1. Obtaining right of access by agency officials to performance cost information.

2. Instituting a regular program of postaward audits, by Defense Contract Audit Agency.

3. Making postaward audits where contracting officers have reason to believe that cost or pricing data used in negotiations may not have been accurate, current and complete, or may not have been adequately verified.

4. Obtaining written identification of data submitted by the contractor in support of pricing proposals.

5. Revising the regulations to make it clear that the mere making available of data to the auditors without identification in writing does not constitute data "submitted," in terms of the law.

6. Documenting procurement files where cost or pricing data were not requested or used to show the basis for concluding that the submission of such data could be waived because of adequate competition or prices that were based on catalog or market prices of a commercial item sold in substantial quantities to the general public.

The foregoing matters dealt not with whether data was being acquired, but with (a) identifying the data obtained, (b) performing adequate analysis and verification of the data and (c) documenting the negotiation files to provide a clear record of the use accorded such data.

The Defense Contract Audit Agency initiated a program for postaward audits, and as you know, Mr. Chairman, on September 29, 1967,[3] the Deputy Secretary of Defense issued a memorandum requiring the inclusion of a clause in all noncompetitive firm fixed price contracts granting access to contractor's records of performance. This memorandum should accomplish by administrative action what would be accomplished by the enactment of bills proposed by you and Congressman Minshall. All other contract types already provide such access.

The Department has revised its regulations to adopt substantially all of our recommendations on the other matters which I have just mentioned.

APPLICATION OF PUBLIC LAW 87-653 TO CONSTRUCTION CONTRACTS

Our reviews of negotiated construction contracts awarded by the Department of Defense led us to the conclusion that—

1. Sufficient cost or pricing data in support of price proposals were not being obtained.

2. Cost analyses of price proposals were not made as required by regulation.

3. Prescribed procedures for utilizing advisory audits were not being followed.

The main reason why the agencies responsible for awarding construction contracts were not complying with the regulation appeared to be their belief that the requirements were not applicable to construction contracts since contractors' price proposals were being evaluated on the basis of comparisons with the agencies' own cost estimates.

[3] See text and GAO comments, B-158193, app. 3, p. 409.