

The act, itself, does not say exactly how there shall be implementation of the act. In other words, what administrative details will be promulgated and followed in seeing that this information is furnished and is used in an effective form so that in the event it is found by the Government as a result of an audit that the contract has been overpriced to the Government because of a failure of the contractor to comply with these other two points—in other words, the submission of the proper information or the certification—the Government will know how much to charge back to him.

This was where we found that in our opinion there wasn't sufficient identification of what was furnished; there wasn't a sufficient audit trail. We felt that to the extent the data submitted either weren't complete, weren't accurate, or weren't current, or when it wasn't clear what data the certificate covered, there had not been full compliance with the intended purpose of the law.

The law, itself, requires implementation by regulation. We believe the Defense Department has done a reasonably good job in the regulation it has issued. As to be expected in the regulatory implementation of any new law, the experience developed weaknesses. We discovered evidences of weaknesses in our survey and recommended corrective changes.

DOD PROCUREMENT CIRCULAR NO. 57 COMPLIES IN GENERAL WITH
GAO RECOMMENDATIONS

The Defense Department has now agreed, in the issuance of Procurement Circular No. 57, with practically all of the changes that we recommended. The major thrust of this is to make it more clear that the requirement for submission of data is not satisfied simply by access to the data, that the data have to be submitted in writing or identified in writing to the contracting officer. Thus, it will be known what actually was submitted and there will be a record, as you said before, a standard against which later developments can be measured.

Chairman PROXMIRE. Let me read two short paragraphs from your testimony in May 1967, in which you said, speaking of the 242 cases which you had studied:

In 165 of these awards, we found that the agency officials and prime contractors had no records identifying the cost or pricing data submitted and certified by offerors in support of significant cost estimates. We also found that of the remaining 77 of the 242 procurements examined, agency and contract records of negotiations indicated that cost or pricing data were not obtained, apparently because the prices were based on adequate pricing competition or on an established catalogue of commercial items sold in commercial quantities to the general public. But there was not a record showing the basis for the contracting officer's determination.

So, really what you are saying is that in the 165 cases, only 20 were in full compliance with the law, and I concluded about 10-percent compliance, really.

Mr. STAATS. I think the essential point has to do with the phrase, that without adequate documentation and without an adequate record, neither the Defense Department, nor we, nor anyone else, can be certain that the information had been supplied.

To that extent, I believe we disagree with Defense in their statement that they could be sure that this information was actually supplied.