

In the first place, these are larger items. Secondly, it is a much bigger area of procurement.

Thirdly, because there are so often one or two or three very large supply firms—there is more of a tendency for these firms to get together. They know each other, they are familiar with this, there is a perfectly human tendency, perhaps, for one to say, "We will take this one and you take the next one, and so forth."

Is there any way, I know this is hard to get at, is there any way that you could give us a report on this or investigate it or suggest what we could do about it to watch it more closely?

It seems to me here we can get a great deal more savings than we can in the advertised competitive bidding area.

Mr. MORRIS. Let me ask Mr. Malloy to comment on this.

Mr. MALLOY. Yes—Mr. Chairman, I am familiar with the report that you have in front of you. I don't recall whether it picks up both the negotiated and formally advertised or not.

Chairman PROXMIRE. It seems to us—and Mr. Ward has advised me that it is his view, too—that this is advertised competitive bidding.

Mr. MALLOY. Fine. I think that this is a complex enough subject that it would take a little more time to consider how to do this and what the practicalities are. We would be delighted—

Chairman PROXMIRE. Wouldn't you agree that there could be a serious problem here?

Mr. MALLOY. There might be, bearing in mind that most of the incidents of tie bids—this is not a listing of collusive bids—it is a list of tie bids. I think this is demonstrative that this is not a collusive situation. That happens normally in the kind of standard items we buy. We buy most of our standard items by formal advertising. The potential in the negotiated—I would be glad to furnish that.

Chairman PROXMIRE. I wish you would give us a report on that.

(Material below was supplied by witness.)

With respect to your question concerning the possibility of identical proposals being received and the evils attendant thereto, and upon a further review of the Armed Services Procurement Regulation, we believe that the government's interest is adequately protected thereby. The regulation, ASPR 1-111.2, covers reports of identical or equal bids or proposals and contracting officers are admonished to report any evidence of violations of the anti-trust laws directly to the Attorney General for appropriate action.

In addition, ASPR 1-115, requires generally that in all formally advertised and negotiated procurements (with certain limited exceptions) each bidder or offeror certify that its prices have been arrived at independently and have not been disclosed to any other bidder or offeror. If the prices have been disclosed to other bidders or offerors a full explanation of the circumstances of the disclosure must be made and unless the government determines that such disclosure was not made for the purpose of restricting competition, such bid or offer cannot be considered for award. In the event that this certification is suspected of being false or there is an indication of collusion, the matter is handled in accordance with ASPR 1-111.2.

Further, the negotiation process involves a detailed examination and evaluation by the contracting officer of each element in the proposal and a confrontation in the "negotiation" of each of the significant elements with the contractor to arrive at a mutually acceptable price. Thus, the "adversary nature" of the negotiation is effective protection of the government's interest in the unlikely event of the receipt of tie proposals in a competitively negotiated procurement. The likelihood of identical proposals being received in competitive negotiated procurements is considered so minimal as not to justify the cost of a formal reporting system.

Copies of the ASPR regulations are attached.