

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., October 30, 1967.

HON. WILLIAM PROXMIRE,
United States Senate,

DEAR SENATOR PROXMIRE: In view of your interest in the implementation of Public Law 87-653 by the Department of Defense, we are offering our views on a memorandum issued by the Deputy Secretary of Defense dated September 29, 1967, on *access to cost performance records on noncompetitive firm fixed-price contracts*.

The memorandum is addressed to the Secretary of the Military Departments, the Assistant Secretaries of Defense (Comptroller) and (I. & L.) and Directors of Defence Agencies. It contains statements on contracting and auditing policies of the Department of Defense and *directs the Assistant Secretaries of Defense to issue implementing instructions to place the policies, summarized below, into effect*.

Noncompetitive firm fixed-price contracts shall 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 shall be used.

A program shall be conducted for 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 P.L. 87-653. Such audits shall be made, as fully as possible, prior to completing the negotiation of the contract.

When it is necessary to provide assurance that defective cost or pricing data were not submitted, audits should be conducted of actual costs incurred after contracts are consummated. To assure that such postaward audits may be conducted, action shall be taken to include, in all noncompetitive firm fixed-price contracts involving certified cost or pricing data, a contractual right to have access to the contractor's actual performance records.

The memorandum also lists circumstances which may indicate the need for postaward audits of performance costs.

With respect to access to contractors' records, we believe that the memorandum would accomplish by administrative action what would be accomplished by enactment of the bill, S. 1913, submitted by you on June 6, 1967, except that, the Deputy Secretary's memorandum is silent on the matter of the agency's right of access to subcontractors' performance records which was specifically provided for in your bill. We therefore spoke to Department of Defense officials responsible for drafting regulations to implement the memorandum about this apparent omission.

We were advised that consideration would be given, in drafting the implementing regulations, to requiring prime contractors to include clauses in subcontracts giving agency representatives the right to have access to subcontractors' records of performance. As soon as we have had an opportunity to review the Department of Defense regulations on this matter we will advise you.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.