

9 August 1967

MEMORANDUM

SUBJECT: ASBCA Decisions on Defective Cost or Pricing Data

AMERICAN BOSCH ARMA CORPORATION

65-2 BCA paragraph 5280; December 17, 1965

This case arose under ASPR provisions antedating P. L. 87-653. The Board held:

- (1) Having disclosed pricing data on purchased parts pursuant to RFP with knowledge that data would be used by Government in negotiating price, and having entered into negotiations with knowledge that it would be required to certify that it had disclosed complete, accurate and current pricing data, the company was under a duty to assure that the data furnished or disclosed to the Government was reasonably current at the time the contract price was negotiated.
- (2) Pricing data from vendor quotations dated subsequent to one month prior to negotiations were not reasonably available for the negotiations.
- (3) Anything that could be found from examination of records which were made available to Air Force auditors who examined them during audit and reported the results of their examination to the negotiating team was disclosed to the Government.
- (4) Pricing data is "significant" if it would have any significant effect for its intended purpose, which was as an aid in negotiating a fair and reasonable price. Significance cannot be determined as a percentage of the total price.
- (5) The absence of understanding or agreement on the amount of materials costs in negotiation of a total price does not operate to defeat the effectiveness of the Price Reduction clause.
- (6) The Government has the burden of proof and the effect of non-disclosure of pricing data cannot be determined on the basis of speculation.