

Admiral RICKOVER. I do not know, sir. I can't say this is so, because one never knows. The high bidder may not want the business at that time, so the other one gets it. However, the present system of contracting makes such arrangements possible. So if such a temptation does exist it is easier to give in to it.

You must surely be aware of the frequent cases mentioned in the press where there has been collusive bidding. And there is no real penalty for such acts. The companies concerned invariably deny the charge; they plead "nolo contendere"; they are fined a small percentage of what they gained illegally; and I believe they are even allowed to charge any damages off as a tax deduction. Where there is true competition the problem does not exist. But you will have to define by law what "true competition" is.

Once the contracting officer rules that a contract is competitive, the Government is then foreclosed from examining the company's books. It is not generally known to Congress or to the public that when a contracting officer certifies that a contract was made on a competitive basis, this completely stops him from ever looking into the contractor's books.

This is why there must be a legal definition of what "competition" really is. Otherwise, the record will show competition where there actually was none. You must not leave it to predilection of individuals in the bureaucracy to decide such matters, particularly where such large sums of Government funds are involved.

I do not think you are ever going to get around this problem just by telling a Government agency to do it. They will not do it; and your experience has shown they will not do it.

If you want to do this job properly, you are going to have to take the action yourself. You are going to have to define by law what competition is. You are going to have to set up penalties.

Mr. MOORHEAD. Admiral, there seems to be two philosophies in the Defense Department: one, where you can't get true competitive buying. You have a choice of either a cost-plus contract; the other is a negotiated fixed-price contract. Under which contract do you think the Government gets the most for the dollar?

Admiral RICKOVER. I cannot give a categorical answer. Fixed-price contracts are generally better. But even with fixed-price contracts there are many ways for the contractor to make changes which increase the cost of the contract and, in effect, make the contract a cost-plus job. Then you have a worse situation, you have a cost-plus situation but without the protection of a cost-plus contract. Frequently the Government itself makes changes to the contract. The minute you start changes, all bets are off. One desirable feature of the cost-plus type of contract is that you can check on costs. However, the cost-plus type of contract is generally inefficient because there is no real incentive to perform economically.

I would say that for machinery and equipment, probably 85 percent of the Defense Department business is noncompetitive. My 85-percent estimate is probably conservative. I am not talking about items of food or clothing, items of the sort that you can buy on the open market.

But items of complex equipment are nearly all noncompetitive, no matter what name you give to the contract. If it walks like a duck, quacks like a duck, and looks like a duck, it is still a duck, no matter what you call it. Therefore, with the many billions of dollars being