

Mr. BAILEY. Not specifically in connection with these particular contracts, Mr. Curtis, although we have done work in this area, and we continue to do work in this area. This is an area where additional competition and additional savings can be obtained to the extent that it is feasible to separate the item being purchased, as you well know.

LEGAL BASIS FOR SUBCONTRACTING

Representative CURTIS. Yes. I think you would agree—I am trying to think whether we have actually said it in any laws, and I hope we have, but it should be public policy I think most everyone agrees—that the big negotiated contract, if it is necessary, and frequently they are, that there be efforts to break them into subcontracts, and as much as possible on an advertised bid basis.

Mr. BAILEY. Yes, sir.

Representative CURTIS. You would agree that that is good public policy. If this is in accordance with law, you would just save me a little work if you could insert in the record where we specifically require it by law. Do you know, do we require that by law?

Mr. STAATS. I would like to suggest we put that in the record.

Representative CURTIS. Yes. I should like to know.

Mr. STAATS. And spell that out a little more.

(The document referred to follows:)

The rules governing competitive bid procedures which are imposed by the public advertising statutes are not applicable to prime contractors in the award of subcontracts unless required by the terms of the prime contract. See B-148430, May 28, 1962, and cases cited. There is no statute which prohibits a Government prime contractor from awarding a subcontract to other than the low bidder. B-160186, November 8, 1966. In the case of firm fixed-price contracts, competition in subcontracting affects the cost to the Government only where such competition takes place before the prime contract price is agreed upon. There are statutes and regulations which have some effect on the extent of competition in subcontracting under cost-type contracts, where the costs are passed on to the Government.

Under 10 U.S.C. 2306(e) and 41 U.S.C. 254(b), cost-type contracts must provide for advance notice by the contractor to the procuring agency of any cost-plus-fixed-fee subcontract and of any fixed-price subcontract exceeding \$25,000 or 5 percent of the estimated cost of the prime contract. ASPR 3-903.2 and FPR 1-3.903-2(b) (1), respectively, implement these statutes. Contracting officer approval of certain subcontractors is also required under fixed-price redeterminable or fixed-price incentive prime contracts. See ASPR 3-903. Pursuant to ASPR 7-203.8 and 7-402.8 subcontract approval is required for certain other subcontracts not mentioned above. Competition in subcontracting is required, at least to some extent, by other regulations. See ASPR 3-901, *et. seq.*, and similar provisions in FPR 1-3.900, *et. seq.* These regulations concern review and approval by the Government of proposed "make-or-buy" programs, purchasing systems, and proposed subcontracting. In general, these regulations provide for detailed review and evaluation of proposed subcontracts and subcontracting systems to assure proper subcontracting methods, including competitive bid procedures, adequate participation by small business, and opportunities for labor surplus areas to compete for subcontracts. ASPR 3-807.10 also expresses DOD policy in requiring competition in subcontracting and places responsibility on the contracting officer for implementing this policy. With respect to contracts requiring Government approval of subcontracts, our Office has held that the contracting officer may not approve a subcontract which is prejudicial to the interests of the United States. 41 Comp. Gen. 424.

We have also held that a contracting officer, in the proper exercise of his discretion, is justified in refusing to grant approval of a subcontract if the internal regulations of the procuring activity require that subcontracts be awarded by competitive bidding and such procedures are not followed. B-149602, January