

I. Procurement Policies and Practices

COMPETITIVE AND NEGOTIATED PROCUREMENT

The DOD is not doing an adequate job with respect to its major procurement programs. Control over a substantial portion of procurement has been virtually lost as a result of excessive resort to negotiation of defense contracts and insufficient knowledge of cost and pricing data. During the period 1951-67, DOD negotiated 86.1 percent of the net value of its procurement despite the clear congressional intent that procurements be made through formal, written bid procedures, whenever practicable. Only through competitive bidding can we extend to all persons an equal right to compete for Government business, prevent unjust favoritism, collusion and fraud and secure for the Government the benefits which flow from competition. Little or no progress has been made toward the objective of greater use of competitive bidding.

RECOMMENDATION

1. The subcommittee once again urges the greater utilization of competitive bidding to satisfy the requirements of defense procurement, and reversal of the tendency to award contracts by noncompetitive negotiation.²

NONCOMPLIANCE WITH THE TRUTH IN NEGOTIATIONS ACT

The most glaring fact about the Truth in Negotiations Act is that it has still not been fully or even substantially implemented, although 5 years have elapsed since its passage. The Comptroller General testified that there had been full compliance on only about 10 percent of the transactions tested. He further testified, on the basis of minimal spot checking of defense contracts, that over a 10-year period the Government had been overcharged \$130 million as a result of the failure of the DOD to obtain adequate cost and pricing data. Obviously, this figure represents only a fraction of the total overcharge.

The recent DOD regulations contained in Defense Procurement Circular No. 57, concern the Government's right of access to performance records of contractors holding noncompetitive firm-fixed-price contracts. These regulations carry out, in part, an earlier recommendation of this subcommittee that the DOD postaudit contracts coming under the Truth in Negotiations Act. The single purpose of any postaward cost performance audit, under the new regulations, would be to determine whether or not defective cost or pricing data were submitted. Profits may not be looked into. Price adjustments are provided for where audits reveal that certified cost or pricing data were inaccurate, incomplete, or noncurrent.

The new regulations represent important steps toward the full implementation of the Truth in Negotiations Act. However, the post-

² See Rep. Martha W. Griffiths' note, p. 1.