

Executive order, the publicizing of the identical bids, it would be more to limit the published details of the bidding to identical bidders. we had included the names of all bidders, table II would have required 100 pages instead of the 278 pages in the present report. However, we your desire to make the identical bid reports as complete as possible reconsider the matter in setting up the format of the next report.

At page 1620 of the transcript you asked for "some indication of the contents of 23" identical bid cases which were excluded from the report because they required separate treatment. Of the 118 Federal cases requiring separate treatment 15 were cases submitted by the Department of Agriculture, most of which are discussed in chapter VI of the report beginning on page 24. Thus, while most cases of identical bidding affecting the procurement of agricultural commodities by the Department of Agriculture for the school lunch program and support programs are discussed in chapter VI, the bidding details are not included into tables I through III and for that reason they are listed as "other" cases in table D, page 16.

The three remaining Federal cases of identical bidding excluded from the report are cases submitted by the Military Petroleum Supply Agency covering procurement of estimated petroleum and petroleum products requirements for a 12-month period for all service installations. The complex character of the procurement arising out of the large number of both bidders and line items of procurement necessitated the development of special processing techniques to accommodate these reports to our machine processing operations. Consequently, these reports were not assimilated for machine processing in time to meet the deadline for publication of the report. They will, however, be incorporated into the next report to be published.

Five identical bid cases reported by State and local agencies were listed in table D as having been excluded from the report because they required separate treatment. These cases involved the procurement of several types of services which necessitated the development of a method of presentation which was not completed in time for publication. These cases will be included in the next report.

You asked, at page 1621 of the transcript, for a memorandum showing a breakdown of the 115 Federal cases listed in table D as having been excluded from the report because the bids were not identical after evaluation. You also indicated that you were puzzled by the fact that so many bids which the procurement agency thought were identical were found by my staff not to be identical. The explanation for the rejection of these cases can be found in the definition of an identical bid in paragraph 1 of Executive Order 10936 which requires the reporting of bid proceedings to the Attorney General:

1. Whenever, in connection with a procurement of property or services exceeding \$10,000 in total amount and made pursuant to an advertisement or other public invitation for bids, a department, agency, or instrumentality of the Government shall hereafter receive two or more bids—

(a) Which are identical as to unit price or total amount, or

(b) Which, after giving effect to discounts and all other relevant factors, the department, agency, or instrumentality shall consider to be identical as to unit price or total amount.

Thus the Executive order requires the submission of reports when there is identical bidding either in the gross or the net amount of the bids. It was determined, however, that as a matter of policy we would publish only those bids which were found to be identical in price after evaluation. Consequently, those cases which were reported under the Executive order because they were identical as to the gross price bid were excluded from the published report if the bids were found to be nonidentical after evaluation by the agency.

Senator Javits also requested our recommendations as to whether the Webb-Pomerene Act should be amended. We still have this matter under consideration and will communicate with you as soon as it is resolved.

Sincerely yours,

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