked Freedom when it would incur direct labor and direct material. Freedom's response, was in accordance with our cash flow projections, which was agreed to with the PCO, Thomas Barkewitz, during negotiations and contract award was in months 8 through 14 of the contract period.

The PCO, Thomas Barkewitz, also confirmed the payment agreement to Freedom's financial backers and said that payment would be made by the ACO, Marvin Liebman, in accordance with DAR 7-104.35(b). The ACO, Marvin Liebman, refused to confirm the same story to Freedom's financial backers that he would pay progress payments based on incurred costs and to include QC equipment and office equipment in order for Freedom to conclude its 5% financing.

The big question now was who was going to finance 100% of the contract during months 1 to 7 if the government was only going to start its financing in months 8 to 14. ? ? ? ?

Some of Freedom's financial backers no longer believed Freedom's story and had decided to "wait and see," or withdrew their financial support.

Not only did the ACO, Marvin Liebman, refuse to pay, he also advised critical suppliers that he intended not to pay causing serious disruption in the relationships Freedom enjoyed with its subcontractors and resulted in the loss of needed equipment, supplies and credit worthiness.

It became obvious that neither the ACO nor the DCAA would honor the PCO's advance agreement on allowing expensing of certain capital costs in progress payments.

On February 6, 1985, with the Government behind over \$824,000 in progress payments to Freedom, the ACO, Marvin Liebman, returned Progress Payment Requests Nos. 1 and 2 unpaid and he also suspended progress payments under the contract due to Freedom's "unsatisfactory financial condition."

On February 15, 1985, in the interest of protecting himself in lieu of national defense, the ACO, Marvin Liebman, again impeded progress and changed the negotiated terms under the contract by imposing his own terms and conditions that Freedom had to meet in order to receive progress payments. The ACO's terms were:

- (1) Freedom obtain a \$3.8 million line of credit which was far in excess of Freedom's financing agreement with the PCO, Thomas Barkewitz, of \$748,000 or 5% of costs and
- (2) Novate its contract to Freedom, N.Y., Inc., aka H.T. Food Products, Inc.

This action was in fact reversing the agreement made between the Government and Freedom. The ACO attempted to justify his actions by:

(A) Challenging Freedom's financial capability because of the reduction in outside contract financing that led to a lower per case price.

(B) Challenging the authority of the PCO, Thomas Barkewitz, to categorize start-up and equipment cost as direct costs.

(C) Challenging Freedom's accounting system for billing these start-up and equipment costs as direct contract costs, even though this was contrary to his own lawyers opinion and the PCO's direction.

By this point, the ACO, Marvin Liebman, and DCAA had destroyed and changed all of the negotiated financing terms of the contract that the U.S. Government committed to Freedom, a Black contractor from the South Bronx, who was a SBA certified economically disadvantaged small business. The ACO, Marvin Liebman, wanted to personally protect himself and his "17" years with the Government and did not want to have a "Black" firm's failure on his record. He did not care about the mission ordered by the Office of the Secretary of Defense dated February 7, 1984, in its D & F mandating that Freedom be developed and maintained as an emergency combat ration prime contractor to respond in the event that war or mobilization was declared. His only concern was that he was not left holding the financing bag if Freedom failed as he stated happened to the ACO in Chicago.

The ACO's breach of the contract financing set the stage for over 26 months of financial chaos in Freedom's attempt to fulfill this contract. The ACO did not give consideration to the fact that Freedom's case price was based on Government financing or that his failure to administer the contract as negotiated by the PCO, Thomas Barkewitz, was a breach of contract and endangered its performance.

On February 28, 1985, as a newly imposed mandate by the ACO, Marvin Liebman, Freedom obtained a \$5 million A/R financing program from Bankers Leasing Association, Inc. ("Bankers"). Advances to Freedom were to be secured by an "Assignment of Claims" to Bankers under the Contract.

By letter of March 12, 1985, Freedom requested a 90-day delivery extension as a result of the effect of the ACO's improper suspension of progress payments. By letter of March 21, 1985, the Government denied Freedom's request for an extension of its delivery schedule.



While the ACO, Marvin Liebman, and DCAA had suspended and withheld vital U.S. Government money from Freedom the PCO, Thomas Barkewitz, was entrusting and shipping millions of dollars of Government Furnished Material (GFM) to Freedom's plant for Freedom to use under the contract. Although the ACO, Marvin Liebman, knew that Freedom needed and did not have the negotiated QC equipment or computerized lot tracking system to properly track and store these millions of units of GFM, he continued to withhold the necessary money to purchase the proper equipment and continued the chaos.

Between November 15, 1984 and May 1985, instead of financing \$117,000 or 5% of the Contract costs as Freedom was obligated to do, Freedom was actually financing, through private sources, all 100% of the \$2,400,000. in costs. In mid May, Freedom Industries, Inc. novated the contract to Freedom, N.Y., Inc. as required by the ACO, Marvin Liebman. The Government then finally made its first progress payment amounting to \$1.7 million, but still did not include the costs of negotiated start-up and capital equipment. Freedom started its argument and stated its contract rights all over again and complained to the now acting PCO, and Chief, Operational Rations, M.H. Rowles that the ACO, Marvin Liebman, was still impeding progress and not paying agreed upon costs.

On or about May 16, 1985, Freedom's lender, Bankers, attempted to obtain a phone verification from the ACO, Marvin Liebman, that payment on one of Freedom's progress payment requests was forthcoming since the ACO had previously stated to Bankers that the progress payment had been approved however, payment was never received.

The ACO, Marvin Liebman, did a complete about face and informed Banker's representative that, although the progress payment request had previously been approved, Bankers should not advance money to Freedom because there were now problems with the progress payment request and that payment would not be made. As a result of this and other communications with the ACO, Marvin Liebman, Bankers withdrew its \$1 million dollar commitment to lease Freedom's production equipment for the contract, thus, the ACO, Marvin Liebman, had now derailed Freedom's hi-tech production equipment lease which then took over four months to put back together.

Meanwhile, vendors and suppliers of Freedom's hi-tech production equipment canceled Freedom's purchase orders when they found out that progress payments 1, 2

and 3 were returned unpaid and that progress payments had been suspended under the contract.

Freedom later found out that the only thing wrong with its progress payment requests was that negotiated start-up and equipment costs were included. For this reason, the ACO, Marvin Liebman, repeatedly stated that the accounting system was not acceptable.

By telefax dated June 5, 1985 to the ACO, Marvin Liebman, the now acting PCO, and Chief, Operational Rations, M.H. Rowles, DPSC, confirmed that the PCO, Thomas Barkewitz, had agreed during negotiations that quality control equipment and supplies, automated building management and control systems, and office equipment would be treated as one-time direct costs, and that "it was decided to pay for these elements as 100% cost rather than insist upon depreciation". [ see EXHIBIT # 5 ]

On June 12, 1985, the ACO, Marvin Liebman, again requested the advice and opinion of DCASR-NY counsel concerning the allowability of such equipment as direct costs. Counsel responded in a memorandum dated July 15, 1985, stating that:

**"... Prior to award of the contract, Freedom and the PCO, during negotiations, agreed that the subject equipment would be treated as direct costs to the contract and such treatment was for the purpose of both price determination and progress payments. The agreement is confirmed by both a TWX dated 10 June 1985 from M.H. Rowles, Chief, Operational Rations, DPSC, (presently acting as PCO) and a telephone conversation, on 10 July 1985, among the undersigned, M.H. Rowles and Keith Ford, a government member of the negotiations team. It was understood by Freedom and the former PCO that the successful performance of the contract would require Freedom to have sufficient working capital for pre-production and production costs. Treating the equipment as a direct cost to the contract will permit the contractor to receive progress payments based on the entire cost of this equipment rather than only on the depreciable portion of the equipment cost. However, based upon the progress payments clause the PCO would not appear to have the authority to make such an agreement. It is possible that the government could be bound based upon a theory of estoppel. See Gould Defense industries, Inc., 73-2 BCA 16,676 at pp. 82, 981-4.**

**4. In view of the express agreement between the former PCO (the Government's duly authorized representative) and the contractor to treat this equipment as direct costs to the contract and the valid business reasons behind the agreement these being the creation of a third source for ready to eat meals, the contractor's need for cash to perform subject contract, and the fact that this equipment is essential to the successful completion of the contract, this office recommends a DAR deviation to permit implementation of the agreement to treat all the equipment in question as a direct cost to the contract for progress payment purposes. If a deviation were not granted the result could be a failure of the**

**contractor to obtain the required equipment and consequently an inability on its part to successfully perform the contract and the possible bankruptcy of the contractor." [ see EXHIBIT # 6 ]**

This memorandum clearly stated that Prior to award of the contract, Freedom and the PCO, during negotiations, agreed that the subject equipment would be treated as direct costs to the contract and such treatment was for the purpose of both price determination and progress payments. All parties knew that without progress payments and direct cost treatment of the items in question, Freedom could never perform the Contract.

On or about June 20, 1985, a meeting was held in New York between Freedom, the Government, Banker's equipment leasing agent and others. As Freedom was pressing for its progress payments, an ACO staff member outburst that Freedom was there for a Government "handout" and that Freedom should go and get its own money to perform the contract.

After lengthy discussion as to Freedom's cash flow and progress payments, the ACO, Marvin Liebman, concluded the meeting by providing assurances from the Government that progress payment problems which Freedom was experiencing would be remedied and that pending progress payments to Freedom would be issued promptly and subsequent progress payments would be paid in a timely manner.

By this time it was too late for Freedom to reorder the hi-speed, hi-tech, state-of-the-art production equipment it negotiated to use under the contract because of long delivery lead-times. In order to meet case delivery deadlines, Freedom was forced to "jig rig" antiquated equipment, which was slow, less efficient and more labor intensive, thus more costly for Freedom.

In July 1985, Freedom hired production employees and began its intense MRE production training program. Test production runs were made and quality control systems were tested.

Throughout this period and beyond, the Government was financially micro managing Freedom and refused to honor its contractual commitment to make progress payments and to permit Freedom to include pre-approved costs as direct costs in its progress payment requests. For example, according to cash flow projections which Freedom and the Government had relied upon in negotiating the Contract, Freedom was scheduled to spend by July 1985 \$7.2 million towards Contract performance. Due to the ACO, Marvin Liebman, having "his foot on the brake" by refusing to make

progress payments and interfering with Freedom's financing and equipment sources, Freedom had by this date incurred costs of only \$4,602,880 of which the Government had paid only \$2,739,615. imposing additional financing burdens and delays on Freedom.

On August 6, 1985 Freedom was notified by DLA Headquarters that the ACO, Marvin Liebman, was without authority to approve progress payments for capital equipment costs that were agreed to during price negotiations and that DLA had requested that DPSC initiate a request for authority to deviate from Department of Defense policy to permit such payment for the negotiated capital equipment that was essential for the accounting and production quality control.

Sometime in September of 1985, with the Government behind over \$4,800,000. in progress payments to Freedom, the ACO, Marvin Liebman, called Freedom and informed it that DCAA had determined that Freedom's accounting system was inadequate and again stopped and withheld progress payments for over three months. One of the reasons for DCAA's finding was that Freedom expensed items which "normally" are capitalized and depreciated.

The DCAA auditor had used Freedom's accounting system as a devious method to "jam the gears" and stop the Government's start-up financing by claiming that Freedom's accounting system was not adequate to capture contract costs because Freedom was charging start-up and equipment costs as direct costs. Freedom had negotiated and was authorized to charge capital equipment and start-up costs against the contract as direct costs, however, DCAA refused to recognize the Government's obligation to Freedom and instead insisted that Freedom use the long term depreciation method. For this reason, DCAA deemed Freedom's accounting system to be "inadequate" to receive Government progress payments.

DCAA knew that if Freedom used the depreciation method it could not charge and expense the negotiated costs direct to the contract, as agreed to with the PCO, and would be forced to raise the needed equipment monies outside the contract, with an addition financial burden on Freedom. The ACO, Marvin Liebman, also reduced our progress payment by \$400,000 claiming the sale of H.T. Food Products, Inc.'s building purchase option was really a "credit to rent."

This DCAA statement of an "inadequate" accounting system was all the ACO, Marvin Liebman, needed to "keep his foot on the brake" and to withhold and not pay the needed start-up money as was negotiated and committed by the Government.

Freedom was again forced to layoff its trained work force. When workers were recalled, many key workers had found other employment. This, "on again - off again," work situation kept Freedom's 400 Black and Hispanic workers depressed and off balanced, as they never knew whether Freedom would have the money to pay them or if they would ever be recalled to work.

The production workers knew that Freedom did not have the money to get needed parts for its "jig rigged" production equipment and was using only 6 of its 12 assembly lines for production causing massive logistics problems.

In November 1985, Freedom lost its' MRE 6 follow-on contract by only 18¢ per case, to an unqualified contractor. The follow on contract was awarded to Cinpac of Ohio, who has been determined by the U.S. Department of Labor to be in violation of the Walsh-Healey Public Contracts Act and "unqualified" for award of the contract which Freedom should have been awarded had the Government lived up to its end of the negotiated financing. Cinpac only had a 46,000 square foot facility and did not have the required 3 million cubic feet of continuous in plant and storage facilities as called for in the JAN and Solicitation. Thus the Government has brought in a fourth planned producer that it must now also develop and maintain in the event of war or troops mobilization. "One standard for Cinpac and a different and more costly standard for Freedom!"

In January 1986, the Government was over \$5,600,000 behind in progress payments to Freedom. In order to avoid a violation of our nations war reserve level of MRE's, a total of 114,758 cases was terminated for default by the Government and Freedom's contract was reduced from \$17,197,928 to \$13,816,262. The Government also extracted \$200,000 in consideration costs.

These cases were reprocured in order to avoid violating war reserve levels. The government then diverted Freedom's GFM and allowed raw materials to be commandeered from Freedom's subcontractors and suppliers. Freedom's plant and production was shut-down again.

Freedom's suppliers and subcontractors had now totally panicked and believed that the Government had abandoned and replaced Freedom with a new prime contractor Cinpac of Ohio. The suppliers demandd to be paid in advance of their production and shipment or wanted letters of credit to be issued by Freedom's bank before they would honor Freedom's purchase orders. This created more financial pressure on Freedom, who was an economically disadvantaged small business.

Freedom filed a timely "Notice of Appeal" to the Armed Services Board of Contracts Appeal, #32570 for the default termination and instituted a lawsuit in Federal Court against the Department of Defense for improperly awarding the MRE 6 follow on contract to Cinpac, a unqualified company. These actions by the Government placed Freedom's MRE 5 contract in a loss position.

In March 1986, Freedom filed an equitable adjustment claim in the amount of \$3.4 million in additional contract costs, based on "Government caused delay and failure to pay agreed to start-up costs, equipment costs, and 95% progress payments that were allowable and allocable to the Contract in a timely manner."

Also in March 1986, microholes causing bacteria was found in the other three prime contractor assembly plants who were working under MRE 6. The USDA retort pouch plant owned and operated by Star Foods of San Antonio, Texas whose capability was used to qualify Star as a Walsh Healey manufacturer, an Industrial Preparedness Pouch Producer as well as award of over 10 million retort pouches under MRE 6 was at fault.

It was later found that this same plant's capability was used by Cinpac of Ohio to qualify themselves as a Walsh Healey manufacturer, as an Industrial Preparedness Pouch Producer, as an Industrial Preparedness Prime Assembly Contractor and recipient of a MRE Assembly contract under MRE 6. The same peacetime and wartime production plant capabilities was counted twice and two separate companies qualified and received awards of MRE 6 contracts.

This was a total fraud on the procurement system of the United States.

The Government knew of the fraud and this conflict of peacetime and wartime production demand on this plant and did nothing about it. When this microhole and bacteria problem surfaced it heavily impacted all MRE Prime Assembly Contractors, including Freedom.

Star Foods was ordered shut down by the U.S. Army Veterinary Food Inspection Service and the U.S.D.A. Meat Inspection Service. This confirmed that Star, not Cinpac, was the real owner and manufacturer under the Walsh Healey Public Contracts Act. Star having it's own employees on its own payroll; its own processing facilities; its own food processing equipment; and its own U.S.D.A. food processing number in its own name as required. Star, not Cinpac, was the company that qualified for award.

On the other hand, Cinpac had no experienced food processing employees on its payroll; no U.S.D.A. food processing facilities; no U.S.D.A. equipment or machinery in

it's name or leased to it; and was not qualified for contract award as was later confirmed by the Department of Labor's final determination that Cinpac was not a Walsh Healey Manufacturer and not eligible for contract award. [ see EXHIBIT # 7 ] Although FAR 22.608-6 (b) provides for the termination of a contract awarded to a firm determined to be ineligible under the Walsh-Healey Act, the new PCO, Frank Bankoff, failed to act in accordance with this law. Thus Cinpac had been allowed to construct a sham arrangement to receive a multi million dollar peacetime production contract. This sham arrangement to mobilize someone else's production resources in the event of war was false and fraudulent misrepresentations to the U.S. Government. However, the Government's new PCO, Frank Bankoff, knowingly allowed it.

At this point in time, with Star shut down and Prime Contractors standing still, the Department of Defense could not respond with MRE rations for our Nation's frontline troops in the event of war or mobilization as required by the Congressional mandates and procurement laws that these contracts were awarded pursuant to.

Cinpac did not have its own or anyone else's peacetime or wartime USDA inspected retort pouch production capability as Freedom was required to have and had in order to qualify at great additional cost to Freedom nor did they have the storage space that the solicitation mandated that the prime contractor have in order to store Government materials. One standard for Cinpac and a different, higher and more costly standard for Freedom.

All this was going on while Freedom was being micro managed by the ACO, Marvin Liebman. Freedom was being denied and robbed of an equal economic opportunity to perform its contract and to be developed in the same manner in which DLA had allowed white contractors to be developed using U.S. Government funds in the performance of their contracts. Despite of all the Government obstacles, Freedom was now producing "high quality" cases of MRE's, delivered to and accepted by the U.S. Government.

In April 1986, the ACO, Marvin Liebman, withheld additional payments of \$300,000 and \$1,412,276 until Freedom agreed to settle its \$3.4 million dollars claim against the Government. When Freedom refused to give up its claim, the new PCO, Frank Bankoff, advised Freedom that he was going to refer the entire matter to DLA, Headquarters, Cameron Station, VA.

In April and May of 1986 Freedom's special counsel, David M.F. Lambert, and a consultant entered into claim settlement negotiations with DLA's Executive Director of

Contracting, Ray Chiesa and DLA's Chief Counsel, Karl Kabeiseman, to settle Freedom's claim and work out a survival plan for Freedom to continue in business as an MRE Prime Mobilization Contractor. During these settlement negotiations, DLA promised to keep Freedom in business if Freedom agreed to drop its claim for equitable adjustment, its ASBCA appeal #32570, its Federal law suit against DLA and Cinpac of Ohio in return for a new MRE 7 contract, a Government guaranteed "V" loan for \$2.4 million dollars, and SBA 8(a) contracts.

Finally, the Government would now at last allow progress payment billings based upon start-up costs and equipment costs which had been agreed to 19 months earlier and which all along had been critical to the successful performance of the Contract. It should be noted that the ACO, Marvin Liebman, never received the requested DAR deviation from the Pentagon. Proving that the PCO, Thomas Barkewitz, had the authority to allow such costs at the time of contract under the negotiation as authorized by 10 USC 2304 (a) (16) and DAR 3-216 "in the interest of national defense" and that the ACO, Marvin Liebman, wrongfully withheld vital progress payments and caused massive financial hardship on Freedom. However, the Government refused to allow any monetary recovery on Freedom's claim for equitable adjustment of \$3,481,768.00. By the time Modification No. P00025 was executed, Freedom was in a loss position, and had suffered extreme and irreversible financial damage due to Government action. The Government also inserted in Modification No. P00025 a clause which purported to be a release of all legal and equitable rights.

Freedom also understood the Government to agree, integral to but outside the express terms of Modification P00025, as follows:

- (1) that four planned producers would receive MRE prime contract awards in the next fiscal year (thus virtually assuring Freedom of a new award);
- (2) that a "V-Loan" application by Freedom's Bank would be approved in order to support continued and future performance by Freedom; and
- (3) that DPSC would award Freedom new contracts under the "8(a)" Program [15 U.S.C. § 637(a)] for other combat meal products.

Because of the promises made during these settlement negotiations by the Government's Executive Director of Contracting and its Chief general counsel as outlined above, Freedom agreed to sign Modification 25.

On May 29, 1986, 5 months beyond the original contract completion date and with the Government over \$6.0 million behind in progress payments, thus causing Freedom



to be under extreme financial pressure and duress, the parties executed Modification P00025, reinstating the defaulted 114,758 cases, extending the delivery schedule and also allowing for the reinstatement of the \$200,000 in consideration costs, thus restoring the Contract to only its original awarded value.

Freedom could not understand how DLA reinstated 114,758 cases to its contract that had already been reprocured, without going through the entire procurement process.

Between May and September 1986 the ACO, Marvin Liebman, recouped at a rate of 100%, all shipment payments and applied a loss formula to progress payments in order to quickly recoup Government money, while encouraging Freedom's bank to lend more money to the contract, in order to leave Freedom's bank holding the financing loss of Freedom's contract and not himself as ACO.

The Government then refused to honor the promises made during settlement negotiations by modifying the MRE 7 Solicitation to state only three and not four contracts would be awarded. Without either an increase in price, equitable adjustment or the additional relief through new contracts, Freedom could not see how to finance further performance of the Contract.

In September 1986, Freedom wrote letters to President Reagan and others complaining about this mistreatment and contract mis-management by DLA. Also in September, the U.S. Senate, hearing of this gross unfairness made committee adjustments to Bill S. 2827 in order to provide relief for Freedom. [ see EXHIBIT # 8 ]

"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. Information is herewith presented relative to changes made:

#### 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.

On September 20, 1986 Freedom was found to be a "responsible" contractor, eligible for contract award under MRE 7.

In November 1986, the Government was \$5.5 million behind in progress payments to Freedom. Freedom's final assembly production shut down due to lack of progress payments to pay subcontractors, suppliers and vendors but Freedom, with its banks assistance continued to produce subassemblies while awaiting for badly needed progress payments and shipments of GFM from the Government, that never arrived. The Government then ordered a Resurvey of Freedom for the MRE 7 contract award and found Freedom to be non-responsible based on "financial condition," and production record. Sporadic progress payments had caused the stop and start of production and Freedom's performance record to appear up and down. This inconsistent performance record was now being used in the MRE 7 preaward process to determine that Freedom was a non-responsible contractor and not eligible for award of a MRE 7 contract.

It is interesting to note that between July 1986 and December 1986, the same period that Wedtech's defense contract scandal was unfolding, the SBA's New York regional administrator was a target of the FBI's Wedtech investigation along with the law firm of Biaggi & Ehrlich. Freedom's ACO, who was the same ACO for Wedtech, literally abandoned his micro management of payments to Freedom under its MRE 5 contract and totally ignored Freedom's MRE 7 efforts by stating that he was too busy with Wedtech's FBI investigation to process Freedom's payments.

In February 1987, Freedom requested a Certificate of Competency ("COC") from the Small Business Administration ("SBA") in New York. Upon the SBA seeing the financial mess that Freedom was in from the MRE 5 contract, it would not issue a COC for the MRE 7 contract, based on the lack of financial capacity even though Freedom had over \$6,000,000 in new bank commitments for the MRE 7 contract and \$3,000,000 in loan deferrals from the MRE 5 contract. [ see EXHIBIT # 9 ]

It was later learned that the SBA did not believe that the bank had the capacity to lend 6 million dollars to Freedom.

In March 1987, DLA commissioned the DCAS-Ohio to review Freedom's proposal for MRE 7. This same DCAS office which was responsible for illegally

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approving Cinpac found Freedom to be financial non-responsible for MRE 7 award, and thus, eliminated Freedom as competition to Cinpac of Ohio. Freedom's presentation of a new commitment from its lender for \$6.0 million to perform the MRE 7 contract and a deferral of payment of \$3.0 million in MRE 5 loans was totally disregarded by DCAS-Ohio.

DLA continued to ignore the U.S. Senate directive and the ruling by the Department of Labor that contract award to Cinpac of Ohio was in violation was not qualified for contract award by awarding the MRE 7 contract to Cinpac of Ohio for over \$3.0 million above Freedom's price. As a result of this award and Cinpac's higher price, Cinpac moved to a larger facility, one year after the solicitation mandated that they comply with the space and storage requirements.

At this point, Freedom's bank seeing that there were no follow-on contracts forthcoming to finance, could not justify to bank examiners why it was lending any more money against Freedom's loss MRE 5 contract. Because the government was not paying any money, the bank stopped financing and Freedom then ran out of money and credit. Freedom was then forced to stop production and lay off its entire work force of over 442 Black and Hispanic hard-core South Bronx employees - - as a direct result of the Government's failure to make timely payments under the progress payments clause.

Even with the contract in breach because of lack of government money, Freedom had somehow managed to deliver 512,462 (or 83%) of the 620,304 cases under contract in return for payments of only \$15,905,584.

On April 20, 1987, the new PCO, Frank Bankoff and the ACO, Marvin Liebman watched in attendance as Freedom's bank sold off Freedom's production equipment and other assets to Cinpac of Ohio and other competitors to recoup some of the loans it had lent Freedom under the contract. The new PCO, Frank Bankoff, and the ACO, Marvin Liebman, did nothing to stop the auction or even offer to pay the government money that was overdue to Freedom under the contract.

On April 23, 1987, the new PCO, Frank Bankoff, executed MOD 30 setting new delivery dates for Freedom to comply with which was August 30, 1987 and September 30, 1987 knowing full well that Freedom had already been evicted from its facility, its production equipment had been sold off to repay bank loans and that the Government

was actively removing GFM, CFM and all QC equipment, lockers and other equipment that was needed to perform the contract. The Government also attempted to remove the toilets, but was blocked by the landlord.

On May 1, 1987 the Government sent a letter stating that Freedom's lack of capacity to go forward under the terms of the contract and meet the new delivery schedule represented a breach of the contract. (There was no mention in this letter that none of this would have happened if the Government had not already breached the negotiated financing terms of the contract or that the Government refused to give an equitable adjustment on Freedom's claim in order to compensate for the extra cost of the Government caused delay as required under the contract, or that the new delivery schedule was not reasonable nor agreed to by Freedom.)

On June 22, 1987, the Government issued a final decision purporting to terminate the Contract for default. Freedom filed a timely Notice of Appeal to the ASBCA #35671.

In August 1988, members of the law firm of Biaggi & Ehrlich, the regional administrator of the SBA, the Bronx Borough President and others were convicted of racketeering in the Federal Government's Wedtech case.

This investigation and convictions proves that there is a direct link between the New York Office of the Small Business Administration and the law firm of Biaggi and Ehrlich.

Therefore, it is our contention that because Freedom refused to "play ball" and give stock to the law firm of Biaggi & Ehrlich, Freedom was "black balled" at the SBA. The regional administrator blocked Freedom from receiving any federal financial or business development assistance.

The ACO, Marvin Liebman, at all times ignored the fact that the contract was legally binding on the United States, by refusing to honor its financing terms as negotiated and asserting that the PCO, Thomas Barkewitz, "screwed up" in making the advance agreement for the Government to finance Freedom's contract. This internal DLA, PCO-ACO squabbling of this breached contract and its failure to terminate the Cinpac contract in accordance with FAR 22.608 - 6 (b) is now being "covered up" by Defense Logistics Agency.

It is our understanding that DLA has given the ACO, Marvin Liebman, an award for his financial administration of this contract while Freedom, the young Black contractor who has been financially "LYNCHED" by DLA, is now being squeezed to pay back the loans borrowed from banks and credit supplied by its vendors. This problem has halted any new loans to get started again.

Freedom through no fault or negligence of its own, is caught between the actions of the Government ACO's contract breach and the new PCO's failure to terminate Cinpac's contract under FAR 22.608-6 (b). Which both actions when taken together cut off any new business to Freedom.

Freedom's direct loss in connection with the Contract to date exceeds \$7.0 million, including claims by Bankers exceeding \$3.2 million. This amount does not include Freedom's negotiated profit of \$2.2 million, or Dollar Dry Dock Savings Bank's earlier \$2 million investment in the MRE program.

Freedom would be a success story today had DLA, forced the ACO, Marvin Liebman, to honor the financing terms of the contract and/or forced the new PCO, Frank Bankoff, to terminate the Illegal Cinpac contract in accordance with FAR 22.608-6 (b) and then award the contract to qualified Freedom. DLA would then have complied with the orders of the Secretary of Defense and the Mandates of Congress under §10 USC 2304 (a)16. Instead, DLA refused to honor the contract and develop Freedom as required by DAR 3-216. This rebellion in the ranks by DLA caused Freedom and its 442 Black and Hispanic South Bronx employees to be left HANGING, broke, busted, penniless, and out of business after borrowing over 10 million dollars trying to participate in DLA's MRE " WHITES ONLY " Industrial Preparedness Program.

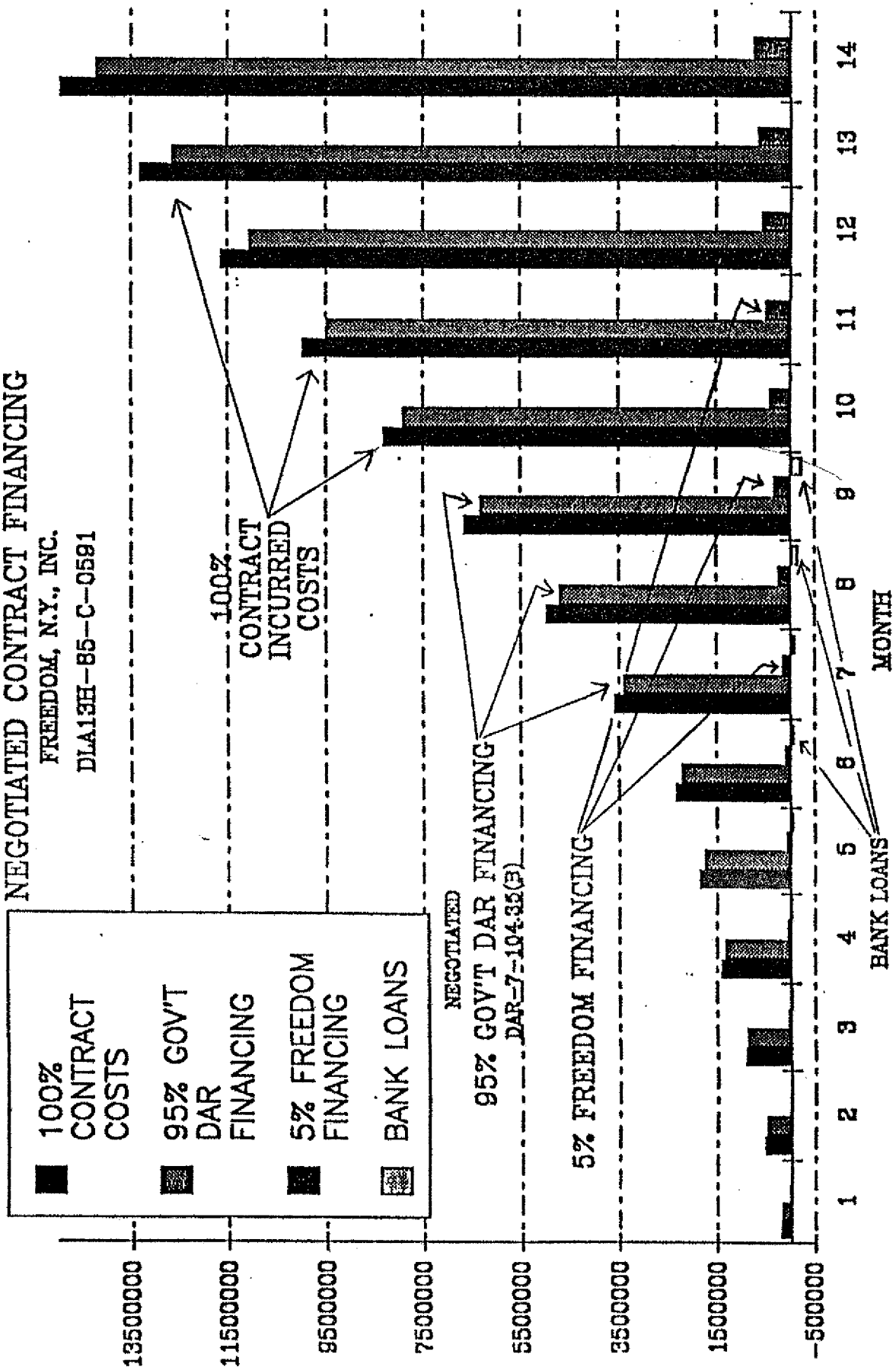
Racism, Discrimination  
and  
Double Standards  
are alive and well  
within the  
Defense Logistics Agency  
**U.S. Department of Defense**  
**isn't it ? ?**

Should our Nation's Black entrepreneurs be treated this way ?.

# NEGOTIATED CONTRACT FINANCING

FREEDOM, N.Y., INC.

DLA13H-85-C-0591



# DISASTROUS GOVERNMENT FINANCING SHORTFALL

DLA13H-85-C-0591

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