

Calendar No. 1579

69TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1571

NIAGARA MACHINE & TOOL WORKS

FEBRUARY 22, 1927.—Ordered to be printed

Mr. BAYARD, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 9150]

The Committee on Claims, to whom was referred the bill (H. R. 9150) for the relief of the Niagara Machine & Tool Works, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1126, Sixty-ninth Congress, first session, which is appended hereto and made a part of this report.

[House Report No. 1126, Sixty-ninth Congress, first session]

The Committee on Claims, to whom was referred the bill (H. R. 9150) for the relief of the Niagara Machine & Tool Works, having considered the same, report thereon with a recommendation that it do pass.

The full facts in the case are stated in the following letter of the Secretary of War, which is made a part of this report:

WAR DEPARTMENT,
Washington, April 20, 1926.

HON. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives.

DEAR MR. UNDERHILL: Receipt is acknowledged of your letter of the 31st ultimo, with which you transmit copy of bill H. R. 9150, Sixty-ninth Congress, first session, entitled "For the relief of the Niagara Machine & Tool Works," and request my opinion as to the merits of the case.

During the construction of the Government explosive plant at Nitro, W. Va., the Thompson-Starrett Co., as agent for the United States, entered into a contract with the Niagara Machine & Tool Works for the manufacture and delivery of two grooving machines. The contract contained the usual cancellation clause. The signing of the armistice rendered unnecessary the completion of the work, and the contract was therefore canceled, the cancellation agreement being that the Government was to pay the Niagara Machine & Tool Works the sum of \$175, the contractor to retain the two machines in their then partially completed state. A copy of the cancellation agreement is herewith. Payment was made the Niagara Machine & Tool Works accordingly.

Subsequently, it is understood, the Comptroller General disallowed this payment in the accounts of the disbursing officer and set up a charge against the Niagara Machine & Tool Works, deducting the amount—\$175—from other moneys due that firm.

The War Department has no knowledge of the reasons underlying the Comptroller General's action; the records do not show that the matter was ever submitted for its comment or recommendation. Under the circumstances, it is suggested that call be made upon the Comptroller General for report on the pending bill. The War Department considered at the time that the cancellation agreement was fair and in the best interest of the United States; nothing has since transpired which would warrant the department to change its view in the matter.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*

CANCELLATION AGREEMENT

NITRO, W. VA., *December 23, 1918.*

Vendor: Niagara Machine & Tool Co., 639 Northland Avenue, Buffalo, N. Y.
Old order No. 14222; adjustment order No. 240.

On account of discontinuance of construction of the United States Government explosives plant "C," the following adjustment of original purchase order bearing the above number is hereby made in accordance with the terms and conditions of said original order, section 5 of which provides as follows:

"The Government has the privilege of canceling any order during the progress of the work by paying the proportionate cost of material and manufacturing and the proper proportion of the vendor's profit. This to be arranged in such a way as to insure the vendor against loss of manufacturing cost or proportion of his profit."

Authority to make this settlement is vested in the director by letter of the Secretary of War, dated December 6, 1918, that "the director shall proceed to reduce, suspend, cancel, adjust, and settle all contracts or valid purchase orders and negotiate the adjustment made necessary by the discontinuance of construction work at this point."

Any portion of the original purchase order not modified by the adjustment herein provided shall remain in full operation.

The payment of the amount herein provided to be paid to the vendor shall constitute a full and final settlement of all questions and claims growing out of the original purchase order except as herein specifically reserved.

1. Original order covered grooving machines.
2. Amount or proportion delivered, none.
3. Amount or proportion paid to vendor, none.
4. Claims of United States for defaults, defective performance, overpayments, warranties, defective workmanship, delays, damages, etc., none.
5. Disposition of purchase order: (a) Part canceled, entire order; (b) part not canceled, none.
6. Disposition of property mentioned in purchase order: (a) Delivered to Government, none; (b) retained by vendor, all.
7. Amount due vendor under section 5 of purchase order for proportionate cost of material and manufacturing and proportion of vendor's profit, as agreed by the vendor and the contracting agent and approved by the director, United States Government explosives plants, \$175.

8. Facts and details showing basis of settlement herein other than above set forth are as follows: Vendor reports expenditures up to November 18 for material, labor, and overhead of \$1,068.44, but have agreed to retain the two machines and accept cancellation of the order on payment by the Government of \$175 to reimburse them for expense of disassembling, storing, and reassembling and reselling.

It is hereby certified both by the vendor and the contracting agent that the foregoing is a true and correct statement showing the basis for the settlement arrived at by the vendor and the contracting agent and approved by the director; that there are no claims of any kind in favor of the vendor or in favor of the United States other than those above set forth, arising out of said original purchase order; that the terms of cancellation provided in the original purchase order have been followed herein; and that the items allowed are of the character specified in said original purchase order, and that the sum of \$175 agreed upon

in settlement of said original purchase order is fair, reasonable, and just, and has actually been expended or incurred by the vendor; and

In consideration of this settlement of vendor specifically releases the United States and the contracting agent from any and all claims of any kind or nature whatsoever arising out of said purchase order except for such portion of the original purchase order as is herein specifically excepted from cancellation.

UNITED STATES OF AMERICA,
By THOMPSON-STARRETT Co., *Agent*.
E. MEYER, P. A.

Witness:

F. A. KINSELLA.

NIAGARA MACHINE & TOOL WORKS,
Vendor.

By GEO. R. MUNSCHAUER, *President*.

Approved by—

D. C. JACKLING,
Director United States Government Explosive Plants.
JOHN H. MACHOWAN,
Assistant Director.

The following certificate by the contracting officer will be made where the contractor is a corporation, in cases where the filing of evidence referred to may properly be waived:

I hereby certify that I have satisfied myself of the authority of the person signing the contractor's name to this agreement to bind it in the matter, and I have waived the filing of evidence of such authority, as permitted so to do by the Army Regulations.

E. MEYER, P. A.,
Signatory Officer for Thompson-Starrett Co., Contracting Agent.



The following is a list of the names of the persons who have been admitted to the bar of the County of New York, in the year 1900, and who have taken the oath of office and qualification as attorneys at law.

ARTHUR J. DILLON
JOHN W. DILLON
JAMES M. DILLON

JOHN W. DILLON & JOHN W. DILLON

JOHN W. DILLON & JOHN W. DILLON

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