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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

## Civil Agencies Can Do A Better Job Of Negotiating Noncompetitive Contracts Priced Over \$100,000

Federal civil agencies are negotiating non-competitive contracts without adequate information. They do not always obtain enough cost or pricing data on contractors' proposed prices, properly analyze it, or effectively use analysis results in negotiations.

GAO attributes the weaknesses to:

- Inadequate guidance for determining completeness of cost or pricing data.
- Confusion as to who should review and analyze data.
- Contracting personnel not having sufficient knowledge about negotiation procedures and practices.
- Ineffective management controls.



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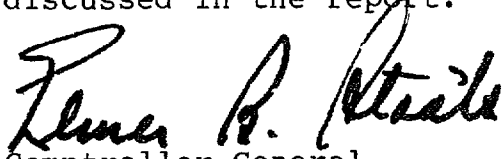
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To the President of the Senate and the  
Speaker of the House of Representatives

This report summarizes civil agencies' weaknesses in negotiating noncompetitive contract prices and our recommendations for improvements.

This work is part of our continuing effort to achieve greater efficiency and economy in noncompetitive contracting. A factor for examining this topic was that, on occasion, civil agencies were granting contractors exemptions from submitting cost or pricing data to support proposed prices for noncompetitive contracts.

Copies are being sent to the Director, Office of Management and Budget; the Acting Administrator, Office of Federal Procurement Policy; the Administrator of General Services; and the heads of the agencies discussed in the report.

  
Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

CIVIL AGENCIES CAN DO A  
BETTER JOB OF NEGOTIATING  
NONCOMPETITIVE CONTRACTS  
PRICED OVER \$100,000

D I G E S T

Federal civil agencies do not always know that the prices they negotiate for contracts of over \$100,000 are reasonable. They have been doing a poor job of obtaining and analyzing the cost or pricing data supporting contractors' price proposals, using analysis results, and protecting the Government from using defective data.

For negotiated noncompetitive contracts over \$100,000, Federal Procurement Regulations generally require that contractors provide cost or pricing data supporting their proposed prices and certify that the data is accurate, complete, and current. The regulations also require

--an analysis of the data to determine what contract performance should cost and

--a provision in the contract for price adjustment if the contractor's data is defective.

*1, 14, and*  
GAO reviewed price negotiations of 61 noncompetitive contracts or contract modifications valued at about \$33 million by 17 procurement offices in 12 civil departments or agencies. Each contract was valued over \$100,000 and was awarded in fiscal year 1977.

*1, 14, and*  
For the 61 negotiations, GAO found that

--no cost or pricing data was obtained for 15 actions (see p. 5),

--incomplete cost or pricing data was accepted by the Government for 41 actions (see p. 7),

--cost or pricing data was obtained but there was no analysis of the data in 14 actions (see p. 11),

--there was incomplete cost analysis for 11 actions (see p. 12),

--cost analysis results were not always effectively used in negotiating contract prices (see p. 16), and

--there was inadequate protection against using defective data. (See p. 18.)

Pricing deficiencies were attributed to:

--Lack of adequate guidance for determining what complete cost or pricing data should include. (See p. 8.)

--Confusion as to who is responsible for reviewing cost or pricing data for completeness, and what Government activity is responsible for analyzing it for awards to small companies owned by socially or economically disadvantaged persons (section 8(a) awards). (See p. 11.)

--Contracting personnel not always being well trained in regulations and procedures for pricing and negotiating contracts requiring cost or pricing data. (See p. 21.)

--Management controls either not existing or needing to be strengthened. (See p. 19.)

#### RECOMMENDATIONS

GAO recommends that the Administrator of General Services have the Director, Federal Procurement Regulations,

--issue better criteria, with examples, as to what is complete cost or pricing data and additional guidance on price negotiation concepts, procedures, and practices, and

--revise the regulations to clarify who should (1) review the completeness of cost or pricing data and arrange to get any other data needed and (2) analyze data submitted by subcontractors taking part in

the Small Business Administration's program for businesses owned by the socially or economically disadvantaged.

GAO also recommends that the Director, Office of Management and Budget, have the Administrator, Office of Federal Procurement Policy, issue directives requiring that civil departments and agencies develop and use

- effective management controls over their procurement operations through (1) in-depth staff reviews of proposed contract pricing actions and (2) effective actions to correct weaknesses reported by departmental or agency procurement management and audit staffs;
- programs for teaching procurement personnel about price negotiation procedures and practices, including classroom training, individual counseling, and daily supervision; and
- a program for performing postaward audits to help ensure that cost or pricing data relied on in negotiating contract prices was accurate, complete, and current as certified by contractors.

GAO further recommends that the Secretaries and Administrators of the Federal civil agencies GAO reviewed should:

- Coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data and additional guidance on price negotiation concepts, procedures, and practices. In the interim, they should direct their agencies to follow guidelines currently being used by the Department of Defense.
- Take action to ensure that contract negotiators are properly trained in negotiating noncompetitive contracts.
- Take action to ensure implementation of and compliance with effective management controls.

### AGENCY COMMENTS

With the exception of the Department of Transportation, the agencies generally agreed with GAO's findings and recommendations. Many of the agencies described what they have been doing or plan to do to improve the negotiation of noncompetitive contract prices. The additional information and comments the Department of Transportation provided in response to GAO's draft report did not, however, convince GAO of the need to alter its conclusions and recommendations.

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ABBREVIATIONS

ASPM No. 1	Armed Services Procurement Regulation Manual for Contract Pricing
DOD	Department of Defense
FPR	Federal Procurement Regulation
GAO	General Accounting Office
SBA	Small Business Administration

## CHAPTER 1

### INTRODUCTION

We examined the practices of 12 executive civil agencies in pricing negotiated noncompetitive contracts over \$100,000 when contractors' cost or pricing data was required. Cost or pricing data is all facts which can be reasonably expected to contribute to sound estimates of future costs, as well as to the validity of costs already incurred. This data must be submitted or identified in writing to support each cost element included in a contractor's price proposal. We wanted to find out whether their procurement offices followed good policies and procedures for developing and using the information needed to negotiate fair and reasonable prices. Weaknesses in or failure to follow good policies and procedures generally has the greatest impact on noncompetitive contracts, because of the absence of marketplace forces that help ensure that fair and reasonable prices are attained under competitive conditions.

We previously performed a similar review at Department of Defense (DOD) procurement offices. In an August 5, 1974, report to the Congress (B-168450 (PSAD-74-82)), we concluded that DOD was generally doing an effective job, although some improvements were needed.

For fiscal year 1977, executive civil agencies reported negotiated procurements totaling about \$18 billion, but did not identify the portion applicable to contracts negotiated without competition. The agencies and their departments that we reviewed negotiated contracts totaling about \$11.7 billion of the \$18 billion procurements reported. We reviewed 61 fixed-price-type contracts or contract modifications with a value of about \$33 million. These contracts were for varied types of goods and services including satellites, medical services, and construction. These actions were awarded by 17 procurement offices of 12 executive civil agencies or departments. The scope of our review is described in chapter 8.

#### PROCEDURES FOR NEGOTIATING NONCOMPETITIVE CONTRACTS OVER \$100,000

The Federal Procurement Regulations (FPRs) prescribe the procedures for negotiating noncompetitive contracts over \$100,000. They state (1) when to obtain the cost or pricing data used by contractors to estimate costs in their price

proposals, (2) the types of analysis to perform, (3) how the results of analysis should be used in negotiating contract prices, and (4) how to protect the Government from defective cost or pricing data.

#### Obtaining cost or pricing data

FPRs require prospective contractors, with some exceptions, to submit or identify in writing the cost or pricing data supporting proposed prices for negotiated noncompetitive contracts over \$100,000. This requirement also applies to contract modifications when the total of increases and decreases are over \$100,000, regardless of the value of the initial contract action or whether or not the initial action was priced on the basis of cost or pricing data.

The regulations also require, with some exceptions, that prime contractors who submit cost or pricing data must obtain similar data under specified conditions from their subcontractors, and that these subcontractors must also obtain pricing data from their subcontractors.

#### Analyzing contractors' proposed costs and prices

Some form of price or cost analysis is required for every negotiated procurement action. Cost analysis is also required by FPRs when contractors are required to submit cost or pricing data for noncompetitive procurements expected to exceed \$100,000. Price analysis is used to supplement cost analysis and in all other instances.

Cost analysis is the evaluation of a contractor's cost or pricing data and of the judgmental factors applied in projecting from the data to form an opinion on what contract performance should cost, assuming reasonable economy and efficiency. Cost analysis evaluates specific cost elements by (1) verifying cost data, (2) evaluating projections of cost data, (3) analyzing design features, manufacturing processes, organization and labor, materials, and estimating assumptions, and (4) all other cost factors that make up the total procurement cost.

Price analysis is the process of evaluating a prospective price without analyzing the separate cost elements and proposed profit that constitute the proposed price. Common price analysis techniques include comparison with prior or published prices, or with independently developed Government cost estimates.

Contracting officers generally use specialists in such fields as contract audits and engineering in analyzing the data and reporting the results. The use of specialists is generally at the discretion of the contracting officer. However, FPRs state that contract audit as a pricing aid shall be used to the fullest extent appropriate. FPRs also state that an audit review will be requested for all contracts negotiated on the basis of certified cost or pricing data with a proposed price in excess of \$100,000, unless the agency head determines that audit resources are not available. In some instances, the contracting officer may waive the requirement.

Contract auditors are assigned that part of a cost analysis which requires looking at the contractor's books and financial records supporting proposed costs. Technical analysts, such as engineers, are assigned to study such matters as whether (1) proposed materials are the most economical and whether quantities are accurate, (2) estimated amounts of generated scrap are reasonable, (3) production operations are efficient, and (4) the mix of labor and the estimated labor hours are reasonable. Cost analysis reports are used by the contracting officer in negotiating the contract price, although the evaluator's recommendations are not mandatory. Sometimes a pricing specialist coordinates the work of all specialists, evaluates the results, and recommends a negotiation objective.

A prime contractor or subcontractor required to obtain cost or pricing data from a lower subcontractor is also responsible for evaluating it and reporting the results to the Government as part of its submission of cost or pricing data. The contracting officer should review each analysis, identify any shortcomings, and ask the prime contractor for any added analysis needed.

#### Negotiating contract prices

Preparations for the negotiation meeting with the contractor should be made after receiving the analysis results. This includes evaluating the results to develop a negotiation objective regarding the offer and planning the general strategy.

Meetings are held with the contractor to discuss differences between the price proposed and the Government's negotiation objective and to negotiate a price. New information

may be brought up at these meetings which requires evaluation. After completing negotiations, the contracting officer should prepare a memorandum setting forth the principal elements of the price negotiation.

Protection against  
using defective data

Contractors required to submit cost or pricing data for awards over \$100,000 must also certify in writing at the time of negotiations that the data is accurate, complete, and current. A resulting contract must also include clauses giving the Government the right to (1) perform a postaward audit of the contractors data and (2) reduce the contract price if it was increased because the Government relied on data submitted by the contractor that was not accurate, complete, or current.

CHAPTER 2

INADEQUATE COST OR

PRICING DATA OBTAINED

We reviewed 61 contract actions valued at about \$33 million. No cost or pricing data or incomplete cost or pricing data was provided for 56 actions.

Without competition, cost or pricing data is essential to provide the Government with a sound basis for judging what contract performance should cost. Without complete data, the Government is deprived of information needed to ensure that a fair and reasonable price is negotiated.

NO DATA OBTAINED

No cost or pricing data was obtained for 15 contract actions valued at about \$5.1 million. The following shows by department or agency, the number of actions reviewed where no data was obtained.

<u>Agency</u>	<u>Number of actions</u>
Department of Commerce	1
Forest Service	1
National Institutes of Health	1
Social Security Administration	5
Veterans Administration	<u>7</u>
Total	<u>15</u>

The reasons given by procurement offices for not obtaining data are as follows.

<u>Reasons</u>	<u>Number of actions</u>
Not needed because price analysis techniques adequate to justify price	9
Need to expedite pricing because of urgency to award a contract	4
Not needed because of close working relationship with contractor	2
Not required for public work, construction, or scarce medical services contracts	2
Contractor would not provide data if requested	1
Data obtained for prior contract	1
Procurement considered to be competitive, although only one responsive bid received	1
Not familiar with what is cost or pricing data or the requirement to obtain it	1

FPRs cite some exceptions to the requirement for obtaining cost or pricing data for negotiated contract actions over \$100,000. The data is not required when the contracting officer finds that the price to be negotiated is based on adequate price competition, published catalog or market prices for commercial items sold in substantial quantities to the general public, or prices set by law or regulation. Also, an agency head or an authorized designee may sometimes waive the requirement if the reasons are given in writing.

In the cases reviewed, the reasons given for not obtaining cost or pricing data were not any of the authorized exceptions, and written waivers were not obtained. In one instance, contracting personnel said that they were aware that the reason given was not a prescribed exception. In the other instances, contracting personnel were not aware that the reasons given were not an authorized exception. In all of these cases, the contracting officers relied on unacceptable techniques to determine the reasonableness of the price proposed by the contractor. For example, an agency had a need for the services of radiology and radiotherapy specialists which were classified as scarce medical services. It had obtained such services from the same contractor for several years and proposed to award a new contract to this contractor. A formal written price proposal was not obtained from the contractor, and consequently, supporting cost or pricing data was not provided.

Procurement office personnel said that a price proposal was not considered necessary because of the close working relationship between the procuring activity and the contractor. They stated that cost or pricing data was not obtained because of a belief that it was not required when procuring scarce medical services, and that it was not needed because both parties were aware of the costs to perform the services. We were also told that such data had never been obtained from the contractor for these services.

A price negotiation memorandum explaining the basis for the negotiated price of \$498,620 was not prepared. Procurement office personnel told us that the contract price included a 7-percent increase over the prior year's price, and was justified by comparing it with prices paid by other procurement activities for similar services.

INCOMPLETE DATA ACCEPTED  
BY THE GOVERNMENT

Some cost or pricing data was provided by contractors for 46 contract actions. The proposed costs for these actions was about \$29.5 million. The data accepted by the Government in support of about 66 percent of these costs, or about \$19.5 million, was incomplete in varying degrees for 41 actions. The data provided included that obtained by the procurement office, as well as data given to auditors and other specialists analyzing the data as evidenced by information in their advisory reports to the contracting officer, working papers, or files. We based our evaluation of the completeness of data on guidance included in FPRs and DOD's Armed Services Procurement Regulation Manual for Contract Pricing (ASPM No. 1). (See p. 9).

The following table separates by agency the number of contract actions reviewed where some data was obtained into the percentage range of proposed costs not supported by complete data.

<u>Agency</u>	<u>Total</u>	<u>Number of actions</u>				
		<u>Percentage of proposed costs not supported by complete data</u>				
		<u>0-20</u>	<u>21-50</u>	<u>51-70</u>	<u>71-99</u>	<u>100</u>
Bureau of Reclamation	3	-	-	-	1	2
Department of Commerce	4	-	-	1	1	2
Department of Energy	7	1	3	3	-	-
Federal Aviation Administration	10	4	3	-	2	1
Federal Highway Administration	1	-	-	-	-	1
General Services Administration	11	-	-	-	7	4
Geological Survey	2	2	-	-	-	-
National Institutes of Health	4	-	1	3	-	-
National Park Service	2	-	-	-	-	2
Forest Service	<u>2</u>	-	-	-	-	<u>2</u>
<b>Total</b>	<b><u>46</u></b>	<b><u>7</u></b>	<b><u>7</u></b>	<b><u>7</u></b>	<b><u>11</u></b>	<b><u>14</u></b>

The following are examples of incomplete cost or pricing data accepted by the Government in support of proposed costs for material, direct labor, and overhead expenses.



## Material

The contractor proposed costs of \$343,188 for material as part of a proposal for roof repair work. The contractor provided the contract specialist with a list of items of material and the proposed cost for each item. No data was provided showing the quantity and unit cost for each item, nor the basis for the cost, such as firm quotes, estimates, and so forth. Although the proposal was audited, the auditors' documentation file did not indicate that they obtained the missing data.

## Direct labor

A contractor proposed \$238,595 for direct labor as part of a price proposal to provide custodial service in a Federal building. The contractor provided the contract specialist with information indicating six types of required labor and the estimated labor hours and labor rates for each type. No data was provided relating the types of labor to the various contract services to be furnished, showing how labor hours were developed, or indicating the basis for labor rates. No additional supporting data was provided other Government personnel, as both an audit and technical evaluation of the price proposal were waived.

## Overhead

A contractor proposed \$128,666 labor overhead costs as part of a price proposal to analyze and update a contingency fuel rationing plan. The contractor provided the contracting officer with information showing that the overhead cost was derived by applying a 135-percent rate to proposed direct labor costs of \$95,308. No data was provided showing how the rate was developed. No additional data was provided to other Government personnel, as an audit of the proposed cost was not requested.

Incomplete data was accepted because of inadequate criteria for determining what is complete data. Another cause is the lack of a clear statement in FPRs as to who should ensure that the data is complete or who should get any other needed data.

## Adequacy of guidelines for determining completeness of data

Most contracting personnel who examined data for completeness stated that they lacked adequate review guidelines.

FPRs define cost or pricing data and suggest forms for prospective contractors to use in providing cost or pricing data. Instructions with the forms provide some guidance on the types of supporting data to be provided. However, the instructions are general in nature and, in our opinion, do not provide adequate criteria for determining what is complete data or examples to show the specific types of data to be disclosed for each cost element.

DOD uses forms for obtaining cost or pricing data which are similar to those in FPRs. DOD has also issued supplemental guidance for determining what is complete cost or pricing data. This guidance is included in ASPM No. 1, published primarily for DOD personnel engaged in analysis and negotiation of contract prices. It may also be used by contractors and by civil agency personnel.

The DOD guidelines state that identification of cost or pricing data should cover the following four points for each item of data.

--What it is.

--Where it is.

--What it represents.

--How it was used in developing proposed amounts.

The guidelines also contain supplemental comments to the instructions included with the forms used to provide data. Also, they provide examples of a complete data submission for each cost element. We used the guidance in ASPM No. 1 to analyze the completeness of the data obtained for the contract actions reviewed because it provides more meaningful criteria than the limited guidance in FPRs.

#### Confusion about who should ensure completeness of data

In some cases, incomplete data was accepted because of confusion as to who should check the data for completeness or who should get any needed missing data. In 23 cases, contracting officers said that they did not review the data for completeness, but relied on auditors, other specialists, or other activities to determine the completeness of data and to obtain any other needed data. However, in most of these cases they did not ask that such a determination be made in their requests for cost analysis.

FPRs require that, when applicable, contracting officers shall obtain cost or pricing data from prospective contractors. They also state that contracting officers are responsible for all administrative actions necessary for effective contracting. DOD's procurement regulation is similar to the FPRs.

FPRs do not specify who is responsible for ensuring the completeness of data. ASPM No. 1 requires, however, that the contracting officer should decide whether a price proposal is supported by complete data. It adds that the contracting officer is responsible for obtaining any other data needed and should not rely on other Government personnel.

### CHAPTER 3

#### COST ANALYSIS INFORMATION NOT ALWAYS

##### ADEQUATELY DEVELOPED OR REPORTED

No cost analysis was performed for 14 of the 46 actions where some cost or pricing data was obtained. Proposed prices were analyzed using only price analysis techniques. Some cost analysis was done for the other 32 actions, although complete cost analysis information was not developed in 11 instances. Also, in some instances, adequate information on the performance or results of evaluations by specialists was not reported.

##### NO COST ANALYSIS PERFORMED

FPRs require a cost analysis whenever cost or pricing data is required. The following reasons were given by procurement personnel for the lack of any cost analysis for 9 of the 14 contract actions. The other five are discussed below.

- Cost analysis required for only cost reimbursement and not for fixed-price-type contracts.
- Cost analysis difficult and would take too much time.
- Lack of time because of the urgency to award a contract.
- Complete cost or pricing data obtained and, therefore, cost analysis was not needed.
- Not required for construction contracts.

The reasons given are not mentioned in FPRs as authorized exceptions to the requirement for cost analysis.

##### No cost analysis for section 8(a) awards

There was no cost analysis for five contract actions, primarily because of confusion of which Government agency should arrange for a cost analysis for an award authorized by Section 8(a) of the Small Business Act (15 U.S.C. 637a). This section authorizes the Small Business Administration (SBA) to award contracts for goods and services to small companies owned by socially or economically disadvantaged

persons. For such awards, the procuring agency awards a contract to SBA, which in turn contracts with the subcontractor to provide the goods or services.

According to FPRs, SBA is responsible for obtaining cost or pricing data from section 8(a) subcontractors. The regulations do not state whether the procuring agency or SBA should arrange for and analyze the results of cost analysis.

There were 12 section 8(a) awards included in our review. For seven of these, the procuring agency arranged for and analyzed the results of cost analysis or mentioned one of the previously discussed reasons for not performing it. For five awards, however, no cost analysis was made, and procuring agency personnel said that they assumed that SBA made the analysis or they could not explain why an analysis was not made. In these instances, SBA did not make a cost analysis. SBA officials said that they do not have the resources to perform cost analyses, and rely on the procuring agencies for this.

#### INCOMPLETE COST ANALYSIS INFORMATION DEVELOPED

There were 11 contracts where only a limited cost analysis was made. No audit or only a limited audit of the proposals were obtained in some instances, and significant portions of proposed costs were not audited. In other cases, a technical evaluation of the price proposal was not obtained. The reasons for the limited cost analyses were not always adequately explained or justified.

The cost analysis that is normally required includes a thorough evaluation of each element of the proposal. If the contracting officer limits the analysis in the belief that information is already available to evaluate proposal elements, the reasons should be documented in the contract file.

#### No audit or a limited audit obtained

An audit was not obtained for three actions, although a technical evaluation was made. There were also three actions where a limited audit of proposed costs were obtained. In these cases, there was no explanation of how existing data was used to establish the reasonableness of unaudited costs. For example, a contractor proposed costs expected to amount to \$812,552. Although a complete analysis of all proposed

costs was requested at first, it was decided to limit the audit to proposed direct labor and indirect cost rates because of the lack of time to perform a complete audit. The rates audited related to about 59 percent of the total proposed costs.

The auditors took exception to the proposed overhead cost rate, and recommended a rate that would have reduced the proposed cost by \$73,946. The contractor subsequently submitted a revised proposal that incorporated the rate recommended by the auditors, but increased the other proposed costs so that the total revised proposed price was the same as the initially proposed price.

No cost analysis of the revised proposal was requested; the proposed price was accepted as the contract price. Moreover, a contract was not signed until 2 months after the audit results were received, although lack of time was given as the reason for limiting the audit of the initial proposal.

No technical  
evaluations obtained

Technical evaluations of price proposals were not obtained for seven of the actions reviewed where some cost analysis was performed. In two of these cases, only a limited audit was made. The following reasons were given by the contracting personnel for not requesting a technical evaluation.

- Technical evaluation is an audit responsibility.
- Proposed amount too small to evaluate.
- Lack of time because of pressure to award a contract expeditiously.
- Technical evaluators seldom develop information useful at negotiations.
- Failure to follow local procedures requiring an evaluation.
- Procurement office policy not to obtain evaluations for follow-on contracts.

The absence of technical evaluations in these cases resulted in the acceptance of proposed amounts without adequate assurance as to their reasonableness.

COST ANALYSIS INFORMATION  
NOT ADEQUATELY REPORTED

In some instances, information on the performance and results of cost analyses by technical evaluators and auditors was not adequately reported to contracting officers. Therefore, the contract negotiators did not have adequate assurance that conclusions about proposed amounts were well founded. The contracting officer should insist that cost analysis specialists provide written reports containing adequate information. The reports should identify what was analyzed, including the cost or pricing data reviewed, and should contain the facts supporting conclusions.

Reporting technical  
evaluation information

There were 25 requests for technical evaluation of price proposals for the contract actions reviewed. No report was submitted to the contracting officer in four instances, and the evaluators merely revised their estimates which they had originally prepared.

Most of the reports submitted either did not identify what was analyzed or did not contain adequate support for exceptions to proposed amounts. Many of these exceptions were not sustained at negotiations. For example, the evaluator stated that 2,072 hours of proposed engineering time was too high, because much of the work was assembly of off-the-shelf items that did not have to be designed or fabricated. The evaluator recommended that half the proposed engineering hours be changed to less costly technical labor. No information was given supporting the position that mostly off-the-shelf items were being assembled or that only half the proposed engineering hours were required.

At negotiations, the contractor asserted that assembly components were not off-the-shelf items and had to be completely engineered and fabricated, and also provided additional data supporting the proposed engineering hours. After consulting with the technical evaluator, the negotiator agreed to the proposed engineering hours.

Reporting audit information

There were 29 requests for audit of the contract actions reviewed. Reports generally contained adequate information

about the audits and included adequate data supporting questioned amounts. However, four reports did not include adequate support for some or all exceptions to proposed amounts.

For example, a contractor submitted a proposal for camera systems, training, and manuals. The auditors questioned about half of the cost proposed for preparing the manuals. The basis for the auditors' position, however, was not included in their report. The contracting officer said that he was forced to accept the proposed cost because he had no data on which to negotiate a reduction. This data, he said, should have been provided by the auditors as part of their report.



## CHAPTER 4

### INEFFECTIVE USE OF COST ANALYSIS AND INADEQUATE EXPLANATION OF PRICING PRACTICES

Cost analyses were not always effectively used in preparing for negotiations and negotiating contract prices. Also, price negotiation memorandums were either not prepared or did not always justify the pricing practices.

ASPM No. 1 states that cost analysis should be used in developing a prenegotiation price objective and at negotiations. After negotiations, a memorandum must be prepared setting forth the principal elements of the price negotiation. The memorandum should explain why no cost or pricing data was obtained and why obtained data was not relied on or used in negotiating the price. It should also give reasons for any variations from recommendations in the cost analysis reports and, for fixed-price contracts, an explanation of any significant differences between negotiated price and price objective.

#### INEFFECTIVE USE OF COST ANALYSIS

For 17 contract actions some cost analysis was made, but no written negotiation price objective was developed based on the results of such analysis. In two instances, tentative contract prices were negotiated before cost analysis was begun or results received. In eight cases, the resolution of some or all exceptions to proposed amounts included in advisory reports was not adequately explained in price negotiation memorandums. Two examples follow.

#### Late receipt of audit report

A contractor initially proposed a price of \$3,894,718 for building construction in June 1977. A revised proposal of \$2,985,666 was submitted in July 1977. After a series of meetings with the contractor, a contract price of \$2,700,000 was agreed to, subject to audit of the proposal. On October 3, 1977, a contract was awarded to the contractor. An audit report dated October 19, 1977, or after the contract award, stated that the contractor could not provide documentation supporting the proposed price, and the entire amount was questioned. No further negotiations took place after the audit.

### Resolution of exceptions

A contractor submitted a price proposal of \$148,781 for a remote monitoring system. A revised proposal of \$151,977 was subsequently submitted. An audit of the original proposal was obtained. The auditors questioned costs of \$8,877, and also stated the \$64,000 of proposed costs was unsupported by the contractor. The price negotiation memorandum prepared by the contract specialist adequately explained how the questioned costs were resolved but did not explain the resolution of the unsupported costs. A contract was awarded for \$150,000.

### INADEQUATE EXPLANATION OF PRICING PRACTICES

There were 15 contract actions where no cost or pricing data was obtained and 14 actions where some data was provided but no cost analysis performed. In these instances, negotiated prices were justified solely on the basis of price analysis. In 11 actions only a limited cost analysis was performed.

A price negotiation memorandum was not prepared for 9 of these 40 actions. The memorandums prepared for the remainder either (1) did not give an authorized reason for not obtaining cost or pricing data, (2) did not state that the data obtained was not relied on when no cost analysis was performed or give the reasons why only price analysis techniques were used, or (3) did not state the reasons for only performing a limited cost analysis.

## CHAPTER 5

### GOVERNMENT NOT ADEQUATELY

#### PROTECTED FROM USING

#### DEFECTIVE DATA

Procurement offices we reviewed did not always obtain required certifications from contractors or include a required clause in contracts providing for a price adjustment if defective data was relied on at negotiations. Also, departmental or agency audit groups had no program for performing postaward audits of certified data to ensure that defective data was not relied on.

Signed certifications of cost or pricing data were not obtained from contractors for 11 of the 46 contract actions reviewed where some data was obtained. In three other instances, the certifications were signed well before the negotiations. The required clause providing for a price adjustment if defective data was relied upon was missing from five contracts where some data was obtained. Contracting personnel could not satisfactorily explain the omissions.

Contracting personnel at those procurement offices reviewed said that there had never been any postaward audits of certified data. We believe that it is important to conduct postaward audits to (1) ascertain whether or not contractors are complying with the requirement to submit cost or pricing data that is accurate, complete, and current and (2) propose contract adjustments where contractors are not complying with the requirement. Audit staffs of civil agencies said that they have no program for systematically conducting such audits. The Defense Contract Audit Agency established a successful program for selecting defense contracts for postaward audit. During fiscal years 1975 through 1977, such audits resulted in price reductions of about \$14.1 million.

## CHAPTER 6

### INADEQUATE MANAGEMENT CONTROLS

#### CONTRIBUTE TO OPERATIONAL WEAKNESSES

The lack of effective procurement office management reviews contributed to the operational weaknesses disclosed by our review. An independent check on performance in pricing and negotiating individual contracts was not required at eight of the procurement offices that we reviewed. Nine offices did have such a requirement, but the review functions were not effective in ensuring that pricing and negotiation practices conformed to prescribed rules and regulations.

Many of the procurement offices that we visited had been reviewed in recent years by their own headquarters organizations who reported some deficiencies similar to those that we found. Evidently, management has not been prompt to correct operational weaknesses. Moreover, many of the contracting personnel involved with the contracts reviewed had received no formal training during recent years in pricing and negotiating noncompetitive contracts over \$100,000. This also contributed to the deficiencies found.

Management control action adjusts operations to conform to prescribed standards and procedures. This requires methods and information to check performance. This may be accomplished by observation, functional or staff review, or independent internal audit. Without performance checks, management cannot ensure satisfactory results.

The essence of management control is action to direct or carry out operations. One such action ensures that duties and responsibilities are assigned only to people qualified and trained to carry them out. This includes providing personnel with training and refresher courses to improve competence and to inform them about new policies and procedures.

#### INEFFECTIVE CHECKS ON PERFORMANCE

##### Contract reviews

An independent preaward review of negotiated contracts was not required at 8 of the 17 offices that we visited. Such a management review by officials not directly involved in negotiating and awarding a contract is needed to ensure that adequate procedures were followed and that tentative prices were justified.

Nine procurement offices required a management review. However, we found that effective reviews were not generally made. For example, a procurement office was required by a departmental regulation to make an independent review of negotiated contract actions over \$100,000 before contract award. The regulation required that the reviewing official ensure that the contract file contained adequate documentation or explanation of all rationale, judgments, and authorities supporting decisions and actions.

Required cost or pricing data was not obtained for one of the five contract actions reviewed at the procurement office, and incomplete data was obtained for the other four. Also, there was no cost analysis for one action where some data was obtained, and only a limited cost analysis in another two instances. The contract files did not contain an explanation for this.

A review of all five actions was made, and they were all approved. The contract files contained the approvals but not the scope of the reviews. In our opinion, the review function was ineffective because it did not identify the lack of data.

#### Functional or audit reviews

Procurement management or audit reviews were performed in recent years by most of the departments and agencies whose procurement offices we reviewed. Some of these reviews included an examination of the procedures and practices for pricing noncompetitive contracts over \$100,000.

Reports of these reviews issued since the beginning of fiscal year 1975 disclosed some of the same deficiencies that we found. Reported deficiencies were:

- No or incomplete cost or pricing data.
- No cost analysis.
- Lack of adequate facts in cost analysis reports to justify exceptions to proposed amounts.
- No justified waivers of audit.
- No certification of cost or pricing data as of the date of negotiations.

- No training of contracting personnel.
- Inadequate guidance for performing the work of the pricing function.
- No or incomplete price negotiation memorandums prepared.

FORMAL TRAINING

There were 76 contracting officers, contract specialists, and negotiators who participated in pricing and awarding the contract actions reviewed. During fiscal years 1975 through 1977, only 18 of these people attended courses in pricing negotiated contracts. Some procurement officials said that their people needed additional training.

## CHAPTER 7

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

Most of the civil agencies we reviewed did a poor job of developing or using the information needed to negotiate noncompetitive contracts over \$100,000, when certified cost or pricing data was required from contractors. Also, in most cases they did not take adequate action to assure that data obtained was accurate and complete. Because of these weaknesses, there is no assurance that the prices negotiated were fair and reasonable. More specifically, we found:

- Cost or pricing data was not obtained or a cost analysis was not made for about 48 percent of the contract actions reviewed. In the absence of competition, cost analysis is needed to judge what contract performance should cost.
- The cost or pricing data provided was complete for only five contract actions. Partial data was obtained for about 66 percent of the costs proposed for 41 actions. Obtaining incomplete data limits the value of cost analysis, because it does not provide enough information to establish the reasonableness of proposed amounts.
- Some cost analysis was performed for 32 contract actions. For about 34 percent of these actions, only a limited analysis was made, and the reasons for limiting the analysis were not documented. In several instances, specialists assisting the contracting officer either submitted no cost analysis report or an incomplete report. A thorough evaluation of proposed costs is needed unless adequate information is already available. Moreover, analysis has no value at negotiations unless the results are adequately reported.
- In preparing for negotiations, a written price negotiation objective using information from cost analysis was not developed for 17 actions. In 40 instances, required price negotiation memorandums were either not prepared or they did not explain adequately why required cost or pricing data had not been obtained, why required cost analysis had

not been performed when some data was obtained, or why only a limited analysis was made. In eight instances, they did not explain how exceptions to proposed amounts contained in cost analysis reports were resolved.

- Adequate protection against using defective cost or pricing data was not provided for about 39 percent of the contract actions examined where some data was obtained. This included (1) not obtaining certifications of cost or pricing data, (2) obtaining certificates dated before the time of negotiations, and (3) not including a clause in contracts providing for a price adjustment if defective data was relied on at negotiations. Also, civil agencies' audit groups had no program for performing a postaward audit of data submitted for selected contracts to determine whether the data was defective.

The operational weaknesses disclosed by our review are attributed to the following conditions.

- Contracting personnel needed better guidance on what is a good cost or pricing data submission.
- Procurement regulations do not clearly state who should review cost or pricing data to ensure that it is complete, and what Government activity is responsible for cost analysis when negotiating prices for section 8(a) awards.
- Contracting personnel were not always well trained in the regulations and procedures for pricing and negotiating those contracts that require cost or pricing data.
- Management controls over the pricing and negotiating of noncompetitive contracts either did not exist or needed to be strengthened. Such controls include independent reviews of proposed contract actions, adequate training of contracting personnel, and timely and effective action to correct operational weaknesses reported by internal audit or procurement management groups.

We believe that our findings and their causes are symptomatic of a failure of management to properly manage its operations. We further believe that top management may be



derelict in its management responsibility when it permits (1) employees to negotiate noncompetitive contracts without adequate guidance and training and (2) procuring activities to function without effective management controls.

#### RECOMMENDATIONS

We recommend that the Administrator of General Services have the Director, Federal Procurement Regulations,

- issue better criteria, with examples, as to what is complete cost or pricing data and additional guidance on price negotiation concepts, procedures, and practices, and
- revise the regulations to clarify who should (1) review the completeness of cost or pricing data and arrange to get any other data needed and (2) analyze data submitted by subcontractors taking part in the SBA's program for businesses owned by the socially or economically disadvantaged.

We also recommend that the Director, Office of Management and Budget, have the Administrator, Office of Federal Procurement Policy, issue directives requiring that civil departments and agencies develop and use

- effective management controls over their procurement operations through (1) in-depth staff reviews of proposed contract pricing actions and (2) effective actions to correct weaknesses reported by departmental or agency procurement management and audit staffs;
- programs for teaching procurement personnel about price negotiation procedures and practices, including classroom training, individual performance counseling, and daily supervision; and
- a program for performing postaward audits to help ensure that cost or pricing data relied on in negotiating contract prices was accurate, complete, and current as certified by contractors.

We further recommend that the Secretaries and Administrators of the agencies we reviewed should:

- Coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data and additional guidance on price

negotiation concepts, procedures, and practices. In the interim, they should direct their agencies to follow guidelines currently being used by DOD.

--Take action to ensure that contract negotiators are properly trained in negotiating noncompetitive contracts.

--Take action to ensure implementation of and compliance with effective management controls.

#### AGENCY COMMENTS AND OUR EVALUATION

With the exception of the Department of Transportation, the agencies generally agreed with our findings and recommendations. (See apps. I to X.) Many of the agencies described what they have been doing or plan to do to improve the negotiation of noncompetitive contract prices. The additional information and comments the Department of Transportation provided in response to our draft report did not, however, convince us of the need to alter our conclusions and recommendations.

The Department of Transportation disagreed with our report. The Department took exception to (1) the number of cases we said we reviewed (they stated that we actually reviewed 160 contracts rather than the 10 we reported), (2) our failure to consider Federal Aviation Administration forms and guidance, (3) our failure to identify what kinds of cost data were not obtained and used in negotiations, and (4) our use of generalities. The Department also inferred that its management controls and training are adequate.

While we did scan contract listings provided by the Federal Aviation Administration and obtain additional information for many contracts, we reviewed in detail only the 10 contracts discussed in the report.

The Department also stated that the report failed to give any recognition to those cost or pricing procedures which have been developed and used by the civil agencies. It enclosed copies of Federal Aviation Administration forms whose completion is required by agency contractors to meet complete cost or pricing data criteria.

In performing our review, we analyzed the Federal Aviation Administration's guidance and found several instances where the ASPM No. 1 required the identification or submission of more detailed cost or pricing information. Further,

we found instances where even this less detailed information was not obtained from the contractor by procurement personnel. We do believe, however, that guidance applicable to contracts awarded after the period of our review includes a number of improvements which should, if properly implemented, eliminate many of the problems discussed in the report. However, this does not negate the need for consistency among agencies. This position is underscored by the Department of the Interior's comment that standard Government-wide procurement policies are essential to maintain uniformity among all agencies' practices and to ensure the private sector's complete understanding.

The Department of Transportation stated that our report did not include specific examples of incomplete data obtained by Department personnel, and that their review of its procedures revealed that proper cost or pricing data is obtained on noncompetitive negotiations and fully used.

Our report presents the general situation found at all of the agencies reviewed. We did not attempt to single out any particular agency or to present full details on all the data gathered during our review. Although we agree that the Department was one of the better agencies, we did find examples where proposals accepted as a basis for negotiations were not adequately supported by cost or pricing data. For example:

- A contractor submitted a proposal by element of cost totaling \$215,455 at the cost level. It did not include any evidence to indicate how the rates, hours, or an inflation factor were determined. There was no evidence how the overhead rate was determined. Other cost elements were similarly not supported.
- A contractor submitted a proposal totaling \$148,781. There was no indication how the labor type, number of weeks, and cost per week were determined. The Department requested an audit of the proposal, but not a technical evaluation. We concluded that 48 percent of the proposal was not properly supported. The auditors set out or questioned about 49 percent of the proposal.

The Department stated that internal reviews are conducted on all negotiated procurements over \$1 million before meeting with the offerors.

All three activities we visited had some sort of contract review. These reviews and other management controls, however, can be greatly improved. We found that:

- There has either been no internal audit or they have issued no reports on negotiated pricing since 1975.
- There have been no reviews made by the Procurement Management Division.
- There is no program for periodic defective pricing reviews.
- The Logistic Evaluations staff has issued reports since 1975 on two different regions wherein they state that people are not familiar with or do not understand the policies and procedures applicable to negotiated procurements.

The Department stated that results of all negotiations are contained in written documentation which discusses pricing and negotiation activities. Comments are made on the disposition of findings in audit reports.

Minutes of negotiation were prepared in all cases. However, we believe many of the minutes were incomplete because they did not adequately explain

- how a reasonable price was negotiated when only a limited cost analysis was performed;
- how a reasonable price was negotiated where exceptions in a technical evaluation report were inadequately supported, and the contracting officer said the poor technical evaluation had a detrimental effect on his ability to negotiate a fair and reasonable price; and
- how questioned, unsupported, or unresolved costs cited in advisory reports were resolved.

The Department stated that procurement personnel are continuously being sent to school so they may be kept abreast of the latest developments in procurement.

We found that 15 contracting officers or contract specialists were involved in negotiating 11 contracts awarded by the Department's constituent agencies. Only 5, or 33-1/3 percent, attended courses during fiscal years 1975-77 on pricing negotiated contracts.

## CHAPTER 8

### SCOPE OF REVIEW

Our objective was to find out how procurement personnel were implementing policies and procedures in negotiating the prices of noncompetitive contracts, and how management assured itself that performance was satisfactory. We also evaluated the adequacy of policies and procedures.

The 61 contract actions reviewed, valued at about \$33 million, were awarded by the following 17 procurement offices.

<u>Procurement office</u>	<u>Location</u>
Department of Agriculture: Forest Service, Administrative Services Division, Region 6	Portland, Oregon
Department of Commerce: Office of Administrative Services and Procurement	Washington, D.C.
Department of Energy: Contracts Management Office, Chicago Operations Office Office of Procurement Operations	Argonne, Illinois Washington, D.C.
Department of Health, Education, and Welfare: National Institutes of Health, Procurement Branch Division of Administrative Services	Bethesda, Maryland
Social Security Administration, Division of Contracting and Procurement	Baltimore, Maryland
General Services Administration: Construction Management Division, Public Buildings Service, Region 10	Auburn, Washington
Construction Management Division, Public Buildings Service, Region 3	Washington, D.C.
Department of Interior: Bureau of Reclamation, Engineering and Research Center	Denver, Colorado
Geological Survey, Denver Federal Center	Denver, Colorado
National Park Service, Denver Service Center	Denver, Colorado
Department of Transportation: Federal Aviation Administration, Aeronautical Center	Oklahoma City, Oklahoma
Contracts Division, Logistics Service	Washington, D.C.
Federal Highway Administration, Office of Federal Highways Projects, Region 10	Vancouver, Washington
Veterans Administration: Hospital	St. Louis, Missouri
Hospital	Oklahoma City, Oklahoma
Marketing Center	Hines, Illinois

At these procurement offices, we examined records pertaining to the pricing of contracts or modifications. These records were (1) the cost or pricing data submitted by the contractors, (2) technical evaluation reports, (3) audit reports, and (4) negotiation records. We reviewed management control procedures and discussed our review with the contracting officials and the managers of the procurement offices. We also reviewed recent internal audits and procurement management reviews of the pricing of noncompetitive contracts.

For awards to small business concerns owned by socially or economically disadvantaged persons under section 8(a) of the Small Business Act, we visited SBA regional offices in Philadelphia, Pennsylvania; Chicago, Illinois; Denver, Colorado; and Seattle, Washington and SBA Headquarters in Washington, D.C. We reviewed the actions taken by both SBA and the procurement offices in negotiating 8(a) contracts.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

MAY 2 1979


Mr. J. H. Stolarow  
Director, Procurement and  
Systems Acquisition Division  
U.S. General Accounting Office  
Washington, DC 20548

Dear Mr. Stolarow:

In accordance to your request of April 24, 1979, we have reviewed the draft report entitled "Civil Agencies Doing a Poor Job in Negotiating Noncompetitive Contract Prices over \$100,000". If the draft report fairly represents the situation concerning the pricing of noncompetitive contracts by the civil agencies reviewed, we have no objections to those recommendations contained therein addressed to the Office of Federal Procurement Policy.

Actions underway within the executive branch, such as development of a single comprehensive Federal Acquisition Regulation and upgrading the professionalism of the procurement work force, should help overcome the shortcomings described in your draft report.

Sincerely,

  
James D. Currie  
Acting Administrator



General Office  
Services of the  
Administration Administrator Washington, DC 20405

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JUN 6 1979

Honorable Elmer B. Staats  
Comptroller General of the United States  
U. S. General Accounting Office  
Washington, DC 20548

Dear Mr. Staats:

This is in response to the letter of April 24, 1979 from Mr. J. H. Stolarow, Director, Procurement & Systems Acquisition Division, which transmitted copies of the GAO draft report to the Congress entitled, "Civil Agencies Doing a Poor Job in Negotiating Noncompetitive Contract Prices Over \$100,000."

I have reviewed the report and generally concur in the findings and recommendations.

GSA has recently established the Office of Acquisition Policy which is charged with initiating improvements in the acquisition process. A critical area which is being reviewed by that office is training. Our goal is to develop an integrated career management/career training program. GSA is also working with the Office of Federal Procurement Policy and other civilian agencies towards establishing core acquisition courses which will include cost and pricing. I expect that by late 1979 or early 1980, GSA will be conducting interagency training for a number of civilian agencies.

Thank you for the opportunity to reply. My detailed comments are enclosed.

Sincerely,

A handwritten signature in black ink that reads "Paul E. Goulding". The signature is written in a cursive, flowing style.

Paul E. Goulding  
Acting Administrator

2 Enclosures



GSA Comments on Draft GAO Report  
(25-9076-P) 4/79  
"Civil Agencies Doing a Poor Job in  
Negotiating Noncompetitive Contracts Over \$100,000"

RECOMMENDATION FOR GSA

1. GAO recommends the Administrator of General Services take the following actions:

Recommendation No. 1 The Administrator of General Services should have the Director, Federal Procurement Regulations:

- Issue guidance that would provide better criteria and also examples as to what is complete cost or pricing data, and additional guidance on price negotiation concepts, procedures, and practices.
- Revise the regulations to clarify who should (a) review the completeness of cost or pricing data and arrange to get any other data that is needed and (b) analyze data submitted by subcontractors taking part in the SBA's program for concerns owned by the socially or economically disadvantaged.

Comments

First Part

GSA issued FPR Amendment 194, September 21, 1978 (copy enclosed). The Amendment provides supplemental guidance on cost or pricing data, the need for increased attention by buyers and contracting officers to the pricing of negotiated procurements, and informational FPR references pertinent to the procurement of supplies and services at the lowest possible costs. In addition, guidance was given to the use of Chapter 8A of the Armed Services Procurement Regulations Manual for Contract Pricing (ASPM No. 1) on catalog and market pricing tasks. Because reference to the manual was limited to Chapter 8A, GSA will issue an FPR amendment or bulletin directing full use of the manual by all civil agency acquisition personnel.

Second Part

With respect to contracts with the Small Business Administration pursuant to section 8(a) of the Small Business Act, GSA will revise the FPR to clarify who should review the completeness of cost or pricing data and who should analyze the data submitted by SBA subcontractors.

Enclosure

2

Recommendation No. 3 The Secretaries and Administrators should:

- Coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data and additional guidance on price negotiation concepts, procedures, and practices. In the interim, they should direct their agencies to follow guidelines currently used by the Defense Department (Armed Service Procurement Manual No. 1).
- Take action to ensure that contract negotiators are properly trained in negotiating noncompetitive contracts.
- Take action to ensure implementation of a compliance with effective management controls.

Comments

As noted above in the first part of Recommendation No. 1, pricing guidance has been provided by FPR Amendment 194, and training by GSA will be upgraded and will include price and cost courses. Further, GSA has established a new central office contract clearance function. Contracts of prescribed dollar thresholds will be reviewed by the Office of Acquisition Policy to ensure that the proposed contracts conform with applicable laws, regulations, and established procedures. Particular attention will be given to the business aspects, including pricing. Similar reviews are directed at lower dollar thresholds for the Federal Supply Service, Public Buildings Service, and Automated Data and Telecommunications Service.



OFFICE OF THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

ASSISTANT SECRETARY  
FOR ADMINISTRATION

June 6, 1979

Mr. Henry Eschwege  
Director  
Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Civil Agencies Doing A Poor Job In Negotiating Noncompetitive Contract Prices Over \$100,000."

The overall thrust of the GAO report indicates that all agencies reviewed are doing a poor job in obtaining and using cost and pricing data. The generalities contained in this report make it difficult to determine which agencies are doing a good job versus those which are not. We believe that the Department of Transportation does a good job in obtaining, analyzing, and using cost and pricing data in negotiating noncompetitive contracts. Since all agencies are grouped together, it is not possible to determine which improvements, if any, need to be made in any given agency.

If we can further assist you, please let us know.

Sincerely,

Edward W. Scott, Jr.

Enclosures



DEPARTMENT OF TRANSPORTATION REPLY  
TO  
GAO DRAFT REPORT OF APRIL 5, 1979

"Civil Agencies Doing A Poor Job in Negotiating  
Noncompetitive Contract Prices over \$100,000"

SUMMARY OF GAO FINDINGS AND RECOMMENDATION

The General Accounting Office (GAO) concludes that civil agencies are negotiating noncompetitive contracts without adequate cost and price information. Specifically, GAO concludes that the civil agencies reviewed did a poor job of developing or using such data, and in most cases did not take adequate action to assure that it was accurate and complete.

GAO believes that the deficiencies may be attributed to the following conditions:

- Contracting personnel need better guidance on what constitutes good cost or pricing data.
- Procurement regulations do not clearly state who should review cost or pricing data to insure completeness. Moreover, there is a lack of understanding as to which Federal agency is responsible for cost analysis for 8(a) awards.
- Contracting personnel have not received sufficient training in negotiating contracts requiring cost or pricing data.
- Management controls over the pricing and negotiation of noncompetitive contracts either do not exist or need strengthening. Examples of such controls are independent staff reviews of proposed contract actions, adequate training of personnel, and timely action to correct operational weaknesses reported by internal audit or procurement management groups.

The GAO makes the following recommendations to correct the above noted deficiencies.

1. The Federal Procurement Regulations should be amended:
  - a. to issue guidelines, criteria, and examples as to what constitutes complete cost or pricing data, and to provide guidance on their use; and
  - b. to clarify responsibility for review of cost or pricing data for completeness and to place responsibility for review of such data submitted by contractors participating in the 8(a) program.

2. The Office of Federal Procurement Policy should issue directives for civil agencies to develop and use:
  - a. effective management controls for in-depth reviews of internal procurement operations;
  - b. training programs for procurement personnel in price negotiation procedures and practices; and
  - c. a program for performing post award audits to insure completeness, currency, and accuracy of cost and pricing data submitted by contractors.
3. Departmental Secretaries and Administrators should:
  - a. coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data, and guidance on price negotiation concepts, procedures, and practices. In the interim, civil agencies should follow the guidelines currently used by the Defense Department in Armed Services Procurement Manual No. 1;
  - b. take action to insure that contract negotiators are properly trained in negotiating noncompetitive contracts; and
  - c. take action to insure implementation of and compliance with effective management controls.

#### SUMMARY OF DEPARTMENT OF TRANSPORTATION POSITION

The overall thrust of the GAO report indicates that all agencies reviewed are doing a poor job in obtaining and using cost and pricing data. The sweeping generalities contained in this report make it difficult to determine which agencies are doing a good job versus those which are not. We believe that the Department of Transportation does a good job in obtaining, analyzing, and using cost and pricing data in negotiating noncompetitive contracts. Since all agencies are grouped together, it is not possible to determine which improvements, if any, need to be made in any given agency.

POSITION STATEMENT

The GAO report suffers from a lack of specific problems within any given agency. The general comments do not, we believe, apply to the procedures employed within the Department of Transportation. We take specific exception to the following areas in the report.

1. The report states that ten (10) contracts of the Federal Aviation Administration (FAA) were reviewed and classified in accordance with the table cited on page 11 of the report. This statement is not correct, since approximately 160 FAA contracts were reviewed (about 60 at Oklahoma City and about 100 at Washington). After GAO's initial evaluation of the contracts, it then selected ten for further review. Nowhere in the report does GAO state the base number of contracts reviewed.
2. For the Federal Highway Administration (FHWA), a single contract from that Administration's Region 10 was examined. Though the draft report does not identify the contract audited, we have learned from the procurement office that it was an 8(a) contract for highway construction work awarded to the Small Business Administration (SBA) in June 1977. The draft report indicates that on five of the 12 section 8(a) contracts audited, no cost analysis was made (see page 16). All FHWA regions, including Region 10, maintain current records of costs/ prices for virtually all individual items used in highway construction projects. Therefore, a definite comparison of prices was made in the case of the 8(a) contract audited. It is important to note here that cost analysis is required only where adequate current pricing information is not available. Practically all of Region 10's contracting activity involves fixed price, formally advertised highway construction contracts where price analysis, as opposed to cost analysis, is appropriate. In our opinion, audit of a single contract, particularly an 8(a) program contract, does not provide a valid basis for a conclusion by the GAO that the FHWA as a whole, or FHWA's Region 10, which awarded the contract, does a poor job of developing or using the information needed to negotiate noncompetitive contracts over \$100,000, where certified cost or pricing data is required from contractors. Similarly, the results of a single

contract audit are inconclusive for evaluating the effectiveness of staff reviews, state of training of personnel, conformance with prescribed standards or procedures or overall management effectiveness.

3. The GAO primarily used the Department of Defense's (DOD) "Armed Services Procurement Regulation Manual for Contract Pricing" (ASPM No. 1) as a basis for its evaluation of the completeness of cost and pricing data. While the report recognizes that the General Services Administration (GSA) needs to issue more in-depth guidelines in this area, the report fails to give any recognition to those cost and pricing procedures which have been developed and used by the civil agencies. We are enclosing copies of FAA forms whose completion is required by agency contractors in order to meet complete cost and pricing data criteria.
4. The report does not specifically identify what kinds of cost data were not obtained, and what was and was not used in negotiations by agency and by individual contract. Since specifics are not identified, the general statements regarding lack of, or improper use of, data are very misleading and have the tendency to present an incomplete, if not an inaccurate, picture.
5. A review of DOT procedures reveals that proper cost and pricing data is obtained on noncompetitive negotiations and fully used. All offerors, whether on noncompetitive or competitive procurements, are informed of the data needed to support their cost proposals. Extreme care is taken to obtain the required documentation to insure proper evaluation of the cost proposal so as to permit meaningful negotiations and the obtaining of supplies and services at reasonable prices. It is fully recognized that not all cases contain complete data, due in part to the reluctance of some offerors to furnish complete data.
6. Internal reviews are conducted on all negotiated procurements in FAA over \$1 million prior to meeting with the offerors. These reviews take place at several levels within the Contracts Division, based upon dollar value of the proposal to be negotiated. For both FAA and FHWA, results of all negotiations are contained in written documentation which discusses pricing and negotiation activities. Comments are made on the disposition of findings in audit reports.

7. Procurement personnel are continuously being sent to school so that they may be kept abreast of latest developments in procurement. Both FAA and FHWA have a trained staff of pricing specialists who are responsible for obtaining and reviewing cost and pricing data and for assisting in negotiating contract prices.

In light of the foregoing exceptions to and comments on this report, we strongly urge that the report be rewritten to clarify those agencies which are performing a good job in the subject area. In addition, the base number of contracts examined should be shown, and all general statements should be rewritten to state specific problem areas within each of the agencies surveyed.





## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

**JUN 7 1979**

Mr. Henry Eschwege  
Director  
Community and Economic Development Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

This responds to your request for comments on the General Accounting Office's draft report entitled "Civil Agencies Doing A Poor Job In Negotiating Contract Prices Over \$100,000."

Department procurement officials recognize the need for more effective management control over proposed contract pricing actions. Indeed, several of our procurement offices already have established new contract review requirements to ensure that cost and pricing data are used properly and effectively. Interior is also encouraging its procurement offices to provide more cost and price analysis training for procurement personnel.

Standard Governmentwide procurement policies are essential to maintain uniformity among all agencies' practices and to ensure the private sector's complete understanding. Therefore, as an interim measure we endorse the recommendation that all agencies adopt the Armed Services Procurement Manual (ASPM) No. 1 and recommend that the Office of Federal Procurement Policy initiate this action. In addition, that office should prescribe standard training requirements, and agencies must commit themselves to providing necessary training for personnel before the ASPM is formally adopted. This will minimize confusion and improper implementation of the Manual. If all agencies do not uniformly adopt the ASPM, the proliferation of contradictory agency procurement regulations will continue.

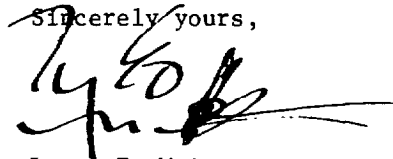
To establish more permanent guidance, we recommend that the Administrator, Office of Federal Procurement Policy, issue a comprehensive set of contract pricing standards in the Federal Acquisition Regulation (FAR) and accompanying instructional manuals or materials that would contain pricing guidance to be used for training and to prevent the wide variations in policy currently

practiced by civilian agencies. In addition, we recommend that the Administrator establish and maintain a series of training courses in cost and price analysis techniques to be sponsored by the Federal Acquisition Institute. These courses would help ensure that proper instruction is available for all personnel involved in this area. They also could serve as key elements in the development of procurement professionals under individual agency career development programs.

Our review of Chapter 2 of the draft report disclosed several inconsistencies with §1-3.807 and §1-3.809 of the Federal Procurement Regulations (FPR). For example, under §1-3.809 (b)(1), the FPR requires audit reviews of proposals which are fixed price or fixed price with economic price adjustment in excess of \$100,000 and audit reviews of any other types of proposals in excess of \$250,000, compared with the \$100,000 thresholds cited in the draft report (p.4). Therefore, we recommend that requirements of FPR §1-3.807 and §1-3.809 be reviewed closely in the final report.

Thank you for giving us the opportunity to comment on this report.

Sincerely yours,



Larry E. Meierotto  
Assistant Secretary  
Policy, Budget and Administration



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

MAY 25 1979

Mr. Gregory J. Ahart  
Director, Human Resources  
Division  
United States General  
Accounting Office  
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Civil Agencies Doing A Poor Job in Negotiating Noncompetitive Contract Prices Over \$100,000." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas D. Morris".

Thomas D. Morris  
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WEL-  
FARE, ON THE GAO DRAFT REPORT ENTITLED, "CIVIL AGENCIES  
DOING A POOR JOB IN NEGOTIATING NONCOMPETITIVE  
CONTRACT PRICES OVER \$100,000"

GENERAL COMMENTS

The Secretary in May 1977 recognized the need for corrective actions in the contracting processes and set forth certain initiatives. Among these initiatives were requirements for training and the implementation of effective management controls. In effect HEW actions negated the findings of the report.

GAO RECOMMENDATION

That the Department coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data, and additional guidance on price negotiation concepts, procedures, and practices. In the interim they should direct their agencies to follow guidelines currently used by the Defense Department (Armed Services Procurement Manual No. 1).

DEPARTMENT COMMENT

We concur. The Department has developed cost and pricing guides for use by our Principal Operating Components (POCs). They are now in final clearance within the Department and should be issued shortly. In view of this, we do not believe it is necessary to use the Armed Services Procurement Manual.

GAO RECOMMENDATION

That the Department take action to ensure that contract negotiators are properly trained in negotiating noncompetitive contracts.

DEPARTMENT COMMENT

We concur. As a part of the Secretary's May 1977 initiatives to improve the contracting and grant processes a program of professional certification is required for all contracting and grant personnel by September 30, 1980. To date 282 individuals have been certified. Part of the certification requirement is that all contract negotiators are properly trained.

GAO RECOMMENDATION

That the Department take action to ensure implementation of and compliance with effective management controls.

Page 2

DEPARTMENT COMMENT

We concur. The Secretary's May 1977 initiatives also require that procurement actions be reviewed at several management levels for compliance with Departmental policies/procedures. In addition, reviews are being made by the Office of Grants and Procurement to insure that POCs have implemented and are complying with effective management controls over procurement actions.



Department of Energy  
Washington, D.C. 20545

May 17, 1979

Mr. J. Dexter Peach, Director  
Energy and Minerals Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity to review and comment on the GAO draft report entitled "Civil Agencies Doing A Poor Job In Negotiating Noncompetitive Contract Prices Over \$100,000."

Three recommendations were made in the report, two of which were addressed to the Administrator of General Services and to the Director, Office of Management and Budget. The third recommendation, which was in three parts, was directed to the Secretaries and Administrators of the civil executive agencies. Our comments are therefore limited to the third recommendation.

The report recommended that civil agencies follow the guidelines currently used by the Defense Department (Armed Service Procurement Manual No. 1). The proposed DOE/PR-003 published for comments in the Federal Register on April 14, 1978, contains a provision for use of the Armed Services Procurement Manual No. 1 by DOE procurement offices. Substantial quantities of the manual were previously provided to each DOE procurement office for their use.

With regard to taking action to ensure that contract negotiations are properly trained in negotiating noncompetitive contracts, DOE has already initiated a program to fulfill this requirement. DOE Headquarters has provided a two-day training course on the material in the Armed Services Procurement Manual to several of the field offices. Several hundred persons have attended such training and the course is currently scheduled at other field offices. The DOE procurement offices are also taking advantage of the training classes offered by the Defense Department. This includes both the residence pricing courses and the mobile pricing courses.

The report also recommended that agencies take action to ensure implementation of and compliance with effective management controls. The DOE-PR 9-51.3 contains instructions for field offices to establish procedures providing for an independent review of proposed contract and subcontract actions. Also, proposed contracts exceeding a certain dollar threshold are required to be reviewed and approved by DOE Headquarters.

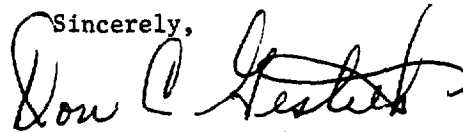
Mr. J. Dexter Peach, Director  
Energy and Minerals Division  
U.S. General Accounting Office

2.

In addition to the above actions, DOE has an aggressive Procurement Management Review Program. Under this program, review teams periodically visit each procurement office. The review teams are currently emphasizing the pricing and negotiating aspects of noncompetitive procurements.

As a final comment, the subject report will be a topic on the agenda at the DOE Contract Pricing Conference scheduled in June, 1979. This will provide key field office personnel an opportunity to gain further knowledge and training in this important aspect of the procurement process.

We will be pleased to provide any additional information you may desire in this matter.

Sincerely,  


Donald C. Gestiehr  
Director  
GAO Liaison



**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Administration**  
Washington, D.C. 20230

31 MAY 1979


Mr. Henry Eschwege  
Director, Community and Economic  
Development Division  
U. S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of April 24, 1979, requesting comments on the draft report entitled "Civil Agencies Doing A Poor Job In Negotiating Noncompetitive Contract Prices Over \$100,000."

We have reviewed the enclosed comments of the Office of Procurement and ADP Management and believe they are responsive to the matters discussed in the report.

Sincerely,



Elsa A. Porter  
Assistant Secretary  
for Administration

Enclosure





**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Assistant Secretary for Administration**  
Washington, D.C. 20230

May 31, 1979

Mr. Henry Eschwege, Director  
Community and Economic Development  
Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

Thank you for the opportunity to review and comment upon your draft report entitled "Civil Agencies Doing a Poor Job in Negotiating Noncompetitive Contract Prices Over \$100,000". In general we concur with your recommendations. However, you reviewed files from FY 77. Since then we have implemented several of your recommendations.

The following actions have already been implemented in our centralized procurement operations:

1. A comprehensive training plan has been developed with required courses for each grade level.
2. A Contract Review Board has been established to provide independent staff review of proposed contract actions.
3. The Armed Services Pricing Manual was ordered for all contract specialists.

In addition, the following actions will be undertaken:


1. A cost and price analysis refresher course will be conducted for our centralized procurement operation.
2. All field procuring activities will be directed to obtain and use the Armed Services Pricing Manual No. 1 for detailed guidance in pricing noncompetitive contracts over \$100,000.
3. All field procuring activities will be directed to develop comprehensive training plans for all procurement personnel.

- 2 -

4. A directive will be issued clarifying responsibility for obtaining and using certified cost and pricing data, technical analyses, and audit support.
5. We will be working with the FAR staff to develop detailed policy guidance on price negotiation concepts and procedures to be included in the Federal Acquisition Regulations.
6. We are exploring the possibility of increasing our personnel so that an internal management review staff can be established to ensure compliance by procuring activities with Federal and Departmental procurement policies and procedures.

We will be glad to provide any further assistance you may require in completing your final report.

Sincerely,

  
Joseph A. Sickon, Director  
Office of Procurement and  
ADP Management



VETERANS ADMINISTRATION  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS  
WASHINGTON, D.C. 20420

MAY 25 1979

• Mr. Gregory J. Ahart  
Director, Human Resources Division  
U. S. General Accounting Office  
Washington, DC 20548

Dear Mr. Ahart:

Your April 24, 1979 draft report, "Civil Agencies Doing a Poor Job in Negotiating Noncompetitive Contract Prices Over \$100,000," has been thoroughly reviewed by my staff. We agree with the General Accounting Office (GAO) findings and concur in the report recommendations.

The Veterans Administration's (VA) Contracting Officers are well aware of their responsibility to insure that prices in fee proposals and contract modifications are reasonable. As a pricing aid, we normally obtain an audit in all instances where the negotiated contract or modification exceeds \$100,000. It is extremely important to have adequate cost and pricing data submitted in a timely manner so that an audit can be accomplished in sufficient time to be useful in the negotiation process. In the course of arranging and conducting audits for VA negotiated contracts over \$100,000, my audit personnel have found situations similar to those noted in the GAO report. We agree there is a lack of definitive guidance in the Federal Procurement Regulations (FPR) as to what constitutes adequate cost and pricing data.

We realize that the preparation of detailed cost and pricing data can be burdensome to a contractor, and that performing an analysis of the data is costly and time-consuming for the Government. However, in large dollar procurements we have found that cost analysis, including a review of accounting data, is one of the best techniques for assuring that the negotiated price is fair and reasonable. The important thing, in our opinion, is to attempt to establish what the procurement should cost in the environment and under the conditions predicted for the performance of the contract.

Our comments on the specific report recommendations follow.

RECOMMENDATIONS:

1. The Administrator of General Services should have the Director, Federal Procurement Regulations

--issue guidelines that would provide better criteria and also examples as to what is complete cost or pricing data, and additional guidance on price negotiation concepts, procedures, and practices, and

Mr. Gregory J. Ahart  
 Director, Human Resources Division

- revise the regulations to clarify who should (a) review the completeness of cost or pricing data and arrange to get any other data that is needed and (b) analyze data submitted by subcontractors taking part in the SBA's program for concerns owned by the socially or economically disadvantaged.

We concur in these recommendations. The VA was previously advised that the Small Business Administration would assume responsibility for obtaining appropriate reviews for 8(a) contracts. Accordingly, the VA has not been conducting pre-award audits of 8(a) proposals.

2. The Director, Office of Management and Budget, should have the Administrator, Office of Federal Procurement Policy, issue directives requiring that civil departments and agencies develop and use

- effective management controls over their procurement operations through in-depth staff reviews of proposed contract pricing actions, and effective actions to correct weaknesses reported by departmental or agency procurement management and audit staffs,
- programs for teaching procurement personnel about price negotiation procedures and practices including classroom training, individual performance counseling, and daily supervision, and
- a program for performing postaward audits to help ensure that cost or pricing data relied on in negotiating contract prices was accurate, complete, and current as certified by contractors.

This Agency recognizes the need for additional training in this area.

3. The Secretaries and Administrators should

- coordinate with the Administrator of General Services to obtain guidelines for determining completeness of cost or pricing data, and additional guidance on price negotiation concepts, procedures, and practices. In the

Mr. Gregory J. Ahart  
Director, Human Resources Division

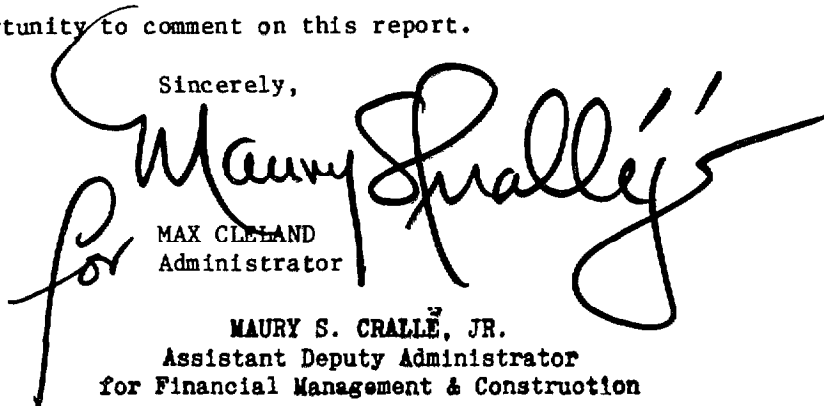
interim, they should direct their agencies to follow guidelines currently used by the Defense Department (Armed Services Procurement Manual No. 1),

- take action to ensure that contract negotiators are properly trained in negotiating non-competitive contracts, and
- take action to ensure implementation of and compliance with effective management controls.

We concur in these recommendations. It is the VA's policy to comply fully with the requirements of the FPR as they relate to negotiating noncompetitive contracts.

We appreciate the opportunity to comment on this report.

Sincerely,



MAX CLELAND  
Administrator

MAURY S. CRALLE, JR.  
Assistant Deputy Administrator  
for Financial Management & Construction

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**OFFICE OF INSPECTOR GENERAL**  
**WASHINGTON, D.C. 20250**

MAY 11 1979

Mr. Oliver Krueger  
Assistant Director  
Community and Economic Development Division  
General Accounting Office  
Room 6639, South Agriculture Building  
Washington, D.C. 20250

Dear Mr. Krueger:

The Office of Inspector General has reviewed your draft report entitled "Civil Agencies Doing A Poor Job In Negotiating Noncompetitive Contract Prices Over \$100,000." and has the following comments:

OIG performed an audit on contract negotiating and our findings were similar to those in the GAO report.

The Departmental comments on the report will be forthcoming.

Sincerely,



L. L. FREE  
Acting Assistant Inspector General  
for Administration, Congressional  
Reporting and Liaison

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
P.O. Box 2417  
Washington, D.C. 20013

MAY 18 1979  
1420



Mr. Henry Eschwege, Director  
Community and Economic Development Division  
U.S. General Accounting Office  
441 G St. N.W.  
Washington, D.C. 20548

Dear Mr. Eschwege:

In response to your letter of April 24, 1979, transmitting a copy of the draft report to Congress entitled, "Civil Agencies Doing a Poor Job in Negotiating Contract Prices Over \$100,000", we have the following comments.

We concur with the overall premise and recommendations in this draft report. Agency Secretaries and Administrators will be able to do a much better job in this area of contracting when GSA and OMB issue the recommended instructions, guidelines and directives set forth in the report. When these have been issued, we will be able to supplement agency instructions to comply with the direction, and plan and implement training to accomplish the stated needs.

Thank you for the opportunity to review and comment on this draft report.

  
JEROME A. MILES  
Acting Chief, Forest Service



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 1 1979

Mr. Henry Eschwege  
Director, Community and Economic  
Development Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your letter of April 24, 1979, requesting our comments on your draft report entitled, "Civil Agencies Doing A Poor Job in Negotiating Noncompetitive Contract Prices Over \$100,000."

We have reviewed the report and offer the following comments with regard to your finding on page 16.

The Small Business Administration (SBA) will assume the responsibility of assisting 8(a) contractors in preparing cost or pricing data supporting proposed prices for negotiated noncompetitive contracts over \$100,000. However, we believe that the subsequent cost analyses should be the responsibility of the procuring agency. Therefore, in respect to your recommendation on page 32, we recommend that the Director, Federal Procurement Regulations should revise the regulations as to who should review and analyze data submitted by socially and economically disadvantaged subcontractors as suggested above.

If you need further information, please advise.

Sincerely,

*William H. Mauck*  
A. Vernon Weaver  
EOP Administrator *actj*

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