



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

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B-210718

RELEASED

MARCH 8, 1983

The Honorable Carl Levin
Committee on Armed Services
United States Senate



121038

Dear Senator Levin:

Subject: Followup on the December 1981 Dollar
Threshold Change for Certified Cost or
Pricing Data (GAO/PLRD-83-49)

This report responds to your October 13, 1982, letter which sets forth questions and observations from a constituent regarding a recent change in the Truth-In-Negotiations Act (Public Law 87-653). The change in the act increased the threshold for the mandatory submission and certification of cost and pricing data for negotiated procurement from \$100,000 to \$500,000. Your constituent pointed out that:

- Field reviews or audits of proposals in the \$100,000 to \$500,000 range have resulted in considerable savings, many times more than the cost of resources to achieve the savings. Thus, the practice of reviewing or auditing these proposals in this range should be continued.
- The savings were realized even though (1) the contractor had full knowledge that certified data would have to be presented and (2) a full pricing review would have to be performed by the Department of Defense (DOD) auditors. Because the deterrent factor of certified data, defective pricing remedy, and audits will no longer be present, it is very likely that the proposals for contracts under \$500,000 will become more inflated.
- The Cost Accounting Standards has also been effective in reducing DOD acquisition costs. However, this program becomes almost useless when DOD has no cost or pricing data to examine.

GAO opposed the threshold increase both in testimony before the House Committee on Government Operations on June 3, 1981, and in our August 17, 1981, letter (see enc. I) to the Deputy Secretary of Defense for several of the same reasons advanced by your constituent.

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We agree with your constituent's observation that field reviews or audits of proposals in the \$100,000 to \$500,000 range have been cost effective and should be continued. It should be made clear, however, that the determination of the need for auditing proposals is independent of the statutory threshold for providing certified cost or pricing data. That is, the need for preaward proposal audit is and always has been at the discretion of the contracting officer.

DOD's Individual Procurement Actions Reports (DD-350 System) do not identify whether a procurement action was subjected to a preaward proposal audit. We are, therefore, unable to readily determine which of fiscal year 1982's 5,113 transactions in the \$100,000 to \$500,000 range (amounting to over \$1 billion) were audited. The Defense Contract Audit Agency, who has the responsibility to perform contract audits, advised us that it performed 2,976 preaward proposal audits in the \$100,000 to \$500,000 range in fiscal year 1982, which is 25 percent fewer than in fiscal year 1981. It is likely that the amendment to the Truth-In-Negotiations Act played a part in this decline.

Your constituent's final concern is what impact an increase in this threshold will have to the usefulness of the Cost Accounting Standards. Nineteen standards were promulgated, pursuant to Public Law 91-379, to achieve greater uniformity and consistency in the cost accounting practices of DOD contractors. Our report, "Agency Implementation of Cost Accounting Standards: Generally Good But More Training Needed" (PLRD-82-51, Mar. 24, 1982), stated that the standards were being well implemented by the responsible Government agencies. Cost Accounting Standards regulations provide that firm fixed-price contracts or subcontracts awarded without the submission of cost data are exempt from the standards. To the degree that the increased threshold influences contracting officers to forego cost data on fixed-price contracts, the numbers of contracts which would be exempt from the requirements to follow the standards would increase.

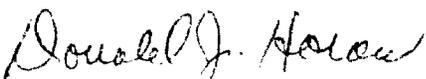
We continue to be concerned that the threshold change to Public Law 87-653 may reduce the Government's assurance of fair and reasonable prices on negotiated contracts in the \$100,000 to \$500,000 range. Accordingly, we plan to initiate a survey to determine (1) whether the threshold change has influenced contracting officers to obtain fewer preaward audits and (2) if so, what alternatives have been used to obtain the information needed for effective contract negotiations.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

We trust this reply is responsive to your constituent's concerns. Please advise us if further information is required.

Sincerely yours,


Donald J. Horan
Director

Enclosure



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

AUG 17 1981

The Honorable Frank Carlucci
Deputy Secretary of Defense

Dear Mr. Secretary:

This letter is to expand upon GAO's opposition to raising the dollar threshold in P.L. 87-653, the Truth-in-Negotiations Act from \$100,000 to \$500,000. In June 3, 1981, testimony on H.R. 3519 before the Subcommittee on Legislation and National Security, House Committee on Government Operations, GAO stated, in part,

"the lifting of the threshold for the Truth-in-Negotiations Act appears to us to be very dubious, since contracting officers now have a great deal of latitude in deciding which contractors' submissions must be audited. Impact on audit workload has been cited as the reason for raising this threshold. Thus, this matter appears to need further study by OFPP."

The impetus for the change appears to stem from the Deputy Assistant Secretary of Defense's (AE) (Assessment) April 8, 1981, "Memo for Acquisition Process Review Team Leaders," which included the following as recommendation 10b:

"raise the threshold for contractor costing input from \$100K to \$500K to accommodate inflation and reflect current auditing procedures. (Paperwork load is such that only data for contracts over \$500K is actually audited today.) Action Required: DEPSECDEF recommend that OMB (OFPP) initiate legislative change P.L. 87-653."

The above is one of 31 recommendations which came out of the Department of Defense's "intense internal scrutiny" of its acquisition practices and was subsequently included in H.R. 3519.

On June 23, 1981, Secretary Weinberger's statement before the Committee on Armed Services, House of Representatives, stated in part:

"Other Procurement Provisions of H.R. 3519

Section 903 raises the threshold ***and certification of cost and pricing data from \$100,000 set in 1962 to \$500,000***. The current thresholds have been clearly overtaken by inflation in the economy. The paperwork and resources involved simply cannot be justified for any perceived benefits in retaining these thresholds. Complying with current thresholds extends procurement leadtime, diverts manpower resources from more essential work, and is costly and burdensome to DOD as well as industry. (Underscoring for emphasis.)

In considering the merits of the proposed increase, a clear distinction must be made between preaward and postaward audits. The April 3, 1981, Defense study statement that the "paperwork load is such that only data for contracts over \$500K is actually audited today," refers to postaward audit. While DCAA does not generally perform postaward audits on these contracts they are generally requested to perform some degree of preaward audit of contractors' proposals over \$100,000. DCAA provided us with fiscal year 1980 data which shows they achieved a net savings of \$173.9 million from audits of 13,258 proposals in the \$100,000 to \$500,000 range.

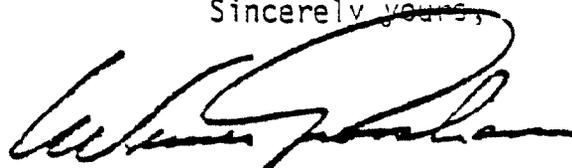
In the absence of competition the contracting officer generally has no alternative but to rely on the audit of the contractors supporting cost or pricing data to assure that a reasonable price has been proposed. Regulations already provide ample latitude for the contracting officer to waive a preaward audit if other basis exist for evaluating the price proposed. On over 13,000 occasions during 1980, however, the contracting officer felt the best interest of the Government would be served by requesting such audits. Unquestionably, the requirement that contractors provide and certify supporting cost or pricing data substantially increases DCAA's ability to quickly and effectively perform preaward audits.

We are not aware of any DOD or industry study that shows an incremental cost burden is incurred by industry to meet the Truth-in-Negotiations Act requirements. Normal business practice would dictate that contractors document the basis for their proposals. As implemented, the Act simply requires that the contractor certify the accuracy of and make the data available to the contracting officer's team. Certification provides the basis for retro-active price adjustment, if warranted, without costly litigation to establish intent.

Thus, we find no evidence to support the statement that raising this threshold will relieve DOD or contractors of a costly burden. In fact, it is our opinion that raising the threshold could invite increased overpricing and reduce DCAA's ability to make expeditious and effective preaward audits without any compensating benefit to DOD.

We are providing copies of this letter to the Chairman and Ranking Minority member of the House Armed Services, Operations and Appropriation Committees and the Senate Armed Services, Governmental Affairs and Appropriations Committees. We would also be happy to discuss this issue further if you so desire.

Sincerely yours,



Donald J. Horan
Director

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