

other, the effective heads of the firms would have worked together. There would be every reason to suspect that under these circumstances the Government would have to be very alert and watchful.

I wondered if there was any way you could get at this particular problem.

Mr. STAATS. It is a very difficult matter. There are two different aspects. One is the identical bid problem and the other one is the one you refer to of collusive sharing of Government business. There is a provision in the Armed Services Procurement Regulation which simply indicates that this is one of several practices designed to eliminate competition and restraint of trade. But the term itself is not fully defined. There is an item in the certificate of independent price determination which is required by the armed services procurement regulations, section 1-115, which says that no attempt has been made or will be made to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

That is simply a statement of purpose and intent. When the certificate is suspected of being false, or there is indication of collusion, then the matter goes to the Department of Justice. But ordinarily this will not happen except when somebody makes a report or an allegation that this has happened in a particular case.

Chairman PROXMIRE. It strikes me there is another way we can get at this. As I understand it, the Truth in Negotiations Act and the other legislation applies primarily on negotiated procurement with a sole source. This is the area of its most common application. This is the area where most of us think of it as being most essential.

Mr. WEITZEL. It applies to negotiated procurement.

Chairman PROXMIRE. Does it apply to negotiated procurement where you have price competition?

Mr. BAILEY. It does not apply where there is adequate price competition.

Chairman PROXMIRE. This is the area where maybe it should apply, too. This is one way of getting at this. You can have adequate price competition in terms of having two, three or four people provide competition with each other. But here is the situation where the collusion is most tempting and where one would logically anticipate that there might be collusion. You know the difficulty with the General Electric case and others. I am not nearly as concerned where there are very few big suppliers who can get together and save enormous amounts of money. We have advertised competitive bidding and any number of people can come in.

Mr. BAILEY. It is my recollection at the time Public Law 87-653 passed the House, it would have covered all negotiated contracts, whether competitively negotiated or otherwise. But in the Senate the provision was added excluding contracts that were let pursuant to adequate price competition, prices based on catalog or market prices of items sold in substantial quantities to the general public.

Chairman PROXMIRE. The additional cost would not be much if we got into that, would it?

Mr. BAILEY. Industry representatives will say that this is a very expensive proposition, to get together these cost estimates, I think. But it is really hard to quantify what you would actually lose because the ones that should result in the larger amount of accumulation of data to support prices are the ones that are negotiated for complex military items that are ordinarily not subject to price competition.