

current, and complete, agency officials did not have the right to do so under negotiated firm fixed-price contracts and subcontracts.

This matter was discussed in hearings before your committee in May 1967.

In June 1967 both you and Congressman Minshall introduced bills to provide agency representatives the right to examine all data related to the negotiation, pricing, or performance of contracts and subcontracts where cost or pricing data are required.

In commenting on the proposed legislation in July 1967 we stated that we were in favor of its passage.

Thereafter, in September 1967, the Deputy Secretary of Defense directed that action shall be taken to include in all noncompetitive firm fixed-price contracts a contractual right of access to the contractor's actual performance records. The directive was silent on the agency's right of access to the subcontractor's records.

We advised Defense officials of this apparent omission, and we were advised that this matter would be considered in drafting the regulations. The Armed Services Procurement Regulation was revised November 30, 1967, effective as soon as received, to provide for an appropriate clause to be included in all contracts and subcontracts, where cost or pricing data are required. (Pertinent excerpts from the regulation are attached. For full text, see p. 162.)

(The information follows:)

ATTACHMENT A

EXCERPTS FROM DEFENSE PROCUREMENT CIRCULAR No. 57, NOVEMBER 30, 1967

Agency Audit Rights

"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. * * *"

"7-104.41 *Audit and Records*

"(a) Insert the following clause only in firm fixed-price and fixed-price with escalation negotiated contracts which when entered into exceed \$100,000 except where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. * * *"

"AUDIT (NOVEMBER 1967)

"(a) For purposes of verifying that certified cost or pricing data submitted, in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of \$100,000, were accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

"(b) The Contractor agrees to insert this clause including this paragraph (b) in all subcontracts hereunder which when entered into exceed \$100,000, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. When so inserted, changes shall be made to designate the higher-tier subcontractor at the level involved as the contracting and certifying party; * * *"