

Mr. MALLOY. Mr. Chairman, there are two points that the Comptroller General has made. In the first instance, he says that as he looks at the decisions that the contracting officers are taking on a case-by-case basis, that he is unable to find clear documentation in our files as to the reasons why the judgement was made that the law did not apply in a particular case. The Comptroller General is not saying that the law either applied or did not apply in that particular instance, but he could not find the documentation.

Chairman PROXMIRE. That is certainly a serious failure on the part of the Department of Defense, the absence of a justification for the exception; isn't that right?

Mr. MALLOY. Mr. Chairman, our regulations require that there be sufficient documentation.

Chairman PROXMIRE. He couldn't find them.

Mr. MALLOY. There should be, I agree with you, there should be that type of documentation. Now I could not tell whether in the given cases that the Comptroller General looked at, whether all of the facts might not have been able to be verified in other ways. But this is an area in which over the past year or so we have been concentrating in our training programs and insisting that our people do this. There is no question in my mind that this should be done, and for the most part it is being done.

Now the second question comes up not in the case of whether or not we are getting cost data. We are getting the cost data. We are having the cost data audited by our auditors who go in and make an independent check of the contractor's books and give us an independent report, and thereafter there is a negotiation. Whereas in the normal situation, the contractor might well take an optimistic appraisal of the future from his point of view, our people might take a pessimistic approach, and the negotiation process is to arrive at a mutually acceptable price with give and take.

Now in that situation, you are looking at sometimes almost mountains of cost data. The contractor must certify as to the factual base on which the price was negotiated, and there are literally thousands of facts that are potential to be certified to.

RELATING CERTIFICATE TO THE FACTS

The problem comes when the contractor executes a certificate. The problem that we need to overcome, and it is a most difficult problem, Mr. Chairman, is to be sure that that certificate is related to the specific facts. Then you have to pick out which specific facts are material. They are all involved in the transaction, but which are material and how do you identify them.

Now our objective is to identify the major important items, because we as anybody else are interested and vitally concerned that if it subsequently turns out in a postaudit by the General Accounting Office, by our own postaudits, and we now do postaudits, if we find data that is not in fact current, accurate and complete, that we have a contractual basis for a recovery. We work diligently to see that that result comes off. But this is a type of thing, with the amount of data that is involved, that we have some difficulties in being sure that this is done. I suspect that we will always have difficulties in this regard.