

advertising procedures. In particular, four specific instances were cited by Senator Dominick as indicative of procurements manifesting a lack of effective competition. This theme was further emphasized by the Senator in statements on the floor of the Senate, and submitted to the committee for the record.

We considered some of the procurements mentioned by Senator Dominick under our bid protest procedures, and we are attaching for the record copies of those decisions. Although the decisions are self-explanatory, it should be noted that in these cases two factors were present which had a significant impact on our legal review of the procurements.

First, our Office must accord a significant degree of finality to the contracting agency's determination in resolving the technical and scientific questions which arise during the negotiation process since we do not possess the in-house technical or engineering capability necessary to conduct an independent evaluation. This policy is illustrated in the protest of the Custom Packaging Company, B-160809, June 29, 1967, 46 Comp. Gen., pp. 885, 893, discussed by Senator Dominick. We believe that this policy represents the only practical avenue open to our Office in disposing of technical contentions advanced by unsuccessful offerors in the face of contrary advice from the procurement agency. Over the years, we have given consideration to the feasibility of employing various categories of technical personnel to assist us in reviewing technical and scientific determinations made by the procurement agencies both in bid protest cases and in audit reviews. However, the arguments against our Office establishing and maintaining an engineering review capability which could, in contested cases, result in an anomalous situation where our Office would be substituting its judgment for that of the contracting agencies have always seemed the most compelling. The significant and, we believe, prohibitory effects of such an arrangement would be the unnecessary diffusion of procurement responsibility and extended and possibly unreasonable delays in effecting procurements. Moreover, the resolution of the highly complex technical questions presented would necessitate the retention of a staff of experts in each of the many diverse areas of technical competence reflected in the broad spectrum of Government procurement.

The second feature common to the bid protests referred to by Senator Dominick is the fact that the contracts were negotiated under certain exceptions to the requirement for formal advertising authorized in section 2304(a) of title 10, United States Code. In each case the determination to negotiate under the exception used was one which, as a result of the provisions of 10 U.S.C. 2310, was final, and thus our Office lacked the authority to question the legality of the negotiated award. However, we found in the cases referred to by Senator Dominick that the determinations to negotiate the procurements were, in our opinion, adequately justified and documented.

The Department of the Army's procurements of AN/PRC-25 and AN/PRC-77 radios are being reviewed by our audit staffs. At the request of Senator Dominick we initiated the audit of the Army procurements to determine whether any excess profits were realized. We expect to issue our report on these reviews in February 1968. Further, as you requested in the hearings on December 8, 1967, we are reviewing the AN/APX-72 transponder procurement by the Navy Department. Our study of this procurement has not developed to the extent that we may offer comments at this time. However, we expect to issue a report on or about March 15, 1968.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

[Enclosures]

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 29, 1967.

B-160809.

Mr. JOHN E. REILLY,
Attorney at Law,
2025 Western Federal Building,
Denver, Colo.

DEAR MR. REILLY: Further reference is made to your telegram and letters dated February 1, 6, and March 22, 1967, protesting on behalf of the Custom Packaging Co.—a small business concern—against the award of a contract by