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RELATION OF COST DATA TO MILITARY PROCUREMENT

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE FOR SPECIAL INVESTIGATIONS

OF THE

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

UNDER THE AUTHORITY OF

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HEARING HELD MAY 22, 1963

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RELATION OF COST DATA TO MILITARY PROCUREMENT

WEDNESDAY, MAY 22, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE FOR SPECIAL INVESTIGATIONS,
Washington, D.C.

The subcommittee met at 10:35 a.m., Hon. Porter Hardy, Jr. (chairman of the subcommittee) presiding.

Members present: Hon. Porter Hardy, Jr., chairman; Hon. Richard E. Lankford, Hon. Otis G. Pike, Hon. Charles S. Gubser.

Staff present: John T. M. Reddan, special counsel; Walton Woods, staff investigator; Phyllis M. Seymour, secretary.

(The testimony that follows was received in executive session. Immediately following the close of the executive session the subcommittee agreed unanimously to the publication of this record.)

Mr. HARDY. Since this is an executive session, I think maybe I better inquire of the staff just who is present. Do you know, Mr. Reddan? Let the committee come to order.

Mr. REDDAN. I have the witness list here.

Mr. HARDY. From the Department of Defense, Mr. Bannerman?

Mr. BANNERMAN. Yes, sir.

Mr. HARDY. You are going to be the principal spokesman for the Department of Defense?

Mr. BANNERMAN. For the Office of the Secretary of Defense, I understand, Mr. Chairman.

Mr. HARDY. Can you tell us who you have with you?

Mr. BANNERMAN. From our office there are just three people.

Colonel Thybony, who is sitting next to me, and Mr. Pilson, all from the Office of the Secretary.

I understand there are others here from one of the field activities having to do with—

Mr. HARDY. You have just the three of you there?

Mr. BANNERMAN. That is correct, Mr. Chairman.

Mr. HARDY. And Mr. Keller, I am glad to see you, from the General Accounting Office.

Can you tell us who is here from the GAO?

Mr. KELLER. Yes, sir. Mr. Bell, Mr. Bailey, Mr. Shnitzer, Mr. Chenery, and Mr. Newell.

Mr. HARDY. Who do you have in the back here? Stand up, you fellows from the GAO, so I can see who you are.

(Rising from group in second row.)

Now, let's see if we can identify these others—

Mr. BANNERMAN. Mr. Chairman, excuse me. I find there is a fourth from the Office of the Secretary of Defense, Commander Fitzgerald.

Mr. HARDY. Is he your backstopper?

Mr. BANNERMAN. He is a backstopper, Mr. Chairman.

Mr. HARDY. Who are these other gentlemen up here?

Mr. YOUNG. I am Mr. Young of Defense Electronics, formerly Dayton Air Force Depot, and Mr. Highwarden, Mr. Saporito, and Mr. Countryman.

Mr. HARDY. The four of you are from the Dayton Depot; is that right?

Mr. YOUNG. Yes, sir.

Mr. HARDY. Haven't we got somebody missing from your operation?

Mr. GUBSER. Mrs. George.

Mr. YOUNG. Mrs. George, sir.

Mr. HARDY. Yes.

Mr. YOUNG. We have a medical certificate that I gave Mr. Reddan.

Mr. HARDY. All right. We will get to that later.

Now, how about the rest of you gentlemen back there?

Mr. BURNETT. Mr. Burnett, Captain Harvey, and Mr. Gruder from DSA Headquarters here, sir.

Mr. HARDY. Who is the gentleman behind you?

Mr. PACKARD. I am Mr. Packard, David Packard, president of the Hewlett-Packard Co. Mr. Brown and Mr. Davis are with me.

Mr. HARDY. I believe that covers everybody in the room. Thank you very much.

Mr. REDDAN. I see we have over here—

Mr. PIKE. Two people.

Colonel GARCIA. I am Colonel Garcia and I have with me Major Staley, sir. We were asked to have observers from the Air Force.

Mr. HARDY. That is good.

Mr. Zuckert didn't come himself?

Colonel GARCIA. No, sir; he sent us.

Mr. HARDY. He was busy.

Well, I have a brief statement that I want to make.

The committee will look this morning at certain aspects of the relationship of cost data to military procurement. Particularly, we will be concerned with the availability of cost data in negotiated contracts and the provisions of Public Law 87-653, together with appropriate Armed Services Procurement Regulations relating thereto.

When Congress amended the Armed Services Procurement Act last year by adding subsection (f) to section 2306, title 10 United States Code, it did little more than put into statutory form the provisions of certain Armed Services Procurement Regulations which were already in existence. However, the subcommittee has been informed that since the effective date of the amendment a number of questions of interpretation have been raised by industry. I understand the Department of Defense has most of these questions under consideration at the present time and is working with industry representatives in an effort to arrive at mutually satisfactory answers.

The subcommittee hopes these answers will be determined soon, but one question has been raised which has a considerable urgency and seems to require our consideration at this time.

The Hewlett-Packard Co., of Palo Alto, Calif., has challenged the right of the General Accounting Office to make an examination of the pricing of electronic equipment procured by the Government from that company under certain negotiated contracts which total approximately \$2 million. The company seeks to find support for its position in part in U.S.C. title 10, section 2306 (f) (4), and refers to its "rights as established by congressional intent in matters of this kind." This brings the matter squarely within the jurisdiction of this subcommittee for a review of the facts to the extent necessary to determine the need for, or desirability of, recommending legislative action.

I have a little more than a cursory interest in this matter because of the particular section of the United States Code which requires that contracts of the military shall contain a provision permitting inspection of records. That grew out of an amendment which I offered to the Defense Production Act back in 1950.

So I have a background of personal knowledge on it, and I think I know what congressional intent was at the time that was originally passed.

Now, the position of the Hewlett-Packard Co. is set forth in sufficient detail in its correspondence with the General Accounting Office to permit us to proceed this morning with a preliminary review so that a determination can be made of the need for future subcommittee action.

For this purpose we have invited witnesses from the General Accounting Office and the Department of Defense to be present and give us the benefit of their testimony. We have also invited, as observers, representatives of the Air Force and Hewlett-Packard Co. Perhaps it should be explained at this point that, although four Air Force contracts are involved in this matter, no *present* Air Force personnel appear to have been involved in this procurement. That is due to the fact that the Air Force personnel who took part in the procurement have since been transferred to the Defense Electronics Supply Center. The Hewlett-Packard Co. representation is here merely as observer because the subcommittee has not yet determined how far it will be necessary to proceed with the matter. If the conclusion is reached that his testimony (or of that of others from the company) is necessary, then we shall ask for such testimony after first examining such Hewlett-Packard Co. records as we deem to be pertinent. Mr. David Packard, president of the company, has indicated a desire to submit a statement. In a letter to him last week, I stated that I would be happy to receive such a document for the use of the subcommittee, and that a subsequent determination would be made whether to include it, or any part of it, in the record.

Now, Mr. Packard has handed to us this morning certain documents and brochures with respect to the Hewlett-Packard Co., and they appear to be a very interesting group of documents.

However, I don't think it is the kind of thing which would be appropriate for insertion in the record, but they will nonetheless be extremely valuable to the committee and its staff in providing background knowledge of the company, so we are very pleased to have it.

Since this is an executive session, we have already had the persons present identify themselves.

Mr. Reddan, in view of the fact that one of the witnesses who was requested to be here is not here, Mrs. Grace George, I think we should have read into the record at this time the statement of the reason why she is not present.

Mr. REDDAN. There has been submitted to the committee, Mr. Chairman, a doctor's certificate, signed by Dr. G. E. Meyer of Dayton, Ohio. It is dated May 16, 1963, and it states that the certificate is for Grace George.

The above patient has myocardial ischemia and should not be subjected to undue stress. I do not think it advisable for her to go to Washington, as I understand the situation.

Signed, "G. E. Meyer."

Attached to that is a memorandum dated May 17, 1963, signed by Vernon E. Young, Acting Director of Procurement and Production.

It reads as follows:

Memo to P. A. (Grace George).

Subject: Doctor's certificate.

In conversation with Captain Harvey, Headquarters, DSA, he stated the congressional committee required answers to the following questions from your physician:

- a. When did the illness develop?
- b. Does it prevent travel to Washington?
- c. Would it prevent her from appearing before the congressional committee in Washington?
- d. Would her condition prevent her from being questioned by the congressional committee at Dayton, Ohio?

I need the above requested information by COB today, May 17.

Signed, "Vernon E. Young, Acting Director of Procurement and Production."

Below that is a handwritten note by Dr. Meyer dated May 17, 1963, which reads as follows:

"The respective answers to the above questions follow:

The question was, "When did the illness develop?" The doctor has written:

"a. Six months to a year ago."

Question b. "Does it prevent travel to Washington?" And the doctor has written:

"No, if done in a relaxing manner such as a vacation."

Mr. HARDY. It would be a complete vacation for her to testify before this committee.

[Laughter.]

Mr. REDDAN. "Would it prevent her from appearing before a congressional committee in Washington?"

And his answer to that is: "Yes."

And the last question: "Would her condition prevent her from being questioned by the congressional committee at Dayton, Ohio?"

His answer to that question is "Yes."

Signed, "G. E. Meyer."

Mr. HARDY. I think I want to make this observation right now. If you have an employee who is too ill to be able to answer questions for representatives of this committee, then I would say she ought to be retired. If she can't answer questions by representatives of this committee in Dayton, Ohio, she is not able to perform her job, and I would suggest that there be some attention given to that immediately

because there is certain information that she has which this committee is going to need.

I certainly don't want to jeopardize her health, but if she is able to perform her job and stay on the job and talk to people that carry out her responsibilities, she can answer questions as to her previous performance. We might just as well get that understood.

I wouldn't subject her to an inquisition before this group of witnesses we have here this morning, but certainly she can answer questions from an individual investigator and answer them under oath. And if she is not able to do that, then I submit that she is not able to work for Uncle Sam.

Now, Mr. Reddan, who is our first witness?

Mr. REDDAN. Mr. Keller, sir.

Mr. HARDY. Mr. Keller, have a seat, will you, please, sir?

Do you have a prepared statement?

Mr. KELLER. Yes, sir; I do. I think copies have been furnished to the committee.

Mr. HARDY. I have it.

Now, Mr. Keller, suppose you just proceed with your statement and I would suggest to the members of the committee that we try not to interrupt him. I will probably be the first one that will violate that admonition.

STATEMENT OF ROBERT F. KELLER, GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY CHARLES M. BAILEY, DEPUTY DIRECTOR, DEFENSE ACCOUNTING AND AUDITING DIVISION; HASSELL B. BELL, ASSOCIATE DIRECTOR, DEFENSE ACCOUNTING AND AUDITING DIVISION; AND PAUL SHNITZER, ATTORNEY, OFFICE OF THE GENERAL COUNSEL

Mr. KELLER. All right, sir.

Mr. HARDY. You go right ahead, Mr. Keller.

Mr. KELLER. Mr. Chairman and members of the subcommittee:

We appreciate the invitation to appear before you to discuss certain aspects of the relationship of cost data to procurement and to postaudit review. This subject is of concern to us in carrying out our responsibility for examining records of contractors holding contracts which are negotiated, as distinguished from those let by competitive bid.

Accompanying me today are Mr. Charles M. Bailey, who is Deputy Director of our Defense Accounting and Auditing Division, on my left; Mr. Hassell B. Bell, Associate Director of the same Division, who is on my right, and Mr. Paul Shnitzer, who is an attorney, Office of the General Counsel, who is sitting behind me in the first row.

The General Accounting Office is an agency in the legislative branch of the Government created by the Congress to examine the manner in which Government agencies discharge their financial responsibilities with regard to public funds appropriated and otherwise made available to them and to make recommendations looking to greater economy and efficiency in public expenditures. The basic audit authority of the General Accounting Office is included in numerous provisions of law, the principal provisions of general application being in the Budget and Accounting Act, 1921; the Government Corporation Control Act; and the Accounting and Auditing Act of 1950.

With the increased use of negotiated contracts for the purchase of supplies and equipment, the Congress, in order to assure that such supplies and equipment are obtained at reasonable prices, has provided that negotiated contracts shall include a clause giving the Comptroller General or his duly authorized representatives the right to examine any pertinent books and records of the contractor or of his subcontractors engaged in the performance of, and involving transactions related to, work under the contract. Such a provision was first enacted in Public Law 921, 81st Congress, on January 12, 1951, as an amendment to the First War Powers Act. An enactment having the same purpose was incorporated into the Federal Property and Administrative Services Act of 1949 and the Armed Services Procurement Act of 1947 by Public Law 245, 82d Congress. The provision, as applicable to the Armed Services Procurement Act, is codified in title 10 United States Code at 2313(b), and reads as follows:

(b) Each contract negotiated under this chapter shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any books, documents, papers, or records of the contractor, or any of his subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

Since the Congress enacted legislation giving the Comptroller General the right to examine the records of contractors who are awarded negotiated contracts by the Government, the General Accounting Office has made many audits of negotiated contracts. Although our audits have covered only a very small percentage of the total number of negotiated contracts, we believe the results have been quite significant.

During the fiscal years 1957 through 1962, the General Accounting Office reported to the Congress findings of excessive prices totalling over \$61 million under contracts negotiated by the Departments of the Army, Navy, and Air Force. Of this amount, about \$48 million had been recovered by the Government through June 30, 1962, as a result of refunds, price reductions, or other adjustments. The excessive prices disclosed by our audits resulted principally from the contractors' failure to submit, or the military departments' failure to obtain, accurate, current, or complete cost data upon which to establish prices.

Our examinations of contractors' records are directed primarily to those areas where large expenditures are involved and which appear to offer the greatest possibility for improvement.

As just noted, we have reported to the Congress a number of instances in which our review of selected contracts has revealed that the Government was in an unfavorable position to negotiate fair and reasonable prices, either because the contractor refused to make cost information available to the agency or because agency contracting officials failed to request or obtain correct, complete, and current cost information which was available to the contractor. With your permission, we would like to present a summary of four recent cases which we think are particularly pertinent to a problem we have at present.

1. Under sole source procurements for klystron tubes, totaling over \$5 million, the contractor quoted prices from its catalog and refused to furnish supporting cost data or negotiate the prices even though commercial catalog pricing was not appropriate for unique military

hardware and effective competition was lacking to insure the reasonableness of such prices. The catalog prices on Government orders frequently exceeded the company's current cost of production by more than 100 percent. The contractor's refusals to furnish cost data were based on statements that its klystron tubes were proprietary items and/or catalog products. However, the sales of these tubes were almost exclusively to the military and the Government had borne, through research contracts and prior procurements, a substantial part of the cost of the contractor's development of klystron products. (B-146757, Jan. 15, 1963.)

The second case: There was an obvious lack of effective price competition among the six suppliers which furnished aircraft tires to the Government, because the General Services Administration did not request cost data or other evidence to support the reasonableness of the prices quoted by the suppliers when establishing the prices of military aircraft tires to be incorporated into the annual Federal Supply Schedule for contracts 1960 and 1961.

Also, our review of contractors' records disclosed the existence of accounting and other pertinent financial data which permitted the ready computation of reasonably accurate costs experienced by the contractors in manufacturing and selling those particular types and sizes of tires purchased by the Government during the period covered by our review. However, no real attempt was made to negotiate reductions of the quoted prices, which generally were the same as the prices listed in prior years' schedules. As a result, the prices accepted by the General Services Administration and paid by the military services were substantially higher than seem reasonable in relation to the contractors' costs to manufacture and sell aircraft tires, and the Government experienced unnecessary costs in its procurement of these items. We estimate that in 1960 alone the Government experienced unnecessary costs of approximately \$10.7 million for the tires it had bought. (B-146753, Feb. 20, 1963.)

A third case: Although it was the sole source supplier of spare engines for certain fire-crash vehicles, the contractor refused to furnish Air Force contracting officials available cost data or other evidence to support the reasonableness of the prices it proposed to pay for five fixed-price contracts. The prices proposed by the contractor and accepted by the Air Force for three negotiated fixed-price contracts were identical with the price at which an earlier formally advertised procurement had been awarded to this contractor, and the price accepted for the fourth contract was only 0.76 percent lower. However, the circumstances under which the earlier procurement by advertising was made did not provide effective competition. Consequently, Air Force contracting officials had no knowledge as to whether the proposed prices which they accepted were reasonable. On the basis of computations which we made, using data taken from the contractor's formal records and available to the contractor at the time its price proposals for the respective contracts were submitted to the Air Force, prices totaling about \$864,000 established for the five contracts were about \$356,500 or 70 percent higher than the contractor's costs previously experienced in producing like engines. In the performance of these contracts, we estimated that the contractor experienced total costs of about \$479,000 and a profit of about 80 percent of cost. (B-146737, July 31, 1962.)

A fourth case: Under various noncompetitive procurements for S-band airborne radar beacons the contractor proposed prices totaling \$1,229,000, which exceeded previously experienced costs under prior contracts for similar beacons by \$595,000 or 94 percent, and were based on a commercial-type sales catalog published by the contractor before valid production cost experience was available. In accepting these proposed catalog prices agency and contractor procuring activities in some instances requested the contractor to furnish cost and pricing data, but in each case the contractor refused to furnish this data. The military negotiators, after obtaining explanations from the contractor, accepted the proposed prices without cost data on the basis that the beacon was a proprietary item. We could find no evidence, however, that any of the procuring activities verified whether the radar beacon was a proprietary item. Such a review would have disclosed that the airborne beacon actually was developed with Government funds, that the Government had unlimited rights to the beacon drawings and technical data, and that the contractor had never sold the beacon commercially. (B-146781, May 20, 1963.)

Our experience indicates the need for careful examination into the reasonableness of accepting catalog or other established prices for negotiated procurements, particularly where contractors have resisted requests by the procurement agencies for cost data to support price proposals and quotations.

The fact that a product is listed in a manufacturer's catalog and offered to any customer is no assurance that competition actually is present or that the standard catalog price is reasonable. A catalog may include products that in technical characteristics and prices are competitive with products of other suppliers, but also it may include products that are unique to a particular supplier. A catalog may include special products that are manufactured only to the customer's order, but also it may include widely used products that are made for the manufacturer's inventory or for off-the-shelf sales. A catalog may include products that have been conceived and developed by a manufacturer at his own expense without outside assistance, but it also may include products that may have been developed in a large part at Government expense. The mere fact that a product is contained in a manufacturer's catalog and offered to the Government and the public through that medium at a stated price provides no assurance that the so-called catalog price represents a reasonable basis for establishing the price to the Government.

In carrying out our work the General Accounting Office has had very few problems concerning access to cost records of contractors. During the fiscal years 1961 and 1962, the General Accounting Office examined the records of about 180 contractors holding contracts with the military departments. In those few instances where we experienced problems with contractors during this period, our position as to the right of access to cost records of contractors prevailed in each case with a minimum of dispute or delay.

We have, however, encountered one contractor who, to date, has refused to allow the General Accounting Office to examine cost records of performance relating to several departments of the Air Force negotiated fixed-price contracts for items of electronic test equipment. This contractor is the Hewlett-Packard Co. of Palo Alto, Calif.

In October 1962 we began an examination of prices paid by the Government for electronic test equipment and related spare parts to determine the effectiveness with which the Government procurement agencies have obtained fair and reasonable prices. We expected to carry out the work simultaneously at several companies. The Hewlett-Packard Co. was one of several selected for examination. The volume of the work at Hewlett-Packard on which we had planned to make our test is as follows, and there follows a listing of four contracts.

Mr. HARDY. We will put them in the record.

Mr. KELLER. And the current contract prices.

Contract Nos.:	Current contract prices
AF 33 (604)-31884-----	\$84,194.71
AF 33 (604)-22362-----	1,178,455.08
AF 33 (604)-28645-----	138,581.46
AF 33 (604)-22221-----	578,499.45
Total-----	1,979,730.70

The prices negotiated for the contracts were so-called catalog prices established by the contractor less discounts ranging from 9.26 to 32 percent.

On November 14, 1962, our auditors who were conducting an examination at the Hewlett-Packard Co. requested cost records on the four contracts mentioned, all of which were negotiated fixed-price contracts. The request was denied by company representatives who then referred the matter to higher authority within the company. By letter dated November 21, 1962, Mr. W. F. Cavier, the firm's vice president, finance, advised our regional manager at San Francisco that in the company's view the access-to-records clause in each contract did not give the General Accounting Office the right to examine cost records relating to the production of the contract items. By letter dated December 18, 1962, the Comptroller General advised Hewlett-Packard of the basis for our request to examine the records and again requested access. We were again refused access by letter dated January 21, 1963, signed by Mr. David Packard, president of the firm. By letter dated February 18, 1963, the Comptroller General answered the arguments previously presented by Hewlett-Packard and again requested access to the records. We were again refused by the company by letter dated March 9, 1963, signed by the president of the firm. Copies of the correspondence between Hewlett-Packard and the Comptroller General are attached to the statement.

In each case the contract on its face is clearly described as negotiated and all of the circumstances are such as to leave no question that the contracts must be considered to be negotiated as the term is defined at 10 U.S.C. 2302(2). Further, Hewlett-Packard appears to have conceded that these contracts were negotiated.

Each of the contracts in question contains a clause as follows:

(a) The contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract.

(b) The contractor further agrees to include in all of his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller

General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term subcontract, as used in this clause excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The contract provision is derived from, and closely follows, the language of the statutory provision appearing in 10 U.S.C. 2313(b).

The basis for Hewlett-Packard's refusal to permit us access to the cost records requested, as indicated in the correspondence between our Office and the firm, is that production costs are not considered directly pertinent because costs were not a factor in the negotiation of the contracts involved.

The firm contends that the use of the words "directly pertinent" in the contract clause and the underlying statute limits the application of the access-to-records clause to contracts where costs were a factor in the negotiation; where effective competition was not present; where standard catalog prices were not used as a basis for pricing; or where substantial quantities of the products involved were not sold to the general public. In brief, it is the position of Hewlett-Packard that the clause applies only to the type of records and information upon which price negotiations were conducted. In this connection Hewlett-Packard consistently has refused to furnish any cost data at the time of contract negotiations and, instead, has certified that no other customer receives a more favorable price.

Hewlett-Packard contends that its position, as expressed above, is supported by the language of Public Law 87-653, September 10, 1962, which presently appears in 10 U.S.C. 2306(f). In situations where the price negotiated is based on established catalog prices of commercial items sold in substantial quantities to the general public, this law permits an exception from the general requirement that pricing data be submitted and certified as to accuracy, completeness, and currency in connection with the award of negotiated prime contracts or subcontracts, or with contract modifications. Hewlett-Packard also notes that the Armed Services Procurement Regulation sets out certain situations in which cost analysis is desirable in the negotiation of contracts, but contends that none of these situations is applicable to the circumstances surrounding the four contracts at issue.

It is our position that the contract clause and the statute give us the right to examine the cost records of the contractor and other pertinent data that relates to the items included in the contract, in sufficient completeness and detail to permit us to determine the reasonableness of the negotiated prices.

We believe our position is supported by the language of 10 U.S.C. 2313(b) and the contract provision and, to an even greater extent, by the legislative history of the statute which is set out at length in the exchange of letters with Hewlett-Packard.

We believe, further, that our position is supported by the fact that our interpretation of the statute has been consistently applied since its

enactment without objection by the Congress and, therefore, should be given the consideration normally accorded longstanding administrative interpretations of statutes.

With respect to Hewlett-Packard's position that only those records and information upon which price negotiations were conducted may be regarded as directly pertinent under the terms of the contract provision and the statute, we think it sufficient to point out that if such an interpretation were intended, the language of the statute and, therefore, the clause, could have been limited to make such an intention clear. This could have been done, for example, by adding to the end of the first sentence of the contract provision words such as "upon which price negotiations were conducted."

The fact that no such limitation was included supports the view that no such limitation was intended. Indeed, such a limitation would have completely frustrated the purpose of the statute as clearly indicated in the legislative history. In the event the interpretation advanced by Hewlett-Packard should prevail, examination by the General Accounting Office would be limited to verification of the contractor's catalog prices. Similarly, in the case of cost estimates used as a basis for establishing contract prices, it could be argued that only those estimates "upon which price negotiations were conducted" would be pertinent. Such a position would preclude our consideration of cost data on previous production, vendor's quotes, and other information we have relied upon to show the unreasonableness of estimates used in arriving at contract prices.

It is our position also that Public Law 87-653 has no effect whatsoever on the right of the General Accounting Office to examine contractor's records. Public Law 87-653 requires, among other matters, that pricing or cost data be submitted as to accuracy, completeness, and currency in connection with the award of negotiated prime or subcontracts, or contract modifications.

Certain exceptions to the requirement are established, including one under which the requirements need not be applied where the price negotiated is based on established catalog prices of commercial items sold in substantial quantities to the general public. You will note that the exception is permissive not mandatory. Further, Public Law 87-653 deals with cost or pricing data in connection with the award of negotiated prime or subcontracts. There is no basis in the language of Public Law 87-653, or in the legislative history of that law, for concluding that the exceptions to the furnishing of cost or pricing data were intended to have any effect on the right of the General Accounting Office to examine a contractor's records. For the same reasons, the sections of the Armed Services Procurement Regulation issued to implement Public Law 87-653 have no effect on the right of the General Accounting Office to audit a contractor's records under the provisions of 10 U.S.C. 2313(b) and the specific provisions of the contracts. In addition, the Armed Services Procurement Regulation, of course, could not operate to deprive the General Accounting Office of a right given to it by statute and by the terms of a contract. Also, we think it pertinent to note the statement in a letter of October 10, 1962, to the Department of Defense staff director for ASPR, in which

the Electronics Industries Association made clear its position that Public Law 87-653 has no effect on the General Accounting Office audit authority, and the quote from that letter is:

* * * In fact, we believe that the present audit powers of the Government are entirely adequate to insure compliance with the statute. The Defense Department has contractual authority to audit all cost-type, redeterminable, and incentive contracts, and the General Accounting Office may audit all negotiated contracts. * * *

Aside from the legal considerations, we recognize that the exercise of our right to examine a contractor's records may cause inconvenience to the contractor. Further, we recognize that our examinations cost the taxpayer money. Therefore, we consider it appropriate not only to set out for the subcommittee the authority for our demand for access to contractors' records, but also to demonstrate why the exercise of that authority may be regarded as necessary to protect the Government's interests.

In the four contracts under consideration, the Air Force—that is the Hewlett-Packard contracts—the Air Force lacking cost data, could only attempt to verify and evaluate the reasonableness of the prices quoted by Hewlett-Packard primarily by comparing the quoted prices with those previously paid the same supplier for similar quantities. Under such conditions, we believe the Air Force could not expect to obtain reasonable assurance that the prices it contracted to pay were fair to the Government as well as to the supplier.

The need for cost data in establishing prices through negotiation may be illustrated by one of the four contracts at issue. This contract is Air Force, AF35(604)-22362, awarded March 16, 1959, for almost \$1 million in electronic items identified by Hewlett-Packard part numbers. One item covered 193 signal generators, identified as item 616A, at a net unit price of \$1,342.32. Another covered 191 signal generators, 614A UHF, at a net unit price of \$1,358.81. These unit prices represent the catalog price of \$1,950 for each item, less a discount of approximately 32 percent.

On July 11, 1960, Hewlett-Packard was awarded an advertised contract by the Air Force for 56 units of the 616B signal generator, described as the same as 616A with an extended upper frequency limit and a restyled front panel, at a net unit price of some \$200 less than the negotiated contract. The contract also included 45 units of the 614A UHF signal generator at a net unit price of more than \$200 below that charged under the negotiated contract. At the time this advertised contract was awarded the catalog price for each item was the same as at the time the above-mentioned negotiated contract was awarded. We believe this vividly illustrates what happens to prices when some degree of competition is introduced and that Hewlett-Packard's catalog prices are subject to adjustment based on conditions affecting individual sales.

Hewlett-Packard has advised us that the prices for the 614A and 616B equipments, as shown in its catalogs, have not been changed from their inception. The 614A was put on the market in 1949 at \$1,950 and still carries the same price. The 616A was first sold in 1946 at \$1,950 and the price was unchanged until the instrument became obsolete in 1960. The 616B, which replaced the 616A, was offered for sale in 1960 at a price of \$1,950 and is still offered at that price.

We question the statement in the letter of January 21, 1963, from the president of Hewlett-Packard that "cost information had not in any way been a factor in the original negotiation." Our review of Air Force files on the negotiation of contract AF33(604)-22362 disclosed letters from Hewlett-Packard specifically taking the position that prices offered to the Air Force were directly affected by estimated costs. Thus, in a letter dated January 16, 1959, it was stated as follows, and I quote:

The unit prices which we have shown are based on our current established and nationally advertised catalog prices. However, in consideration of the overall economies in production costs and selling expense which we hope to achieve based upon this particular combination of instruments, we are offering a 32 percent price reduction on the Hewlett-Packard instruments specified as items 1 through 6 contingent on award of a contract for all items in the quantities called for in your Request for Proposals.

Further, a letter dated February 20, 1959, from Hewlett-Packard on the same procurement states:

Only a very small proportion of Hewlett-Packard sales orders are written on a discount basis. In fact, there is only one situation in which Hewlett-Packard instruments are sold to regular customers at less than the nationally advertised catalog prices.

This situation applies to orders for very large quantities of instruments which produce appreciable sales and manufacturing savings directly. It is our practice to pass these savings along to our customers, but it is important for you to understand that these savings are not a simple function of order size alone but are related to a complex series of factors which require individual analysis in each instance.

Finally, in another letter of February 20, 1959, from Hewlett-Packard it was stated:

However, when a customer orders very large quantities of Hewlett-Packard instruments, some savings in sales expense and manufacturing expense can accrue. When this occurs, it is our practice to pass these savings along to our customers. However, we do not do this on an arbitrary average basis but rather we calculate the anticipated savings in each instance to arrive at the actual discounts we offer.

We believe the foregoing is clearly indicative of the Hewlett-Packard policy to offer significant discounts from catalog prices based on costs of production and sales.

Of these four contracts with Hewlett-Packard, three were negotiated pursuant to the authority in 10 U.S.C. 2304(a)(10)) on the basis that specification data available were so inadequate as to make it impracticable to secure competition. The fourth was negotiated under 10 U.S.C. 2304(a)(2) on the grounds that a public exigency required immediate action and would not permit a delay normally incident to procurement through formal advertising.

Further, the record shows that, in the case of two of the contracts, negotiations were conducted only with Hewlett-Packard as a sole source; that in another case a proposal was received from one other source; and that in the fourth case, while proposals were originally solicited only from Hewlett-Packard, proposals later were requested informally from two other sources which were not seriously considered for award either because of the high prices asked or the inadequacy of the equipment offered.

Our office has consistently supported the position that adequate competition, usually obtained by formal advertising, will serve to hold prices at a reasonable level. In our opinion, however, procurement

officials are justified in relying on competition to assure that prices being paid by the Government are fair and reasonable only if such competition has a reasonably broad base and competitive prices actually have been obtained. We believe the Government is not assured of obtaining fair and reasonable prices merely because there may be potential competition.

We are firmly of the view that:

1. We are authorized by the terms of the contracts with Hewlett-Packard and the statute to have access to the contractor's records.
2. The kind and degree of competition necessary to assure the reasonableness of prices paid Hewlett-Packard were not present.
3. Evidence exists to indicate a possibility that Hewlett-Packard's prices could have been lower had there been effective competition.
4. In other instances where contractors have refused to make cost information available to the procurement agency or where agency contracting officials have failed to request or obtain cost information, the Government has been in an unfavorable position to negotiate fair and reasonable prices.
5. In the absence of cost data, the procurement agency had no sound basis upon which to determine the reasonableness of the prices negotiated with Hewlett-Packard for the four contracts in question.
6. Our examination of records relating to the contracts with Hewlett-Packard is essential to evaluate the reasonableness of the prices paid.

In support of our view we think it appropriate to quote remarks made by the chairman of this subcommittee in the House of Representatives on October 15, 1951, on legislation subsequently enacted as Public Law 245, 82d Congress, providing for the examination of the contractor's records. With your permission, I will quote it.

Mr. HARDY. Let the record understand these are Mr. Hébert's words.

Mr. KELLER. No, sir, I think these are your words.

Mr. HARDY. These are mine?

Mr. PIKE. Very eloquent.

Mr. HARDY. I will stand by them then.

Mr. KELLER. I think we have it correct.

In normal times, competitive bidding generally operates as a brake on the price which a contractor can demand from the Government for his goods and services. However, these are not normal times, and it should be obvious to all of us concerned with the expenditure of billions of dollars for national defense that we must establish every reasonable safeguard against waste and extravagance in the spending of these vast sums. Under conditions as they now exist, competitive bidding has little or no effect upon contracts which are negotiated without advertising. As a result, when a contract is being negotiated, here is a typical illustration of what usually happens: A contractor with years of experience comes to the conference table accompanied by a highly competent accountant and equally competent lawyer. The Government representative on the other side of the table will, in a great majority of cases, be at a tremendous disadvantage, from the standpoint of both training and experience, no matter how conscientious and honest he may be. So, aside from any intentional liberality on the part of the Government contracting officer, there is every chance in the world that the Government will come out on the short end of the deal. This bill would at least enable the agent of the Congress to check the transactions, both from the Government records, and the contractor's books.

Mr. HARDY. I think I recognized those words after we got into it.

Mr. KELLER. Yes, sir.

If the Government's contracting officials are to be deprived of current, complete, and correct cost data in procurements where catalog or other contractor-established prices are involved, those officials may well be restricted to bargaining with the contractor over the size of discounts without any real basis for evaluating the reasonableness of the prices quoted. Furthermore, if Hewlett-Packard is successful in preventing the General Accounting Office from obtaining access to its records relating to such negotiated contracts, the Government will be deprived of the most important means for examining into the reasonableness of contract prices.

We would like to mention at this time, Mr. Chairman, that our work at other contractors' plants involving procurements of electronic equipment amounting to hundreds of millions of dollars is progressing smoothly and we are receiving no appreciable resistance. However, we understand that other contractors are carefully observing the position taken by Hewlett-Packard and it is to be expected that their future decisions to make available or to refuse to make available cost information at the time of negotiation to contracting officials and cost records of performance to the General Accounting Office may be governed by the outcome of the Hewlett-Packard case.

In the event of refusal to make such information available, we believe that the excess amounts the Government pays as a result of overpricing will be very substantial.

Mr. Chairman, that concludes our formal statement and we will be glad to answer any questions you and other members of the subcommittee may have.

(The following documents are a part of Mr. Keller's prepared statement:)

HEWLETT-PACKARD Co.,
Palo Alto, Calif., November 21, 1962.

U.S. GENERAL ACCOUNTING OFFICE,
143 Federal Office Building,
San Francisco, Calif.

Attention: Mr. A. M. Clavelli, regional manager.

GENTLEMEN: Representatives of the General Accounting Office have been engaged for several weeks past in an audit here in connection with the following contracts: AF33(604)22221, AF33(604)29783, AF33(604)31884, AF33(604)22362, AF33(604)28645. Contract AF33(604)29783 was entered into by means of formal advertising—clause 10 specifically states that it is not applicable in this case so the audit of this particular contract is unauthorized. The rest are all negotiated contracts calling for standard commercial articles normally sold in substantial quantities to the general public. Prices were based upon established catalog prices.

During most of this audit period we have cooperated in every way with the representatives of the GAO, and have readily made accessible to them the information they had sought. However, during the sixth week of this audit the GAO representatives asked for detailed cost data in connection with all of these contracts. Our Government contracting personnel refused to make this information available explaining that it was their belief that cost information was not directly pertinent because costs were never a factor in the negotiation of the contracts involved, and that only price analysis, not cost analysis, is required.

The GAO people persisted in their position and referred this whole matter to me for a statement of company policy on whether or not we would deny or accede to their requests for cost information in these specific cases. I agreed to reconsider the matter, study the question further and to restate our position as a result of that reconsideration.

As a result of considerable study and discussion of this problem, it is the considered policy of this company to continue to maintain our position that

cost information is not directly pertinent to these contracts and that we are therefore justified in keeping this company information confidential.

In our opinion the intent of Congress and the Government as expressed in clause 10, Standard Form 32, is that cost analysis is not necessary or desirable in this type of case. The use of the words "directly pertinent" in clause 10, in our judgment, were clearly meant to limit the application of this clause to contracts wherein costs were a factor, or effective competition was not present, or where standard catalog prices were not used as a basis for pricing, or where substantial quantities of the products involved were not sold to the general public. In other words, clause 10 should apply only to the type of records and information upon which the price negotiations were conducted.

The Armed Services Procurement Regulations themselves lend support to our conclusions, in our opinion. ASPR section 3-8074 lists nine situations in which cost analysis should be made. None of these examples fit our case. Was it an oversight that our case is not covered therein? We think not; we believe the omission was intentional and clearly indicates the intent of these regulations is not to require cost analysis in cases such as these contracts under consideration here.

GAO representatives cited cases wherein other companies have submitted cost data and intimated that these cases were applicable to ours. We checked up on these cases and found that no parallel existed. The McDonald case concerned a cost based incentive type contract. The General Tire case contract called for "Mil Spec" items and the price list used was a Federal Supply Schedule, not a commercial catalog.

On the other hand, a case has come to our attention wherein a large company doing business nationwide has, under circumstances similar to our own, denied Government auditors access to cost records and has apparently been sustained in that position.

United States Code, title 10, section 2306(f) (4) states essentially that cost and other information shall be submitted except "the requirements of this subsection need not be applied to contracts or subcontracts where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public." This, we understand, is the latest word from Congress on this matter and seems to apply to our case.

There are other references which can be cited to support our contentions in this matter, and we would be pleased to discuss them in further explanation of our position, if necessary.

This is a complicated problem and it is easy to see how misunderstandings can arise. However, we believe that we have correctly interpreted the law on the subject and that we seek only to preserve our rights as established by congressional intent in matters of this kind.

Yours very truly,

(Signed)

HEWLETT-PACKARD Co.,

W. F. Cavier,

W. F. CAVIER,

Vice President, Finance.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., December 18, 1962.

Mr. DAVID PACKARD,
President, Hewlett-Packard Co., 1501 Page Mill Road, Palo Alto, Calif.

DEAR MR. PACKARD: The General Accounting Office is making an examination of the pricing of electronic equipment procured by the Government from the Hewlett-Packard Co. under negotiated contracts. Our examination is being made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), the Accounting and Auditing Act of 1950 (31 U.S.C. 67), and the authority of the Comptroller General to examine contractors' records, as set forth in 10 U.S.C. 2313(b).

The Department of the Air Force awarded negotiated contracts to the Hewlett-Packard Co. for electronic equipment, including fixed-price contracts AF33(604) 22221, AF33(604) 22362, AF33(604) 28645, and AF33(604) 31884. During our examination of negotiated contracts awarded to your company, representatives of this Office have been denied access to cost data relating to these contracts. As indicated by the enclosed copy of a letter dated November 21, 1962, from the

vice president, finance, of your company to the manager of our regional office in San Francisco, Calif., our right of access to cost records is questioned on the following grounds:

You stated that it was your belief that cost information was not "directly pertinent" because costs were never a factor in the negotiation of the contracts involved, and that you are therefore justified in keeping this information company confidential. You stated also that in your opinion the intent of Congress and the Government as expressed in clause 10, standard form 32, is that cost analysis is not necessary or desirable in this type of case; that the use of the words "directly pertinent" in clause 10, in your judgment, were clearly meant to limit the application of this clause to contracts wherein costs were a factor, or effective competition was not present, or where standard catalog prices were not used as a basis for pricing, or where substantial quantities of the products involved were not sold to the general public; and that clause 10 should apply only to the type of records and information upon which the price negotiations were conducted.

We do not agree with your conclusions. Records which pertain to the costs and prices of electronic equipment furnished by your company to the Government are considered by this Office to be directly pertinent to the contracts. The purpose of this letter is to request that such records be made available for our examination, as provided by the terms of the negotiated contracts awarded to your company by the Department of the Air Force.

The negotiated contracts between Hewlett-Packard and the Department of the Air Force contain identical paragraphs at clause 10 of standard form 32, to be applicable if the contract amount exceeds \$1,000 and if the contract is entered into pursuant to negotiation rather than by formal advertising.

The cited clauses were included in the contracts pursuant to Public Law 245, 82d Congress, 65 Stat. 700, which amended section 4 of the Armed Services Procurement Act of 1947 (codified as 10 U.S.C. 2313) by adding the following subsection:

"(c) All contracts negotiated without advertising pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall until the expiration of three years after final payment have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts."

Senate Report 603, 82d Congress, to accompany Senate bill 921, which was later enacted as Public Law 245, explained the purposes of the legislation as follows:

The Federal Property and Administrative Services Act of 1949 and the Armed Services Procurement Act of 1947 are general legislation of permanent application to a very large percentage of Government procurement. They authorize negotiation of contracts without advertising under certain specified circumstances in the discretion of the agency head. Since it is well recognized that negotiated contracts are at the same time effective procurement instrumentalities under special circumstances, and require close supervision and control, this legislation would make examination by the Comptroller General a permanent part of procurement procedure on a basis of broad application. This bill would have the effect of extending the examination provisions added to the First War Powers Act by Public Law 921 of the 81st Congress."

In considering the legislation, the following statement was made on the floor of the House of Representatives by Congressman Hardy on October 15, 1951 (97 Congressional Record 13197):

"This brings up another point. As I have indicated, the authority contained in this bill is really only necessary to cover those cases where the contractors refuse to permit the General Accounting Office to inspect their books and records. As I have already pointed out, the vast majority of contractors do make their books available on a voluntary basis when requested. Thus, this bill would affect that comparative few contractors who now refuse the agent of the Congress permission to see their records. It would be compulsory upon them.

"It seems logical to me to suppose that there is greater need for the GAO to see the records of those few who do not wish to make them available on a voluntary basis than it is to see the records of those who readily comply. To put it bluntly, those with nothing to hide have nothing to fear by opening their books to the General Accounting Office."

The language of the act and of the legislative history clearly establishes that the statutory provision was enacted to make possible the close supervision and control over negotiated procurements which the Congress regarded as necessary in the interest of the Government. This purpose requires that the act, and the contract provision which is almost identical in language, be interpreted to permit such detailed examination of the contractor's records to assure the necessary degree of supervision and control. In other words, the clear intent of the statute was to provide for the examination by our Office of such of the contractor's records as would permit a valid evaluation of the reasonableness of the prices charged. This is clearly established by further remarks made by Congressman Hardy on the floor of the House of Representatives immediately after those quoted above (97 Congressional Record 13198) as follows:

"In normal times, competitive bidding generally operates as a brake on the price which a contractor can demand from the Government for his goods and services. However, these are not normal times, and it should be obvious to all of us concerned with the expenditure of billions of dollars for national defense that we must establish every reasonable safeguard against waste and extravagance in the spending of these vast sums. Under conditions as they now exist, competitive bidding has little or no effect upon contracts which are negotiated without advertising. As a result, when a contract is being negotiated, here is a typical illustration of what usually happens: A contractor with years of experience comes to the conference table accompanied by a highly competent accountant and equally competent lawyer. The Government representative on the other side of the table will, in a great majority of cases, be at a tremendous disadvantage, from the standpoint of both training and experience, no matter how conscientious and honest he may be. So, aside from any intentional liberality on the part of the Government contracting officer, there is every chance in the world that the Government will come out on the short end of the deal. This bill would at least enable the agent of the Congress to check the transactions, both from the Government records and the contractor's books."

The language of the access to records clauses included in the pertinent agreements is modeled closely after the statutory language and was undoubtedly intended to be coextensive in scope. Therefore, we must adhere to the position stated earlier that under the contracts we are authorized to examine such of the contractor's records as would permit a valid evaluation of the reasonableness of the prices charged without regard to the factors considered or ignored by the contractor in establishing those prices.

Even though other factors are considered by Hewlett-Packard in establishing the prices for the electronic equipment furnished to the Government and the prices established for may not be directly proportionate to costs, costs of production nevertheless directly pertain to, and involve transactions related to, the contract. Although it is not a condition to the legal authority of the General Accounting Office to have access to such records, we believe that cost records are directly pertinent to the prices established. We believe also that an examination of the relationship of experienced and estimated costs to the prices paid by the Government, and of the pricing methods used in establishing the prices, is clearly within the scope of the type of examination contemplated and required by the terms of the contract.

It is our position, consistent with our interpretation of the act and the contract provision, (1) that all books, documents, papers, and other records relating to the pricing and cost of performance of negotiated contracts are records relating directly to the contracts and to the Government's financial interest, (2) that such books, documents, papers, and other records are not limited to the formal cost accounting records and their supporting data, but include all underlying data concerning contract activities and operations which afford the basis for, or are involved in any way with, the incurrence of costs by the contractor, (3) that the cost records which we requested and other data supporting the prices charged to the Government by the contractor are directly pertinent to the contracts, and (4) that therefore all such books, documents, papers, and other records and underlying data are subject to examination by the General Accounting Office under its statutory responsibility and authority to examine activities and related costs under negotiated contracts.

We must request that you have the responsible officials at Hewlett-Packard Co. make available to the General Accounting Office as required, all books, documents, papers, and other records directly pertinent to the contracts, which in-

clude, but are not limited to, (1) records of experienced costs, (2) support for prices charged to the Government, and (3) such other information as may be necessary for us to review the reasonableness of the contract prices and the adequacy of the protection afforded the Government's interests.

We request also that you advise us within 15 days with respect to your decision to make these records available for our examination.

Very truly yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

HEWLETT-PACKARD Co.,
Palo Alto, Calif., January 21, 1963.

Mr. JOSEPH CAMPBELL,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. CAMPBELL: Before replying to your letter of December 18, 1962, I have reviewed the circumstances and background with the Hewlett-Packard personnel who were originally responsible for negotiating the contracts now under review. I believe the Hewlett-Packard position has not been fully understood by your Office and the discussion in your letter does not reach the basic reasons that lead H-P to seek to protect the confidential nature of records relating to its costs of production.

At the outset, I should like to point out that two representatives of your office were continuously engaged in the audit of contracts No. AF-33(604)22221, AF-33(604)31884, AF-33(604)22362 and AF-33(604)28645 for the 6 weeks' period immediately following September 24, 1962. Our company extended to them complete cooperation until they asked for extensive records relating to the cost of performance of these contracts, including specifically direct labor, direct material, and overhead costs on both finished items and at various stages of manufacturing. Hewlett-Packard declined to comply with this request on the ground that records relating to its actual or estimated costs were not "directly pertinent" to these contracts, since cost information had not in any way been a factor in the original negotiation.

Your letter of December 18, 1962, deals with the general basis of the authority of the Comptroller General, but you have not discussed its application to the facts of our situation. The statutory authority referred to in your letter (Public Law 245, 82d Cong., 65 Stat. 700) was repealed in 1956—several years before the execution of these contracts—and was replaced by a codification which limits the right of examination to books and records "that directly pertain to, and involve transactions relating to, the contract or subcontract." (70 A. Stat. 133.) The broad rights of inspection which you assert in your letter of December 18, 1962, appear to be substantially identical in the case of a cost-plus-fixed-fee contract and in the case of a contract in which cost was not an element of the negotiation. This interpretation has the effect of reading out of the statutes the limitation that Congress inserted. It seems to us that H-P costs could only be "directly pertinent" to these contracts if those costs had been an element of the negotiation and reliance had been placed thereon by the contracting agency. An element which (a) was not available to the contracting officer when the contract was negotiated and (b) was not referred to in the contract in any way and (c) cannot now be a basis for adjusting the obligations of either party to the contract does not seem to us to be directly pertinent to that contract within the meaning of 10 U.S.C. 2313 (b).

Pertinency must be determined by the circumstances of the particular contract. I believe it will be helpful to an understanding of the H-P position to use as an illustrative example one of the contracts involved in the present discussion, namely, contract No. AF33(604)31884, dated January 30, 1961. This contract related to one instrument—a signal generator, H-P model No. 620A. This instrument has been an item in the H-P catalog of instruments for a long time, having been initially introduced in 1952. The instrument has been purchased by several branches of the Government and some have been purchased every year since 1952. The list price of the instrument has been \$2,250 continuously since its original inclusion in the catalog. The annual volume of sales to nongovernmental sources in 1961, the year in which contract No. AF33(604)31884 was signed, was sufficient so that this instrument was excluded from our annual renegotiation proceedings.

There are several instruments competitive with model No. 620A and we believe proposals were solicited from other suppliers prior to the acceptance of the H-P proposal by the Air Force contracting officer. The catalog list prices of the two instruments most nearly competitive with H-P model No. 620A are within \$75 of the list price of the 620A. The H-P proposal quoted the list price, less a discount to the Government of 11 percent, and H-P specifically declined to submit any cost information in connection with its proposal. In this regard, H-P advised the Air Force contracting officer by letter that:

"Since the instrument on which we are bidding is a standard commercial unit, offered at the nationally advertised price, we do not believe you will require DD Form 633—Cost and Price Analysis. In lieu of completing this form, we certify that the prices quoted are equal to or less than net prices charged to any other customer for like quantities, services or materials."

The Air Force contracting officer acquiesced in this position and accepted the H-P proposal without any H-P cost data. The Air Force had purchased model 620A prior to 1961 and undoubtedly was familiar with its performance characteristics, as well as its list price. In any event, no reliance could have been placed upon H-P cost data in the awarding of this contract—a fact which can easily be verified by reference to the contracting agency.

Contract No. AF33(604)31884 is, of course, a fixed price contract and does not contain a single provision relative to costs of the supplier. H-P was committed to deliver 42 units of this model at the specified price and has done so to the satisfaction of the contracting agency. Neither H-P nor the contracting agency has any contractual right to any price adjustments and none has been sought by either party. An audit of the H-P cost figures cannot develop one factor which will be relevant to contract No. AF33(60)31884 or to its performance.

The 1962 amendments to chapter 137 of title 10 of the U.S. Code and the revised procurement regulations appear to substantiate the H-P position. Cost data need not be procured where the price is based on adequate price competition or established catalog prices. Indeed, we note that the Comptroller General himself advised the Congress when it was considering these amendments that the obtaining of cost certification "should, we believe, be dependent upon whether any reliance was placed upon cost and pricing data in establishing the contract price." (Letter of Comptroller General to Senator Russell dated July 17, 1962.) There was no reliance on cost in these four contracts and we see no purpose to be served by voluntarily consenting to an audit of irrelevant material.

I should like to emphasize that the H-P position is dictated by considerations of policy. We realize that the U.S. Government is familiar with the company's general profit margins and our annual renegotiation proceedings have demonstrated a recognition that the H-P profits are not unreasonable. However, the electronic industry is a very competitive one and we consider the H-P cost data as to specific instruments to be highly confidential. H-P would be most unhappy if such information became available to our competitors in any manner. The nature of the duties of the General Accounting Office are such that information developed by its audits is often made public through reports to the Congress and is frequently given wide dissemination to various governmental contracting agencies. Preservation of confidentiality is not possible under such circumstances. The situation might be different if all manufacturers were being required to submit information which was to become public only as a part of a general consolidated report, from which it would be impossible to ascertain the cost data of a specific company.

We have not been referred to any case in which a court or outside agency has upheld the right of the Comptroller General to demand inspection of cost records in contracts where no reliance was placed on cost in awarding the contracts. It seems significant to us that you have been unable to cite any such outside authority with respect to a statute that has been in effect or more than 10 years. H-P made its unwillingness to supply this information clear to the contracting agency and the awards were based solely on the commercial catalog price, the prices quoted, and the merit of the product. We do not believe the Congress intended that where a supplier is unwilling to provide cost data to the contracting agency in connection with a consideration of its price proposal that it must nevertheless be compelled to divulge such confidential information upon a subsequent audit of the contract should its proposal be accepted.

H-P must therefore request that this audit be confined to the matters directly pertinent to these four contracts and we cannot concur in your conclusion that H-P cost data is pertinent to these contracts. It is unnecessary to reiterate that H-P is, of course, entirely ready to make available the information necessary to verify our commitment that the catalog prices, with discount, as quoted to the Air Force were "equal to or less than net prices charged to any other customer for like quantities, services or materials."

Yours very truly,

HEWLETT-PACKARD Co.,
DAVID PACKARD, *President.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 18, 1963.

HEWLETT-PACKARD Co.,
Palo Alto, Calif.
(Attention: Mr. David Packard, president).

GENTLEMEN: We have your letter of January 21, 1963, replying to our letter of December 18, 1962, with respect to the right of our Office to examine the records of your firm concerning certain contracts with the Department of the Air Force.

You contend that the records relating to the cost of performance under the contracts which have been requested by our auditors are not "directly pertinent" to the contracts and, therefore, our Office does not have a right of access to them under clause 10 of standard form 32 included in each of the contracts. Your position appears to be based on the contention that the figures are not relevant since cost information was not in any way a factor in the original negotiations.

As we indicated in our letter of December 18, 1962, the paragraph included in the contracts derives from Public Law 245, 82d Congress, 65 Stat. 700. The history of the legislation clearly establishes that its purpose is to permit our Office to check on the transaction with respect to whether the interests of the United States have been properly represented, since the protection inherent in the competitive bid system is absent under negotiated procedures. That provision of law was originally codified as 10 U.S.C. 2313(b), 70A Stat. 133. While some modification was made in the language under the codification, section 49(a), 70A Stat. 640, states that the legislative purpose was to restate the law without substantive change. Therefore, any change in the language appearing in the codification from that of the original enactment must be regarded as editorial and not affecting the substance of the provision.

As you point out, the language of the contract and of the statute upon which it is based provides that our Office shall have access to "any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract." While the provision might have been more precisely stated, the legislative history of the act, cited at some length in our earlier letter, provides no basis for limiting our access to those records which may relate directly to matters considered in the course of negotiation. In our view, any limitation on the right of access which would preclude an evaluation of price in comparison to the contractor's cost would frustrate the purpose of the contract clause and the statutory provision. Therefore, any records dealing with costs incurred under contracts which include the access-to-records clause must be regarded as directly pertinent without regard to the extent of negotiations as to price. In this connection it should be noted that the clause applies to any negotiated contract, whether it provides for payment on a fixed price or another basis.

In support of your position that the examination-of-records clause was not intended to apply in the instant situation, you refer to 10 U.S.C. 2306(f) (4), as amended by Public Law 87-653, September 10, 1962. The cited statute requires that pricing data be submitted and certified as to accuracy, completeness, and currency in connection with the award of negotiated prime or subcontracts, or contract modifications. Certain exceptions to the requirement are established, including one under which the requirements need not be applied where the price negotiated is based on established catalog prices of commercial items sold in substantial quantities to the general public. You will note that the exception is permissive, not mandatory. It is your position that the procure-

ments under consideration fall within that exception. There is no basis in the language of the provision or in its legislative history for concluding that exceptions to the submission and certification requirement were intended to have an effect on the right of our Office to examine a contractor's records.

You stated that you have not been referred to any case in which a court or outside agency has upheld the right of our Office to examine cost records in connection with contracts awarded where no reliance was placed on cost in making the award. The reason for the absence of any precedent of this kind is simply that our Office has in every case been able to prevail upon the contractor to permit access to the records we have considered necessary for our examination without resorting to any court or other outside agency. We might point out in this connection that the failure of any contractor up to now to require us to resort to litigation or similar action is worthy of note.

With respect to your position that disclosure of certain of your data would adversely affect your competitive position, we can only state that we recognize that such disclosure may be detrimental to a contractor. While we cannot agree to any limitation on our right to utilize the data in carrying out our responsibilities, we can assure you that our report will include only the data necessary to support our conclusions and we will endeavor to present that data in terms which will protect your commercial interests.

We must, therefore, again demand access to the kind of information detailed in the next-to-last paragraph of our letter of December 18, 1962. Unless we receive advice from you within the next 15 days that these records will be made available for our examination, we will be required to take such further action deemed appropriate to the exercise of our rights under the contract and the execution of our statutory responsibilities.

Very truly yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

HEWLETT-PACKARD Co.,
Palo Alto, Calif., March 9, 1963.

Mr. JOSEPH CAMPBELL,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. CAMPEELL: In reply to your letter of February 18, 1963, we must advise with regret that we cannot acquiesce in your statement of position, as we believe a principle of paramount importance is involved.

We should like to emphasize that our views as to your rights of inspection relate solely to your demand for inspection of cost records of items sold at prices based "on established catalog prices of commercial items sold in substantial quantities to the general public." The contracts to which your demand relates do not involve the type of situation in which Hewlett-Packard Co. is either—

- (a) the only available source;
- (b) a manufacturer of items designed primarily for military use; or
- (c) a manufacturer of items for which there is presently no effective competition.

We can sympathize with the need to monitor prices in circumstances where any one of these elements is an important factor and it is the H-P policy to cooperate in audits relating to such situations.

However, as we understand your present position, you contend that the Congress has authorized you to inspect any contractor's cost records, even where the purchase is of a standard commercial article produced in competition with other responsible suppliers and sold in substantial quantities to the general public. In this regard, we should like to point out that the contracts at issue between us do relate to standard commercial articles which are sold in substantial quantities to the general public. These products are manufactured essentially to be "off the shelf" items and we can assure you that each unit in the contracts under discussion (except one minor special modification involving only \$2,900 of sales) qualifies as a standard commercial item under the Renegotiation Amendments Act of 1956, in that more than 35 percent of the total sales of such items were not subject to renegotiation. We believe that in substantially every case the Government had available to it alternate sources of supply from well-established firms. Accordingly, it seems to be a valid assumption that in all of

these cases the reasonableness of price was tested by both competition and by a significant amount of purchasing by the public. Prices were therefore determined by the operation of the usual incidents of the marketplace and under those circumstances a particular producer's margin of profit is certainly not relevant to the purchase.

In the past, H-P has consented to the auditing of millions of dollars of Government purchases and we are always willing to agree to such audits where cost has been a pertinent factor in the original negotiation. However, H-P is convinced that the Congress did not intend that industry sacrifice its rights of privacy as a condition of dealing with the Government in circumstances under which cost was not a pertinent factor in the original negotiation. We do not believe that the Congress intended that we suffer a detriment to our competitive position merely by selling a standard commercial item to the Government under circumstances where Congress itself now recognizes that cost data need not be supplied as a part of the original contract negotiation and where there will exist no basis for subsequent price modification based on cost experience.

It is significant that H-P has been audited by the General Accounting Office periodically since 1950 and heretofore no demand for inspection of cost records has been made under circumstances such as those involved in the present controversy. In view of the continuing importance of the principle involved, H-P cannot acquiesce in your request for inspection. Nevertheless, we do recognize that there is a legitimate difference of opinion between us as to proper statutory interpretation and accordingly we shall be glad to cooperate with you in arranging for submission of this issue to an appropriate court for decision.

If you feel it would be helpful, we shall be glad to discuss with you personally at your convenience any aspects of this problem.

Yours sincerely,

DAVID PACKARD, *President.*

Mr. HARDY. Thank you, Mr. Keller. I think you have stated this case very well as to the necessity for having a contract provision permitting audits of negotiated contracts. If there is any question about the authority for the General Accounting Office to examine records, cost records relating to negotiated procurements, I think the committee wants to clear that up and perhaps these hearings will enable us to determine whether there is any deficiency in the statute and, if so, we will try to get it cleared up.

Now, are there any questions? Mr. Lankford?

Mr. LANKFORD. No questions.

Mr. HARDY. Mr. Gubser?

Mr. GUBSER. I have a number of them, Mr. Chairman. Do you want me to wait a while?

Mr. HARDY. It doesn't matter. Mr. Keller is available now. I think you can just as well go ahead if you have questions for Mr. Keller.

Mr. GUBSER. Well, first of all, I would like to ask a question which I think I have asked you privately on previous occasions, Mr. Keller.

Mr. KELLER. Yes, sir.

Mr. GUBSER. What situation could you imagine where cost data would not be pertinent to a negotiated contract?

Mr. KELLER. We do have problems with contractors from time to time as to whether certain data are directly pertinent. For example, where we go beyond direct manufacturing costs. The area might be research activities. We want to know how research costs are allocated as between the Government contract and commercial business. Carrying it a step further, I have no doubt that the cost of certain activities of a company may have no direct bearing on the costs of the Government contract. If such is the case, we do not have access to the records of those activities.

Mr. GUBSER. In other words, your opinion has changed since we discussed this in the middle of January, when your answer to that same question, if I remember correctly—

Mr. KELLER. I don't think so.

Mr. GUBSER. That you could not conceive of a situation where cost data would not be pertinent to a negotiated contract.

Mr. KELLER. I am afraid I misunderstood your question. I thought your question was how far do we go in determining which costs are pertinent and which are not.

Mr. GUBSER. I will repeat the question: Can you conceive of a situation where costing data would not be pertinent to a negotiated contract, insofar as the General Accounting Office is concerned? And, if so, I would like to know what situation that would be?

Mr. KELLER. Well, I think you can go back to Public Law 87-653 and, prior to that time, the Armed Services Procurement Regulation where it is recognized that exceptions could be made in requesting cost data at the time of negotiation.

In certain cases I think it would be all right to negotiate on catalog prices, if the procuring agency is satisfied, by the use of other pricing information, that the Government is obtaining a reasonable price.

I am still concerned as to whether your question deals with pricing or GAO's right to audit.

Mr. GUBSER. I am referring to the words "directly pertinent," which are in the law, and also I believe they are on the face of the contract.

Mr. KELLER. Yes, sir.

Mr. GUBSER. What situation could you conceive of where the cost data would not be pertinent insofar as GAO is concerned in interpreting the law and this clause on the face of the contract?

And, if I remember correctly, you told me you couldn't conceive of any such situation. Which raises the question in my mind, "Why put the words 'directly pertinent' into the law if there is no exception to it?"

Mr. KELLER. I think the words are important. There could be certain company costs which have no relationship to the costs of performing a contract. But if there is a relationship, then the costs are directly pertinent.

Mr. GUBSER. I am not trying to put words in your mouth, but are you saying this in effect, and I give you the right to correct me, that that unless cost is a part of the negotiation it is not pertinent? Isn't that what you are saying?

Mr. KELLER. No, sir; I am not saying that. I am talking about what records we have a right to audit. The words "directly pertinent" pertain to which of the contractor's records we have a right to audit, not to the question of the pertinency of cost records at the time of negotiation.

Mr. HARDY. Well, there are two things involved here. One relates to procurement procedures and the other to the right of GAO to audit. I have the feeling that maybe the two of you are confusing those.

Mr. GUBSER. That may be.

Mr. KELLER. I am sorry, I misunderstood your question.

Mr. GUBSER. You, of course, are not coming to this committee for relief from your particular problem with Hewlett-Packard? I mean that is a legal situation, is it not?

Mr. KELLER. It is certainly a legal situation and I have no doubt in my own mind that legally we are entitled to access to Hewlett-Packard records.

Mr. GUBSER. But I mean you will agree that this committee does not have the power to——

Mr. KELLER. I don't think——

Mr. GUBSER. To compel the production of those records to GAO? It only has the right to compel the production of the records for the committee?

Mr. KELLER. I don't think I am qualified to speak on the powers of the committee.

Mr. GUBSER. It is a matter you could take to court, isn't that right. Mr. Keller?

Mr. KELLER. I think so, although we have not had to do so in any other case. We try to avoid it.

Mr. GUBSER. I gathered the implication in your testimony that Hewlett-Packard is the only company that has ever refused such material. Is that totally correct?

Mr. KELLER. No, I think if you will look at our statement carefully we said that we received no appreciable resistance.

We have had problems from time to time, but in each case——

Mr. HARDY. There has been one at least that came before this committee when Mr. Hébert was chairman.

Mr. KELLER. Each case has been resolved to our satisfaction.

Mr. GUBSER. Is there a matter pending now that involves the same issue with United States Steel?

Mr. KELLER. No, sir.

Mr. GUBSER. There is not?

Mr. KELLER. It was pending, but it has been resolved to our satisfaction.

Mr. GUBSER. To your satisfaction?

Mr. KELLER. Yes, sir.

Mr. GUBSER. How long ago was that?

Mr. KELLER. Within the last week.

Is that correct?

Mr. BAILEY. Yes, it was Monday.

Mr. GUBSER. As long as there are gray areas here—obviously there are or we wouldn't be here this morning—has the GAO ever recommended to the contracting agencies that they specifically require the subsequent production of cost data as a term within the contract? Don't you have that right to do so?

Mr. KELLER. Well, Mr. Gubser, I think the provision in the contract at the present time is quite adequate. I think we get back to our argument as to the meaning of the words "directly pertinent."

Mr. GUBSER. I agree. "Directly pertinent" are the key words.

Mr. KELLER. In other words, if you don't use cost data at the time of negotiation, is the cost of production data pertinent later on. I would like to point out again that I think we are dealing with two different matters when we talk about pricing and when we talk about actual costs of production. There is a relationship, but the relationship does not tie together as to the right of the General Accounting Office to access to cost records of production.

Mr. GUBSER. Do you know of any situation where any private contractor, or any private customer, has purchased the same materials that are under question here at a price lower than the Federal Government, from Hewlett-Packard?

Mr. KELLER. No. Of course, I say "no" with qualification, because I don't think we have made a thorough examination of Hewlett-Packard's books on this point. Have we, Mr. Bailey?

Mr. BAILEY. No.

Mr. GUBSER. On page 6 you say the prices negotiated for the contract were "so-called catalog prices." That raises a cloud as to whether those were legitimate catalog prices or not.

I have just seen this book I hold in my hand and have not studied it, but apparently this is Hewlett-Packard's catalog. Do they issue just one catalog? I see it says No. 24. I don't know whether it is the 24th issue or if there are 24 different catalogs. Do they from time to time publish new ones?

Mr. BELL. They put out new ones from time to time.

Mr. GUBSER. Were the items involved in these four contracts listed in this catalog?

Mr. BELL. I don't know about that specific catalog. The retail prices for the items listed in the contract are listed in the catalog. The point we are making here is that Hewlett-Packard says that when it receives a contract of this magnitude it recomputes what its cost of manufacturing and selling the item would be. This is done completely independently of the catalog and the price quoted bears little relationship to the catalog price.

Mr. GUBSER. Let's get this established. You said "so-called catalog prices." That to me throws a cloud on the catalog prices. Are these legitimate catalog prices? Disregard the Government for a moment. Is this what Hewlett-Packard offers to the trade? Are these legitimate catalog prices?

Mr. BELL. This is my understanding of the document they use to present their wares to the general public.

Mr. GUBSER. Then your scriptwriter could have left the word "so-called" out of there?

Mr. BELL. He could have.

Mr. GUBSER. He could have called it catalog prices? It says here that Hewlett-Packard discounts from 9.26 to 32 percent to the Government. Has it been their practice to deal with the Government on the basis of the catalog prices less a discount?

Mr. KELLER. That is our understanding.

Mr. GUBSER. Hasn't that been a rather established custom in the negotiations and the dealings that have been going on over the years?

Mr. KELLER. That was true in these four contracts. I cannot personally speak for their general practice.

Mr. GUBSER. One thing I would like to clear up for my own edification. I noticed in your statement, and I think also in one of the communications that Hewlett-Packard sent to you, that Public Law 87-653 enters into it frequently.

Am I correct that the effective date of 87-653 was subsequent to the negotiation of these contracts?

Mr. KELLER. That is correct.

Mr. GUBSER. In other words, we are just talking, when we talk about Public Law 87-653, insofar as the matter at issue today is concerned?

Mr. KELLER. Yes. The issue was first raised by Hewlett-Packard on the basis that Public Law 87-653 is the latest expression of Congress on acceptance of catalog prices.

Mr. HARDY. If the gentleman will permit, those words are used in the Hewlett-Packard letter. You have it there.

Mr. GUBSER. Yes, but it is beside the point really insofar as the real issue involved here.

Mr. KELLER. We didn't raise it. We attempted to answer the contention.

Mr. GUBSER. I understand that; yes. I would like to ask about what steps are taken by General Accounting when you go into a plant of this kind and you do get this information. What degree of confidentiality is there?

Mr. BAILEY. Well, Mr. Gubser, we attempt to keep this information that the contractor gives us as confidential as possible. In other words, unless it would pertain to something that we would need to state in our report to show the problems that were involved or to develop or definitely establish the validity of our findings, this information is kept by us in confidence unless we are compelled to disclose it, for example, to a congressional committee or something of that kind. We make no outside disclosure of such information except as a part of our reports, or pursuant to a request by an appropriate Government authority having a need to know.

Mr. GUBSER. I know nothing in the world about the electronics industry, but I understand it has become a very highly competitive industry and I would imagine that cost data on subassemblies and components would be highly valuable bits of information to a competitor. Is that correct?

Mr. BAILEY. I would assume that the contractors are interested in keeping their sources of supply and the prices they pay as confidential as possible; yes, sir.

Mr. GUBSER. In other words, it might be a matter of just good business to keep this information as corporation-confidential; isn't that right? It is not necessarily a question of ill will and attempt to defraud the Government or anything like that; wouldn't you say?

Mr. BAILEY. Yes, sir; I would imagine that many contractors, as I say, are interested in keeping this information—

Mr. GUBSER. You say you attempt to keep it confidential insofar as it is possible. I notice there is a lot of qualification in those terms. Now, in practice, you just can't keep it quiet; can you?

Mr. BAILEY. Well—I don't know of any case where we have had to disclose information that has been given to us by a contractor in confidence except for that we have had to use for substantiating findings in a particular case.

Mr. KELLER. I wonder if I might add—

Mr. GUBSER. Just one moment. There is no guarantee to the company involved that they are not going to pick up a GAO report to Congress and find their corporation-confidential information right there in black and white? You can't guarantee them that at all when you go in to look at their records, can you?

Mr. BAILEY. Mr. Keller?

Mr. KELLER. I would like to answer to that. If a contractor says certain information is confidential for business reasons, as Mr. Bailey points out we will attempt to keep it confidential, but we cannot guarantee it. If our records are asked for by a congressional committee we will furnish the records. Also, it is our policy to make our reports to Congress and necessarily certain details of pricing and production costs are going to appear in those reports. Reports so made are available to the public.

I would like to say that I think if the General Accounting Office should make audits and secretly hand them over to the Defense Department with no one else having access, I have a serious question as to whether the Office would be as effective as it is today.

Mr. GUBSER. Well now, lest my attitude be interpreted as hostile, let me say that I have a very high regard for the personnel of GAO, and I do honestly believe that you are not attempting to broadcast confidential information to the detriment of the persons that you are working with. There is no hidden meaning at all in my questions.

What about the percentage of Government-sponsored research and development work which is done at Hewlett-Packard as compared with other electronics companies? Do you know anything about that?

In other words, how much of their——

Mr. KELLER. Offhand I don't.

Mr. GUBSER. Aren't the majority of Hewlett-Packard's instruments which they offer to the Government items that have not been developed with Government R. & D. funds?

Mr. BELL. I don't think we know, Mr. Gubser.

Mr. GUBSER. Well, in thumbing through it here, there was some sort of a——

Mr. HARDY. I think insofar as GAO is concerned, or insofar as the statute is concerned, that question would relate to the specific item rather than——

Mr. GUBSER. Well, that is just my point. Would the situation be different if every one of these items had been developed by Hewlett-Packard with their own funds instead of Government funds? Would the situation be any different?

Mr. KELLER. As far as our right of access?

Mr. GUBSER. That is right.

Mr. KELLER. No different.

Mr. GUBSER. Insofar as the pertinency of cost data is concerned?

Mr. KELLER. No, sir; I don't think so.

Mr. GUBSER. You don't think so?

Mr. KELLER. No, sir.

Mr. GUBSER. The fact that this is——

Mr. KELLER. It is an element that would enter into our examination. If an item had been developed entirely by the company from its own funds, I certainly think that would be taken into consideration in any report we made. Although I would add that we follow the theory, and the Defense Department does also, on pricing of contracts that each contract is to stand on its own feet.

In other words, so far as GAO is concerned, we are not attempting to audit and report in the manner that the Renegotiation Board operates where you look at the defense business of a contractor for a particular year.

Mr. GUBSER. I note here on page 11 you state that this 616A instrument, whatever it is, was procured on an advertised contract for \$200 less per unit than a similar item with just a few differences was procured under negotiation.

Now, the way your statement is written, it sounds like there is a very slight difference in the instruments. Are you sure that such an implication is justified, that there were really only minor changes?

Mr. BELL. I believe so. We have a copy of Hewlett-Packard's letter to the Air Force saying that it is offering this as a substitute item. The letter states that the substitute item is the same thing except for minor items. This information is directly from Hewlett-Packard.

Mr. GUBSER. Could there have been improved circuitry, for example, a use of printed circuits instead of wired circuits and a consequent reduction in manufacturing costs? Did you look into all those things before you drew this conclusion?

Mr. BELL. We obtained our information from a letter from Hewlett-Packard dated May 27, 1960, addressed to Headquarters, Dayton Air Force Depot, signed by Richard J. Reynolds, and I quote from that letter:

Under item 4 you will be pleased to know that the Model 616A UHF signal generator you have specified has been superseded by the improved Model 616B. This new model is the same instrument except the upper frequency limit has been extended from 4.0 kmc. to 4.2 kmc. In addition, the front panel has been restyled for greater operating convenience.

That is the complete story as given to the Air Force.

Mr. GUBSER. Is this incident offered in support of your contention that, if you could get into cost data, you might find similar situations of where—

Mr. BELL. Mr. Gubser, I think this procurement story is a very interesting one. In March of 1959 these instruments were bought on negotiated basis for \$1,342 against the catalog price of \$1,950.

Mr. GUBSER. What was the commercial trade buying that instrument for?

Mr. BELL. I have no idea.

Mr. GUBSER. It would be interesting to know.

Mr. BELL. On July 11, 1960, Hewlett-Packard was awarded an advertised contract for a price some \$200 less than the negotiated price. Now, at the time Mr. Keller and I discussed the Hewlett-Packard matter with you in January, we talked at length about competition. Later I checked into the extent to which competition actually existed on the award of this contract. The Air Force solicited bids from some 90 firms. Only three companies responded. One of those was Hewlett-Packard who got the contract. There were two other bidders. We took a look at why some 59 firms solicited declined to bid on this particular item and the results were quite interesting. Eight declined to bid because they didn't manufacture this particular type of equipment. Nine declined to bid because they didn't have

the facilities available. Three declined to bid because they didn't carry the item in inventory. Two declined to bid because they considered the specifications too rigid. Twenty-seven declined to bid and gave no reason at all. Ten declined to bid because they felt they couldn't compete with Hewlett-Packard items specified in the invitation for bid. So, out of the 90 firms solicited bids were received from only 3.

Mr. GUBSER. Three, however—what were the three companies? Do you know, offhand?

Mr. BELL. Yes, I have that.

Hewlett-Packard, Polarad Electronics Corporation—

Mr. GUBSER. How large a company is that?

Mr. BELL. I don't know the size of it.

And Republic Electronics Industries Corp., Farmingdale, N.Y.

Mr. GUBSER. They—the bids were received and they were responsible bidders apparently.

Mr. BELL. The Air Force should answer that question.

Mr. GUBSER. Well, would you call three bids competition?

Mr. BELL. It would depend entirely upon the circumstances in the individual cases.

Mr. GUBSER. How far apart were the bids?

Mr. BELL. Very substantial. Hewlett-Packard was the lowest bidder.

Mr. GUBSER. Well then we have—we did in this instance have competition, certainly a three-way competition?

Mr. BELL. There were three competitors.

Mr. HARDY. That produced a price of \$200 less than—

Mr. BELL. That competition produced a price \$200 less for substantially less quantities than had been paid 18 months earlier under a negotiated contract.

Mr. GUBSER. Well, of course, I think that you can't necessarily imply that this competition necessarily produced this \$200 reduction.

You know there are all sorts of situations, I can sell pears to you at a lot different price in July than I can sell them in February. The price you can offer may depend upon the particular situation of the moment that happens to exist in your plant, and it depends upon your productive capacity at the moment. There was competition, I think you will agree. There were three bidders and they must have been responsible bidders or their bids would not have been considered.

Mr. BELL. We know only that on this one request for bids Hewlett-Packard was lower than the other two bidders.

Mr. GUBSER. One other point. How much of this business with Hewlett-Packard is subject to renegotiation?

Mr. BELL. We don't know. We have done very little work at Hewlett-Packard.

Mr. HARDY. Let me raise this point: We are not raising any question about the competitive contract; the one that was awarded on the basis of bid invitations. In that one, Hewlett-Packard's price per unit was \$200 less than for substantially the same unit under the negotiated contract where there was no competition. As I say, we are not concerned with the contract which was let as a result of competitive bidding, because such a contract does not provide for an audit of the company's books and records.

The significance is that you had two contracts, one of them was negotiated, as a sole source procurement, if my memory is correct. Is that right?

Mr. BELL. Yes, sir.

Mr. HARDY. Negotiated as a sole source procurement, and how long afterward was it determined that competition was possible?

Mr. BELL. Approximately 18 months.

Mr. HARDY. Eighteen months later you had a competitive procurement as against a sole source procurement initially, is that correct?

Mr. BELL. Yes, sir.

Mr. HARDY. And although we are not concerned with auditing the competitive procurement, it does raise a rather interesting comparison of what happens when you buy the same items under competition as contrasted with your procurement under negotiation from a sole source. It is even more striking in this case, since the number of items purchased under competition was much less than that purchased by way of negotiation, and one would normally expect to pay a higher price when purchasing fewer items.

Mr. BELL. That is right.

Mr. HARDY. Now, the question that raises in my mind, and sooner or later our friends from the Department of Defense are going to have an opportunity to tell us, why didn't you have competitive procurement initially?

Mr. GUBSER. That is the point.

Mr. HARDY. How did you discover that you had 90 people that you could invite 18 months later and you didn't do it in the beginning? You are going to have plenty of opportunity to answer those questions.

Mr. GUBSER. Just one more question, Mr. Chairman, and then I will yield the floor. I have had too much time already.

This again has to do with the tone or an inflection in the rhetoric of Mr. Keller's statement. I want to make very sure that we understand each other. The point is made at some length that these catalog prices have not changed, have not been decreased.

I seem to read something into that. Couldn't it also be said that they have not been increased, isn't that true?

Mr. KELLER. They have remained the same.

Mr. GUBSER. Yes, and over a considerable period of time, I presume, and I think you will have to admit that probably labor costs went up in the meantime and costs of production generally went up, and I think the general price index, you will have to admit also went up, while you say these prices remained the same.

Now, could it be, might we also state in an added paragraph that perhaps improved manufacturing techniques have absorbed the increased costs which have hit every industry and that we have been pretty lucky that these prices have remained the same? You might justify that statement too, couldn't you?

Mr. KELLER. I think the only way we could adequately answer it is by an examination of Hewlett-Packard's records.

Mr. HARDY. There is one other point that I am afraid my friend from California overlooked when he was making this observation about the increases in costs. Eighteen months after the sole source procurement, you get a competitive procurement at \$200 less.

Mr. GUBSER. As I said, I will sell you pears cheaper in July than I will in February. I am through, Mr. Chairman.

Mr. HARDY. Just one other point I want to make before I turn it over to Mr. Pike. I want to be sure I do understand this. These contracts, were all of these sole source procurements?

Mr. KELLER. One was not, Mr. Chairman. Three were sole source.

Mr. HARDY. Three were sole source?

Mr. KELLER. And the fourth was negotiated on the basis that there was an emergency. In other words, they didn't have time to get competition.

Mr. HARDY. Well, there was no competition in any event on that one either?

Mr. KELLER. No, sir.

Mr. HARDY. Well—

Mr. KELLER. Now, I might add that—this is on page 13 of my statement, in—

two of the cases, negotiations were conducted only with Hewlett-Packard as a sole source; in another case a proposal was received from one other source * * *

Mr. HARDY. What happened to that proposal, do you know?

Mr. BELL. Yes, Mr. Chairman. In that particular case another source, for reasons we haven't been able to determine, learned of the request that had gone to Hewlett-Packard. This firm submitted proposals for two of the items being ordered.

Mr. HARDY. Mr. Reddan says we will cover that in detail later on today. We will skip that for now.

Mr. BELL. All right, sir.

Mr. HARDY. One other thing I just want to be sure my thinking is straight on.

The right of GAO to examine these records is based on language in the statute and in the ASPR, and we are going to get into this ASPR question a little bit later too, because apparently some of the Defense Department people haven't been in entire agreement as to what ASPR's mean, but we are going to find out about that later on and if there has been a little "brainwashing" in the meantime since these folks came to town, maybe we will find out who did the brainwashing and how we got together all of a sudden. We will get to that this afternoon.

But the interesting language is the one word, "pertinent." Now, so far as I am concerned, there isn't any gray area in what "pertinent" means. Insofar as I am concerned, there isn't any question about what congressional intent was.

The Hewlett-Packard letter which was referred to a while ago, as Mr. Gubser pointed out, does bring up the question of legislation which was passed last year and which was subsequent to the contracts, and, as a consequence, would not have a direct bearing except insofar as it raises a question of congressional intent. That letter of November 21, 1962, ends on this note; it says, "* * * we seek only to preserve our rights as established by congressional intent in matters of this kind."

Well, I think insofar as congressional intent is concerned, we have to keep in mind the fact that the legislation passed in 1962 was aimed at procurement and not at the matter of examining records with respect to costs—negotiated costs used in pricing negotiated contracts. That is the thing I think we have to keep in mind.

The 1962 amendments related to procurement and not to the question of audit, if my memory serves me, not to the GAO's right to audit.

Mr. GUBSER. In fact, if I remember correctly, that section wasn't even in the bill as it originally passed the House.

Mr. KELLER. That is correct.

Mr. GUBSER. It was added in the Senate.

Mr. KELLER. The section was rewritten by the Senate.

Mr. GUBSER. And came back in conference report and was never debated on the floor of the House.

Mr. HARDY. So there wouldn't be any way to establish congressional intent insofar as debate of that bill last year. The only congressional intent that you could establish would have to go back to the War Powers Act and there isn't any doubt in my mind what the congressional intent was at the time that one was passed. Now, Mr. Pike.

Mr. PIKE. I would like to ask a couple of questions, Mr. Chairman.

You have stated that while you feel that you are on clear legal grounds here in this connection, there hasn't been any prosecution of your position. Why hasn't there been any prosecution of your position?

Mr. KELLER. This is the first case, Mr. Pike, where we have had a major issue. We have had contractors who have raised questions as to our right to audit, but in every case heretofore the matter has been resolved to our satisfaction.

Mr. HARDY. Just to clear that one up. The only one that I am familiar with, and I am sure you will recall it, had to do with one of General Motors' branches, whatever you call them. And in that case the act of a vice president in refusing access was countermanded by the president of General Motors Corp.

Mr. KELLER. That is correct, sir.

Mr. HARDY. That one I recall personally.

Mr. PIKE. I agree with what the chairman said earlier, and with what Mr. Gubser said earlier, that certainly we are not here to attempt to resolve the issue, the legal issue. But when you come in here with what I feel to be a very strong statement as to your legal position, I don't know, maybe there are examples where cost is not a factor in a negotiated contract. But I will confess I have difficulty conceiving of a situation in which cost should not be a factor in a negotiated contract. Where cost is not a factor, it seems to me that the contract should be on a competitive basis. But where you have got to negotiate the contract then it seems to me that cost is properly a factor in the negotiation, and for that reason I am particularly curious. I think the language you used was that you had found it not necessary to prosecute this case.

Mr. KELLER. That is correct. No other case.

Mr. PIKE. What do you mean by that, Mr. Keller?

Mr. KELLER. We have, from time to time, had questions raised by contractors, not as to our right of access, but on how far that right goes. For example, we have had contractors who have said, "You can look at the cost records but you can't look at our negotiation file."

Mr. PIKE. Don't you have here a case that goes about as far as any of them could go in that they say, "You can't look at our cost records"?

Mr. KELLER. Yes. I personally disagree with the contractor's position 100 percent, because I just don't see any basis for their position. Although I recognize their right to—

Mr. PIKE. Is it not therefore your move?

Mr. KELLER. Yes, if the contractor does not accede to our requests.

Mr. PIKE. I would like to ask you—I have been reading this correspondence in the back of the book here, and, frankly, while I am not particularly sympathetic with the contractor's position on the basis of that correspondence, I do find some thing in there that interests me. This question arose during the sixth week of an audit being conducted out there on these four negotiated contracts. The four negotiated contracts involved \$1,900,000—some odd thousand total. Is it normal and reasonable to expect that it should take two men 6 weeks of auditing to get at facts where they are not even involved with—before they even get to the question of the cost of the contractor?

Mr. BELL. I will attempt to answer that.

Mr. HARDY. That is a real good question, and it brings up the efficiency of the operations of the General Accounting Office. Maybe we will have to look into that.

Mr. PIKE. It seems to me we ought to at least ask these people the questions that they are particularly qualified to answer.

Mr. BELL. Unfortunately, you zeroed me pretty fast on that one, this being my responsibility.

At the time we undertook this review at Hewlett-Packard we also went into a number of other contractors' plants. We staffed the jobs very lightly. We, frankly, were feeling our way into a particular problem that we felt might possibly exist.

We had had some indications in earlier work that we might be paying more money for a few spare parts to repair an end item than we had originally paid for the end item, itself. One of the things that took the men the time that it did, in this particular plant, and in some others, was an attempt to identify this type of equipment that would be susceptible to this particular type of problem.

Mr. PIKE. Well, it was one of these four pieces of equipment, was it not?

Mr. BELL. Oh, no.

Mr. PIKE. Didn't I read in the correspondence here that this particular audit and these two particular men in these 6 particular weeks were involved only with these four contracts?

Mr. BELL. When they originally went into the plant they were to make a general review, a survey, if you will, of the Government business that had been carried on there for a given period of time. Then it would be narrowed down to one, two, three, or four contracts, and then pieces of equipment under those contracts. This is a natural development in carrying out the audit.

Mr. PIKE. Then what were they in there auditing? It seems to me that—and I am not as familiar as I should be with this correspondence, but it does seem to me that in the initial letter that is in the file here from Hewlett-Packard they say: "The two representatives of your office were continually engaged in the audit of contracts," and they set forth these four contracts, "for the 6 weeks' period." Now, is this an accurate statement?

Mr. BELL. No, it is not, it is an oversimplification and an overgeneralization. They also don't say it was the same two men, because we had a staff change on this job.

Mr. PIKE. No, they don't say the same two men, it says two representatives of your office were continuously engaged.

Mr. BELL. We had a staff change on that job because of an illness of one of the men that occurred during the time. But as you would expect any time that you start encountering problems with a contractor your pace will slow down. That is exactly what happened here.

Mr. PIKE. I just find it very difficult, without knowing what else they were working on, to see how two men could spend that length of time involved with four contracts, the total value of which was only \$1,901,000.

Mr. BELL. Understand, Mr. Pike, this was merely a part of a much broader examination.

Mr. PIKE. In Hewlett-Packard?

Mr. BELL. No.

Mr. PIKE. I am only concerned with the fact that you had two men in Hewlett-Packard for 6 weeks.

Mr. PIKE. Well, I won't pursue that any further.

Mr. HARDY. I think you have made a right good point.

Mr. PIKE. Frankly, I can see where on the simple human element of having two people fussing around in your files for 6 weeks that I might be inclined to get my back up a little bit and take a position which perhaps I didn't think was the strongest legal position in the world, just because I was so tired of having these people fussing around in my files on such a minor item. That is my feeling on that.

Let me ask one further question: Have there been additional negotiated contracts entered into with Hewlett-Packard since November 1962?

Mr. BELL. We have not checked this out. We have been attempting to resolve this matter with Hewlett-Packard for the ones that presently were issued before we attempted to see what else was there.

Mr. HARDY. That particular question, follow it up with the Defense witnesses when we get to them.

Mr. PIKE. That is all.

Mr. HARDY. Anything, Mr. Reddan?

Mr. REDDAN. Mr. Keller has indicated that the General Accounting Office would like to submit a written statement on the work performed by GAO auditors during a 6-week period. May we have permission to insert that material in the record at this point?

Mr. HARDY. Without objection, it is so ordered.

(The following letter and statement from the General Accounting Office were subsequently received:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 29, 1963.

B-146767.

HON. PORTER HARDY, JR.,

Chairman, Special Investigations Subcommittee, Armed Services Committee,
House of Representatives.

DEAR MR. CHAIRMAN: During the hearings before your subcommittee on May 22, 1963, on the relationship of cost data to procurement and postaudit review, Congressman Pike raised a question as to what work two General Accounting Office auditors were performing at the Hewlett-Packard Co. for a period of 6

weeks prior to the date Hewlett-Packard refused access to the cost records on four negotiated contracts between the Air Force and the company.

Since the date of the hearings, we have made a further inquiry into the matter and we are enclosing a statement of the work performed.

It would be appreciated if this letter and the attached statement could be made a part of the record of the hearings of the subcommittee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

Representatives of the General Accounting Office devoted the first 5 weeks at the Hewlett-Packard Co. to a review of the pricing of spare parts in relation to the pricing of the related end items. The objective of this review was to determine whether prices negotiated for individual spare parts had resulted in a significantly higher price for a set of replacement spare parts than the price for a complete end item. In order to achieve this objective our auditors prepared lists containing information as to part number, description, and quantity of parts used in each subassembly making up the seven pieces of equipment we selected for review; obtained Hewlett-Packard's sales price for each item; and computed what the price of the end item would be if based on the sales prices of the individual spare parts. We were not able to obtain from the contractor copies of detailed bills of material making up the end items. The contractor refused to reproduce the bills of materials so the detailed listings were prepared by our staff which took 2 weeks. Normally these are furnished by the contractors. Also, in some cases sales prices of individual spare parts were not readily available and the contractor was reluctant to furnish the information. Therefore it was necessary for our auditors to consume considerable time with contractor personnel to compile the information. It was not necessary for our auditors to obtain access to Hewlett-Packard's cost records until the above information was compiled, reviewed, and evaluated.

During the first week of our review, Hewlett-Packard's contract administrator questioned our right of access to certain sales prices, and it was only after several discussions with higher company officials that these problems were resolved on an individual case basis. We mention this to show that delays were encountered during the course of our work that were attributable to actions of the contractor. It was only after we requested information as to the contractor's costs for end items covered by the contracts and the parts making up the pieces of equipment selected for review that our auditors were unable to make further progress in this examination.

Mr. HARDY. Let the subcommittee stand adjourned to reconvene at 1:45.

(Whereupon, at 12:14 p.m., a recess was taken until 1:45 p.m. of the same day.)

AFTERNOON SESSION

Mr. HARDY. Let the committee come to order.

Mr. Reporter, I forgot this morning to indicate the presence of the members of the subcommittee. Let the record show the presence of Mr. Pike, Mr. Gubser, and myself this afternoon. I expect it would be a good idea if you would have it show also that all of the members of the subcommittee were present during the morning session except Mr. Norblad.

(Mr. Lankford arrived at the hearing at 1:55 p.m.)

Mr. HARDY. Now, Mr. Bannerman, will you come up and have a seat, please, sir.

Mr. BANNERMAN. Yes, sir.

STATEMENT OF GRAEME C. BANNERMAN, DEPUTY ASSISTANT SECRETARY FOR INSTALLATIONS AND LOGISTICS; ACCOMPANIED BY COL. WILLIAM W. THYBONY, ASSISTANT DIRECTOR FOR PROCUREMENT POLICY; AND T. ALFRED PILSON, PROCUREMENT SPECIALIST, DEPARTMENT OF DEFENSE

Mr. HARDY. Mr. Bannerman, you are familiar with the subject which the subcommittee is pursuing?

Mr. BANNERMAN. I have become familiar with it this morning.

Mr. HARDY. Just this morning?

Mr. BANNERMAN. I had some vague idea what the subcommittee was interested in prior to that time.

Mr. HARDY. Well, I declare. I will have to speak to my staff on not getting you more fully briefed.

In keeping with our usual practice, the subcommittee would like to have, if you would give us quickly, a brief biographical background.

Mr. BANNERMAN. My name is Graeme C. Bannerman. I was born in Washington, D.C., in April 1910, went to public schools in Washington; bachelor of science degree from Hamilton College, bachelor and master of laws from George Washington University Law School; I am a lawyer, member of the bar in the District, have worked for the Government for 26-plus years, all in procurement jobs.

Mr. HARDY. You hold your age very well.

Mr. BANNERMAN. I practiced law for 2 years, Mr. Chairman.

Mr. HARDY. I am sure that didn't help you.

Mr. BANNERMAN. No; I am sure it didn't.

And I am now the Deputy Assistant Secretary of Defense for Procurement.

Mr. HARDY. Thank you, Mr. Bannerman.

Proceed, Mr. Reddan.

Mr. REDDAN. In your present position, Mr. Bannerman, what is your area of responsibility, generally?

Mr. BANNERMAN. I am responsible for the development of procurement policies applicable to all procurement activities within the Department of Defense.

Mr. HARDY. Did you write the ASPR's?

Mr. BANNERMAN. Colonel Thybony, who works in my office, is the Chairman of the ASPR Committee. The ASPR Committee, as you may know, is made up of the representatives of the three military departments, the DSA, and our office.

Mr. HARDY. Since you have the responsibility, he has somebody to pass the buck to if anything comes up?

Mr. BANNERMAN. If any bucks come up with respect to the ASPR, I am afraid I can't pass them.

Mr. HARDY. That is good. We've got the right man. Go ahead.

Mr. REDDAN. Do you have any other area of responsibility beyond policy?

Mr. BANNERMAN. Yes, I was going to—I hadn't quite finished. I am sorry.

I have within my office a directorate for procurement management which is a relatively new activity for us, started within the last year and a half. Through this directorate we try to keep an eye on how our policies are working, attune and adjust them if they seem to need it, and keep a fairly accurate appraisal of the procurement job being done throughout the Department of Defense. This is an immense job, as you can imagine.

Mr. REDDAN. Who has this responsibility?

Mr. BANNERMAN. The Director of Procurement Management is Mr. Lyons, who reports to me. Mr. Robert Lyons. I also have under me the Director for small Business Policy for the Department; that is it. Mr. Chairman.

Mr. HARDY. Thank you, Mr. Bannerman.

Mr. REDDAN. Would the policies established in your office later be translated into ASPR's?

Mr. BANNERMAN. ASPR is the normal form for us to establish policies, they are not policies until they are in ASPR.

Mr. REDDAN. With regard to section 2306 of title 10, the amendment of last year. Did you participate in any way in the drafting of the language which later found its way into the statute?

Mr. BANNERMAN. Yes, I did. This language originated—do you want to go into the details of this?

Mr. REDDAN. If you will, please.

Mr. BANNERMAN. This language originated with a section of the bill which was, I believe, known as the Hébert bill. As it passed the House, it related only to incentive contracts and required the submission of cost data applicable to incentive contracts. And I believe also a certificate of accuracy of cost data. When this—

Mr. HARDY. That had to do with subcontracts particularly, the certificate of accuracy?

Mr. BANNERMAN. No, Mr. Chairman. I think it had to do—as it passed the House, it had only to do with prime contracts of the incentive type. When this got over to the Senate, we were testifying there, and we testified in opposition to this bill, as I believe the record shows. In the course of the discussion with the staff members, and other members of the committee in the Senate, we indicated that if there is to be a requirement for a certificate of accuracy, as to cost data, in our judgment this should not be confined to one type of contract; it should be applicable to any type of contract where cost data is relevant, and where we asked for it.

In short, we ought to be able to rely on the data that is given us by contractors.

As a result of this discussion, there were some amendments made in this section of the act, over in the Senate. These proposals were discussed with the GAO and with us and jointly between the Senate committee staff, the GAO people, Mr. Keller, and some of his people at that time. The proposal went through about 12 or 15 drafts before we found language that we could all agree on.

In the course of those drafts there was introduced for the first time the notion that the act should make some statements with respect

to when we should get cost data. Prior to that time all the drafts had merely said that when we do get cost data we should get a certificate. So that this \$100,000 noncompetitive, noncatalog type arrangement went in as a result of those discussions. It was agreed to at that time by the representatives of the GAO, by me, and by the Senate committee staff, was introduced as an amendment before the Senate Armed Services Committee. It was reported favorably by the Armed Services Committee, passed the Senate, came back to the House, and was accepted by the House.

Mr. HARDY. I wish you would clear up for my better understanding the comment you just made in describing the area of applicability. You said, I believe, noncompetitive, noncatalog-type items.

Mr. BANNERMAN. The effect of this portion of the legislation that passed last year, speaking generally, but I think accurately, is to require in large contracts, contracts of \$100,000 or over, and subcontracts, subject to certain limitations which are not relevant here, that we get cost data in support of the contractor's estimate of costs unless the contract is one which was awarded as a result of adequate competition, or was based on catalog prices covering items sold in substantial quantities to the general public.

Mr. HARDY. Where do we get that spelled out? That is the thing that I want.

Mr. BANNERMAN. I believe that is in the statute as it passed last year.

Am I wrong on that? What does the statute say? There is a proviso in section 4 of the act, "Provided that the requirements of this subsection need not be applied," mind you this is permissive, Mr. Chairman, this is not mandatory, it doesn't say you can or cannot get it, but it says you do not have to get it.

Mr. PIKE. Mr. Chairman, may I interrupt right here? Permissive to whom?

Mr. BANNERMAN. To the Government.

Mr. PIKE. Thank you.

Mr. BANNERMAN (reading).

Provided that the requirements of this subsection need not be applied to contracts or subcontracts where the price negotiated is based on adequate price competition, established catalog, or market prices of commercial items sold in substantial quantities to the general public,

Then there are two other exceptions. (Continuing:)

prices set by law or regulation or, in exceptional cases where the head of the agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.

Mr. HARDY. Of course, the thing that prompted my inquiry was your reference to catalog-type items. Now, I wanted to get that narrowed down a little bit so that we are all talking about the same thing and understand it to mean the same thing.

Mr. BANNERMAN. Mr. Chairman, when I first made the reference I think I said catalog items which are sold in substantial quantities to the general public.

Mr. HARDY. That is—

Mr. BANNERMAN. That is the point.

Mr. HARDY. That is the qualifying—

Mr. BANNERMAN. I completely agree with you, I think to this extent there is no disagreement between me and the GAO. I think the mere fact that an item is in somebody's catalog does not exclude it from the need for getting cost data. I think actually there are very few people in industry that would argue that way.

Mr. LANKFORD. Mr. Chairman. Excuse me.

I just want to get this straight now. This is permissive as regards catalog items sold in substantial amounts to the general trade; is that correct?

Mr. BANNERMAN. Yes. Mr. Lankford, let me make—perhaps I can make this point clearer to everyone by simply saying that the effect of the statute was to require us to get cost data under certain circumstances, and then give certain permissive exceptions from that requirement. Under those permissive exceptions or under any other circumstance where we want to get cost data, we are not prohibited from getting it. We may get it if we want it, and we do want it in a great many cases, some that are not touched on by the law at all.

The fact is that this was a basic requirement that we get cost data.

Mr. HARDY. Fundamentally, the objectives—well, let us go back a little. The objective that Mr. Hébert had in mind to start with grew out of hearings held by the subcommittee while he was chairman where there had been cost data submitted in the course of negotiations, price negotiations, there had been cost data submitted which was inaccurate.

Mr. BANNERMAN. That is correct.

Mr. HARDY. The contention was that the Government negotiators had a right to rely on the accuracy of that cost data, and that is the kind of thing that prompted the effort to secure a certification.

Mr. BANNERMAN. That is correct; yes, sir.

Mr. HARDY. That the data were accurate.

You are giving the committee the background on the evolution of this exception. But certainly this exception did not have as its objective the permission of using cost data based on a catalog price which didn't represent a competitive price?

Mr. BANNERMAN. Mr. Chairman, a catalog item price is not, in my judgment, cost data. The effect of this exception is simply to say that if there is a catalog item which in fact is sold in substantial quantities to the general public covering commercial items sold in substantial quantities to the general public, there is no statutory requirement to get cost data at all. You can rely on the catalog price plus the applicable discount rates whatever they may be, since that price is set in commerce, subject to the play of the marketplace. And that, I think, was the intention rather than to say that is cost data. It isn't cost data.

Mr. HARDY. You could use it provided it represented a competitive price based on sales in the open market?

Mr. BANNERMAN. Precisely, Mr. Chairman.

Mr. HARDY. Now, there are catalogs, catalogs, and catalogs. Catalogs come through the mail all the time, I get them, that are obviously fictitious prices. They give you a formula you can use to find out the price they really will sell it to you for by reading a code and applying it to the number that the item bears. But the price posted in the catalog wouldn't necessarily reflect a competitive market price.

Mr. BANNERMAN. Mr. Chairman, I completely agree, and we have not done anything to indicate that we would be routinely or automatically satisfied with a catalog price.

Mr. HARDY. I think that clears that part up.

Mr. BANNERMAN. If the item is in fact one which is sold in substantial quantities to the general public, and it is a commercial item—

Mr. HARDY. At the price quoted in the catalog?

Mr. BANNERMAN. Well, if the catalog price bears a relationship to the market. Now, if the catalog price covers sales of 1, you can almost always expect to be able to get discounts if you are buying 100. And negotiating a discount is quite a separate problem than the one of going through a deep analysis of what the costs are.

The theory of this provision is simply that if the price is one which is set, subject to competitive forces, this item competes with somebody else's item, that the price can be basically relied on as reasonable subject to appropriate discount structures for whatever volume and quantity you are buying.

In short, this is one of the things you rely on. You do it in your normal purchasing, your personal purchasing. When you go buy an automobile you rely on the market price to set the level of prices for automobiles. You don't ask Mr. Ford what it cost him to make it. This I think is what is meant here.

Now, I completely agree that the use of catalog prices has to be very carefully watched. This requires negotiation. You have to determine a number of things. First, you have to determine is it sold in substantial quantities to the general public?

You had before you this morning the Hewlett-Packard catalog. The fact that an item was in that catalog would not to my mind demonstrate to a negotiator that it was or was not sold in substantial quantities to the general public. This must be found out. I am quite sure the company would be glad to disclose how many they sold publicly, that is to the general public, other than the Government. I think that you need to know what their practice is with respect to discounts from those prices so that we can make sure that we get the discount that is appropriate to the quantity we are buying.

We frequently put a most favored customer clause in such contracts. But this does not mean that you need cost data.

Mr. LANKFORD. Mr. Chairman.

Mr. REDDAN. That you do not need cost data?

Mr. BANNERMAN. I say it does not mean that you must have cost data. The statute recognizes that in this case, meeting these tests, cost data should not mandatorily be prescribed. Now, under our regulations the negotiator can ask for it if he wants it, but he is not required to get it.

Mr. LANKFORD. This is a point I would like to touch on. You said that the basic idea is that cost data be supplied with permissive exceptions.

Mr. BANNERMAN. That is in the statute.

Mr. LANKFORD. Yes. Now, who determines whether cost data shall be required or not?

Mr. BANNERMAN. The contracting officer and the negotiator, Mr. Lankford. The Government is interested—

Mr. LANKFORD. I am very interested in a passage here in Mr. Keller's statement, quoting from a letter written by Hewlett-Packard to the Air Force, that—

since the instrument on which we are bidding is a standard commercial unit offered at the nationally advertised price, we do not believe you will require DD Form 633.

Then it says—

"The Air Force contracting officer acquiesced in this position.

It seems to me there that the contractor was the one determining whether the cost data was required or not.

Mr. BANNERMAN. Well—

Mr. LANKFORD. And further—that was on contract No. AF 33 (604)-31884. On contract No. 33(604)-68245 it says:

A procurement plan provided for requesting Hewlett-Packard to submit information on DD Form No. 633, current financial reports, and the purchase request includes a requirement that cost information be submitted in accordance with form DD-633. In a letter transmitting the firm's proposal Hewlett-Packard stated its belief that form 633 would not be required.

Mr. BANNERMAN. Mr. Lankford, there is certainly nothing to prevent a contractor from suggesting that we do not need cost data in a given case.

Mr. HARDY. The key to that is what your man does to make that determination for himself.

Mr. BANNERMAN. I completely agree with you, Mr. Chairman. I would like to point out, Mr. Lankford, all of these cases are prior to the statute we are talking about and prior to the present regulations.

Mr. HARDY. It really wouldn't apply.

Mr. LANKFORD. But isn't it up to the contracting officer to determine whether such a form is required?

Mr. BANNERMAN. Yes, sir.

Mr. LANKFORD. Rather than the company?

Mr. BANNERMAN. Yes, sir. Absolutely.

Mr. LANKFORD. In these two instances, from what I was reading here in the files, it is the company who made the determination.

Mr. BANNERMAN. No. I think if I interpret those letters correctly, and I may be wrong because I am not familiar with the details of these cases, what the company is saying is that we think that under your own regulations you shouldn't be asking for this. Don't you see? And the contracting officer agreed. He was not required to agree.

Mr. HARDY. I think that is the answer to it.

Mr. BANNERMAN. Frankly, I wouldn't want to comment on whether he was right or wrong because I don't know the details of the case.

Mr. HARDY. We are going to find that out.

Mr. BANNERMAN. Not from me.

Mr. LANKFORD. Mr. Chairman, this is the reason for asking these questions about this form DD-633, or whatever it is. It seems to me from reading these letters that had this cost data been required from Hewlett-Packard, then Hewlett-Packard would not have objected to supplying it on an audit by GAO.

Mr. HARDY. I don't think you ought to try to read Hewlett-Packard's mind. They might or they might not.

Mr. LANKFORD. Well, I say this is what it seems to me from the correspondence.

Mr. HARDY. It could be.

Mr. LANKFORD. From the correspondence between Hewlett-Packard and GAO, because in several instances in the letters of Hewlett-Packard it said that cost data was not a part of the negotiation and had never been brought up.

Mr. BANNERMAN. Mr. Chairman, I would like to say that I completely agree with Mr. Keller of the GAO with respect to their right of audit in these cases. I don't think the question as to whether we did or did not get cost data should have any impact whatsoever on their right of audit and I don't think it does under the clause.

The clause talks about directly pertinent data; that is to say, data directly pertinent to the transaction, not to the price. There is no question in my mind but what the cost of the manufacturing of these items is pertinent to the contract.

Mr. HARDY. Mr. Pike.

Mr. PIKE. Mr. Chairman, I would just like to ask a procedural question. Is it open season on Mr. Bannerman here?

Mr. HARDY. Sure it's open season on him.

Mr. PIKE. Or do you want him to finish a statement?

Mr. HARDY. He doesn't have a prepared statement.

Mr. BANNERMAN. I don't have a prepared statement.

Mr. HARDY. So, as long as it relates to the aspect we are working on, go right ahead.

Mr. PIKE. Let me ask you this: At what point of time are we talking about obtaining this cost data? Now, in this instant case, this was after the contract had been negotiated. Don't you try to get—isn't the purpose of all of this to arrive at the negotiated price instead of something that you come in with later?

Mr. BANNERMAN. Mr. Pike, I would like to draw a distinction, real sharply, because I think it has led to some confusion and it may again.

The right of the General Accounting Office to audit runs to 3 years after completion of the contract. I believe I am right.

Mr. PIKE. Right, under the statute.

Mr. BANNERMAN. And it is that right that is under dispute with the Hewlett-Packard Co. The company has not at any time that I know of disputed our right to request cost data in advance of contracting as a condition for making a contract. They may raise this argument later, but so far as I know, they haven't yet.

Mr. HARDY. You are giving them some ideas anyway.

Mr. PIKE. But what they are doing is relying on your regulation to say that this is not necessary in this case. Now, is it not the fact that the particular regulation which you are testifying about doesn't really have much to do with the right of the GAO to come in subsequently and investigate?

Mr. BANNERMAN. It is my judgment that it has nothing to do with the right of the GAO to come in subsequently.

Mr. PIKE. Thank you.

Mr. BANNERMAN. But I would also like to say that there is nothing in that regulation that gives any rights to a contractor to give or refuse data to us. It is simply guidance to our negotiators as to what constitutes good negotiation, and even there it leaves latitude.

Mr. PIKE. That is why I asked the question, permissive to whom.

Mr. BANNERMAN. Permissive to us.

Mr. PIKE. Because to me it is essential that we lay this on the record, that all of the permissiveness is directed at the procurement officers of the Federal Government as to the policies they shall use in initially arriving at a negotiated contract.

Mr. BANNERMAN. Mr. Pike, if a contractor elects to refuse cost data to us, and I have had it happen in times past, in cases when I wanted it and wanted it very badly indeed, but if he elects to refuse to give me cost data, I have no club in my arsenal that allows me to force him to give it to me.

He can always say don't buy from him and I can always say, "All right, I will go somewhere else." Mostly you can, occasionally you can't.

Mr. PIKE. It doesn't happen too often.

Mr. BANNERMAN. It doesn't. I have had it happen.

Mr. HARDY. But even if that happens and you do negotiate a contract, GAO still has the right to audit.

Mr. BANNERMAN. I completely agree. I completely agree, but that does not necessarily mean that that data has anything to do with the pricing of the contract.

Mr. HARDY. Mr. Gubser.

Mr. GUBSER. Did the Department of Defense or the Air Force, or the contracting agency ever request cost data on these four contracts at issue?

Mr. BANNERMAN. Mr. Gubser, I would prefer, if you don't mind, that you ask that of the witnesses who will follow because I don't know.

Mr. GUBSER. May I ask this question and give you the same right to pass it along?

Let's assume that GAO's requests were acceded to by Hewlett-Packard and investigation proved that there were excessive profits on some portions of this contract, would there be any legal requirement for a rebate or a refund to the Government on these four contracts?

Mr. BANNERMAN. You mean in a situation where we had not asked for cost data, not priced on that basis? It is my judgment there would not be.

Mr. GUBSER. Let me construct it more exactly as an hypothetical case. Let's assume as of now GAO is granted the right to look at this cost data and they determine that there in an excessive cost, an excessive charge.

Mr. BANNERMAN. Excessive profit.

Mr. GUBSER. Excessive profit. Would there be any legal rebate or refund?

Mr. BANNERMAN. It is my opinion that there would not be. I might add—

Mr. GUBSER. Then what is the purpose of requiring cost data, what is the purpose then?

Mr. BANNERMAN. To find out how good a job we are doing.

Mr. HARDY. That is one major purpose. That is perhaps the major purpose, to find out whether or not you are doing your job right?

Mr. BANNERMAN. That is right.

Mr. HARDY. And if you are not, you would correct it on the next go-around. That is assuming that all of the negotiations were legal and

proper as they went along and were in keeping with the existing statutes. That was the situation that we had in that particular incentive contract where there were false statements given.

Mr. BANNERMAN. That is right.

Mr. HARDY. I don't know that they were deliberately false.

Mr. BANNERMAN. I think in most cases they weren't. I would like to respond just a little bit more fully to Mr. Gubser, if I may. Where we do ask for cost data under the new statute or even prior to that time, and we have in the contract the certificate of accuracy of data and the price adjustment clause that is now in there and required by this statute in those contracts to which it is applicable, we would, of course, have a right to a price adjustment if it turned out on audit even 3 years later that the data which had been given to us at the time it was given was not accurate.

In short, they are certifying that the data is accurate when given and that the price may be adjusted to that which it would have been had the data been accurate, if it is found out later that it is not.

I would like to make one other point if I may, Mr. Chairman, because I feel pretty strongly, and I think it kind of goes to the heart of the question we are talking about.

On this question of excessive profits, there is a whole range of items that are sold to the general public where price is not set primarily on the basis of costs.

People develop products at their own expense. I think probably Hewlett-Packard does a good deal of this themselves. There are many instances where innovation and private invention, private financing is spent to develop new products to sell on the market commercially.

In general those items are priced in such a way as to bring the greatest return to the company that made the invention.

Now, if in a given case the company feels that it has a very hot line of items that will sell very well indeed, it may be perfectly normal—and I am sure in the total of the U.S. industry, in fact, it is very normal to expect to get on individual items in a line like that a profit which by the standards we have been talking about here might seem completely excessive—100 or 200 percent—that the item might be priced that way and sell that way.

On the other hand, that same company might have other items which are total failures, that don't sell at all, on which they absorb losses, or where for good enough reasons they might choose to sell at a slight loss. I don't believe that adding up costs on each item of that kind and then adding some margin of profit that is considered reasonable, such as 8 or 10 percent, is necessarily doing good pricing.

I think conceivably you might be smothering the invention in cases of that kind. We should be willing to pay the market price. I think, however, the acknowledgment of these facts requires very careful analysis on our part as to what kind of a case we have. However, I would hate to have some fixed limit on what was considered a reasonable profit because I think that many items that are privately developed simply are not priced that way.

Mr. HARDY. That is your proprietary situation.

Mr. BANNERMAN. That is correct, Mr. Chairman.

Mr. HARDY. And certainly we don't want to do anything that would stifle the incentive to invent.

Mr. BANNERMAN. My point is simply this, that the permissive exception for getting cost data when we have catalog or market prices of commercial items sold in substantial quantities to the general public is probably a very wise one.

I would like to see it continued. I think it is also one that requires very careful and intelligent administration and I think that we have not reached the stage where we are giving it that in every case, but we are making progress.

Mr. HARDY. Well, I recognize considerable validity in the point that you make, but it does require analysis with respect to every item that you buy on that basis.

Mr. BANNERMAN. Precisely, Mr. Chairman. The law that you passed last year, of course, is mandatory only on transactions over \$100,000. I am still naive enough to treat any transaction of \$100,000 and up as a very large deal. I think these are important and they should have that kind of treatment.

Mr. HARDY. You are an exception to most.

Mr. GUBSER. And we hope you never change.

Mr. BANNERMAN. I can't help but think that there may be some items that are lower than that that need the same attention and we intend to give it.

Mr. HARDY. You are getting down to the kind of thinking that most of us do. Mr. Reddan, any further questions?

Mr. REDDAN. No.

Mr. HARDY. Anything further, members of the committee?

Mr. GUBSER. Do you try to consider the overall profit picture of a particular company or do you think it is fair to go in and impose item by item profit limitations?

Mr. BANNERMAN. Mr. Gubser, I don't believe in placing profit limitations on anything. I do not, however, think that we should consider in our individual contract pricing the overall condition of the company. We price each contract on its own merits. But this does not imply that we are limiting profit on that.

Mr. HARDY. Well, actually in your normal negotiations you are not negotiating on that basis unless you are in a development contract, something of that kind, but where you are negotiating on a proprietary item certainly you are not negotiating on the basis of limiting the amount of profit.

Mr. BANNERMAN. No, sir.

Mr. HARDY. That the individual makes on that particular item?

Mr. BANNERMAN. That is correct.

Mr. HARDY. Now, the only place that I know of where you do come into a case of limitation on profits is involved in renegotiation. That does not work on the individual item basis?

Mr. BANNERMAN. That is correct. Renegotiation, as you know, is not even handled in the Department of Defense.

Mr. HARDY. That is right.

Mr. BANNERMAN. It is an independent board, and they operate on an annual business basis. We feel that that technique is totally unsuited to individual contract pricing and each contract should stand on its own feet.

Mr. HARDY. That is right.

Mr. GUBSER. Were these four contracts renegotiable?

Mr. BANNERMAN. I would prefer—well, frankly, I think to get assurance to that you had better talk to Mr. Packard, but I am guessing that they were.

Mr. HARDY. I would think that the contract as such wouldn't be renegotiable.

Mr. BANNERMAN. No, but they would be included in the base for renegotiation, I think. I am not sure.

Mr. HARDY. Yes. Normally this kind of a contract would go in a producer's base for renegotiation.

Mr. BANNERMAN. If these were standard commercial items, within the definition of the Renegotiation Act, they would not even go in the base for renegotiation. I don't know whether they were or not. I think probably Mr. Packard is the only one that could tell you.

Mr. HARDY. He may not know. Mr. Pike?

Mr. PIKE. Are any of the Defense Department witnesses able to tell us whether there have been any subsequent contracts with this corporation since November 1962?

Mr. BANNERMAN. I feel confident that they can, but let me say with almost absolute assurance, but with no knowledge of the fact, that there must have been. There are a great many contracts placed with this company right along. It is a very responsible company and I think a very reputable one.

Mr. PIKE. Well, assuming that there have been, then I am interested in knowing whether in the face of this history anything was put in the contract to make sure that there wouldn't be a repetition of the refusal to—

Mr. BANNERMAN. GAO—

Mr. PIKE (continuing). To show the cost data.

Mr. BANNERMAN. Mr. Pike, the requirement in our contracts for access to records by GAO has been in there for 10 years and so far as I know there isn't any question about GAO's right to get these—to have access to these records. Mr. Packard questions it. I respect his judgment, but I don't agree with it.

Mr. PIKE. You respect his motives, but not his judgment.

Mr. BANNERMAN. I respect his motives and he is entitled to his judgment.

Mr. GUBSER. How long have you had any number of contracts which were negotiated for a fixed price for competitive items offered to the trade?

Mr. BANNERMAN. Mr. Gubser, we have a very great many of those. As a matter of fact we have gotten, as I think the chairman knows from discussions he has had with Mr. McNamara, our price competition awards up to the point where they represent approximately 37 percent by dollars of our total procurement in the Department, of which only around 12, 13, or 14 percent is by formal advertising. The rest is by negotiation. This is price competition.

Now, where we have active price competition, we just don't think we should be seeking cost data and I gather the Congress feels that way, that is why they gave us the exemption last year.

Mr. HARDY. I have no problem with that; where you have any actual competition I don't believe we have any business monkeying with cost data.

Mr. BANNERMAN. That is right.

Mr. HARDY. But sometimes some of us may disagree on what constitutes competition.

Mr. BANNERMAN. Well, I expect we could, Mr. Chairman.

Mr. HARDY. Yes.

Mr. BANNERMAN. But I don't think that the disagreement would be as wide as your comment might indicate.

Mr. GUBSER. Isn't the concept of fixed price negotiated contract on catalog items comparatively recent?

Mr. BANNERMAN. Not as a concept, Mr. Gubser, but as a matter of emphasis, certainly.

Mr. HARDY. I would—

Mr. BANNERMAN. Mr. McNamara has been pressing very hard indeed to get away from cost-plus-fixed-fee and other types of low-risk contracts into higher risk contracts on the ground that the higher the risk the lower the cost will ultimately be, because you have a forced attention on the part of the management of the companies we are doing business with to keep the cost down, because, if costs go down they keep it, or, if it doesn't, they lose it.

On cost plus fixed fee that incentive is not there, hence he is driving toward more risk in more contracts.

Mr. GUBSER. I know of the Secretary's tremendous record in that regard and we all appreciate it, but I want to go back beyond that.

Let's take 8 years ago. I am probably talking to one of the most knowledgeable men in the whole city on the subject of contracting. Would you say there were a significant number or an insignificant number of negotiated fixed-price contracts there for items which were competitive 8 years ago?

Mr. BANNERMAN. Mr. Gubser, I don't know what you would consider significant. There were a very great many by my standards. There is nothing new about making fixed-price competitive negotiated contracts.

As I say, I think the swing is up, but it started from a pretty high base.

Mr. GUBSER. What was all the public furor about 10 or 11 years ago that led to this requirement in the law? Wasn't it cost plus fixed fee?

Mr. HARDY. This requirement on data.

Mr. BANNERMAN. You mean for the GAO?

Mr. GUBSER. Yes, wasn't it because of cost-plus-fixed-fee contracts? I think if you go back to the newspaper files, you will find I am right.

Mr. BANNERMAN. Mr. Gubser, I don't really know whether that is correct or not. I have the impression that the GAO always had the right of access to records on cost plus fixed fees, just as we have always had. I may be wrong.

Mr. GUBSER. I hope they have.

Mr. BANNERMAN. The GAO people here could, I am sure, tell you.

Mr. HARDY. I don't believe that is entirely accurate, but anyway, that is a matter of history. If you want to dig into it—we want to get to these other witnesses.

Mr. GUBSER. I just want to ask for these four contracts, GAO apparently testified that there was only one where this was a sole source situation, isn't that right?

Mr. BANNERMAN. I believe they said two.

Mr. GUBSER. Two?

Mr. HARDY. Two sole source; one started out with competition and the other one was under a different exception.

Mr. BANNERMAN. "Further, the record shows that in the case of two of the contracts, negotiations were conducted only with Hewlett-Packard as a sole source; that in another case a proposal was received from one other source; and that in the fourth case, while proposals were solicited originally only from Hewlett-Packard, proposals later were requested informally from two other sources"——

So in a sense you could say two of them.

Mr. GUBSER. This statement does not say that these items were not manufactured by other companies, does it?

Mr. BANNERMAN. No. The GAO's statement doesn't. I don't know.

Mr. GUBSER. What do you suppose is the reason that you only negotiated with Hewlett-Packard?

Mr. HARDY. That is what we are going to try to find out.

Mr. BANNERMAN. I would imagine the other people could testify better on that. There was one comment made this morning, I believe the chairman made it. It was an indication that at least one of these items could be bought competitively because we in fact did it in a later procurement.

I would like to point out just as a generality and not with specific reference to these cases that it is entirely possible that you can buy an item competitively one time and be unable to buy the same item competitively later.

For instance, you may have a frequency meter where you are looking for a certain range of frequencies and an accuracy of plus or minus one-tenth of 1 degree, and on this basis you buy competitively. But if you need the same frequency meter with an accuracy of plus or minus one-thousandth, maybe only one company makes it, so that you would buy the same meter, but you would buy it one time competitively and the other time not.

Mr. HARDY. You are getting into another area that we may want to explore later on and that is overspecification.

Mr. GUBSER. Has the equipment been delivered that is the subject of these four contracts?

Mr. BANNERMAN. Again, I would like to have you talk to the other.

Mr. HARDY. Thank you, Mr. Bannerman. Thank you very much.

Mr. BANNERMAN. Yes, sir.

Mr. REDDAN. Mr. Chairman, before we have the witnesses from the Gentile Air Force Base, could we hear from Colonel Garcia? We had asked him to try to find the invitation to bid file in connection with Hewlett-Packard contract No. 33 (604)-28645.

Mr. HARDY. Do you have it, colonel?

Mr. PIKE. You word this as if it were a problem.

STATEMENT OF LT. COL. LABRE R. GARCIA, CONGRESSIONAL INVESTIGATIONS DIVISION, OFFICE OF LEGISLATIVE LIAISON, OFFICE OF THE SECRETARY OF THE AIR FORCE

Colonel GARCIA. I think I reported to Mr. Reddan, Mr. Chairman, that the search that was instituted through Headquarters, Air Force Logistics Command, came up with the answer that it couldn't be found.

Mr. HARDY. Is that still the the answer we have?

Colonel GARCIA. I haven't heard any more. I thought—I didn't know that you had reinstituted the requirement after that response, Mr. Reddan.

Mr. REDDAN. I just wanted your statement for the record.

Colonel GARCIA. All right.

Mr. HARDY. Is that unusual, colonel, do you know?

Colonel GARCIA. I don't know, Mr. Chairman. All I can say is that these files are retired. I don't know how old that particular one is, and then there was a change in the organization when Gentile Air Force Depot was taken over by the Defense Supply Agency.

Now, there was a transfer of records there which I understand to some extent ended up in Middletown Air Force Base and it is there that records indicate that this was sent and they have been unable to locate them.

Mr. HARDY. Well, all right. Thank you, colonel.

Now, Mr. Young, will you and your associates come up, please? Let's see, we have Mr. Young and who else do you have with you?

Mr. YOUNG. Mr. Highwarden.

Mr. HARDY. Mr. Highwarden. Do you want to bring up the rest of them too, Mr. Countryman and Mr. Saporito.

Mr. YOUNG. That is right, sir.

Mr. HARDY. Normally I would ask each of you to give us a brief biographical sketch. Maybe Mr. Young, since you are the chief of this group—are you?

Mr. YOUNG. Yes, sir.

Mr. HARDY. Give the committee the benefit of a brief biographical background, please, sir, and tell us just what your responsibilities are now.

TESTIMONY OF VERNON E. YOUNG, DEPUTY DIRECTOR, DIRECTORATE FOR PROCUREMENT AND PRODUCTION, DEFENSE ELECTRONICS SUPPLY CENTER, DAYTON AIR FORCE DEPOT, DAYTON, OHIO

Mr. YOUNG. Right, sir. I was born in August 1917, Springfield, Ohio. Attended Springfield, Ohio High School. I did not attend college. I have had approximately 5 or 6 years civilian buying experience and have been in Government procurement since 1948. I came to what is now known as the Defense Electronics Supply Center in July of 1961, which was after the award of these contracts.

I spent approximately 5 years in Air Force purchase policy, and the balance of the time has been in the buying function of Air Force items up until about the last 10 months, which has been under DSA in the Defense Electronics Supply Center.

Mr. HARDY. What is your title now?

Mr. YOUNG. I am the Deputy Director of Procurement and Production.

Mr. HARDY. Deputy Director of Procurement and Production?

Mr. YOUNG. Yes, sir.

Mr. HARDY. And what areas—are there several deputies?

Mr. YOUNG. No, sir, I am the only Deputy of Procurement and Production under Colonel Smith, who is the Director of Procurement and Production.

Mr. HARDY. In other words, you have, under Colonel Smith, the responsibility for the performance of this Defense Electronics Supply Center at Dayton, is that right?

Mr. YOUNG. In the procurement area only, sir, production and procurement.

Mr. HARDY. Procurement?

Mr. YOUNG. Yes, sir.

Mr. HARDY. Thank you very much, Mr. Young. Go ahead.

Mr. REDDAN. Mr. Young, did you personally participate in the award, the negotiations leading up to the award of these contracts with which we are concerned?

Mr. YOUNG. No, sir, I had nothing to do with the award. In the award of the contracts, they were awarded in March of 1959, August of 1960 and January of 1961. I did not come to that activity until July of 1961.

Mr. HARDY. Did any one of your associates participate?

Mr. YOUNG. Mr. Countryman was the contracting officer on two of the contracts in question. Mr. Zehenni, who was the other contracting officer, is now deceased. Mr. Highwarden was and is the Chairman of our Procurement Review Committee, and Mr. Saporito is in charge of our pricing.

Mr. HARDY. And Mr. Saporito, did you participate in the negotiation of these contracts?

Mr. SAPORITO. Yes, sir.

Mr. REDDAN. Mr. Young, could you tell the committee briefly the mechanics of the procurement at the time these contract were awarded, how the procurement is initiated, what steps it takes and which of these gentlemen here have responsibility in the various areas?

Mr. YOUNG. Right. In this type of procurement, the buying cycle starts when the procurement of a—when the purchase request is received in procurement.

Prior to that time, the requirement is computed by what is called the inventory manager. He comes up with the quantity that is needed, the delivery requirements, where it is needed to be sent to and the delivery times.

When the purchase request is received, the purchase request contains a description of the item, along with the specifications number or the part number, what is to be procured, quantity to be procured, desired or required, delivery schedule, estimated cost and fund allotment citation, shipping instructions and other such items.

Mr. REDDAN. To whom does he deliver this procurement request?

Mr. YOUNG. This purchase request comes into a central receiving point where it is recorded in; it is passed down to a buying branch. We have a different situation now than we had at that time.

Mr. REDDAN. But as of that time?

Mr. YOUNG. As of that time, we had certain commodity buying authorization. In other words, we had a test equipment organization that bought test equipment, the test equipment branch. These purchase requests were then received and passed down to the test equipment branch where they were then assigned to a buyer who is under the general supervision of a contracting officer.

Mr. REDDAN. Does it go to the buyer directly or through the contracting officer?

Mr. YOUNG. It goes through the contracting officer who normally is the branch chief.

Mr. REDDAN. So there is a considerable amount of paper work connected with the commencement of one of these procurements prior to the time it gets to the buyer?

Mr. YOUNG. Yes, sir.

Mr. REDDAN. Perhaps we can start just to illustrate what happens by taking a look at one of these contracts. I will show you the file which we received from the Gentile Air Force Depot on Air Force Contract AF33 (604)-22221.

Mr. YOUNG. Can we make a correction on that?

Mr. REDDAN. Yes.

Mr. YOUNG. These contracts had been sent to Middletown prior to our becoming Defense Supply Agency. I think it was April or May of last year and they were picked up from Middletown and not Gentile.

Mr. REDDAN. I see. All right.

Now, as I understand of the witnesses we have here, the first one to whose attention this would be brought would be Mr. Highwarden?

Mr. YOUNG. No, sir. Of the witnesses that are present here, it would be Mr. Countryman, who is the contracting officer.

Mr. REDDAN. Excuse me. Mr. Countryman, yes.

Mr. YOUNG. He would have a buyer working for him. But under the contract in question, Mr. Zehenni was the contracting officer.

Mr. REDDAN. I see.

Mr. YOUNG. Comparable position to Mr. Countryman's.

Mr. REDDAN. Yes. So that of the witnesses here, the only one who would have first-hand experience with this particular contract would be Mr. Highwarden, is that right? Mr. Highwarden and Mr. Saporito?

Mr. YOUNG. Did you review this as a part of your committee work, Mr. Highwarden? As well as Mr. Saporito? Yes.

Mr. REDDAN. Mr. Highwarden had the review function?

Mr. YOUNG. That is right, sir.

Mr. REDDAN. Mr. Highwarden, I would like to hand you that file on the contract we have just referred to and ask you if you can tell the committee from an examination of the file—you reviewed that file yesterday, did you not, sir?

Mr. HIGHWARDEN. No, sir, I didn't.

TESTIMONY OF E. B. HIGHWARDEN, PROCUREMENT REVIEW OFFICER, DEFENSE ELECTRONICS SUPPLY CENTER, DEPARTMENT OF DEFENSE, DAYTON AIR FORCE DEPOT, DAYTON, OHIO

Mr. REDDAN. This file was made available to you for review, was it not, sir?

Mr. HIGHWARDEN. I didn't see this file yesterday. We had just a short time and I looked at a different file.

Mr. REDDAN. I see. All right.

You approved this particular contract, did you not, sir? Your approval is the next to the last document in the file.

Mr. HIGHWARDEN. This file was approved by my office.

Mr. REDDAN. Yes. Does the approval carry your signature?

Mr. HIGHWARDEN. No, sir, it does not.

Mr. REDDAN. Does it carry your name?

Mr. HIGHWARDEN. It carries my name as the Chairman.

Mr. LANKFORD. Would you speak up just a little bit?

Mr. HIGHWARDEN. I will do my best, sir.

Mr. HARDY. Let us find out just what you had to do with that, Mr. Highwarden. Anything?

Mr. HIGHWARDEN. I don't know without becoming a little more familiar with the file, or the questions that are to be asked. I can't tell you exactly what I did have to do with it.

Mr. REDDAN. Well, if you will look right in back of the file where you are now, sir, you will find a handwritten memorandum signed by a Grace George. Who was Grace George? Is she the same witness who submitted a doctor's certificate here this morning?

Mr. HIGHWARDEN. Yes, that is Mrs. George.

Mr. REDDAN. She was the buyer on this particular contract?

Mr. HIGHWARDEN. Do you have it marked? Oh, yes. A handwritten one, you say?

Mr. REDDAN. Handwritten, yes. I think it is dated February 13—

Mr. HIGHWARDEN. Yes, I have it.

Mr. REDDAN. Do you have the memorandum there which tells how this procurement began as far as she was concerned, when it was first brought to her attention? It is dated February 13—

Mr. HIGHWARDEN. I have this handwritten memo dated the 1st of February.

Mr. REDDAN. Would you read that?

Mr. HIGHWARDEN. The subject is pricing information. Paragraph 1, "Hewlett-Packard prices as originally quoted"—

Mr. REDDAN. Excuse me, the one right behind that, where she talks about the initiation of this contract.

Mr. HIGHWARDEN. Below it?

Mr. REDDAN. Yes, it is the same date.

Mr. HIGHWARDEN (reading):

Memo to file, February 13, 1959, Subject: RFP 33-604-59-1460 and amendments 1 and 2.

1. At the time of the issuance of subject RFP, the undersigned was instructed to go "sole source" on all calibration requirements, in that no other items were acceptable under this program, and that a "sole source" justification was being prepared covering same. Accordingly, only Hewlett-Packard was solicited on this RFP as all the items being procured were H-P equipment being procured under the calibration program.

2. On December 29, 1958, a D/F—

Mr. REDDAN. Excuse me, what is a D/F?

Mr. HIGHWARDEN. It is a memorandum, it used to be called a disposition form—

was received in this office, setting forth only a portion of the items as "sole source" items, the balance having one or more equivalent items.

3. Due to the urgency of the program, it was the buyer's opinion that all action taken prior to receipt of this D/F was not to be held up, and that only future procurements would comply with aforementioned D/F, therefore no action was taken to solicit any other sources at that time.

4. An award was written on January 6, 1959, and was forwarded for review January 19, 1959, at which time, it was advised the other suppliers as shown on the D/F should be requested to quote. Telephonic requests were made to Narda Microwave Corp. and FXR, Inc.; FXR on items 1 and 5; Narda on item 4.

a. FXR, Inc., indicated he would like to quote on both items, however, their model 2815A, item 1 of RFP and PRD models 801 sold at approximately \$1,200 to \$1,300; while the desired H-P 715A was a \$300 item, therefore a "no bid" was offered on this item. On item 5, he submitted his quote on his model X-164A, at a unit price of \$204.68.

b. Narda quoted on their model 510, on item 4, at a unit price of \$67.50.

c. Due to Hewlett-Packard's reduction in price on items 4 and 5, plus 10 percent overall discounts, the prices quoted by the above suppliers were not the low bids, and all items were awarded to Hewlett-Packard Co.

5. Due to the many discrepancies encountered in list 1 of calibration D/F, in which equivalent items are set forth, such as the one appearing in paragraph 4-a of this memo, (item 1), Maintenance Division is in the process of amending same.

Signed "Grace George, Buyer."

Mr. REDDAN. Now, I just have one or two questions on that; the memorandum starts off saying she was directed to go sole source. Do you know who directed Mrs. George to do that, sir?

Mr. HIGHWARDEN. At that point I do not know who directed Mrs. George. If she was not in possession of the D/F, which solicited the sources and the items which were to be bought, then I could not say who directed her.

Mr. HARDY. Who would have been authorized to issue such direction to her?

Mr. HIGHWARDEN. The commander of the installation would have been authorized under those regulations in effect at that time.

Mr. HARDY. Would he be the only one who would be authorized to issue such instructions?

Mr. HIGHWARDEN. If my memory is correct, it was his responsibility to make the final determination with regard to sole source.

Mr. HARDY. Did Mrs. George work under you?

Mr. HIGHWARDEN. No, sir.

Mr. HARDY. She did not work under your supervision?

Mr. HIGHWARDEN. No, sir.

Mr. HARDY. Would you have had any authority to issue such instructions to her?

Mr. HIGHWARDEN. No, sir.

Mr. REDDAN. Going back to Grace George's memorandum which you have just read, you will note that she states that after initiating the procurement from Hewlett-Packard on a sole-source basis, she received a D/F which showed there were acceptable substitutes for some of these Hewlett-Packard items.

Mr. HIGHWARDEN. There were two such lists.

Mr. REDDAN. Yes.

Mr. HIGHWARDEN. I believe a copy is enclosed in the file, is it?

Mr. REDDAN. Yes. Would you refer to those two, sir, please?

Mr. HIGHWARDEN. You want it read?

Mr. REDDAN. No, no. In looking at that list, do you find that there are two items which appear on the procurement request as items 4 and 5 for which substitutes are acceptable, indicating that Hewlett-Packard is not sole source?

Mr. HIGHWARDEN. Do you have them marked?

Mr. REDDAN. They are marked with a red dot.

Mr. HIGHWARDEN. With the red dots?

Mr. REDDAN. Yes.

Mr. HIGHWARDEN. On list No. 1, which is USAF calibration standards equipment, preferred items and acceptable substitutes, there were—you want the stock numbers?

Mr. REDDAN. Yes, if you would.

Mr. HIGHWARDEN. They were stock No. 7CAC-116725, a detector mount which was specified as Hewlett-Packard X-485B, or Narda 510, and then there was item or stock No. 7CAC-979569-2945, variable attenuator, Hewlett-Packard, X-382A or FXR-164A. I don't identify the "FR."

Mr. REDDAN. Now, do you find, sir, on the original proposal which was handled on the sole source basis those two items, the HPX items, X-485B and 382A? They should be items 4 and 5.

Mr. HIGHWARDEN. Do you by any chance have these marked? These files are rather unusually put together.

Mr. REDDAN. Yes, I will be with you—

Mr. HIGHWARDEN. I believe I have found it. Items 4 and 5, you say?

Mr. REDDAN. Yes.

Mr. HIGHWARDEN. RFP-1460, item 4, is a radiofrequency balometer. That is Hewlett-Packard type X-485B.

Mr. REDDAN. That is right.

Mr. HIGHWARDEN. And the USAF stock number is given.

Mr. REDDAN. And the item is on the next page, is it not, sir?

Mr. HIGHWARDEN. Item 5 is attenuator or waveguide.

Mr. REDDAN. HP—

Mr. HIGHWARDEN. That is model X-3382A, Hewlett-Packard, and the stock number is given.

Mr. REDDAN. As I understand it those are on the list which are acceptable substitutes, but according to Grace George's memorandum she felt the D/F she received in December was not applicable to procurement already started, so she continued on a sole source basis with Hewlett-Packard?

Mr. HIGHWARDEN. That is what she said.

Mr. REDDAN. Did Grace George have the authority to make this decision on her own? With whom would she have to have cleared that decision?

Mr. HARDY. Let the record show Mr. Highwarden's answer was in the negative.

Mr. HIGHWARDEN. At the very least with her contracting officer who would have obtained the authority from a higher level.

Mr. REDDAN. Now, there came a point in time, according to her memo, when this was picked up by the reviewing office, the fact that there were adequate substitutes for two of the items for which she was contracting on a sole source basis. Now, do you have any recollection as to who in your office discussed this matter with Grace George?

Mr. HIGHWARDEN. I am familiar with it. It could have been me in conjunction with some one of the other personnel in the office, or it may be that I was just—

Mr. REDDAN. Do you have any recollection at this time?

Mr. HIGHWARDEN. Whether I talked with her, personally, you mean?

Mr. REDDAN. Yes. Do you have any recollection at this time as to whether you had any contact with Grace George on this matter?

Mr. HIGHWARDEN. I don't recall that I had contact with Grace George, but I did make the decision that it was necessary to solicit the other sources.

Mr. REDDAN. I see.

Mr. HIGHWARDEN. May I add this?

Mr. REDDAN. Yes.

Mr. HIGHWARDEN. That at the outset of the procurement for these items that the list, as Grace mentions, was not available, and that we had subsequently come into possession of the list.

Mr. REDDAN. What is the date of that list?

Mr. HIGHWARDEN. November 26, 1958.

Mr. REDDAN. November 26. When does she say she got it? It is in the back there.

Mr. HIGHWARDEN. On December 29, 1958.

Mr. REDDAN. She got it a month later. Do you know where it would have been during all that time?

Mr. HIGHWARDEN. Do you want a guess?

Mr. REDDAN. Anything that—

Mr. HIGHWARDEN. My guess would be that it was either in the process of coordination—possibly in the process of coordination prior to the commander's approval. That would be only my guess.

Mr. REDDAN. I see.

Mr. HARDY. It might have been sitting on the commander's desk all that time?

Mr. HIGHWARDEN. I can't tell you that, sir.

Mr. HARDY. That might be just as good a guess as any other.

Mr. HIGHWARDEN. I think mine is a safer one, though.

Mr. HARDY. For you to make.

Mr. HIGHWARDEN. For me.

Mr. REDDAN. Mr. Highwarden, according to the file, and according to your own recollection, what did Grace George do after she was instructed to get competition in this case?

Mr. HIGHWARDEN. She solicited the other sources.

Mr. REDDAN. By telephone?

Mr. HIGHWARDEN. Well, I would have to go back to her memorandum.

Mr. REDDAN. Yes; yes.

Mr. HIGHWARDEN. Because I personally don't recall.

Mr. REDDAN. What does the file show?

Mr. HIGHWARDEN. Her memorandum indicates that she solicited by telephone.

Mr. REDDAN. According to her memorandum she called Narda and FXR?

Mr. HIGHWARDEN. Right.

Mr. REDDAN. Does the file show that she submitted bids?

Mr. HIGHWARDEN. It shows that on two of the items I believe one of them no bid, I think we just read that.

Mr. REDDAN. Yes. If you will look at her spread sheet dated February 13, right in front of that handwritten memorandum you have just been looking at, I think you can get it, perhaps.

Mr. HIGHWARDEN. This sheet included in her preceding memorandum doesn't indicate who bid what. It shows list price, quoted price, and discounts, and so forth, but it doesn't indicate that Narda was involved in it. There must be an abstract in here somewhere, though.

Mr. REDDAN. Yes. Would you show it to him, please? Those TWX's are in the back.

Mr. HIGHWARDEN. We have the answer.

Mr. REDDAN. Excuse me, sir, I didn't hear you. Do you find it?

Mr. HIGHWARDEN. Yes; we have the abstract.

Mr. REDDAN. All right.

Now, what bid did Narda submit?

Mr. HIGHWARDEN. She shows Narda submitted a quotation of \$67.50 on item 4.

Mr. REDDAN. \$67.50?

Mr. HIGHWARDEN. \$67.50 on item No. 4.

Mr. REDDAN. Item No. 4?

Mr. HIGHWARDEN. Right.

Mr. REDDAN. That was Narda 510 as a substitute for Hewlett-Packard X-485-B; is that correct?

Mr. HIGHWARDEN. I believe so.

Mr. REDDAN. What did Hewlett-Packard bid on that?

Mr. HIGHWARDEN. \$73.90.

Mr. REDDAN. \$73.90. Now, is that the original price that they submitted?

Mr. HIGHWARDEN. That is what the abstract shows. The abstract doesn't show——

Mr. REDDAN. I see. Will you flip back, then, to the original procurement. Just hold your place in there.

Mr. HIGHWARDEN. \$75.90.

Mr. REDDAN. They submitted originally a price of \$75.90?

Mr. HIGHWARDEN. Right.

Mr. REDDAN. Is there any indication that that price is changed?

Mr. HIGHWARDEN. Yes, that has been marked out and \$73.90 inserted and is initialed "W. Wallin, Hewlett-Packard Co., "2/12/59" is the date.

Mr. REDDAN. On February 12 this has been changed to pen and signed by "Wallin." Do you know who Wallin is?

Mr. HIGHWARDEN. I am aware that he was a representative of Crossley Associates.

Mr. REDDAN. He was——

Mr. HIGHWARDEN. Who were representing Hewlett-Packard.

Mr. REDDAN. He was a representative of Crossley who were representing Hewlett-Packard?

Mr. HIGHWARDEN. Yes.

Mr. REDDAN. Do you know whether or not he had power of attorney from Hewlett-Packard?

Mr. HIGHWARDEN. That I do not know.

Mr. REDDAN. Is there any indication in the file how Hewlett-Packard came to make that change?

Mr. HIGHWARDEN. I can't answer that without reviewing the file.

Mr. REDDAN. Well, all right. Take a look at the file, then. Is there anything in there?

Mr. HIGHWARDEN. Do you want me to take the time to go through it?

Mr. HARDY. I think if you don't already know there isn't anything in there, I think we are going to have to have your testimony even if we have to give you time to go through it. But, as a matter of fact, I had understood that file had been made available to you yesterday with the indication we were going to ask you some questions about it. I am a little disappointed at the testimony we are getting now, showing how ignorant you are about it. Maybe you didn't have time enough to go through it, but I have reason to believe that there isn't anything in the world in there to indicate how that change came about.

You are the man that had the responsibility for reviewing it. You do have a familiarity with it, you remember some of these things. It doesn't carry your signature, but it shows that your office reviewed it, and obviously it had to be reviewed under your direction. You are the one individual that we have that is knowledgeable enough to answer these questions. If you have to have some time to review the file, please take it, and we will go ahead with another witness.

Mr. REDDAN. Do you need any time to review it?

Mr. HARDY. Don't you know, as a matter of fact, that the information is not in there?

Mr. HIGHWARDEN. Mr. Chairman, I have only Mr. Reddan's word that the information is not in there.

Mr. HARDY. I don't want you to testify on the basis of his word. I want your testimony on your word.

Mr. HIGHWARDEN. He indicated this yesterday. This file I did not have an opportunity to look at yesterday. I only had an opportunity to look partially at one file yesterday in the few minutes that we had.

Mr. YOUNG. Mr. Chairman, could I add something here?

Mr. HARDY. If you can add anything that is pertinent, Mr. Young, please do.

Mr. YOUNG. We had an opportunity yesterday to look at all four files, not knowing the questions that would be coming today. Each one of the files is approximately 2 inches thick. It would be difficult to become completely familiar with all of the information in the files.

Mr. HARDY. All right.

Mr. REDDAN. I asked these same questions yesterday, Mr. Young.

Mr. HARDY. Mr. Young, you had not had a responsibility for these files, personally, had you?

Mr. YOUNG. No, sir.

Mr. HARDY. Mr. Highwarden had had a previous responsibility for reviewing this one, and I suggest you let Mr. Highwarden testify with respect to his own competence.

Mr. YOUNG. Yes, sir.

Mr. REDDAN. Would you look at the TWX's in the file there on the lefthand side from Narda and FXR, and tell the committee when those two companies submitted their bids on these two particular items, items 4 and 5?

Mr. HARDY. What are you working on now?

Mr. REDDAN. He is looking for the date of the bid from Narda and FXR.

Mr. HIGHWARDEN. I have it. There is one here signed by W. A. Bourke, attention D. Minniear, MDPT-28, reference model, Narda

Model 510, quantity, 214; delivery, 100 in 60 days; balance, 90 days, f.o.b. and acceptance our plant, Commercial Plant G, Mill Standard 130, marking unit price \$67.50, signed by W. A. Bourke.

Mr. REDDAN. What is the date of that?

Mr. HIGHWARDEN. That is dated the 10th of February and is shown as received in the communications branch on the 11th of February at 2:52.

Mr. REDDAN. How about the one from FXR?

Mr. HIGHWARDEN. That one is——

Mr. REDDAN. Just the date of that one, please.

Mr. HIGHWARDEN. Just the date? That one is dated—is shown as received in the communications branch February 12 at 1532.

Mr. REDDAN. So Narda's was received on the 10th and FXR on the 11th?

Mr. HIGHWARDEN. I believe that was the 11th and 12th, wasn't it?

Mr. REDDAN. The 11th and 12th, excuse me.

Now, were those bids under Hewlett-Packard's bids which were in existence on the 10th and 11th?

Mr. HIGHWARDEN. Well, the Narda bid was under the \$73.50 that was bid, it was \$67.50.

Mr. REDDAN. It was under the \$75?

Mr. HIGHWARDEN. Under the \$75.

Mr. REDDAN. That was the bid of Hewlett-Packard at the time Narda came in with their bid. Hewlett-Packard's bid was \$75 per item at that time, and Narda came in with a bid of \$65.50 for the same item; is that right, sir?

Mr. HIGHWARDEN. That is right.

Mr. REDDAN. They came in with a bid of that amount on February 11?

Mr. HIGHWARDEN. Yes.

Mr. REDDAN. Now, on the FXR——

Mr. HIGHWARDEN. I am sorry, they were received at the depot on the 12th.

Mr. REDDAN. All right, their bid came in on the 12th to the depot?

Mr. HIGHWARDEN. Right.

Mr. REDDAN. And the FXR bid was how much, sir?

Mr. HIGHWARDEN. That was \$204.68.

Mr. REDDAN. And what was the Hewlett-Packard's bid for the comparable item?

Mr. HIGHWARDEN. Originally \$250.90 and revised to \$222.

Mr. REDDAN. What date was that revision made?

Mr. HIGHWARDEN. That is also dated February 12, 1959.

Mr. REDDAN. So both of Hewlett-Packard's bids were revised as of the 12th. Now, both FXR and Narda are under the prices which you have just given to us as quoted by Hewlett-Packard?

Mr. HIGHWARDEN. Initially.

Mr. REDDAN. And yet the award was made to Hewlett-Packard. I wonder if you could tell the committee how that was justified?

Mr. HIGHWARDEN. Under our procedures at that time when a quotation was received, either a late bid or a quotation, distinguished as between advertising and negotiated procurements, when a late quotation was received it was required at a level no lower than the directorate office to determine whether or not that quotation would be received

for award, would be considered for award, and if it was to be considered for award then everyone who had previously submitted a quotation was to be given an opportunity to requote.

Mr. REDDAN. That was the standard procedure?

Mr. HIGHWARDEN. That was the standard procedure.

Mr. REDDAN. Now, can you tell the committee whether your standard procedure was followed in this case, however? Is there anything in the file to show whether or not it was?

Mr. HIGHWARDEN. This I don't know. There should be something in the file to show it, but I cannot tell you whether there was or not.

Mr. HARDY. What constitutes a late quotation? In this case whose quotations were late?

Mr. HIGHWARDEN. It is a rather peculiar situation here.

Mr. HARDY. Peculiar situation—

Mr. HIGHWARDEN. We were going out on—

Mr. HARDY. Actually a request had gone out for these quotations, hadn't it?

Mr. HIGHWARDEN. Right.

Mr. HARDY. Then how could it be a late quotation?

Mr. HIGHWARDEN. A resolicitation was made. This was the peculiarity of the situation.

Mr. HARDY. It was a new solicitation, it was a solicitation of two people who had been determined to have items which were suitable; is that right?

Mr. HIGHWARDEN. Right.

Mr. HARDY. So this solicitation was made on what date?

Mr. HIGHWARDEN. Well, the receipts were on the 11th and the 12th.

Mr. HARDY. Yes; but when were they solicited to submit proposals?

Mr. REDDAN. Her memorandum shows that, sir.

Mr. HIGHWARDEN. I don't believe her memorandum gives the date. It says it was forwarded for review on the 19th of January at which time it was revised and the other suppliers as shown on the D/F should be requested to quote. Telephonic requests for Narda Microwave—

Mr. HARDY. The earliest possible it could have been was the 19th of January?

Mr. HIGHWARDEN. The 19th of January.

Mr. REDDAN. What is the next sentence there?

Mr. HIGHWARDEN. That tells about "FXR indicated they would like to quote on both items; however, their model 2815-A and PRD models 801 sold at approximately \$1,200 to \$1,300, while the desired HP-715A item was a \$300 item; therefore, no bid was offered on this item."

Mr. REDDAN. Do you know whether she received any bids from any of those companies on the day she made the telephone calls, a verbal bid?

Mr. HIGHWARDEN. I don't know, sir.

Mr. HARDY. I would like to get back for just a moment to this question that was raised a while ago. Now, Hewlett-Packard changed its prices on February 12, according to what you read there a while ago, as I understood it. Presumably this change was made by a representative, did I understand you to say of Crossley Associates?

Mr. HIGHWARDEN. Yes, sir.

Mr. HARDY. And presumably he lived in Dayton; do you know?

Mr. HIGHWARDEN. I do not know.

Mr. HARDY. Don't you know where he lived? Didn't you see him frequently?

Mr. HIGHWARDEN. I do not know Mr. Wallin.

Mr. HARDY. You don't know him?

Mr. HIGHWARDEN. No, sir.

Mr. HARDY. Should the file show how that change happened to occur?

Mr. HIGHWARDEN. Yes; the file should show the resolicitation, there should be a memo in there covering the resolicitation and any pertinent information regarding it.

Mr. HARDY. Well, in the absence of such a memo, how would there be justification for a change in the solicitation, or in the price?

Mr. HIGHWARDEN. Talking—

Mr. HARDY. Mr. Young, it is rather unfortunate that Mrs. Grace George is not here as we are talking about her memorandum.

Mr. YOUNG. Yes, sir.

Mr. HARDY. Frankly, on the surface of it, I cannot pass judgment now, but on the surface it looks like she picked up the phone and called somebody and said "You had better come in here and change your price."

Mr. YOUNG. The normal procedure would be to ask them if they desired to change their price.

Mr. HARDY. I am not talking about a normal procedure now. I am trying to find out what happened.

Mr. YOUNG. Yes, sir.

Mr. HARDY. We are not getting very far. Actually, it seems to me, Mr. Highwarden, that you had the responsibility for reviewing this file.

Wouldn't you have a responsibility for determining whether or not there was a proper basis for those prices to have been changed?

Mr. HIGHWARDEN. We should have seen, sir, that the file was properly documented.

Mr. REDDAN. Would resolicitation be tantamount to negotiation?

Mr. HIGHWARDEN. I am sorry, I didn't hear your question.

Mr. REDDAN. As I understand it, your standard procedure would be to resolicit.

Mr. HIGHWARDEN. Yes.

Mr. REDDAN. Now, would that be characterized as negotiation?

Mr. HIGHWARDEN. I wouldn't call it negotiation as such. It is a part of the negotiation procedure.

Mr. REDDAN. Yes. Would you look at the document which was approved by your office in the back of the file and see what the contracting officer wrote there as justification for awarding this contract to Hewlett-Packard, sir?

Mr. HIGHWARDEN. In the very back?

Mr. REDDAN. That is it, on that page.

Mr. HIGHWARDEN. "Bidders with whom negotiations were conducted," is this the section you want?

Mr. REDDAN. Yes, would you read it?

Mr. HIGHWARDEN (reading):

Negotiated lower prices on items 4 and 5. Contractor's quote on other items could be negotiated no further. Ten percent overall discount given by Hewlett-Packard.

Mr. REDDAN. Now, they negotiated the price down with Hewlett-Packard, according to that, is that right?

Mr. HIGHWARDEN. Yes.

Mr. REDDAN. Would that indicate to you then that there wasn't resolicitation of all interested bidders but a renegotiation with Hewlett-Packard on those two items after Narda and FXR submitted their bids?

Mr. HIGHWARDEN. Not necessarily. It wouldn't indicate—

Mr. REDDAN. Not necessarily, read it some other way, if you will, for me.

Mr. HIGHWARDEN. Well I mean it would not indicate to me that they necessarily negotiated with Hewlett-Packard after Narda and FXR submitted the bid.

Mr. REDDAN. But it said they negotiated with Hewlett-Packard and got the bids down. Is there anything to show that they extended that same courtesy to Narda and FXR?

Mr. HIGHWARDEN. Not in here.

Mr. HARDY. Is there anything anywhere? Frankly this thing raises a whole kettle of fish that doesn't smell very good. We are trying to get everything on the table as far as we can. I suggest that you take that file and study it and be prepared to testify about it. It was reviewed by your office. You have some personal familiarity with it. Your testimony has indicated that.

It was reviewed by your office and approved by your office and still you come in here and acknowledge that it doesn't contain supporting documents which it should have. At least, we can't find them.

So what are we to conclude? It looks as if some shennanigans may have gone on in connection with that contract. I don't know, I hope there weren't.

Mr. HIGHWARDEN. I don't know, sir. This file was reviewed some 5 years ago and it has been since reorganized. I don't know whether all of the documents that were in there at that time are in here now or not.

Mr. HARDY. I don't either, but of course we have to assume it. We asked for the whole thing and that is all we got.

Mr. HIGHWARDEN. I find the RFP, and the award and contract, and so forth, I find them all separated in here. This is not a normal way to file a contract.

Mr. REDDAN. That is the way we received it.

Mr. HARDY. It is just exactly how it was received in this office. Every document that was in it is there. This is a development which was not anticipated at all when we started inquiring into this matter; that is not the kind of a thing we had looked for. We had no reason to suppose there would be any indication in here that there might be some question of propriety in handling this contract.

Mr. HIGHWARDEN. I can say that there was no indication in the file that there was any impropriety involved when my office reviewed it or it would not have been recommended for approval.

Mr. HARDY. That is your testimony, but you haven't got a thing in the world to back it up.

Mr. HIGHWARDEN. That is true.

Mr. HARDY. Not one earthly thing in the world in the file, because there is the whole file that the Air Force furnished to us.

Mr. HIGHWARDEN. I am not even sure this is completely the initial file. It may or may not be.

Mr. HARDY. But you can't testify to what was in the file, because you have already said you didn't know.

Mr. HIGHWARDEN. My office——

Mr. HARDY. We asked you about a memorandum; whether or not there was anything in the file to indicate how it happened that Hewlett-Packard came in and changed its bid on February 12.

Mr. HIGHWARDEN. And I said there should be.

Mr. HARDY. You said you didn't know.

Mr. HIGHWARDEN. I said there should be.

Mr. HARDY. You also said it should be there.

Mr. HIGHWARDEN. That is right. I said that there should be one in there.

Mr. HARDY. But you don't know whether there was or not. So we are just running around in circles, but it doesn't leave a very good flavor, not to me. Let's get on to something else.

Mr. REDDAN. Mr. Saporito, what was your responsibility with respect to this particular contract?

TESTIMONY OF SAM B. SAPORITO, CHIEF, PRICING AND NEGOTIATION OFFICE, DEFENSE ELECTRONICS CENTER, DEPARTMENT OF DEFENSE, DAYTON AIR FORCE DEPOT, DAYTON, OHIO

Mr. SAPORITO. From a pricing standpoint, sir.

Mr. REDDAN. I see. At that time were you the Chief of the Pricing and Negotiation Office?

Mr. SAPORITO. Yes, sir.

Mr. REDDAN. Can you tell from the contract file what you had on which you could make an evaluation of the price of the items on which Hewlett-Packard was bidding?

Mr. SAPORITO. Yes, sir. The file contains a pricing memorandum which I prepared. In this memorandum it states the facts of this case.

Mr. REDDAN. Did you request cost data from the Hewlett-Packard Co.?

Mr. SAPORITO. Yes, sir. My memorandum indicates that the contractor will not give a cost breakdown on standard commercial items on this particular case.

Mr. REDDAN. You requested a cost breakdown on the items on which the company was bidding.

Mr. SAPORITO. Yes, I do recall, I did ask for a cost breakdown from Hewlett-Packard on these contracts.

Mr. HARDY. What did you mean by the statement you just made, that your memorandum indicated that cost data would not be gotten on standard commercial items?

Mr. PIKE. He didn't say that.

Mr. SAPORITO. I didn't say that, sir.

Mr. HARDY. Then I misunderstood. What did you say?

Mr. GUBSER. Would you repeat it?

Mr. SAPORITO. I made the statement that contractor—I have in my memorandum of pricing—"the contractor will not give a cost breakdown on standard commercial items."

Mr. HARDY. What does that mean.

Mr. SAPORITO. This meant at that time that Hewlett-Packard claimed that these were standard commercial items listed in the standard commercial catalog; they would not give us cost information or cost backup supporting the price.

Mr. HARDY. You mean they refused to give it to you?

Mr. PIKE. They refused.

Mr. SAPORITO. They would not give it to us; yes, sir.

Mr. HARDY. They had refused to give you the cost data at that time?

Mr. SAPORITO. Yes, sir; to my recollection they refused to give us cost data.

Mr. GUBSER. Is there anything in your memorandum making a recommendation to the final contracting officer about their refusal to give you cost data? In other words, did you accept the fact that they were standard commercial items?

Mr. SAPORITO. No. My thinking in this matter was that irregardless of whether the fact they were standard commercial items, that I requested—it was my personal policy, that is, requested cost data on a contract of this magnitude.

Mr. HARDY. Let's see if we can, if you will excuse me, find out just exactly what you did.

Now you had the responsibility for evaluating the prices, is that right?

Mr. SAPORITO. Yes, sir.

Mr. HARDY. How did you do it; what did you do? Did you meet with Hewlett-Packard representatives by yourself, or with others?

Mr. SAPORITO. No; this was a team effort with the buyer, the contracting officer, and myself. We asked the Hewlett-Packard people and their representative to furnish cost breakdowns on this procurement.

Mr. HARDY. All of the items.

Mr. SAPORITO. We did not get it.

Mr. HARDY. On all of the items in the procurement?

Mr. SAPORITO. On this particular item we asked for the entire situation; yes, sir.

Mr. HARDY. And you didn't get it.

Mr. SAPORITO. No, we did not get it.

Mr. HARDY. Tell the committee just exactly what transpired during that particular piece of negotiation.

Mr. SAPORITO. I have to check the file here because I think I have put it all into this file.

Mr. HARDY. Please do.

Mr. SAPORITO. We attempted to get cost data, as I stated before, and we did not get it. Therefore, I also went to the field office, the San Francisco, I believe, field office, under which Hewlett-Packard—the district in which our field office is located, and asked them to give us an analysis or give us whatever they could with regard to the pricing of these items. Mr. Scollard at that time was the price analyst at the office, discussed this with them, but they would not give him cost information. He did divulge some information to us and that was

with regard to the commission or the—yes, the commission which Hewlett-Packard gave to some particular divisions or special groups. And this referred to a 25-percent discount.

DYMEC was one particular subsidiary of theirs which it was told to us that this case did exist, they got a 25-percent discount. We also were aware of the commission—

Mr. HARDY. Discount from what?

Mr. SAPORITO. Discount from catalog price.

Mr. HARDY. Did you have a catalog?

Mr. SAPORITO. I was asked that question yesterday, sir, and I don't remember whether I had a catalog. I believe I did. I don't have it in my pricing file. Customarily we would file it in the contract and also try to keep a copy in our file. I don't believe I have that particular one in my file.

Mr. HARDY. I see. Go right ahead.

Mr. SAPORITO. We also were aware of the fact through the forms we have there, that the Crossley Associates received a certain commission, I believe it was 12 percent commission on standard equipment delivered to customers in their territory.

Through this method I reconstructed a price, merely backward, hypothetically reconstructed a price using these factors and developed some sort of a tentative price objective which would appear to be the type of price we were looking for.

And this is what the memorandum states. Then, of course, we conducted negotiations and I might say exhaustive negotiations with this company.

Mr. HARDY. How did your negotiations wind up as relates to the price objectives which you had reconstructed?

Mr. SAPORITO. Well, the price which we got ended up with a 32-percent discount, sir.

Mr. HARDY. Below the prices that you had computed?

Mr. PIKE. No.

Mr. SAPORITO. No, this is not below the price I had computed because in the—

Mr. HARDY. I am not concerned about what is in the catalog, if I don't know the basis for the catalog prices, whether or not they are competitive, they don't mean anything to me.

Mr. SAPORITO. Yes, sir.

Mr. HARDY. So I am trying to figure out what they meant to you and what you did. Do you have some comment in the last part of your memorandum there that might shed some light on this?

What does the last paragraph in your memorandum say?

Mr. SAPORITO. Do you want me to read it?

Mr. HARDY. Please.

Mr. SAPORITO. There were two memorandums on this particular case, sir. The regular one and then there was an addendum attached to this. But this particular one says—

The buyer must bear in mind that the spares are to be shipped concurrent with the end items as stated in our request for proposal and also the contractor's affiliates are given a standard reduction of 25 percent. Also the sales agreement with their sales representatives states that a commission of 12 percent of the selling price is paid on all standard equipment delivered to customers in their territory. Since there is no cost data or financial statement to evaluate this

proposal, there is no concrete evidence to establish a price objective. It appears that the Government is entitled to further reduction in this procurement and this analysis is furnished the buyer as a basis for further negotiation.

Mr. HARDY. It didn't help us very much, apparently. Maybe they didn't have anything to go on, I don't know.

Mr. SAPORITO. There is one more point contained in this memorandum. That was in connection with the spare parts. Spare parts were being procured concurrently with this order. And there was no commission received on the spare parts portion—in this particular case.

Mr. HARDY. Well the spare parts aspect I hadn't tried to explore. But you never did quite tell me how the final price compared with your reconstructed price.

Mr. SAPORITO. Well, this is why I brought up the spare parts. Do you want totals, sir, from this memorandum?

Mr. HARDY. I don't know how else we can work on it.

Mr. SAPORITO. All right.

Mr. HARDY. Of course, I suppose that there was a variation; some of them were closer than others. Did you compute what the value of the whole contract ought to be?

Mr. SAPORITO. Using this hypothetical basis which I did, yes; I did.

Mr. HARDY. How did the final cost of the contract compare with it? Was it more or less?

Mr. SAPORITO. It was more than what I stated; yes sir.

Mr. HARDY. The contract was more than what your hypothetical computation determined?

Mr. SAPORITO. Yes, sir.

Mr. HARDY. So that is why the last paragraph of your memorandum suggested that there probably should be further concessions to the Government, something to that effect?

Mr. SAPORITO. Well, I made the point that no consideration for discount was given to us with respect to these concurrent spares that were being bought on this contract. And if a commission was to be received on the major items and they were being shipped concurrently it was my contention that also the commission at least should be applied to that.

Mr. HARDY. On the spares.

Mr. SAPORITO. That was the point in this case.

Mr. HARDY. I see.

Mr. REDDAN. Mr. Saporito, on how many of these four contracts that we have been discussing here did you analyze the cost?

Mr. SAPORITO. I worked on three of them, sir.

Mr. REDDAN. On those three did you have any cost data?

Mr. SAPORITO. No, sir; they all indicate no cost data would be submitted.

Mr. REDDAN. Did you request cost data on all three?

Mr. SAPORITO. To my recollection I always asked for cost data.

Mr. REDDAN. Do you have anything which would refresh your recollection? Would the files themselves help you?

Mr. SAPORITO. That was—the one we were just discussing was 22362. This was 31884. Paragraph 5 will indicate that—

This Office is unable to make a comprehensive analysis without the benefit of a field analysis report or a detailed cost breakdown substantiating cost data from the contractor.

Mr. REDDAN. That is your memorandum of January 4, 1961?

Mr. SAVORITO. Yes, sir.

Mr. REDDAN. And what was the other contract, sir?

Mr. SAVORITO. The other one was 28645. In this particular case paragraph 3:

The normal procedure of analyzing the elements of cost could not be performed by the price analyst to develop a price objective due to the fact that the contractor would not submit cost data.

Mr. REDDAN. And what is the date of that document, sir?

Mr. SAVORITO. July 19, 1960.

Mr. REDDAN. Signed by you?

Mr. SAVORITO. Yes, sir.

Mr. GUBSER. When this contract was entered into then, you knew that you had been refused the cost data?

Mr. SAVORITO. Yes, sir, contracts, yes, sir, I had been refused cost data.

Mr. GUBSER. Have any instances in your experience occurred through the years where GAO has been able to come in and show you where your procedures could be improved, resulting in better contracting procedures? Can you think of any instances?

Mr. SAVORITO. That GAO has come into my office?

Mr. GUBSER. Yes.

Mr. SAVORITO. No, sir, I don't recall any instance where GAO has come into the pricing office and recommended—

Mr. GUBSER. Have suggestions come to you for improved contracting procedures which emanated originally from GAO?

Mr. SAVORITO. Well, I think probably so because I am sure GAO has gotten into many of these contracts and procedures have emanated from those which have been passed down to the working echelon.

Mr. REDDAN. Mr. Countryman, with respect to contract 33(604)-28645, were you the contracting officer on that particular contract?

**TESTIMONY OF ROBERT COUNTRYMAN, CONTRACT OFFICER,
DEFENSE ELECTRONICS SUPPLY CENTER, DEPARTMENT OF
DEFENSE, DAYTON AIR FORCE DEPOT, DAYTON, OHIO**

Mr. COUNTRYMAN. Yes, I was.

Mr. REDDAN. I would like to show you a copy of a document dated June 17, 1960, and ask you if you prepared the original of that one?

Mr. COUNTRYMAN. This document is a procurement plan for the two PR's that were procured by the contract AF 33(604)28645 and was prepared by a buyer under my supervision.

Mr. REDDAN. I see. Does your signature appear on the second page?

Mr. COUNTRYMAN. Yes, as the contracting officer.

Mr. REDDAN. Did you have a responsibility for that?

Mr. COUNTRYMAN. I have the responsibility and had the responsibility as the contracting officer to coordinate on the procurement plan, which—

Mr. REDDAN. Would you look at paragraph 3 on the first page and read that to the committee?

Mr. COUNTRYMAN. Paragraph 3 of the procurement plan states:

This procurement will be negotiated pursuant to section 2304(a) (10) of title 10, United States Code, as contemplated by paragraph 3—

Mr. REDDAN. Excuse me. Is that paragraph 3 that you are reading?

Mr. COUNTRYMAN. That is paragraph 3.

Mr. REDDAN. I must have the wrong paragraph then. The one that refers to two-step procurement—. What paragraph is that?

Mr. COUNTRYMAN. Same paragraph. So may I continue?

Mr. REDDAN. All right; if you will, please.

Mr. COUNTRYMAN (continuing):

as contemplated by paragraph 3-210.2(xv) of the Armed Services Procurement Regulation. This procurement was started as a two-step advertisement; however, it developed that the available descriptive information was inadequate.

End of paragraph.

Mr. REDDAN. What does that mean, sir?

Mr. COUNTRYMAN. The information that I will give is the information that I picked out of the file from the time that Mr. Woods was at Gentile back in March and also from reviewing the file yesterday.

Mr. REDDAN. No, I mean that document that you just read. You signed that, didn't you?

Mr. COUNTRYMAN. Yes.

Mr. REDDAN. I just want to know what that paragraph means. I just want to know what two-step advertising is.

Mr. COUNTRYMAN. What two-step advertisement is?

Mr. REDDAN. Yes.

Mr. COUNTRYMAN. Two-step advertisement was a method, and still is a method as far as I know, of buying items that are maybe not quite standard items that you can buy off the shelf. You have to go through two steps on the procurement.

The first step consists of an outline of your technical parameters. It is written up by your engineers, or in this case by our calibration people. This technical description is synopsized to industry in the form of a request for technical proposal.

Mr. REDDAN. In other words, you send out a description of the item, the specifications?

Mr. COUNTRYMAN. A description of the item, no quantities are mentioned.

Mr. REDDAN. But you send out the specs that you want the people to do their bidding on; is that right?

Mr. COUNTRYMAN. I wouldn't say the word "specs."

Mr. REDDAN. All right, whatever word you say, it is all right with me.

Mr. COUNTRYMAN. An outline of your technical parameters. They did not go into real detail on the outline.

Mr. REDDAN. Is there enough information there to let a prospective bidder know what you want?

Mr. COUNTRYMAN. Again on the RFTP, on the request for technical proposal, generally there is enough information set forth for the nontechnical parameters so that interested suppliers who pick up the RFTP through the synopsis procedure can submit a technical proposal to the agency which sent it out for technical evaluation.

Mr. REDDAN. Now, you say that is generally the case. Was it the case here?

Mr. COUNTRYMAN. From the file that I read—

Mr. REDDAN. From that document that you just read, doesn't it say you didn't have enough descriptive data to get bids?

Mr. COUNTRYMAN. This particular piece of paper says, "It developed that the available descriptive information was inadequate."

However, there is an attachment within the file which would indicate that we did go through the first step and we did go through the second step, which would infer, I think—

Mr. REDDAN. Sort of a two-step?

Mr. COUNTRYMAN. That we did go through the two steps, yes, sir.

Mr. REDDAN. What I want to know is whether, at any place along the line, these people to whom you were sending out this invitation for proposals could submit an intelligent proposal based upon the description that you gave them?

Mr. COUNTRYMAN. Yes, they could.

Mr. REDDAN. What does it say? It developed what, that there wasn't enough data or there wasn't enough description? What does that mean?

Mr. COUNTRYMAN. It says "It developed that the available descriptive information was inadequate."

Mr. HARDY. So it means then that any responses that you got would not have really been responsive at all because you didn't give them adequate information to go on; is that right?

Mr. COUNTRYMAN. I would say that is right.

Mr. HARDY. So that you just went through the motions of going through these two steps in spite of the fact that you didn't have enough information to make a procurement on that basis?

Mr. COUNTRYMAN. If the committee will—Mr. Chairman, will permit, I will give a brief résumé of the entire program as I recall it.

The entire calibration program, and this was one of the items, consisted of approximately 100 items, and in the fall of 1959 we sent out a request for a technical proposal No. 6625.

Mr. REDDAN. Did you sent that to Hewlett-Packard?

Mr. COUNTRYMAN. It was sent out to industry through the synopsis procedure, industry—Hewlett-Packard picked it up. It was available.

Mr. REDDAN. Did Hewlett-Packard send you a proposal?

Mr. HARDY. Let's let him finish.

Mr. COUNTRYMAN. Yes. I can't say, sir.

Mr. HARDY. Go ahead and tell us just how this was done.

Mr. COUNTRYMAN. OK.

So there were approximately 100 items on the calibration program that we had on the RFTP 6625. That was in the fall of 1959. At the end of 1959 the technical proposals on all the items did come into Dayton Air Force Depot. There was a considerable—there was considerable quantities of technical proposals received from industry. On some items there were more than one or two technical proposals. On other items, I can't say whether or not we got—I can't say that we got a technical proposal from industry on each item.

Mr. HARDY. How does that get down to the point we were trying to clear up?

Mr. COUNTRYMAN. That—

Mr. HARDY. We were talking about the inadequacy of the descriptive information, or whatever you call it.

Mr. COUNTRYMAN. After the IFB opened on the second step and the file 28645 says no bids received, well, I can only draw an inference at this point that since we went through the first step and we went through the second step that something must be wrong because we didn't get a valid IFB on—

Mr. HARDY. What made you think it was because you didn't give them enough information? Maybe nobody wanted to make the thing.

Mr. COUNTRYMAN. That I think is entirely correct, that at that point it was realized that there must have been a valid reason why we didn't get a—

Mr. HARDY. So you were just guessing when you wrote that memorandum?

Mr. COUNTRYMAN. Well, this was in June of 1960.

Mr. HARDY. And it referred to descriptive material that was sent out in the fall of 1959?

Mr. COUNTRYMAN. Right.

Mr. HARDY. Is that what you were talking about?

Mr. COUNTRYMAN. The descriptive information was sent out in the fall of 1959. The tech proposals came in—I can't give a definite date, I am sorry—as to when they were due. I would say it was around December of 1959.

Mr. HARDY. So then in June of 1960 you looked back at this thing and said what a bunch of saps we were to send this mess out like this; there wasn't enough information here for people to bid on?

Mr. COUNTRYMAN. It was one item involved.

Mr. HARDY. All right. We are just talking about that item. Is that about the size of it? You know, this is not the first time I have heard tell of a Government procurement agency sending out requests on bids on something that didn't make any sense at all because they didn't tell them enough to bring in an intelligent bid, just a hunting license, so maybe that is what you did in this case; I don't know who sent the things out.

Mr. COUNTRYMAN. The procurement plan, as we said before, states, "It developed that the available descriptive information was inadequate."

Mr. HARDY. But you don't have one earthly thing to show that was the trouble, do you? I don't know, do you?

Mr. COUNTRYMAN. No, I am sorry, I don't.

Mr. HARDY. Then that was just window dressing in there, and you were going to try to excuse somebody from getting better results because you didn't send out good enough information?

Mr. COUNTRYMAN. Yes. Yes, I would say that is true.

Mr. HARDY. I wouldn't understand, otherwise, why you put that kind of language in there. It really doesn't mean anything.

Mr. REDDAN. Is the testimony you have given here today your recollection of what took place, or have you been able to refresh your recollection?

Mr. COUNTRYMAN. Some of it is recollection and when I give numbers it is from reviewing the file, that I made there when Mr. Woods visited Gentile, and also from reviewing the file yesterday and I have the notes here.

Mr. REDDAN. Yes. Have you seen the invitation to bid file?

Mr. COUNTRYMAN. No.

Mr. REDDAN. That would contain all of this information about which you have testified?

Mr. COUNTRYMAN. No, I have not; the IFB.

Mr. HARDY. I am assuming that you were looking at the invitation to bid file with respect to these items when you wrote that memorandum. Of course, you haven't any recollection of it now, I would expect.

Mr. REDDAN. In your procedures prior to the material which is incorporated in this particular file, is there any indication that you solicited specifically Hewlett-Packard?

Mr. COUNTRYMAN. Would you repeat the statement, please?

Mr. REDDAN. Let's put it this way: You eventually ended up dealing with Hewlett-Packard as a sole source on this item, did you not?

Mr. COUNTRYMAN. Yes.

Mr. REDDAN. And how did you happen to get in touch with Hewlett-Packard on this?

Mr. COUNTRYMAN. We sent them a—

Mr. REDDAN. How did you get Hewlett-Packard's name? Does your memorandum say? You say further coordination with—

Mr. COUNTRYMAN. The PR's—I have to say I don't know how we got Hewlett-Packard's name, because I frankly don't know.

Mr. HARDY. Let me get back to Mr. Saporito just a minute on this pricing picture.

Do you have any instructions with respect to securing cost data for this kind of a negotiation?

Mr. SAPORITO. Sir, do you mean today or as it happened then?

Mr. HARDY. No, I was thinking about at the time—let's take it one at a time. Let's do them both ways. At the time of this procurement, were there instructions with respect to securing cost data?

Mr. SAPORITO. Yes, I believe it was—this is from a pricing standpoint. I believe there was requirement to obtain cost data. I can't say that it is in a regulation of any kind. However, from my own judgment it was my thinking that I passed on, we should have cost data in order to evaluate proposals where the dollar volume is of sufficient magnitude that it should be looked at.

Mr. HARDY. In any event, at that time there were no inhibitions against awarding a contract to a firm that refused to give you cost data?

Mr. SAPORITO. No inhibitions? I am not a policy man, but I do not believe so.

Mr. HARDY. How about—

Mr. SAPORITO. The Air Force regulations at that time, if they contained anything I don't know, but I don't believe so.

Mr. HARDY. You don't know of any regulation that required you to take other steps if the contractor, prospective contractor with whom you were negotiating, refused to give you cost data? What would be your alternative? Turn up your nose at them and say, "I'll go ahead and get another one"?

Mr. SAPORITO. I didn't hear that.

Mr. HARDY. I say, what would be your alternative if he refused to give you that, say, go ahead, go to somebody else—

Mr. SAPORITO. If he made that statement?

Mr. HARDY. Did you ever have that happen to you? I am not thinking about this particular one.

Mr. SAPORITO. Yes, I think so. I think that has happened.

Mr. HARDY. What I am trying to get at is, what alternative you have or you had at that time in case of negotiating with a contractor who refused to give you cost data?

Mr. SAPORITO. There are certain alternatives. I took it up with the director and took it on up to my division chiefs and presented the problem that we are looking for cost data and were not getting it. As a matter of fact, my memory does recall now that—I believe after this particular contract we are talking about, the big one, the Air Force did have a requirement that asked us to submit problem areas to higher headquarters echelon, which we did.

Mr. HARDY. Did you send this one in?

Mr. SAPORITO. No, sir; not this one. I think it was after this.

Mr. HARDY. I mean the problem, I don't mean the contract, I mean the problem of securing cost data.

Mr. SAPORITO. Did I send this one into headquarters AMC? No, sir; I took it up at the directorate level.

Mr. HARDY. What did he say? "Go on, forget it. Go ahead and do the best you can?"

Mr. SAPORITO. No, he didn't say that to me at that time. We pursued the matter. We exhausted all possible avenues, I believe, to try to get this data.

Mr. HARDY. You didn't get it, so you awarded the contract? Go ahead.

Mr. GUBSER. With these four witnesses here, could we expand upon that? I would like to know just how many avenues you did exhaust and what they were?

Mr. SAPORITO. As I mentioned, I took it up to my respective bosses.

Mr. HARDY. What did he do, or does the file reflect it? I would like to know just how much of a point the Government made of this cost data in negotiating this contract. There ought to be something in this file that would tell us that.

Mr. SAPORITO. I can only speak on my behalf again that I did bring it up. We personally had many, many discussions with the Hewlett-Packard people with regard to this.

Mr. GUBSER. You took it up to the directorate level?

Mr. SAPORITO. I believe that some high-level Hewlett-Packard people were also involved from the correspondence.

Mr. GUBSER. Were you the contracting officer in some of these contracts?

Mr. COUNTRYMAN. On two of them, but—on two of them.

Mr. GUBSER. Did the question of cost data ever enter into your negotiation?

Mr. COUNTRYMAN. Yes. On the RFP that we sent out to the contractor, we had requested the submission of the DD-633.

Mr. GUBSER. And it was specifically refused, is that right?

Mr. COUNTRYMAN. They refused, yes.

Mr. GUBSER. What is that?

Mr. COUNTRYMAN. Yes, they refused.

Mr. GUBSER. Did you go back at them again? Did you try again?

Mr. COUNTRYMAN. No. No.

Mr. GUBSER. Was this before or after Mr. Saporito took this to the directorate level?

Mr. COUNTRYMAN. This was after in this case, after he took it.

Mr. GUBSER. The point I am trying to establish here is that there is a very definite point that was made of this in the negotiations leading to the contract.

Mr. HARDY. You know that is one I am glad you brought up because I forgot about it, and I was about to miss a very good point.

I meant to follow that one up because that was one that we pursued to a limited degree, I believe, with Mr. Bannerman. Who, for instance, approved the—what was it—form 633? Who approved the waiving of the 633? I have it before me. That is this thing to submit the costs, the same thing you were talking about.

Mr. GUBSER. Yes. I didn't know the number though.

Mr. HARDY. He used it there a minute ago, which reminded me of it. On contract 6625712, was that yours, Mr. Countryman?

Mr. COUNTRYMAN. No, it isn't.

Mr. HARDY. Well, anyway, this discussion I think we had with Mr. Bannerman here a while ago—Mr. Pike, I believe, raised it, or Mr. Lankford raised it—

Mr. WOODS. Mr. Lankford raised it on 84.

Mr. HARDY. The Hewlett-Packard Co. had this to say in the letter: "We do not believe you require form DD-633, Cost and Price Analysis."

Now, who had the responsibility for saying, "No, we don't have to have it." Was that yourself?

Mr. SAPORITO. No, sir. As a matter of fact—

Mr. LANKFORD. I have the original letter right here. It was attention Charles Tate.

Mr. COUNTRYMAN. I think on the contract in question, Mr. Chairman, is it 28645?

Mr. LANKFORD. 31884.

Mr. COUNTRYMAN. 31884 and on those two contracts I was the contracting officer.

Mr. HARDY. Did you waive the form 633?

Mr. COUNTRYMAN. I have to take responsibility of discontinuing the effort to get a DD-633. I will have to take that.

Mr. GUBSER. Let's get this very clear here; the form DD-633 was requested?

Mr. COUNTRYMAN. Was requested.

Mr. GUBSER. Right. Hewlett-Packard refused and you did not make any further effort to get it and you acceded to Hewlett-Packard's position, correct?

Mr. COUNTRYMAN. We did not make any effort to get the DD-633.

Mr. GUBSER. You asked for it and it was refused?

Mr. COUNTRYMAN. It was refused.

Mr. GUBSER. And you acceded?

Mr. COUNTRYMAN. And I acceded, yes.

Mr. GUBSER. And then a contract was—

Mr. COUNTRYMAN (interrupting). Negotiated.

Mr. GUBSER (continuing). Let to Hewlett-Packard?

Mr. COUNTRYMAN. Yes, sir.

Mr. GUBSER. In other words, you considered that costing data wasn't directly pertinent; isn't that right?

Mr. COUNTRYMAN. I would have to say yes. I evidently determined that we, under the criteria established at that time that, we didn't have to have it.

Mr. GUBSER. Thank you.

Mr. HARDY. Now, I think you should identify that criteria. I want to understand what we are talking about. We have had testimony here this morning about this catalog business and the letter from Hewlett-Packard says—

Since the instrument on which we are bidding is a standard commercial unit offered at the nationally advertised price, we do not believe you will require form DD-633.

Is that the basis on which you didn't require it? Maybe that is the reason Mr. Saporito couldn't get the cost data, because you folks over in your negotiating sections were just letting them get away with it.

Mr. SAPORITO. May I explain something, sir, at this point?

Mr. HARDY. Anybody that can explain anything, please do.

Mr. SAPORITO. I believe Mr. Highwarden can also check this statement.

Under the Air Force system we had a boilerplate contract and there was a section—I don't know the exact section—we had cost-data requirements. In this particular block the RFP would indicate if we wanted cost data and we marked it accordingly, and we would mark this to get cost data.

Mr. HIGHWARDEN. May I read a section from the ASPR that was in effect at the time?

Mr. HARDY. Please, if it will help clear this up.

Mr. HIGHWARDEN. 3-807.6, that was preceded by 3-708. This has since been removed from the ASPR. Subject: "Sole Source Items."

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers' use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally consummated with the contractor, the contractor's price lists and discount or rebate arrangements should be examined and negotiations conducted on the basis of the "best user," "most favored customer" or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual procurement being negotiated. When a contractor whose product is required because of its proprietary character or whose technical assistance is essential declines to negotiate a profit or fee in accordance with the considerations and factors set forth in ASPR 3-808.1 or 3-808.2, or demands a profit or fee which the contracting officer considers to be unreasonable in relation to the supplies to be furnished or services or work to be performed, the procuring activity concerned should attempt to develop an alternate source of supply.

Mr. HARDY. Well, now, in this case what did the procuring activity do? It decided not to insist on getting cost data; is that right? And, if so, who made the decision? That is what I am trying to find out. I am trying to find out who made the decision to disregard the cost data? I am not saying it was or was not in keeping with the ASPR. I don't know.

Mr. COUNTRYMAN. On two of the contracts I will take the responsibility, sir, that I discontinued the effort to get the cost data, on contract 28645 and on contract 31884.

Mr. HARDY. Now, why did you do it? How did you justify it?

Mr. COUNTRYMAN. Mr. Chairman, it was my understanding at that period of time that we could request cost data from a contractor but he need not furnish it to us on standard commercial items. This was my understanding at that time.

Mr. HARDY. Well, now, on standard commercial items. Who made the determination that these were standard commercial items? On standard commercial items where a competitive price had been established, would that enter into it?

Mr. HIGHWARDEN. That was not in the ASPR, sir. What I wanted to point out to you with regard to reading that particular section of the ASPR is this was one of the bases that contractors used to refuse to furnish the cost data and they can adopt some—

Mr. HARDY. You mean that ASPR was the basis?

Mr. HIGHWARDEN. Yes, sir; the fact that it says, "Sole source items. When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers' use of the techniques of price and cost analysis may not always be possible," and then tells how you should proceed on the basis of best user, most favored customer, and so forth.

What we did specifically at that time, and without regard to this particular contract, was to accumulate a list of these suppliers with whom we had had problems and those lists were periodically submitted to Headquarters AFLC, to the pricing organization there, who said they were going to take what steps they could to bring about, if possible, revisions in our procedures which would enable us to have a little more authority to demand pricing or cost data.

Mr. HARDY. I wish I could get away from the feeling that in these procurements, and I am wondering whether or not it runs all through your procurements, but in these procurements I get the feeling that you didn't even really try very hard to get cost data, and you didn't try very hard, certainly, to get competition on the items where competition was available. At least that is the impression that I get, and I could be wrong.

Mr. HIGHWARDEN. I can understand where you could have that feeling, sir, because I listen and I get sort of the same impression. I am aware that we made as great an effort as is possible in the face of the contractors continuing to say, "No, no, no, no." You can go just so far.

Mr. HARDY. What you are saying is the only thing you could have done would be to say, "Well, we will just have to try to find somebody else. You won't cooperate."

Mr. HIGHWARDEN. We had no other alternative if he continued, to refuse or to make the award to him. We had two alternatives, one, to make the award, and to try to obtain the other source.

Mr. HARDY. But you didn't try very hard to obtain another source?

Mr. HIGHWARDEN. If there was no other source available.

Mr. HARDY. Well, not right handy, anyway. I think that is about as far as I want to go with that.

Mr. GUBSER. May I ask Mr. Countryman one quick question?

Mr. HARDY. Go right ahead.

Mr. GUBSER. I think the record ought to show something about the performance on these contracts that you are up here about today. Have there been any complaints at all?

Mr. COUNTRYMAN. Sir, the contracts were, as previously read, were sent to Middletown for administration—

Mr. GUBSER. What I meant is, have deliveries been made on the items contracted for?

Mr. COUNTRYMAN. I really cannot answer that question.

Mr. GUBSER. You never heard of anything unsatisfactory at all?

Mr. COUNTRYMAN. No, sir; I have not.

Mr. GUBSER. In other words, you negotiated a pretty good deal for the Government; didn't you?

Mr. COUNTRYMAN. We negotiated a contract.

Mr. PIKE. As long as we are going to sit here and ask the most leading questions we can, have you ever heard anything good about the contract?

Mr. HARDY. Don't try to answer that one, because—

Mr. COUNTRYMAN. I have heard nothing either way.

Mr. GUBSER. That is a good answer.

Mr. HARDY. Now, I might just raise one other little question in connection with this. Would you be surprised to know that Hewlett-Packard Co. contends that this was not a sole source, that these were not sole source contracts?

Mr. COUNTRYMAN. I don't know what the basis of their—

Mr. HARDY. You don't have to answer that one, either, but in a letter to the General Accounting Office, Hewlett-Packard said—

We should like to emphasize that our views as to your rights of inspection relate solely to your demand for inspection of cost records of items sold at prices based "on established catalog prices of commercial items sold in substantial quantities to the general public." The contracts to which your demand relates do not involve the type of situation in which the Hewlett-Packard Co. is either (a) the only available source * * *.

So you must have had other sources. You contracted with them on a sole source basis, but they said they were not the only available source. So they knew something about what was going on that you didn't know.

Mr. GUBSER. Which is the number of sole source contract that you are speaking of?

Mr. COUNTRYMAN. I am not sure which one—

Mr. GUBSER. Well, the one that was sole source.

Mr. HARDY. Two of them.

Mr. COUNTRYMAN. 28645 was one of them.

Mr. GUBSER. What is it?

Mr. COUNTRYMAN. 28645.

Mr. GUBSER. What was the other one? What about a company called Ransom Research, on that one?

Mr. COUNTRYMAN. On 28645?

Mr. GUBSER. Yes. Is it AF33(604)28645? Didn't Ransom Research have something to do with that?

Mr. COUNTRYMAN. The name doesn't ring a bell, sir.

Mr. GUBSER. Is there a company called ADYU?

Mr. COUNTRYMAN. That doesn't mean anything to me.

Mr. GUBSER. What is the other one, the other contract? What was 22221, was that one sole source?

Mr. SAVORITO. I don't know, sir.

Mr. YOUNG. 22221 is the one that has the FXR quotation, sir.

Mr. GUBSER. Was that sole source or not?

Mr. YOUNG. I think this originally started as sole source and that was the one that came back and went out to the two companies.

Mr. GUBSER. General Radio manufactured that item, didn't they?

Wait a minute, Probam & Tensor, Sun Electric, Ballantine, FXR, PRD, Sperry, Narda, General Microwave, Wave-Form, aren't they competitive in those items?

Mr. YOUNG. They are competitive in this area, sir, but I am not sure on these certain items.

Mr. GUBSER. I have got prices listed for this item for them. They must have had them in their catalogs. Doesn't Jetronics and Berkeley submit prices on bid on procurements of this kind?

Mr. HARDY. Let us see if we cannot bring this to a conclusion.

Mr. YOUNG. I would like to explore with you briefly the current procedure for handling procurements of this kind, particularly as they relate to some of the kinds of things that we discussed a little earlier. In the contract where Mrs. George was involved, on this kind of a procurement you had competition on two or three items. Is it the practice after you receive a price from a new source to go back to the original proposer and say: "So and so sent in a bid lower than yours, do you want to cut your price"?

Mr. YOUNG. It is not the practice, sir. The practice is to give everybody equal treatment.

Mr. HARDY. Is it the practice, having secured new prices, to call the other bidders on the phone and say: "Would you like to revise your price?" without telling them somebody else has come in with a lower one?

Mr. YOUNG. The practice would be not to disclose any prices to anyone else has to what the other person had bid. Through the process—

Mr. HARDY. Wouldn't it be true, if this kind of procedure does exist, wouldn't it be true that if, using the principals that we had in this case, if Hewlett-Packard had its sole source proposal in and subsequently you discovered that a couple of items that somebody else could furnish, and you asked them for quotations, then under what circumstances do you notify Hewlett-Packard that they have a right to make another proposal?

Mr. YOUNG. The normal situation, sir, would be to extend the period of time for submission of a quotation and give all of them the same chance. If you had Hewlett-Packard who had previously submitted a quotation, and you found about two other ones, if you gave them, say, until the 15th of the month you would also give Hewlett-Packard until the 15th to modify their bid if they desired.

Mr. HARDY. Well, in this case the record clearly shows that Hewlett-Packard changed its prices on the very day that the other bids were received.

Mr. YOUNG. Yes, sir.

Mr. HARDY. Then there is one other aspect of this record that I would like to relate to your present procedure. Having gotten your prices in, do you then go back to a chosen prospective contractor and say "Do you want to give us an across-the-board discount now"?

Mr. YOUNG. No, sir; the policy would still be, everybody fair and equal treatment.

Mr. HARDY. This contract looks like that is what happened.

Mr. YOUNG. It could be, sir. It could be purely a coincidence.

Mr. HARDY. I hardly see how you would have that many coincidences in this kind of a thing.

Mr. YOUNG. Mr. Chairman, there is one of the telegrams in here which was dated on the 12th, which was the same date that Hewlett-Packard made their change. It shows it was received at 3 something in the afternoon in the teletype office. Under a normal situation since our work hours close at 4:15, that would not normally have been received until the next day, which would have been the 13th.

Mr. REDDAN. Wasn't that just confirmation?

Mr. HARDY. I was going to get to that.

Mr. YOUNG. That I don't know.

Mr. HARDY. Don't you have reason to believe that was simply a confirmation of a telephone conversation?

Mr. YOUNG. It could be; I don't know.

Mr. COUNTRYMAN. I don't know if this would be in order, but could it be established that a TWX came to Hewlett-Packard through Crossley Associates at some point in time, and that whoever changed the contract came in on the 12th based upon a message that may have been dated the day before? I don't know.

Mr. HARDY. I don't know whether it could or not, and neither do you know whether it could be established that actually Mrs. George called the Crossley Associates and said you had better come in here and straighten this thing out or you are going to lose the bid. I don't know that she did and I don't want to suggest that she did, but the circumstances surrounding this raise some questions of dubious propriety in my mind, which makes it all the more difficult to understand why Mrs. George is not even available for questioning by the staff of the committee. And I repeat what I said this morning; if she is not capable of being questioned by the committee and cannot account for her own performance, then she is not capable, in my book, of working for Uncle Sam in any capacity.

Mr. PIKE. Is it established she is working for Uncle Sam in the same job?

Mr. YOUNG. Yes, sir; she is working at Defense Electronics in a position—you must recognize one thing. Since last July our mission has changed, buying test equipment, we are now the Defense Supply Agency. Our procurements are the bits and pieces, resistors, transformers, switches, relays, and various small components, that is it.

Mr. PIKE. I am not interested in what she is buying, is she still working as a buyer?

Mr. YOUNG. She is still working as a buyer; yes, sir.

Mr. PIKE. I would like to put on the record the fact that I share the chairman's misgivings.

Mr. HARDY. "Misgivings" is rather mild.

In any event, that kind of a procedure of calling one contractor and negotiating further with him after somebody else had submitted proposals would not be permitted under your present procedures?

Mr. YOUNG. That is correct, sir.

Mr. REDDAN. Was it permitted at that time?

Mr. YOUNG. I cannot answer that, sir. It was not, as far as I can see, ever authorized.

Mr. REDDAN. Can you be responsive to that question, Mr. Highwarden?

Mr. HIGHWARDEN. It has not been permitted since I have been with Government procurement.

Mr. REDDAN. And that has been how long, sir?

Mr. HIGHWARDEN. 1948, May 14 or 15.

Mr. REDDAN. Thank you.

Mr. HIGHWARDEN. You mean to apprise one contractor of another contractor's bid? That is correct.

Mr. PIKE. Or even to just say, not necessarily to give them the figures, but just to say we have gotten a bid in here which makes yours not look so attractive?

Mr. HARDY. Well, anything further?

Mr. PIKE. No, sir.

Mr. HARDY. Gentlemen, let me thank you very much for your helpfulness. I hope that we have clarified this situation with respect to cost data as distinguished between the requirements for it for procurement and the requirements for it for auditing purposes. I hope also that the existing ASPR's are not interpreted by you procurement people as precluding the right to secure cost data. You heard Mr. Bannerman's testimony?

Mr. YOUNG. Yes, sir.

Mr. HARDY. I had understood that some of you folks were construing the existing ASPR to prohibit you from securing cost data where there are catalog prices. I hope if you had any misgivings on that it is cleared up.

Mr. YOUNG. Yes, sir.

Mr. HARDY. Really, the more disturbing aspect of this thing is the one which developed collaterally, involving what has a possibility of being some shenanigans. I am quite disturbed about that. Under other circumstances I would want to ask that these files be reviewed so that we could have direct testimony concerning the documents which ought to be in the files but which obviously are not there now. We cannot establish at this point, perhaps, whether or not actually there were some shortcomings in the review and approval by Mr. Highwarden's office of that particular contract. I don't know, but I have a question at the moment as to whether or not they did a proper job. But the two aspects of this particular thing that we have had before us; one, the availability of cost data to the GAO, and the other one is performance of some of your contract people.

Mr. YOUNG. Yes, sir.

Mr. HARDY. And, as I say, I wish that there were an opportunity for a review of these files so that we could get direct testimony as to what should be in them and their supporting evidence, but since we are going to have to keep them for a while longer in order to complete our work, we probably will just have to dispense with that and let the files speak for themselves.

So, again, our thanks to each of you for your helpfulness. We will let the committee stand adjourned subject to call of the Chair.

(Whereupon, at 4:21 p.m., the subcommittee adjourned.)

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