

Your reports exclude all procurements of a value of \$10,000 or less, and in view of the fact that in fiscal 1961 the Defense Department bought over \$1 billion under contracts of less than \$10,000, wouldn't it be a good idea to at least sample a significant portion of contracts in this smaller size range?

Mr. LOEVINGER. I suppose this is a matter of judgment, sir.

The \$10,000 limit is established in the Executive order. My recollection is that the Attorney General has the authority to vary this limit as may appear necessary, and indicated by experience.

It might be advisable to sample some of the other bids. I think that it is a question of the degree of burden that the procuring agencies are willing to bear, of getting used to the procedures, of getting our own techniques for handling the data sufficiently well established so that we can give any assurance that if we get any additional data it can be usefully handled.

Chairman PATMAN. Judge Loevinger, I am very much interested in some of the statements you make on pages 7 and 8 of the report. You point to the fact that there are so many variables involved in determining the price at which to submit a bid that—

It is difficult to justify identical transaction prices and particularly those filed in response to invitations for sealed bids.

In view of that statement and giving attention to the highly concentrated character of many of these industries, wouldn't it be a good idea if we had legislation making identical bids *prima facie* evidence of antitrust violations?

Mr. LOEVINGER. I don't think that I can really comment on such a proposal, Congressman Patman, without giving a little more careful consideration to it and seeing the proposal.

Conceivably there might be constitutional problems depending upon how this were done.

If, for example, the filing of identical bids were made *prima facie* evidence of violation of the Sherman Act, this might involve establishing a presumption in a criminal case that could not withstand constitutional attack.

I am not saying that it would, and I am speaking off the cuff, so that I am rather unsure of myself. I think that such legislation would have to be very carefully drafted, although I think that there may well be an area in here in which some legislation might be appropriate.

Chairman PATMAN. Thank you, sir.

As I read over your report and think about some of your comments, it seems clear to me as I think it does to you, that where there has been a high incidence of identical bids a collusive situation is frequently found.

Wouldn't this suggest very strongly the wisdom of the kind of legislation I mentioned to you just a moment ago; namely, a law making the submission of identical bids, perhaps over a period of time or on a number of different occasions, *prima facie* evidence of antitrust violations?

In other words, go beyond what we were discussing a while ago, and where it is a kind of chronic or continuing situation, consider it *prima facie* evidence?

Mr. LOEVINGER. Yes.