ITEM IV--REVISED AUDIT CLAUSES

To provide adequate contractual coverage for access rights to contractor's records necessary to perform post-award reviews, when required under Public Law 87-653, changes have been made in the clauses in ASPR 7-104.41. Effective as soon as received, these revised clauses will be used in contracts as provided in 7-104.41 herein. The following letter from the Deputy Secretary of Defense explains the reasons for the changes and the limited use to be made of the broadened coverage applicable to firm fixed price contracts. (Letter is provided for informational purposes and is canceled when the ASPR coverage is incorporated in a subsequent revision of the Regulation.)

" THE SECRETARY OF DEFENSE
WASHINGTON

2 9 SEP 1967

MEMORANDUM FOR Secretaries of the Military Departments
Assistant Secretary of Defense (Comptroller)
Assistant Secretary of Defense (I&L)
Directors of Defense Agencies

SUBJECT: Access to Cost Performance Records on Noncompetitive Firm Fixed Price Contracts

I have given careful consideration to the arguments for and against access to contractor post-award cost performance records on noncompetitive firm fixed price contracts, for the purpose of determining the degree of contractor compliance with PL 87-653. Clearly, it has been and remains our policy that in firm fixed price contracts the cost and profit consequences are the full responsibility of the contractor since he assumes all the risk of performing in accordance with the contract. Likewise, it is our policy that such contracts be used only where there exists a reliable basis for judging reasonableness of contractor cost estimates. Where such a basis does not exist, other contract forms should be used.

The Department of Defense is required to conduct a program of review and audit sufficient to ascertain that the cost or pricing data submitted by contractors in connection with the negotiation of noncompetitive firm fixed price contracts were current, accurate and complete as required by PL 87-653. It is our policy to make such audits, as fully as possible, prior to completing the negotiation of the contract. However, when it is necessary to provide assurance that defective cost or pricing data were not submitted, audits should also be conducted of actual costs incurred after contracts are consummated. To assure that such post-award audits may be conducted when deemed appropriate, action shall be taken to include in all noncompetitive firm fixed price contracts involving certified costs or pricing data, a contractual right to have access to the contractor's actual performance records.

Circumstances which may dictate the use of a post-award cost performance audit include such cases as those where: (1) factors of urgency in placing