Deputy General Counsel, Rm. 7031
Mr Keller
Mike


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

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Remarks of

ROBERT F. KELLER, GENERAL COUNSEL

before the

Eighth Annual Institute on Government Contracts

of

The Southwestern Legal Foundation, Dallas, Texas, DLG01239

on the

Role of the General Accounting Office in the Enactment and Implementation of Public Law 87-653--
The Truth in Negotiations Act

It is a real pleasure for me to participate in your Eighth Annual Institute on Government contracts. I want to discuss the role of the General Accounting Office in the enactment and implementation of the "Truth in Negotiations Act" and to give you our views on some of the recent ASPR changes.

But first, I want to compliment the Foundation for their interest in sponsoring the Annual Institutes on Government Contracts. It is a very necessary ingredient if we are to have a healthy Government-industry relationship. It is most important that representatives of industry

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[The Role of GAO in the Enactment and Implementation of P.L. 87-653]

and representatives of the Government get together in meetings such as this to exchange ideas and to try to solve some of the problems in the very complex field of Government contracting. We may not always agree but we cannot help but have a better understanding of our respective positions.

Extensive Use of Negotiated Procurements and a New Auditing Right by G.A.O.

The General Accounting Office played a major role in the enactment of Public Law 87-653. You may recall that in 1951, during the Korean emergency and when the use of negotiated contracts was on the upswing, Congress gave the General Accounting Office a new and important auditing right. It provided that all negotiated contracts should include a clause giving the Comptroller General access to any directly pertinent books and records of the contractor or any of his subcontractors engaged in the performance of such contracts or subcontracts.

Concern by Congress and G.A.O. Audits of Defense Contracts

The military departments continued to use the negotiating authority beyond the period of Korea. Soon thereafter, the Congress became concerned about the extensive use of this negotiating authority. Responding to this Congressional concern, the GAO in 1956, equipped with its access-to-records authority, embarked upon an intensive review of the defense procurement program, primarily directed into audits of defense contracts.

G.A.O. Disclosures

Starting in 1957, we issued a series of reports to the Congress, our "blue-book" reports. We found numerous cases of overpricing of defense contracts because of inflated or erroneous estimates of costs. Typically, a report would show that a negotiated price was overstated because reasonably firm costs were overestimated or recent cost experience was not adequately considered.

At this point, let me say that our audit work did not justify a conclusion that the great majority of defense contractors willfully misled the Government. Neither did our work establish that Government contracting officials were not diligent in trying to protect the Government's interests. Rather our work indicated that given the magnitude, complexity and uniqueness of the items being purchased, and the lack of a competitive atmosphere, the Government negotiators often were not in a good position to negotiate advantageous prices for the Government, because they were not aware equally with the contractor of all the cost and pricing factors influencing the prices proposed.

Air Force Requirement of Data Certification

As a consequence of our early reports, the Department of the Air Force in 1958, imposed a requirement for an early form of data certification. Then, in October 1959, a certification requirement was adopted for all the military services as part of a major revision of the Armed Services Procurement Regulation dealing with pricing policies and techniques. The regulation provided that in the absence of effective price competition, the Government's negotiating team must be in possession of current,

complete and correct cost or pricing data before decisions were made on contract prices. A certificate was required when the amount of the procurement action exceeded $100,000, and the price negotiated was based more on the contractor's actual or estimated cost than on effective competition, established catalog or market prices, or prices set by law or regulation. This ASPR coverage was the forerunner of the present law. However, it did not provide for a price reduction in the event faulty data was submitted.

Concern of Congress in 1959 and 1960

During 1959 also, the Congress was giving consideration to the matter of excess profits and to the Renegotiation Act, which was due to expire on June 30, 1959. While it was generally agreed that the Renegotiation Act should be extended, there was disagreement in the Congress as to whether profits earned by contractors under incentive-type contracting should be afforded special consideration in renegotiation.

The conflict regarding the treatment of these incentive profits under the Renegotiation Act was resolved by extending the Act (at that time, to June 30, 1962) and directing the Armed Services Committees of the House and Senate, in connection with a study of the Renegotiation Act, to make studies of the procurement policies and practices of the Department of Defense and the various services, including examination of the various methods of procurement and types of contracts, and their effectiveness in achieving reasonable costs, prices, and profits. The House and Senate Armed Services Committees each set up a special subcommittee to carry out this directive. Congressman Carl Vinson,

former Chairman of the House Armed Services Committee, became Chairman of the Special Subcommittee on the House side, while Senator Strom Thurmond became Chairman of the Procurement Subcommittee on the Senate side.

During the Spring of 1960, the House Subcommittee held extensive hearings, giving particular attention to incentive contracting. Chairman Vinson made clear his view that incentive contracting was particularly subject to abuse, in that the validity of the target cost estimate depended upon good estimating by the Government at the negotiating table. For example, if a contractor overstates his costs, he increases his estimate of costs and, in turn, his profits based on estimated costs. On the strength of the GAO audit findings, Chairman Vinson concluded that incentive profits were all too often being increased at the bargaining table by reason of unrealistically high estimates in relation to costs of actual performance.

The former Comptroller General Joseph Campbell, in his testimony before the Subcommittee, suggested the possibility of a contract provision to limit incentive profits to those cases where the contractor was able to show that the savings were due to his actual efforts in performance. GAO was asked to help prepare a bill along these lines--which we did.

Legislation Introduced

In May 1960, Congressman Vinson introduced a bill providing for limiting incentive profits to savings traceable to contractor efficiency in performance of the contract. The Department of Defense objected on the ground that it would be very difficult to apply. Almost immediately

the language was redrafted and introduced as a new bill, H.R. 12572. The new language also applied solely to incentive contracts, but it required the submission of certified cost data, and it introduced the idea of a price reduction clause which would operate if it was found after audit that the target cost or price was increased as a result of any inaccurate, incomplete, or noncurrent data submitted by the contractor in the course of negotiations.

House Action and Senate Action on H.R. 12572

H.R. 12572 was reported by the House Committee and was passed by the House of Representatives on June 24, 1960. Meanwhile the Senate Subcommittee on Procurement, chaired by Senator Thurmond, was hearing testimony on the subject. In August 1960, a report by the full Senate Committee on Armed Services was issued based on these hearings. The Senate Committee concluded that "Most, if not all, of the problems in the Department of Defense can be solved administratively." It recommended that the ASPR be amended to require, in addition to the then current requirement for a certificate, a price reduction clause applicable to incentive contracts, permitting adjustment of the target cost to exclude any amounts by which the target cost was increased because of inaccurate, incomplete, or out-of-date cost data submitted by the contractor.

A Revision of ASPR

No final action was taken on H.R. 12572; and on January 31, 1961, the ASPR was amended to include a price reduction clause. But in implementing the Committee's recommendation, the Department of Defense decided to include all types of negotiated fixed-price contracts in the coverage.

A new Bill is Introduced

The matter rested until March 1961, when Congressman Hébert of Louisiana re-introduced the Vinson bill (H.R. 12572) as H.R. 5532. The Department of Defense took the position that this legislation was no longer necessary in view of the ASPR coverage. Our Office disagreed. GAO thought that the ASPR coverage should have been more comprehensive and should have provided for audit of the data.

House Action

The House Committee on Armed Services approved the legislation in April 1962. But there was a minority report stating that the objectives of the bill were better met by regulation than by statute. In the House Floor discussion on the bill Congressman Hébert cited information he had received from GAO to the effect that the military departments were not following the ASPR certification requirements. We had found that while the Air Force was diligently applying the requirement, in about one-half of the Army and Navy contracts examined the certification requirement was applicable but not applied. In the subcontract area, we also found non-observance of the requirement, even in Air Force subcontracts. The House, on June 7, 1962, then passed H.R. 5532 by unanimous vote.

Senate Action

Again the matter rested with the Senate Armed Services Committee, this time chaired by Senator Russell of Georgia. Congressman Vinson, himself, testified before the Senate Committee in favor of the bill. He emphasized that the reason for putting the certification requirement into law was to insure the provision would be followed.

You will recall that the provision contained in the House version of H.R. 5532 applied only to incentive contracting. During the course of Mr. Vinson's testimony, several members of the Senate Committee advocated that this "truth-in-negotiations" requirement be extended to all types of negotiated contracts. Senator Russell pointed out that the limited coverage might drive contractors out of incentive contracts. And, as Senator Symington noted: "* * * it would seem to me that if there is any merit in such a certificate as to cost on an incentive contract, there is equal merit for a certificate on any contract."

DoD still adhered to its view that the law was not needed. Its spokesmen agreed, however, that the certification principle was applicable beyond incentive contracting. GAO also supported extending the coverage to all types of negotiated contracts.

Approval of Legislation by the Congress

On August 10, 1962, the Senate Committee approved H.R. 5532, with certain amendments. The final version of the "Truth-in-Negotiations" act which the Senate Committee approved on August 10, 1962, had been prepared jointly by representatives of the GAO and the DoD, in consultation with staff members of the House and Senate Armed Services Committees during the preceding two weeks. The bill became law on September 10, 1962, to be effective December 1, 1962.

Criticisms of the Legislation

The act, which has now been in effect for over 5 years, has not been without its critics. It has been suggested, among other things, that

the act is unduly harsh because (1) it reaches the "honest" mistake and (2) it affords no relief to the contractor in those cases where he understates his costs. Interestingly, in August 1963 Congressman Hébert, the sponsor of H.R. 5532, introduced legislation aimed at amending the "truth-in-negotiations" act to limit price reduction to those cases where the contractor knew the data was defective, and to permit offsets for losses due to defective data. That bill (H.R. 7909, 88th Congress) was not adopted. In fact hearings were not held on the bill by the House Armed Services Committee.

Opposition to the bill was based on two factors. First, if the honest mistake was exempted from the coverage of the truth-in-negotiations act, there would be little purpose in the law. There is already adequate protection against the "dishonest" mistake, or false statements in the civil and criminal fraud statutes which are on the books. The "Truth-in-Negotiations" Act was not designed as a punitive law but rather was designed to correct defective pricing where the contractor had the responsibility for submitting correct data in the course of negotiations.

Second, offsets, if they are to be allowed, should be limited. Otherwise, the Government is inviting the submission of carelessly prepared proposals and would be, to some extent, permitting a renegotiation of the contract. As you know, there is a limited offset provision in the new ASPR provisions set forth in Defense Procurement Circular No. 57, dated November 30, 1967. The new provisions would allow an offset in correcting a composite rate or in the case of the pricing of a single item.

G.A.O.'s Approval of the Legislation

In our view, the present law is based on a sound legal concept. Legal authorities recognize that it is unjust to allow one who has made a misrepresentation, even innocently, to retain the fruits of a bargain induced by such representation. In discussing the policy of imposing liability for innocent misrepresentation, Samuel Williston in his treatise on the Law of Contracts, states that, "The real issue is no less than this: When a defendant has induced another to act by representations false in fact though not dishonestly made, and damage has directly resulted from the action taken, who should bear the loss"? He believes that in a business situation every moral reason exists for holding the defendant liable. It seems to me that the "Truth-in-Negotiations" Act essentially embodies this basic legal concept.

In short, the "Truth-in-Negotiations" Act provides a reasonable and practical solution to the problem noted in our earlier audit reports--How can the Government procure its needs at fair prices in those areas where the normal forces of the market are not operating?

Is the Act Working?

But is the act working? Is it meeting expectations? We think it is. Certainly it would be foolish of me to say that the act is problem-free. We all know otherwise. But we in the General Accounting Office, and the officials of the Department of Defense, and the other agencies, are working constantly to improve the operations of the act.

GAO Report Recommendations

In our reports under Public Law 87-653 we have recommended:

-- Obtaining right of access by agency officials to performance cost information.

-- Instituting a regular program of postaward audits by Defense Contract Audit Agency.

-- Making postaward audits where contracting officers have reason to believe that cost or pricing data used in negotiations may not have been accurate, current and complete, or may not have been adequately verified.

-- Obtaining written identification of data submitted by the contractor in support of pricing proposals.

-- Revising the regulations to make it clear that the mere making available of data to the auditors without identification in writing does not constitute data "submitted".

-- Documenting procurement files where cost or pricing data were not requested or used to show the basis for concluding that the submission of such data could be waived because of adequate competition or prices that were based on catalog or market prices of a commercial item sold in substantial quantities to the general public.

Changes Made by DoD

The Department of Defense has revised its regulations to adopt substantially all of the GAO recommendations on the matters just mentioned. These changes were made by Defense Procurement Circular No. 57 which was issued on November 30, 1967.

I want to comment briefly on these changes.

DCAA Audits

The requirement which directs the Defense auditors to audit performance cost records in order to verify price data had been recommended by GAO for some time. It was adopted (with some assist from the Hill) and we think it is an important tool which will enable the Defense Contract Audit Agency to do a real effective job in verifying pricing data.

We likewise have no quarrel with Secretary Nitze's memorandum of September 27, 1967, which limits the use of the audit data to actually checking on defective pricing. In other words, he makes it quite clear that it is not to be used for repricing the contract or otherwise chipping away at the profit the contractor may have realized on that particular contract.

GAO Audits

However, it should be clearly understood that Secretary Nitze's memorandum has no effect on the right of the GAO to audit contractors' records. Our right is based on a statute which gives us the right of access under any negotiated contract.

I want to emphasize this point because this argument has been brought up by several contractors. It is also pertinent to the argument in the Hewlett-Packard case which was decided in the Government's favor by the Ninth Circuit Court of Appeals last fall. In that case, the contractor argued that the thinking of Congress at the time Public Law 87-653 was passed should affect the prior statute which was enacted back in 1951.

Submission of Data

We are particularly pleased that the new regulations (3-807.3(b)) make it clear that merely making data available to a preaward survey team, regardless of whether the Government auditors took time to look at them or not, does not constitute a submission under the law. Most of us wouldn't really have any problem with this except for the Board decision in the American Bosch Arma case, which said just about that in so many words. In other words, under that Board decision, if it was available it was a submission. Do you just turn over 20 file cabinets or two carloads of records and say that is the submission because it is available to the auditors? I know the Board subsequently modified that view, at least I think they did, and also I heard informal comments it really didn't intend what it said, but still it said it and it was in the decision. We think the new regulations have helped to clarify this.

Identification of Data

Now let us turn to the matter of identification of data. We think that a data certificate is really of very little use to the Government, or anybody else that might be looking at it, unless it is pretty clearly

known just what the certificate covers. The GAO has been a strong advocate for having better identification to tie in the data that was considered at the time of negotiation, and also to identify and make clear just what the contractor was submitting or identifying.

In our examinations we did find some serious deficiencies in this respect. I know that contractors complained at the time about the carloads of records they would have to submit. I really think that was pushing the argument too far to the other side. I believe a clear identification of what you are tying your data into; for example whether it is purchase orders or quotes received as presently required by 3-807.3(f) really answers the question and gives the Government sufficient information upon which to base its pricing. It also permits the Government to tie in its audit work, both preaudit and postaudit.

I think it should also help the contractors because they perhaps now are able to do away with submission of some of the evidence and back-up work that they submitted in the past merely by identifying data which is in their files.

Availability of Data

Another change we think is an improvement is the attempt to identify or pin down the time when data was reasonably available to the contractor. This is accomplished by the new ASPR 3-807.5(1). We in the GAO have always recognized that different types of data have different availability dates. And the new section in the ASPR advises that cutoff dates as to currency of data should be established by the negotiators. Also, I think it makes

it clear that there can be different dates for different things. Obviously, the overhead rate may not be as current as a new price received from a subcontractor.

We also agree with the new regulation that data on significant matters should be generally current as of the date of agreement on price.

Overs and Unders

I would like to comment on the question of "overs" and"unders". There has been considerable discussion and I guess a great deal of difference of opinion about allowing "unders" if you are going to knock off the "overs".

The original proposal that was circulated in this area said that setoff would be permitted when "inextricably interconnected." The regulation that eventually came out in ASPR 3-807.5(a)(3) said the same thing in different words. In effect it allows an offset in correcting a composite rate or in the case of pricing a single item.

On the setoff question, and the netting of "overs" and "unders", I am probably in the minority in Government--and I only have one vote at the GAO--but I do not believe the Government has to be quite so strict on the netting of "overs" and "unders". I don't think Public Law 87-653 said we had to be, and I don't think, as some have argued, that the legislative history supports the view that you can't take into consideration any substantial netting. It has been argued that because Congressman Hébert introduced a bill which would allow this to be done, it means that it couldn't have been done under the original law.

I don't buy the proposition that the introduction of a bill is a really serious piece of legislative history to support a certain view. If a bill is voted on and defeated, that is another proposition, but remember that although many bills are introduced in Congress each year some of them are not even considered and die on the vine, and some are unnecessary because the law already on the books would allow what is proposed.

Closing the Door

I do believe, however, that the Government did have its choice. I think it was decided by the Armed Services Board in the Cutler-Hammer case as to which way, at least from the Government's standpoint, it was going--and I really can't say the Board was wrong. In Cutler-Hammer the Board, after reviewing the legislation, took the position that no set offs would be allowed.

Limiting Setoffs to Particular Areas

It is a proposition on which you can make a good argument on both sides. I prefer to take the other side. I would, in my own view, limit the setoffs of "overs" and "unders" to the same areas. I don't think I would like to see an "under" on labor offset against an "over" on materials. Because then I believe you would be getting into a renegotiation of contract.

I know somebody is going to ask me why I stop there. I think I have to stop somewhere, and that is a reasonable stopping point. This is about the best answer I can give to a question of that kind.

Definition of "Cost or Pricing" Data

There is one change in the regulation which does cause me some concern, although perhaps I am concerned needlessly. It is the definition of the term "cost or pricing data" in ASPR 3-807.3(e). It is crucially important under Public Law 87-653. Prior to Defense Procurement Circular No. 57, cost or pricing data was defined as that portion of the contractor's submission which is factual. The requirement for certified data was said to be met when all of the facts reasonably available to the contractor up to the time of agreement on price and which might reasonably be expected to affect the price negotiations are accurately disclosed to the contracting officer or his representative.

Under the proposal circulated in May of last year, the regulation would have provided that cost or pricing data consist of all facts existing up to the time of agreement on prices and which might affect the price negotiation.

We felt that the latter format represented no fundamental departure from the existing definition given to the term cost or pricing data. However, industry had misgivings about the May 1967 proposed definition. The view was expressed that these changes could likely "result in a virtually unlimited scope of contractor liability, in terms of cost or pricing data which might in the future be held to be within the scope of the certificate and the defective pricing clauses."

It was urged instead that the data submission be limited to that data which the contractor did in fact use or, in accordance with normal business practice, should have used in framing his price proposal.

Meanwhile, in August 1967, along comes the Board decision in the Sparton case. The Board held in connection with the price reduction clause that a prospective contractor is not required to list each and every quote received from a prospective vendor, whose responsibility had not been previously evaluated and where it "concerns a part deemed to be critical."

The final definition in Defense Procurement Circular No. 57 states: "Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price."

I can appreciate industry's objection to the definition in the 1967 proposal. At the same time, I frankly am troubled by the implication in the Sparton decision that a contractor's duty to disclose vendor quotes may be limited. My concern is somewhat increased by the new clause in Circular No. 57. Suppose the contractor received but two quotes and he anticipates accepting the higher one. I wouldn't blame the contractor for estimating his price on the higher quote, the quote he is most likely to accept. But it seems to me that he probably should disclose both quotes to the contracting officer, even though he expects to accept the higher quote. He may finally decide to use the other vendor which is exactly what happened in the Sparton case.

In some cases, I question whether a contracting officer can really make a sound estimate of cost, or a sound evaluation of prices submitted to him, unless he is aware of these possible vendor sources. If many

components and many vendors' quotes are involved, I think there is a good bet that the contractor will end up selecting at least a few vendors who originally were not likely to be selected.

I don't mean to suggest that a contractor must disclose information of a useless nature, for example, vendor quotes which are obviously unacceptable or proposed production techniques which are at best remotely feasible at the time of negotiation. On the other hand, I have some question about supporting an interpretation of the regulation which limited that data submission requirement to data representing just the probabilities, and not the reasonable possibilities.

Defective Data--The Prime, Sub and Government

On March 4, 1968, the ASPR Committee circulated a proposed implementation of the Truth-in-Negotiations Act dealing with defective subcontractor cost or pricing data which has aroused much discussion. Let me back up a little before going into this latest ASPR proposal.

The Truth-in-Negotiations Act provides that subcontractors shall be required to submit cost or pricing data prior to the award of non-competitive subcontracts expected to exceed $100,000 in price. The reason for this requirement is not hard to imagine. Certain prime contract proposals, for example, provide for more than 50 percent subcontracting. When Public Law 87-653 was written it was intended that all of the prime contractor's price, and not only a part of his price, would be subject to the certification requirements of the law, and that the Government would be protected against defective subcontract data as well as defective prime contract data.

It soon became evident, however, that there were certain problems to consider. I'll illustrate with the case of the firm-fixed-price prime contract. Normally a prime contractor and the Government will agree on price and enter into a prime contract before the prime contractor enters into his subcontracts. The prime contract price may be based in part on cost estimates received from the prime's various suppliers. After the prime contract price is agreed upon, the Government no longer has a direct financial interest in the prime's subsequent dealings with his subcontractors. This is the case under the firm-fixed-price prime contract.

Under the Truth-in-Negotiations Act, however, the prime contractor is nevertheless required to obtain cost or pricing data and a certificate from his subcontractors. The question is, what purpose is served by requiring the prime contractor to obtain cost or pricing data from a subcontractor after the prime contract price has been established?

I think this question is answered under the proposed ASPR coverage.

The proposed ASPR coverage states, first of all, that where the prime contractor's price is based in part on subcontract cost estimates, the prime contractor generally will be expected to support his subcontract cost estimates with subcontractor cost or pricing data.

Secondly, and this is the key provision, the prime contract price will be subject to price reduction for defective data submitted by the prime contractor from his potential suppliers as well as suppliers already under contract with the prime contractor.

This coverage gives effect to the subcontractor part of the "Truth-in-Negotiations Act". An example will show what I mean.

The Government and the prime are negotiating for a production contract. In estimating the price of a component, the prime has a quote of $10,000 each from his supplier. Upon request from the Government the prime obtains and certifies back-up data from his supplier which supports the $10,000 per component quote. The prime and the Government finally do reach agreement on a price which reflects an anticipated cost for component of $10,000 each.

Now let us assume that in fact the supplier had furnished defective back-up data and that based on current data the estimated cost per unit should have been $9,000 instead of $10,000.

Possibility One: When the prime and the supplier later negotiate a subcontract, and the supplier is required to furnish a certificate, the prime discovers that the supplier had overstated his costs by $1,000. Accordingly, the parties subcontract on the basis of $9,000.

It is fair for the Government to reduce the prime's price by $1,000 per unit. I think you can all agree on this. Otherwise, the prime will benefit based on defective data furnished to the Government.

Possibility Two: The prime does not discover the defective data and he agrees to pay the subcontractor $10,000 per unit.

In this case the Government is the one "hurt" by the defective data while the subcontractor is the one benefiting. Yet I don't think it is unfair for the Government to obtain a reduction against the prime, leaving the prime to secure a reduction against the subcontractor.

I'll leave it with these two examples. I think that the ASPR coverage offers the best solution I have seen so far to the thorny problem of the subcontractor under the "Truth-in-Negotiations Act".

I'll add one postscript. If a supplier, for one reason or another, furnishes no data, or the Government does not insist on such back-up data, the prime contractor cannot be held liable for any defective subcontract data. It's that simple. There can be no price reduction for defective data if no data were furnished in the first place.

The Burden of Proof Argument

I would like to mention one further point. It concerns the November guidelines on the problems and consequences of submission of defective data and how they switch the burden of proof from the Government to the contractor. This is covered in ASPR 3-807.5(a)(2).

I really do not, at least in my view, think the issuance of the guidelines changed anything. I believe the decision of the Board, in the American Bosch Arma case said exactly what we now have, although perhaps they softened up somewhat in the Defense Electronics case. It really has been there all the time. The Board has recognized it and the new ASPR spells out what the Board has been saying in this area. Basically, that the natural and probable consequence on contract price of defective data is the amount by which the data was defective.

It is, of course, a rebuttable presumption. The Government has to show that it relied on this data and it certainly has the burden of the proof in that respect. Secondly, the contractor has to come in and

show that the defect in the data didn't have any significant effect or certainly did not result in an increased price, if such was the case.

I hope I haven't given you the impression that all GAO suggestions are agreed to by DoD. This is not so. For example, we made a recommendation in connection with the implementation of P.L. 87-653, that the contracting officer should maintain records to show just what was agreed upon with respect to each cost element and profit. The Department of Defense disagreed with the concept that contract prices should always be supported by specific agreements on each significant element of cost making up the total contract price.

We were concerned at the time that the effects of a defective data submission might be obscured by agreement as to a total contract price, without any indication in the negotiation file as to the individual cost element comprising the total price. Our fear on this score, however, has been somewhat alleviated. The Armed Service Board has held, in effect, that the negotiation of a total price does not negate the operation of a defective pricing clause.

Current G.A.O. Efforts

I'll give you some idea of our current efforts with regard to P.L. 87-653. While the Defense Contract Audit Agency (DCAA) will be undertaking most of the post-audit work of contracts subject to P.L. 87-653, we will test the effectiveness of DCAA's work and will perform selected reviews of our own.

We will be studying the effects of the new ASPR particularly some of the problem areas. We know that to obtain compliance with the implementing regulation, there must be cooperation between the Government and industry and a belief by both that the regulations are fair. This requires that the Government and the contractor recognize the problems each face. It is our intention to understand the problems each has and to strive toward an effective balance between implementing the act's objectives and avoiding imposition of unnecessarily burdensome requirements.

To this end, we will do preliminary work at contractor's plants and at various procurement offices of the military services. We thereby hope to achieve first-hand knowledge of the problems being encountered by agency officials and by contractors in complying with the regulations. We will consider whether or not these problems are the result of requirements that are not necessary or essential for the negotiation of fair and reasonable prices.

Before closing, I want to say a few words about contract incentives and "truth-in-negotiations." It has been said by some that the act will destroy contract incentives. I do not believe this for a moment. At the risk of repeating myself, the act was designed to achieve full disclosure at the bargaining table. Is such a purpose adverse to traditional contracting concepts? Will full disclosure at the bargaining table destroy the incentive of a contractor? We think not. In fact, it should increase a contractor's incentive to perform more efficiently. Challenged by a contract price based on accurate cost estimates, the capable contractor will strive

harder to lower his cost of performance. GAO, for one, welcomes increased profits for the contractor if they are the result of efficiency in performance.

As to the future, in my opinion the "Truth-in-Negotiations" Act is here to stay. How can anyone be against the truth. Assuming I am correct, I think one of the virtues of the act is that it is written in fairly broad principles leaving the administration of the act to be implemented by the procurement regulations. This allows a great deal of flexibility insofar as both Government and industry are concerned.

There have been many revisions of the regulations implementing the act and no doubt there will be more. Perhaps, some time in the future, we will even have substantial agreement between Government and industry that the act is working fairly for both sides. This time will be advanced if both sides continue working objectively, each recognizing the other's problems, toward an effective balance between achieving the act's objectives and avoiding the imposition of unnecessarily burdensome requirements for attaining those objectives.

With this, I hope you have gained some understanding of our role in connection with Public Law 87-653 and of our continuing interest in the act's implementation.

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