

in with the 41 category of items for which under the regulations specific findings of similarity need not be made?

Mr. TUTTLE. I think I had better defer to counsel on that one, Counselor. I haven't given that question any thought. If State were to call me this morning and ask me that question, I would probably hazard a guess and then check with counsel. And my guess would be that they would fall into the category where you have to make a specific determination of similarity rather than into the 41-category list.

Mr. MONAGAN. Mr. Tuttle, included in the regulations are various types of requirements or possible courses to follow the required judgment as to where exchange/sale disposal should be through competitive bidding or through negotiated sale, what the cost-benefit ratio is and other sales. There are requirements that there be a 1-year limitation. There is the 1-for-1 so-called requirement. Do you have any record of your determinations or any examination of these transactions with respect to these different standards and how they have been applied or whether they have been applied in the exchange/sale program?

Mr. TUTTLE. Well, Mr. Chairman, the regulation does have a large number of requirements and you have mentioned most of them. We review practically all of the items which are disposed of by the Government agencies, including Defense, line item by line item at the time of the sale. We do not have that kind of exposure to the trade-in practices of the agencies, but the great bulk of exchange/sale traffic is on the sale end of it, much less on the exchange or outright trade-in.

On the test of similarity, this has come up before. I believe it was mentioned in the last report that your subcommittee issued or that the full committee issued. To the extent that we can, if we note in a disposal document some question of similarity, we can raise it. But ordinarily this is something that would have to be determined by pulling a file drawer open in a Government agency and checking the procurement document against the proposed disposal document; in other words, looking at the old item as against the proposed purchase of the new item and seeing that they are similar within the meaning of the regulation. And we have felt that at this point we have to stop short, that we cannot audit the internal decisions on similarity by individual transaction reviews. I think this is true also of the other point you mentioned, the use of negotiation and the use of competitive bid and the economic values of each. The test in the regulation is simply that the contracting officer has the responsibility to maximize the return to the Government, whether it means getting the best trade-in value or, if he can do better on an open sale, then it is his responsibility to take the open sale.

Mr. MONAGAN. Well, what does your review cover then, if you say you review each transaction? If it doesn't cover the standards that you just referred to, what does it cover?

Mr. TUTTLE. It covers the aspect which we think is quite important, and I know HEW feels too that it is probably the most significant thing, and that is the eligibility—

Mr. MONAGAN. You mean whether or not it comes within a category?

Mr. TUTTLE. Yes, sir, some agency proposing to exchange/sale a firetruck when the regulation says it can't be done.

Mr. MONAGAN. Well, that wouldn't be a very demanding exercise of judgment, would it?