

Well, I believe that this carries out the suggestion in my prior answer, sir, that you cannot give a dogmatic response to this. It depends upon the drafting of the legislation.

There are situations in which identical bids are obviously not necessarily the result of collusion. Thus resale price maintenance laws may well account for identical bidding in certain situations; certain programs of the Agriculture Department account for identical bidding quite legitimately.

Account must be taken of these situations, and therefore any attempt to create presumptions must be rather carefully drafted.

Chairman PATMAN. Senator Proxmire, would you like to ask some questions?

Senator PROXMIRE. Yes.

Judge Loevinger, how extensive is identical bidding? On the basis of your examination so far, can you give us a notion whether this constitutes 5 percent, 10 percent, 2 percent of procurement?

Mr. LOEVINGER. Yes, sir.

Our answer necessarily depends on extrapolation from data which, we hasten to assure you, are incomplete and therefore not wholly reliable, and you must realize that we are extrapolating from what we really admit are not wholly adequate data.

However, the figures roughly are these: that the total amount of procurement by State and local governments in the course of a year is a little bit in excess of \$10 billion. So far as we can ascertain virtually all of this is advertised or competitive.

The total procurement by the Federal Government in the course of a year is on the order of \$31 to \$32 billion. However, because a very large part of this is by military agencies, and agencies such as the AEC, which predominantly negotiate—

Senator PROXMIRE. And that is—

Mr. LOEVINGER (continuing). Their procurement, there is only about \$4.8 or \$5 billion that is advertised.

On the other hand, our reports do not cover all State and local procurement; therefore, we have something on the order of \$10 to \$15 billion, \$15 billion being the maximum and \$10 billion being about the minimum, of procurement that is competitive or advertised that is covered by these reports.

The extrapolation indicates identical bidding affects about \$100 million worth of this, or about 1 percent in terms of total value. As we have indicated this is rather less than we expected to encounter, and may indicate that the activities, and the inquiries and the reporting system, have already had some effect.

Senator PROXMIRE. I take it from what you have said before that this is simply one method of collusion.

You talk about indicia of collusion that identical bidding may be one aspect of it.

Another aspect of it may be simply rotating a low bidder and dividing up the market that way.

Mr. LOEVINGER. Yes, sir.

Senator PROXMIRE. I am wondering if you have any kind—of course, you wouldn't have the kind of specific mathematical estimate with regard to these other kinds of collusion that you would have with regard to competitive bidding.