HEARINGS
BEFORE THE
SPECIAL M-16 RIFLE SUBCOMMITTEE
OF THE
PREPAREDNESS INVESTIGATING
SUBCOMMITTEE
OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
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JUNE 19 AND 20, 1968

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(III)
ADDITIONAL PROCUREMENT OF M-16 RIFLES

WEDNESDAY, JUNE 19, 1968

U.S. Senate,
Special M-16 Rifle Subcommittee of the
Preparedness Investigating Subcommittee
of the Committee on Armed Services,
Washington, D.C.

The subcommittee (composed of Senators Cannon (chairman), Stennis, Smith, and Miller) met, pursuant to call, at 10:05 a.m., in room 224, Old Senate Office Building, Senator Howard W. Cannon presiding.

Present: Senators Cannon, Smith, and Miller.
Also present: Senator Thurmond of the full Preparedness Subcommittee.

James T. Kendall, chief counsel; Samuel R. Shaw and Robert M. Neal, professional staff members.

Senator CANNON: The hearing will come to order.

Today we open our hearing into the Army's issuance of contracts for additional procurement of M-16 rifles. It should be noted that this is really a continuation of previous investigations into the Army's rifle problem. A report on our last investigation into the rifle program was published only a little over a year ago, on May 31, 1967.

We were assured by the Army at that time that it was their intention to accelerate the production of the M-16. Apparently the acceleration they had applied to the program turned out to be inadequate. At the end of March 1968, they found it necessary to terminate the competitive bidding procedure they were then following, to establish a second commercial source. This was done, we have been informed, because the amounts planned for that procurement were too small, and the production time was too extended.

In the procedures followed in placing contracts with Harrington & Richardson and General Motors, it now appears that the question of price did not enter into the elimination of two companies otherwise adjudged competent to do the work. The ceiling prices fixed for the two successful offerors, even though subject to subsequent downward negotiation, were so high that they have drawn considerable public attention and adverse criticism.

The shortcoming of competitive bidding procedures seems to have been the result of a sudden recognition of needs, which, it seems reasonable to believe, had long ago been expressed by responsible field commanders and their intervening superiors. The Congress is entitled to a full explanation of and justification for events leading to this situation.
The propriety and justification for the abrupt change of course in the planned procurement is one of the primary subjects for this hearing. Another primary area of interest is the degree which even this abrupt change in method will satisfy our requirements for the rifle in a timely and orderly fashion. It is apparent that the months of preparation for the previous procurement plan were suddenly cast aside for an accelerated procurement. This raises some question about the soundness and logic of plans for distributing the rifle among its future recipients. There is a requirement for an explanation of how the proposed production schedules will fill, in timely fashion, the requirements previously described to the Congress.

Today we will hear from the Army and will explore its version of the situation. In subsequent hearings, we will have witnesses from at least two companies involved in the M-16 procurement process. We are conducting the hearings in closed session so we can be completely free to receive both classified information and information from the companies involved which they may consider as privileged matters. Our witness today is Hon. Robert A. Brooks, Assistant Secretary of the Army for Installations and Logistics. We appreciate his attendance and the information he is about to give us.

You may proceed.

STATEMENT OF ROBERT A. BROOKS, ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS AND LOGISTICS), DEPARTMENT OF THE ARMY; ACCOMPANIED BY MAJ. GEN. ROLAND B. ANDERSON, DIRECTOR OF MATERIEL ACQUISITION, OFFICE, ASA (I & L); COL. WALTER P. CUMBIE, DEPARTMENT OF THE ARMY, MONITOR M-16 RIFLE; AND JOHN MERITT, OFFICE, ASA (I & L), DEPARTMENT OF THE ARMY

Dr. Brooks. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee. I am pleased to have the opportunity to appear before this committee to clarify the Army's actions with respect to the M-16 procurement and to answer any questions that you might have.

I have with me Maj. Gen. Roland B. Anderson, Director of Materiel Acquisition in my office.

REQUIREMENTS FOR M-16 RIFLES

A number of general questions have been raised. Principally, these questions relate to the increased requirements for the M-16 rifle which necessitated a modification in our original procurement plan; and to the method and propriety of our selection of the two additional sources of production for the M-16 rifle.

Although the subject was covered in my letter to the chairman on May 31, 1968, I would like to review the developments which resulted in a dramatic increase in our requirements for the weapon. As of January of this year, our total planned deliveries for calendar year 1968 numbered about 350,000 M-16 rifles. Deliveries planned for calendar year 1969 were slightly higher. This rate of delivery would have provided, by August 1968, the additional rifles earmarked under the
then current plans for United States, South Vietnamese, and other free world forces in Southeast Asia.

Beginning in February 1968, however, a series of decisions were taken at the highest level of Government which substantially increased the requirements for rifles as well as for other weapons and equipment items. The central decision relevant to rifle requirements was that the South Vietnamese forces, both regular and territorial, were to be equipped and trained to assume a larger share of the combat against the enemy in South Vietnam. Underlying this decision were two principal factors: first, the improved performance of the South Vietnamese forces evidenced through 1967 and confirmed by the increased effectiveness of regular Vietnamese Army units during and since the enemy's Tet offensive; second, was the clear change in the enemy's tactics, begun during Tet and persisted in ever since, to conducting open and intensive military operations throughout South Vietnam, using troops increasingly armed with automatic rifles.

These decisions and the successive recomputations of rifle requirements to date have increased rifle requirements for South Vietnamese Forces alone by approximately [deleted] rifles. Other increases for free world and U.S. Forces in Southeast Asia have led to a total increase of approximately [deleted] rifles for Southeast Asia forces. Of these, approximately 250,000 have been characterized by the Joint Chiefs of Staff as being urgently needed.

Compared with the new requirements, the previously planned delivery rates for the M-16 rifle were obviously inadequate. At those rates the increased requirements would not be satisfied until late 1970 at the earliest. Therefore, the production base needed to be both expanded and accelerated.

The following actions were taken to increase and accelerate production: Colt Firearms Division, the present producer, was requested to expand its monthly capacity from 30,000 to 50,000 rifles to be attained in June 1969. General Motors and Harrington & Richardson were awarded letter contracts to produce 240,000 rifles during a 6-month period, with each planned to make initial deliveries in February 1969 and reach a maximum rate of 25,000 per month the following November.

By December of 1969, our revised procurement program is expected to produce 444,000 more rifles than the original plan.

I shall now deal with the requirements for, and distribution to, specific elements of all supported forces, first, in the situation before the decisions discussed earlier, next, the present situation, and third, in the situation at this time next year, when the increases in rifle production will have begun to take effect.

These are depicted on the three charts attached to this statement. None of these charts include requirements for replacing .30-caliber weapons now in the Department of Defense inventory. Present plans are that the caliber .30 weapons will eventually be replaced with the M-16 rifle.

REQUIREMENTS FOR 1968

Chart 1 shows worldwide M-16 rifle requirements and assets as of January 1, 1968. The net or unfilled requirement of [deleted] for U.S. Forces in Southeast Asia was for support troops. At this point
in time, all of the U.S. combat maneuver battalions had been equipped with the M-16 since August 1967. The unfilled Republic of Vietnam Armed Forces requirement was for the then-constituted regular Army maneuver battalions. All of the U.S., free world, and Republic of Vietnam Armed Forces requirements were scheduled to be filled by August 1968 on the then-existing production schedule. After August we were planning to fill progressively the requirements for other worldwide U.S. Forces, amounting to [deleted] rifles. The Army component of the requirement, [deleted] rifles was to reequip non-NATO- oriented Army Forces currently armed with M-14 rifles. The Air Force component of the requirement, [deleted] was to replace carbines under the Air Force modernization program.

INCREASED REQUIREMENTS FOR SOUTHEAST ASIA

Chart 2 shows the major increase that has taken place in rifle requirements for Southeast Asia as of June 1, 1968. Most of the increase is in requirements for the Republic of Vietnam Armed Forces, [deleted] rifles. Major components of this increase are [deleted] rifles for the Regional and Popular Forces [deleted] rifles for the Civil Irregular Defense Groups, and [deleted] rifles to equip the total regular Vietnamese Armed Forces. The increase of [deleted] in free- world force requirements is composed principally of [deleted] for Thai forces, in both Thailand and South Vietnam, and [deleted] for Korean forces in South Vietnam. For U.S. forces in Southeast Asia about [deleted] of the increase was for the Army, to provide for deploying forces, maintenance float and losses. You will note that from January 1 to June 1 we have increased the actual rifle assets in Southeast Asia by [deleted] more than the total unfilled requirements previously scheduled for delivery by August. Vietnamese Army maneuver battalions of the presently constituted forces, for example, are today 94 percent equipped with the M-16 rifle. The other major increase outside Southeast Asia is for the Korean forces in Korea, [deleted] rifles.

PROGRESS IN MEETING REQUIREMENTS

Chart 3 shows anticipated progress in meeting the new requirements by July 1, 1969, with increased production schedules. At that time all but [deleted] rifles will be available against the U.S. force requirement of [deleted]. This will be for depot stockage and pipeline. Other free-world forces will be equipped except for the Thai Army in Thailand, [deleted] rifles, and Korean support forces in Vietnam, [deleted] rifles. Of the Republic of Vietnam Armed Forces, all South Vietnamese Army maneuver battalions will have the M-16, [deleted] will be in the hands of regional and popular forces, [deleted] with the Vietnamese Marines and the remainder with Vietnamese Army combat support forces. Deliveries to all Southeast Asia forces, a total of [deleted] rifles, will be complete by December 1969. Of these deliveries, 444,000 will have resulted from the new production schedule which will make possible the completion of deliveries at least 1 year earlier than our January production schedule.
EXPANSION OF PRODUCTION

I would now like to discuss the procurement procedure which resulted in the selection of two additional sources for production of the M-16 rifle. I addressed this subject in considerable detail in my letter to the Comptroller General of the United States on June 11, 1968, and I will only cover the highlights at this time.

In order to obtain more rifles quickly, the first step taken was to request Colt's, the present producer, to expand its monthly capacity from 30,000 to 50,000. The latter rate is expected to be attained in June of 1969. Expanding production at Colt's to this level was the fastest way to increase deliveries.

ALTERNATIVE PROCUREMENT PROCEDURES

Since last October we had been in the process of selecting a second producer for the M-16 rifle. The urgency of getting additional rifles more rapidly, however, made it essential that we review our second-source plans. Several alternative courses of action were considered, two receiving serious consideration. The first was to continue competition for a second source, but in addition, to select a third producer on a sole-source basis from among the four offerors who were then in the process of qualifying their technical proposals. In developing this alternative, discussions were held with General Motors' Hydromatic Division, in view of this company's capacity and outstanding past performance against accelerated schedules, particularly the production of M-39, 20mm, cannon. This alternative would have provided us with a substantial number of additional rifles at an early date while not interrupting the normal competitive procurement process with the other offerors.

The second alternative was to interrupt the competitive procurement process, negotiate with all four competitors against an accelerated schedule, select two of the four, and award latter contracts to each of the two in order to permit an immediate production go-ahead with definitization of prices and terms to follow later. This alternative would provide more rifles than the first, since two contractors would be working on accelerated schedules. In view of the potential gains from accelerated delivery of rifles to Southeast Asia, I selected the second alternative, and this plan was personally reviewed and approved by the Secretary of the Army, the Assistant Secretary of Defense, and the Deputy Secretary of Defense.

Prior to the increase in requirements, in September 1967, I authorized a negotiated procurement leading to the selection of a single additional producer because there was a need to expand the production base. The authority for my action was 10 U.S.C. 2204(a)(16), which authorizes procurement by negotiation when it is in the interest of national defense to expand the mobilization base. The increased requirements which necessitated modification of the original procurement underscored the need for an expansion of the mobilization base. Two additional sources were needed instead of one. Since there was no change in our ultimate objective, there was no occasion to alter the basis of the negotiated procurement. Accordingly, after making the findings and determinations required by law, I authorized
continuation of the procurement under the authority of exception (16). Under the new procurement plan, of course, accelerated deliveries were more essential than under the original plan. Accordingly, the modified request for proposals made it clear that we intended to select the two producers which afforded the Government the highest degree of confidence in their ability to meet or exceed the accelerated delivery schedule.

**SELECTION OF CONTRACTORS**

All four offerors were informed of the revised ground rules for the procurement, were asked to submit new proposals and were given an opportunity to discuss their proposals in light of the changed requirements. All four proposals were carefully and objectively evaluated by a board of experts. That evaluation determined that the selection of General Motors and Harrington & Richardson would provide the Government with the greatest assurance that the accelerated delivery schedule would be met while providing the strongest possible additions to the mobilization base. Because both General Motors and Harrington & Richardson were rated higher than either Maremont or Cadillac Gage, ceiling prices based on estimated production, facilities, tooling and startup costs were solicited from the former two companies. The prices submitted by both companies were fair and reasonable. Accordingly, they were awarded letter contracts. These contracts are subject to negotiation downward after complete audit by the Defense Contract Audit Agency. We expect to have definitized contracts signed by the end of this year.

**CONSIDERATIONS OF PRICE**

It was our intent to solicit ceiling prices from one or both of the contractors not selected only if one or both of the companies which received superior ratings responded with an unreasonable ceiling price or if there were not a significant difference in the technical evaluation. Since both General Motors and Harrington & Richardson submitted reasonable ceiling prices, and since both were substantially superior in the technical evaluation, we did not request price estimates from Maremont or Cadillac Gage. Our procedure was fully consistent with ASUS 3-101, which provides that:

> Price quotations... shall be solicited from the maximum number of qualified sources... consistent with the nature of and requirements for the supplies or services to be procured to the end that the procurement will be made to the best advantage of the Government, price and other factors considered.

I cannot emphasize too strongly that price was not abandoned as a factor for consideration. The same amendment to the request for proposals that announced the change in the immediate object of the procurement specifically conditioned the award of letter contracts on the receipt of reasonable ceiling prices. And, as I have previously indicated, both General Motors and Harrington & Richardson provided budgetary estimates that were within the range of reasonableness we had previously established for each company. Even these ceiling prices are subject to negotiation downward and the Army intends to aggressively negotiate with each contractor a fair and reasonable firm price when an audit of the producer's cost data has been obtained.
PREMIUM PRICE FOR ASSURANCE OF ACCELERATED DELIVERY

A great deal has been made of the fact that, subsequent to the award of the letter contracts, both companies not selected indicated that they would have been willing to perform the contract at a price less than that estimated by either General Motors or Harrington & Richardson. I can only restate that the critical requirements in Southeast Asia compelled us to select the two producers affording the Army the greatest assurance that the accelerated delivery schedule would be met. The Army was well aware that area wage rates and plant overhead rates differed. We expected that these differences would be reflected in the budgetary estimates prepared by each offeror. In effect, we are paying a premium for an increased probability of satisfying a delivery schedule and for a mobilization base composed of more reliable producers.

In passing the Armed Services Procurement Act of 1947 Congress clearly contemplated that factors other than price would frequently be controlling when negotiations were conducted under the authority of exception (16). The legislative history demonstrates congressional awareness that such negotiated contracts might not represent the most economical procurement of the items. Congress judged the authority to pay a premium to be required for national security. The M-16 awards represent just the kind of procurement in which this broader authority contributes to our ability to meet urgent requirements to expand the mobilization base.

FINALITY OF JUDGMENT

In enacting the Armed Services Procurement Act, Congress also recognized that difficult individual judgments must sometimes be made in the case of negotiated procurements pursuant to exceptions (11) to (16). Accordingly, the Congress provided, in what is now 10 U.S.C. 2310(a), for the finality of a secretarial determination and decisions relating to these exceptions.

URGENCY JUSTIFIES PROCEDURES

The selection of General Motors and Harrington & Richardson for the award of the letter contracts was a straightforward process. Both companies were clearly superior to the two companies not selected. This was not a situation in which a ceiling price solicited from a competitor from whom after an objective evaluation we expected to get fewer rifles, could be significantly compared to a ceiling price from a competitor judged more capable of producing. The basis for the urgency which compelled this procurement was the decision I have cited, that the Republic of Vietnam Armed Forces will assume a larger share of combat.

This urgency cannot be measured against the possibility of a lower price with less assurance of early delivery. This might be applicable to other procurements. It is not applicable here. Less assurance of delivery means fewer rifles for the Republic of Vietnam Armed Forces and delayed achievement of their desired combat effectiveness. It would therefore mean continuation of the major combat burden now borne by U.S. forces and its cost in casualties, and in money. The only proper
criterion in this case was the assurance of a fair and reasonable price from the most capable competitors for the major effort involved. I believe that we have met and shall meet this standard.

**SUMMARY OF ARMY POSITION**

I submit, then, that the action taken by the Army in this procurement was consistent with the letter and the spirit of the applicable law and regulations and that it was proper exercise of authority granted to the Secretary of the Army by law specifically intended to be used in the situation with which we were confronted.

In summary the Army reacted to urgent requirements to deliver additional M-16 rifles to United States, South Vietnamese and other free-world forces in Southeast Asia. The increased pressure of enemy action, coupled with increased issue of Communist-made automatic rifles to North Vietnamese and Vietcong forces, highlighted the need for the accelerated delivery of the largest possible number of rifles. The equipping of South Vietnamese forces is a major step in our efforts to shift a greater portion of the war to their shoulders. Accelerated deliveries to meet these increased requirements was our objective. We switched from the price competitive approach to one of selecting two producers judged most capable of manufacturing rifles on an accelerated basis; we announced our intentions and followed the announced plan. I consider the decisions made were sound and proper and were the best possible to meet our procurement objectives.

Mr. Chairman, we will be glad to answer your questions.

(The charts referred to, follow):)

**CHART 1**

**M-16 RIFLE, REQUIREMENTS AND INVENTORIES, AS OF JAN. 1, 1968**

<table>
<thead>
<tr>
<th>Area/element</th>
<th>Total requirements</th>
<th>Assets</th>
<th>Net requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEA U.S. forces</td>
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<tr>
<td>Other free world forces</td>
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<td>RVNAF</td>
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<td>Total</td>
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<tr>
<td>Other worldwide U.S. forces</td>
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<tr>
<td>Others</td>
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<td>Grand total</td>
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**CHART 2**

**M-16 RIFLE, REQUIREMENTS AND INVENTORIES, AS OF JUNE 4, 1968**

<table>
<thead>
<tr>
<th>Area/element</th>
<th>Total requirements</th>
<th>Assets</th>
<th>Net requirements</th>
<th>Change in total requirements since Jan. 1, 1968</th>
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<tbody>
<tr>
<td>SEA U.S. forces</td>
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<td>Other free world forces</td>
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<tr>
<td>Grand total</td>
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</tbody>
</table>
Senator Cannon. Thank you.

Senator Smith.

Senator Smith. Thank you very much.

NATURE OF TECHNICAL EVALUATION.

Mr. Secretary, it is my understanding that the technical evaluation consisted of detailed analysis of the various written reports and forms and other documents submitted by the various companies, is that correct?

Dr. Brooks. Yes, Senator, it is.

Senator Smith. By what method did you ascertain that the actual physical factors which were involved in the documented submissions were present on the ground or in the plant?

Dr. Brooks. There was a visit made, Senator, to each of the bidders' plants in the course of a facility evaluation which was directed by the source selection evaluation board.

Senator Smith. Who made those visits, a representative of yourself?

Dr. Brooks. Representative of the Army Weapons Command, Senator, which is the contracting agency. I am sorry, I should correct that.

General Anderson. The Defense Contract Administration Services also participated.

Dr. Brooks. There were representatives of both organizations. General Anderson. There were verbal discussions of these, too.

Senator Smith. If one of the submissions was somewhat scanty in its language describing certain physical features, as compared with the actuality present in the factory, you could only determine the desired capability by such a visit, and you feel that the visit was sufficiently thorough to give you all the information necessary?

Dr. Brooks. I believe that there was a visit and they did look at it on the ground, Senator, yes.

Senator Smith. You were satisfied that they were very fair?

Dr. Brooks. Yes, I was satisfied.

"GM'S LACK OF TEST RANGE OMITTED IN TECHNICAL COMPARISON"

Senator Smith. The evaluation described Maremont as weak in the range facilities for testing the rifle. How do you explain that there was no comparable description of General Motors as weak, since it did not
possess any facilities of this nature, and its plans for provisions were an unusual arrangement which must have been noticeable in the written descriptions of its proposed testing arrangements?

Dr. Brooks. I believe that the description as weak, as a weak point in Maremont's proposal, Senator, involved the plan for creating or acquiring the facilities, as well as, of course, a survey of the facilities that were present on the ground. It was on that basis that the Board arrived at the conclusion that relatively speaking to the other contractors, Maremont did not have as strong a plan for quality assurance and the testing metrology facilities as did the other contractors, specifically the successful ones. General Motors and Harrington & Richardson.

Senator Smith. Was the evaluation determined on Maremont, or on General Motors in the same way that it was on Maremont?

Dr. Brooks. Yes; indeed it was.

Senator Smith. If Maremont had physically in operation range testing procedures for any needed expansion, how could it be described as weak when compared with General Motors, who really had no such facility in existence?

Dr. Brooks. Well, General Motors had, of course, the current facilities which they were using for the M-39 cannon; Maremont had the facilities which they were using for the M-60 machine gun, both of which are in production at the present time. It was a question of their plan for conversion and additional acquisition of facilities to meet the new and expanded requirements and to change them from the weapons that they were presently using and testing to those required to test the rifle.

Mr. Kendall. May I interrupt, Senator Smith?

Senator Smith. Yes.

Mr. Kendall. I think the Senator is asking about a testing range.

Senator Smith. That is right.

Mr. Kendall. General Motors did not have a testing range, Mr. Secretary, while Maremont did.

Dr. Brooks. I will have to check the record on that. There is a voluminous set of findings, of course, by the Board, and I believe that the plan at any rate for the General Motors testing facilities was considered extremely adequate, in fact a superior plan.

Senator Smith. Did you have something, General Shaw?

General Shaw. I visited General Motors' plant. The M-39 range they plan to use to stow the ammunition for the M-16 tests. There would be no conversion. They described to me their plans of building a range in the overhead directly above the production line. There was no such range, no such thing in existence. They had a plan to build one. There simply wasn't a range in existence, and none that they planned to use, in existence.

Dr. Brooks. Well, they had, however, a plan which I believe, General Shaw, was considered to be a superior plan for the development and acquisition of such a range.

Senator Smith. But it still remains that they did not have in being, testing facilities equal to Maremont, isn't that correct?

Dr. Brooks. I would have to check that, Senator. I accept Mr. Kendall's comment on the existence. I had understood that they did have a testing range.
General Anderson. They do.

Dr. Brooks. For the cannon.

General Anderson. Yes.

Senator Cannon. Isn't it a fact they were proposing to install a range over the heads of the workers that would have required detailed installation and detailed protective features, and as a matter of fact, quite a unique proposal in and of itself?

Dr. Brooks. I am not familiar with that particular location, Mr. Chairman, but we can certainly check that and furnish the answer.

Senator Cannon. That is my understanding, that that was the plan. It was to use space up in the rafters of the building, space directly above the people who were working on the M-16 below, and with the requirement to install protective devices, protective measures and complete soundproofing to get away from the acoustical problem.

Dr. Brooks. I will certainly check that information, sir, and confirm it or modify it for the record.

Senator Cannon. I thank the Senator for yielding.

Senator Smith. Thank you very much, Mr. Chairman, and Mr. Kendall.

Mr. Secretary, you will furnish a complete response to the questions on that matter for the record; will you not?

Dr. Brooks. Yes, I shall.

(The information referred to follows:)

The plan for a test range submitted by the General Motors Corporation on 20 January 1968 called for the construction of a facility immediately south of and adjacent to the Ypsilanti plant, and the area planned for M10 rifle production. The new plan presented during the 5 April 1968 discussions provided for the construction of a 100-yard range in the balcony of the M10 rifle production area. The range will be equipped with six accuracy firing stations and six function and test fire cells. Steel plates will be installed where needed to insure safety and insulating material will be used to reduce the noise to an acceptable level. Due to the height of the building, the floor of the range facility will be about 10 feet over the heads of the workers. A unique but feasible sound absorption system is being developed through which test weapons will be fired to further reduce the noise. Balcony space in this huge manufacturing complex is used extensively for a variety of things. A cafeteria, for example, is installed in another balcony of the M10 rifle production area. The construction of the test range as planned will eliminate the need for the construction of another building, thereby reducing costs, and facilitate testing of weapons due to its close proximity to the production area.

GM'S LACK OF METROLOGY LABORATORY OMITTED IN TECHNICAL COMPARISON

Senator Smith. Mairesmont, which has a metrology laboratory functioning for the Army's contracts of M-60 machineguns and in the same area has plans for M-16 production, was described as significantly weak in this feature. As I understand it, General Motors' presentation to the Army showed they had no metrology lab in the M-10 area, and originally did not plan to have one, instead relying on the use of outside commercial facilities.

Can you, or will you explain how the written evaluation, which blackmarked Mairesmont on this account did not even mention the complete absence of such a facility on the part of General Motors? And also, when the Army insisted that for the production of the
M-16, General Motors shall install a lab in the M-16 area? Isn't that right?

Dr. Brooks. I know their plan was to install such a metrology facility, Senator, and again I am speaking of General Motors, that this plan appeared to be a good one, in fact an excellent one, and that it was accepted as a strong point in their evaluation.

Senator Smith. But isn't it true that the written evaluation did not refer to this in any way, as far as General Motors was concerned?

Dr. Brooks. The written evaluation, the summary written evaluation, Senator, which of course is extremely brief, did not refer to this as a point in General Motors, I am sure that it is addressed in the voluminous and detailed findings of the individual groups which composed the Source Selection Evaluation Board, because this was one of the features that was required to be handled in the work breakdown, and it had to be dealt with by those working groups.

Senator Smith. Don't you, Mr. Secretary, think personally that this is important enough an item to have appeared in even the brief summary of your evaluation?

Dr. Brooks. Well, it was covered in, I believe, Senator, by the quality assurance program, which is dealt with briefly of course for General Motors as being a program—I will have to quote it—“of a sound manufacturing plan for the M-16.”

EQUITY OF COMPARING GM’S FINANCES WITH RESOURCES OF SMALL BUSINESS

Senator Smith. In the evaluations performed, each company was marked on the categories of finance and management. When you consider the position of General Motors in the corporate structure of the entire world, do you think it an equitable proceeding to assess them a numerical score, in comparison with other companies such as Harrington & Richardson, which as you have noted, is classified as small business.

In other words, do you think you could compare a big business with small business for a job of this kind?

Dr. Brooks. In this case, Senator, it was necessary to compare them, because there was no special consideration being given to the small business aspect, and what we were interested in, of course, was the company most capable of producing. The capability to produce, of course, includes the matter of financial strength, and it was considered that both General Motors and Harrington & Richardson, even though it is a small business, possessed adequate financial strength so that it would be appropriate to award them this contract.

Senator Smith. In other words, you are saying that the provision in the law with respect to set-asides for small business was not given any consideration in this contract?

Dr. Brooks. This was not a contract, Senator, which appeared appropriate for the small business set-aside procedure, which is allowed for in the statute.

Senator Smith. Would it not be more equitable for all concerned, to merely ascertain on these two features, that any prospective bidder is competent and adequate, without assessing numerical factors, which obviously are out of balance among the competitors?
Dr. Brooks. I think it would have been appropriate, and it was contemplated under the way in which the original procurement was established, where we had a relatively normal procurement leadtime of some 14 months, and where the buildup was on a more or less normal basis to 10,000 rifles a month on a 1, 8, 5 shift.

When we went to the accelerated procedure, where we reduced the leadtime from 14 months to 9, we required them to get as fast as possible to 25,000 per month on a 3, 8, 5 basis:

It was our feeling that any contractor would have a difficult time, and would represent a risk to the Government in being able to meet the schedule, even the best, and therefore we gave considerable weight to the relative evaluations because under the circumstances under which we were placing the procurement, it seemed to us that a judgment of greater capability meant a probability of getting more rifles. This is what it meant.

AFTER-AWARD: ASSEMBLY OF INDUSTRIAL PRODUCTION EQUIPMENT AS A WEAKNESS.

Senator Smith. The evaluation assessed as a weakness on the part of Maramont, that 75 percent of the required industrial production equipment would have to be obtained after award, I am informed as a result of a staff visit to the four companies, that General Motors, for instance, planned to make heavy use of the Government account machinery available throughout the country. I assume from your figures for Maramont that you have them for the other three companies as well. Will you tell us what they were for comparison purposes?

Dr. Brooks. For General Motors, Senator, it was about 50 percent. For Harrington & Richardson it was the lowest of all the companies. I believe it was approximately 20 percent.

General Anderson. That is about right.

Dr. Brooks. About 20 percent.

Senator Smith. Thank you, Mr. Chairman. That is all for the time being. It just seems to me that this is a pretty shoddy and shabby record on a matter of very great importance.

Senator Cannon. Thank you.

Dr. Brooks, first I would like to go to some of your charts that are attached here.

Dr. Brooks. Yes, sir.

Senator Cannon. What was the reason of the reduction in requirements for other worldwide forces? Was this simply a figure-juggling process?

Dr. Brooks. No, sir. This was in part the shift of deploying forces. Between January and June, as you know, there were deployments agreed upon to expand U.S. Forces in South Vietnam. Those forces therefore fell out of the other worldwide area where they were originally, and are added to Southeast Asia. There are also other changes, primarily in the Marines and I believe in the Navy, where the Marines were changing their requirements, for example, for their training base to bring them under the Southeast Asia requirement towards which the training base is primarily oriented.

Senator Cannon. Do I understand it that you do include in this requirement the equipment, the equipping of the forces in South Korea?
Dr. Brooks. That is included here, sir, on the last line under "Other Worldwide," those forces, [deleted] increase in requirements is primarily for the South Korean Army in South Korea.

Senator Cannon. In South Korea?

Dr. Brooks. Yes, sir.

Senator Cannon. And is that a fairly recent determination?

Dr. Brooks. Yes, sir. It was made at the same time as the other determinations starting in February of this year.

Senator Cannon. Is that fully supported by our commanders, our field commanders in South Korea?

Dr. Brooks. Yes, sir. It is certainly supported by the Joint Chiefs of Staff. The Secretary of Defense has taken it under his advisement. We are directed to attain the capacity to be able to meet this requirement.

Senator Cannon. That is considered of equal urgency with these other requirements that you have laid down here?

Dr. Brooks. The Joint Chiefs of Staff, Mr. Chairman, gave certain priorities as I indicated in the paper, those priorities as urgent requirements do not include the South Korean forces. This is an increased requirement but it was not characterized by the Joint Chiefs as urgent.

Senator Cannon. So that it certainly did not bear an urgency tag comparable to the equipment of the South Vietnamese forces, for example?

Dr. Brooks. It did bear a tag which was comparable to some of the South Vietnamese forces. Only some of the South Vietnamese requirements were characterized as urgent; as for example those for equipping the initial increment of the Regional and Popular Forces in South Vietnam. That was characterized as an urgent requirement. The other requirement for support troops was not so characterized.

Senator Cannon. I must say, having visited that area quite a little over the past, well, since the fall of 1965, that I found no sense of urgency, not even a unified sense of agreement that the South Korean forces should be so equipped. Yet from early in 1965, or mid-1965, there was quite a strong appeal for the South Vietnamese forces to be equipped, and for a conversion to M-16's in South Vietnam. Yet it took us, how long a period of time to make that decision, 2 1/2 years; is that right?

Dr. Brooks. No, sir. They were being equipped already late last year in November-December of 1967.

Senator Cannon. Yes, but your changes that you are talking about here occurred since January of this year.

Dr. Brooks. Yes, sir; that is correct.

Senator Cannon. Is that right?

Dr. Brooks. The changes to equip the entire South Vietnamese regular force took place since February of this year. There had previously been a recognized requirement to equip the maneuver battalion element of the South Vietnamese forces. That had been approved by the Secretary of Defense and was already under way at the time when these other changes in requirements took place.

FAIRNESS OF TECHNICAL EVALUATIONS

Senator Cannon. I want to go to another subject now for a few moments, into some of the matters of the technical evaluation process that you used.
As I understand it, you tried to make the process so that each firm was given a full and fair assessment of their technical plans to make and qualify the rifle; is that correct?

Dr. Brooks. Yes, sir.

**COMPARISON OF TEST RANGES.**

Senator Cannon. Now in your letter to the Comptroller and in the Source Selection Advisory Council, you lay stress on the alleged weakness of the Maremont targeting and accuracy firing stations, and in the Comptroller's letter you say:

"This weakness is significant," and in the Source Selection Advisory Council report it says:

'Maremont does not have immediate facilities to support several important features of the program such as targeting and accuracy firing stations.'

It would then be correct to say that this comparative weakness was a significant factor in the final outcome, would it not?

Dr. Brooks. It was one of several factors and it was significant; yes, sir.

Senator Cannon. This question has been raised in general, but I would like to ask it specifically.

Since that importance is attached to that particular feature, can you tell us why the fact that General Motors did not even possess such a firing facility was not even mentioned as a weakness for General Motors?

Dr. Brooks. It was not only the current facilities that the Board was looking at, Mr. Chairman. It was the plan and the schedule for the development and acquisition of the facilities that would be needed for the rifle, and on that the Board scored General Motors and Harrington & Richardson high, and Maremont relatively less high as to what they would have at the time that the rifle was coming into production.

Senator Cannon. So this was based solely on the plan that they said they would put in effect, even though they had nothing then as compared to a company that did have actual capability at that time?

Dr. Brooks. It was based on a combination of the two, I believe, sir.

Senator Cannon. I will be interested in seeing your further response to this so-called rafter approach that I raised a question on a little earlier.

Dr. Brooks. Yes, sir.

**COMPARISON OF METROLOGY LABORATORIES.**

Senator Cannon. In your letter to the Comptroller you say that the metrology laboratory facilities operating for Maremont you consider to be a significant weakness and in the Advisory Council report this too was singled out as an inadequate feature among "several important features of the program."

This places, in the scoring, considerable stress on the presence of this metrology laboratory that Senator Smith asked about. Can you explain why the total absence of such a metrology laboratory in General Motors' M-16 plans was not mentioned, and that in their technical presentation their plan was to do this important work by an outside firm as an outside contract, and it was not until this presentation that...
their plan was changed to provide for its purchase, construction, fitting out, and providing the trained technicians?

Dr. Brooks. As I indicated, Mr. Chairman, we will have to supply the specifications on that. It is my understanding that the plan that was presented had adequate provision for metrology facilities in the General Motors' proposal. If it had not had such facilities, I certainly would have expected that it would have been cited as a weak point in the evaluation.

Senator Cannon. If General Motors had not had such facilities?

Dr. Brooks. Had not had an adequate plan to arrive at such facilities, I think it should have been and would have been cited.

Senator Cannon. While you are on it there, since they were totally absent physically, and in the case of the metrology laboratory, had to be warned that such a laboratory was required to be physically present, why no mention was made of these features, whereas Maremont was in writing described as weak on those physically present and merely requiring expansion.

Dr. Brooks. We will provide that answer.

Senator Cannon. Direct your answer to that.

Dr. Brooks. Yes, sir.

Senator Cannon. Specifically as to why no mention was made of it.

Dr. Brooks. Yes, sir.

The written Phase I technical proposal submitted by General Motors on 20 January 1968 did not comprehensively describe the plans for handling metrology laboratory requirements. Generally, the plan specified that external and internal facilities would be utilized as required. In the oral presentation made by General Motors on 5 April 1968, quality assurance personnel went into extensive detail as to how this requirement would be met. During this oral presentation, it was pointed out that existing facilities would be utilized to the maximum extent feasible. The existing facilities were described as being in a 50 feet by 50 feet cubic in an environment under rigid temperature and humidity control. If it were found necessary to resort to external facilities, it was planned to use the General Motors Technical Center located a few minutes away in Warren, Michigan, or laboratories of the Industrial and Metrology Division of the Bendix Corporation in Detroit.

General Motors did not revise its plan for metrology laboratory facilities during the period between 20 January and 5 April 1968. The oral presentation of 5 April provided a detailed, excellent plan in contrast to the 20 January technical proposal. That contrast was reflected in the overall score given General Motors in the evaluation report and documented in the voluminous record compiled by the Source Selection Evaluation Board.

The Source Selection Advisory Council report to which I refer in my letter to the Comptroller General merely summarized weak and strong points for each offeror.

General Motors' plan for metrology laboratory facilities, although excellent, did not warrant being singled out as a strong point. Maremont's plan was sufficiently weak to justify being highlighted as a weakness.

AFTER AWARD ASSEMBLY OF INDUSTRIAL PRODUCTION EQUIPMENT

Senator Cannon. In your letter to the Comptroller you emphasized that you considered Maremont had a deficiency in its requirement to obtain 76 percent of the industrial production of equipment after award.

Do you consider this unusually high percentage in such an undertaking?

Dr. Brooks. It varies very substantially in all undertakings, Mr. Chairman, and I think it varied a great deal in this undertaking.
As I indicated, it varied from 20 percent for Harrington & Richardson, which had an M-14 line in being, up to 76 percent for Maremont. This was a feature which we felt would make it that much more difficult for them to meet this highly accelerated schedule.

Senator Cannon: So that you had a fear that they could not do what they said they could do; is that it?

Dr. Brooks. We had a sense, Mr. Chairman, of risk in any of the contractors being able to do what this accelerated schedule called for. The risk we felt was less, was minimized in the case of the two contractors who were selected.

Senator Cannon: General Motors officials informed the staff that their total requirement for machines was 618; 534 of these were to be obtained from the Government-owned machines scattered around the country in various accounts, including $5.9 million for 72 new machines to be purchased for the Government account. This means that about 85 percent of General Motors machines had to be obtained and installed in the areas intended for M-16 production.

If 76 percent was a weakness for Maremont, how can you account 85 percent for General Motors as being strong?

Dr. Brooks. The figures that I have, Mr. Chairman, were that approximately 80 percent of the General Motors production equipment would have to be obtained after award, and that is a comparable figure to the 76 percent for Maremont.

Perhaps General Anderson can expand on that.

General Anderson. That is our information. You might possibly be including the Government equipment that they already have in the plant on the M-39 and they are going to use several hundreds of those.

Senator Cannon: The figure that the staff was given was as I stated; 616 total, 534 of which were to be obtained from the Government-owned machines scattered across the country in the various accounts.

I wish you would reconcile those figures for the record.

Dr. Brooks. Yes, sir; we will.

In contrasting actual with planned progress, General Motors indicated to Subcommittee staff members that approximately 85 percent of all required tooling had been acquired. To produce the M16 rifle, General Motors plans to use a total of 587 pieces of production equipment. Twenty-four pieces will be supplied from General Motors' own equipment, 274 of the M39 line will be used, 51 will be obtained from the TRW M16 line, 177 from DIPBC, and 51 purchased for the Government's account. This means that 289 of the total of 587, or 49 percent of the production equipment General Motors plans to use on the M16 line will have to be acquired from sources external to the Hydra-matic plant.

Maremont's plan, on the other hand, called for the use of 444 machine tools. Thirty were to be supplied from Maremont's equipment pool, 76 diverted from the M60 machine gun line, 207 obtained from an M14 rifle line, and 134 purchased for the Government's account.

Maremont's plan, therefore, required the acquisition of 78 percent of the production equipment needed for the M16 rifle program as compared to 49 percent for General Motors.

General Anderson. I suspect that that number includes the ones they already have in the plant.

General Shaw. They were being moved out. The entire area was being cleared and those machines, those involved with the M-39, were being parked outside to be later retooled.
General Anderson. Some they are using will not be required on the rifle line at all, and some that they have, several hundred, will have to be rearranged for the rifle production plan. They might move them out for rearrangement purposes and then move them back.

General Shaw. I believe how many actually to be bought and outside the plant would be the significant figures.

General Anderson. Yes.

CHROME PLATING PROCESS AS PART OF PRODUCTION BASE OBJECTIVE

Senator Cannon. The announced intention of the Army was to gain an assured base of production for the M-16 in which certain parts were to be substantially in-house produced. One of these was the barrel, which requires chrome plating of the chamber. General Motors stated to the staff that they did not have this capability, nor the time to acquire adequate experience, and planned to do it by outside contract.

Maremont is equipped and has a satisfactory history of experience in Army production in this process. As a measure of adequacy for a production base, why was this not taken into the comparative statement of merit?

General Anderson. Yes, sir. Each contractor had a different shall we say ‘make or buy’ pattern. They would make certain things, they would procure other things from outside from subcontractors.

As a matter of fact, General Motors is making, as far as the components are concerned, more in-house because they want to minimize their risk by not trusting someone else on any of the other components.

Now in the case of the barrel, they are going to make their own barrels in-house. Now the chrome plating of that barrel, as you indicate, they are going to have done by subcontractor. That is nothing unusual.

As a matter of fact, Colt Firearms is now doing the same thing. They are getting their barrels chrome-plated outside. When you say barrels, we are talking, Mr. Chairman, only of the chamber. The entire barrel is not chrome-plated. It is just the chamber portion of it.

Senator Cannon. Yes, I understand that, but this has been one of our big technical problems in South Vietnam. This is where we have had a lot of difficulties in the chamber.

General Anderson. Yes, the lack of chrome plating.

Senator Cannon. Chrome plating, and the degree of reliability that has been achieved. I am wondering why this factor was not taken into consideration or brought into account in figuring the comparative merits of the technical proposals.

General Motors was the only one that did not have an in-house capability, and this is an area that requires a great degree of good quality control, as obvious from our experience in South Vietnam.

Dr. Brooks. General Motors, Mr. Chairman, will continue to be responsible for the quality control naturally on whatever it makes and whatever it buys.

Senator Cannon. I understand that. They will continue to be responsible under this contract. My question is, why was not this taken into consideration, not just the fact that they would be responsible, but that the other companies had a capability and General Motors did not.

General Anderson. Mr. Chairman, the chrome plating of the chamber, of the barrel, is not a particularly sophisticated or difficult thing
to have done anywhere. It is a simple operation. It is not a difficult thing to do at all.

For example, Colt, when we introduced the chrome chamber in the M-16 rifle some months ago, was able to go out to a commercial facility, somewhere nearby there I believe, and start doing this in a matter of weeks, and we have had no difficulty quality assurance wise with the chrome plating of the chamber. It is not a difficult operation to subcontract out.

Senator Cannon. Did you take any steps to evaluate their subcontractors' experience in the process?

Dr. Brooks. Yes, sir; the subcontract structure was included in the evaluation.

Senator Cannon. What did you actually do with respect to their proposed subcontract?

Dr. Brooks. The subcontractors were surveyed by the Board, Mr. Chairman, both for their competence and for the possible conflict between the subcontract structure proposed by one bidder as against another.

Senator Cannon. Who is their subcontractor on this chrome plating?

Dr. Brooks. I will have to furnish that for you, sir. We can find out.

(The information requested follows:)

Chrome plating is not considered sufficiently critical to require the contractor to have in-house facilities. The request for proposal issued on 3 October 1967 specified that access to adequate chrome plating facilities was satisfactory. General Motors plans to use Doehler-Jarvis, a subsidiary of the National Lead Corporation, as a subcontractor. Doehler-Jarvis has had an outstanding record of performance on chrome plating M58 components. Colt's subcontractors with other firms, so there is no possibility of conflict for the capacity involved. All located in the Hartford, Connecticut area, Colt's subcontractors are the Allied Platers, Inc., Superior Plating and Mieroim, Inc.

**COMPARISON OF BARREL STRAIGHTENING PROCESS**

Senator Cannon. In the request for proposals and other documents on M-16 production, emphasis had been laid upon the ability to perform the barrel straightening procedure. General Motors did not plan to use this procedure, instead relying on its experience in heat treating processes to accomplish the same end. No mention was made in the evaluation of this deviation from the technical requirements of the request for proposal. Why was it not mentioned?

General Anderson. General Motors, as you know, are going to make their barrels by a very sophisticated process called cold swage, and with their technical knowledge of manufacturing and their use of this method of making the barrels, they have no concern whatsoever involved about the so-called straightening of the barrel and the control of the heat treatment. No other company is going to use the cold swage method that we know of at this time, not at the beginning anyhow.

Senator Cannon. You had checked that out and were completely satisfied, that that was equally as good a process, is that right?

General Anderson. Oh, yes, sir. It has been used before. It is not a brand new process. It is one that has not been used extensively.
Senator Cannon. Incidentally, while I am on that, and I know my time is about up, I am going to call on Senator Thurmond in just a moment, but Senator Smith raised the question as to financial ability, and you indicated that both Muremont and General Motors were financially able as far as you were concerned. In the rating, General Motors got less than a one rating.

I am just wondering what kind of a company you would require to get a one rating, according to your rating categories, in this country. Can you think of any offhand, if General Motors has less than one, that would get a one rating?

Dr. Brooks. I raised that question with the Board, Mr. Chairman, and they said that it was not their practice to give anyone 100 percent on these overall categories, that there were I suppose, technical, management, and financial risks with any company, even General Motors.

Senator Cannon. I guess that is the whole story. They had never given anybody one before and did not think they should start now.

Senator Thurmond?

Senator Thurmond. Mr. Chairman, I do not believe I have any. Being a member of this subcommittee I just stopped by to listen for a little bit to what was going on. I expect to read the record in more detail, thank you very much.

Senator Cannon. Do you have more questions, Senator?

Senator Smith. No.

Elimination of Incentive and Penalty Clauses

Senator Cannon. The crash procurement scheme eliminated the incentive and penalty clause from the proposal. In the report to the Comptroller, the explanation was made that under the crash urgency of expansion and acceleration of the production plan, that it would have been unrealistic and inequitable to include this clause. Since none of the companies requested this removal, was this not sort of a gratuitous action on the part of the Government here?

Dr. Brooks. We felt, Mr. Chairman, that that specific penalty provision which operated in a very narrow range, for example, the penalty provision takes effect on the first day of the first month following any shortage in production, was not appropriate in that it might result in a very large contingency factor being placed into their estimates by the offerors. This does not mean, I want to emphasize, that we are abandoning the concept of penalty provisions.

In fact, I have asked the contracting agency to include consideration of such provisions in the negotiations which will take place, and the question is rather the character of the penalty provision that was in the contract versus what we would like to see in the contract under the accelerated schedule.

Senator Cannon. Would it not have been better to have waited until one of the companies raised that objection, if they had an objection to it?

Dr. Brooks. Well, sir, the problem was that these companies were supposed to submit budgetary estimates on a very short time frame, and that we were then planning to award a letter contract with a ceiling price to be negotiated downward. We were interested in anything
which would give us, which would help to assure us a reasonable ceiling price. We felt that if we include the same penalty provision that was in a 14-month lead-time contract, in a nine and a half lead-time contract, that we were apt to get what we would consider an unreasonable estimate.

Senator Cannon. In your letter to the Comptroller General, General Motors' previous record on other items of early production was cited as a principal reason for great confidence that General Motors, a nonproducer of rifles, could meet this demanding schedule.

Now, is it not true that in these cases of previous early production that the penalty and incentive clauses were included in General Motors contracts?

Dr. Brooks. I will have to check out by individual contracts, Mr. Chairman, and furnish you the answer.

Do you know offhand, General Anderson?

General Anderson. In the case of the M-39 machinegun there was no such provision. On the others that I have cited, I do not remember. I rather suspect that it was not, Mr. Chairman, because of accelerated crash nature of them, and for the same reasons Dr. Brooks has described. It would introduce a contingency into their pricing.

Senator Cannon. You cited as your main purpose here though the expediting of production. Now, how did the removal of this clause expedite production by General Motors or any one else?

How would that tend to expedite production? This was your main concern.

Dr. Brooks. Yes, sir. We felt that it would be inequitable and might increase our prices to get this clause in there. We felt this specific clause was not appropriate to the procurement.

As I say, we have not abandoned the concept of a penalty clause which would be appropriate to this procurement.

Senator Cannon. But you still did not answer the question as to how you think the removal of that would expedite production by anybody.

Dr. Brooks. It was a question, sir, that this did not bear, as we saw it, on the expediting of production. It bore rather on the conclusion of an equitable contract as soon as possible. In that sense we felt it would help just to get an earlier contract and therefore, earlier production. Inasmuch as there is another provision:

Senator Cannon. Now, of course, I am sure that one of your reasons for awarding the contract was because of GM's vast resources and the fact that they would devote a lot of effort toward the contract if required, but let's say they had difficulties in their main profit line, which is automobiles. Would it not have been useful to have had the leverage of this clause to make sure that the resources were used on a priority for this item?

Dr. Brooks. If I may address myself to your first statement, Mr. Chairman, I do not think that simply the bigness of the company was our reason for going to General Motors. There are many substantial, very large companies in this country, where we have not had the experience so far as defense procurement is concerned that we have had with General Motors. They have shown, not only the fact that they have the resources, which is of course, well known, but the fact that they have consistently been willing and shown evidence of apply-
ing these resources to the contracts which they have undertaken for the Government, and I think the contracts for the M-39, 20-millimeter cannon, the 'shell, metal parts, the 105-millimeter shell, the 81-millimeter mortar shell, which are recent contracts, all with substantial urgency and all where this company has exceeded its accelerated schedule, are indicators of their attitude, capability, and intent to move out on these accelerated procurements for the Government.

**ELIMINATION OF PRICE IN SELECTION OF TWO COMPANIES FOR NEGOTIATED CONTRACT**

Senator Cannon. On the original competition, all firms were to be prepared to submit firm prices on April 5, 1968. That was true even after the original proposed quantity was increased from 167,000 rifles to 358,000.

It was reaffirmed as late as the 19th of March. On March 29, the number of rifles per company was reduced to 240,000, but the rate of production and time of first delivery was accelerated.

Now, what were the intervening factors which caused the March 29 proposal to eliminate the consideration of prices proposed by the bidding companies?

Dr. Brooks. The prices which were contemplated to be received, Mr. Chairman, on the 5th of April were prices based on a 14-month leadtime, and a contract award as of the 15th of June, which would have given us first production in August, August of 1969.

Those prices were no longer applicable to the increased schedule, which called for delivery in February, that is 6 months earlier, and which called for a more rapid build-up to the maximum production.

Therefore, we felt that those prices were no longer significant so far as the changed schedule and the changed delivery time were concerned.

Therefore, in order to get a contract as soon as possible, rather than have the contractors go back and develop new firm prices which would have taken at least we feel 30 to 60 days longer, in order to get firm auditable costs on a new schedule, we went the letter contract route, which required a budgetary estimate with the prices to be negotiated later.

This new budgetary estimate was what we announced on the 29th of March and what we indicated to the contractors we wanted and which they furnished to us as requested.

Senator Cannon. In your testimony before the Ichord subcommittee in the House, you cited the Truth in Negotiating Act as the basis for elimination of price from proposals, saying that your estimate was that it would take from 60 to 90 days for the competing companies to verify prices from their own supplier before they could submit a valid price.

Was this belief based on any inquiry to the competing companies as to the time that they might require?

Dr. Brooks. This belief, sir, was based on our general experience with changed schedules.

Senator Cannon. But you made no attempt to verify from the companies whether that was in fact a true position?

Dr. Brooks. This may have been done, sir.
Was it done in this case, General Anderson?

General Anderson. No, sir; not in the second case.

The submission of cost and pricing data required by 86-653, and it takes the form of a form 633. This is a submission, and the submission of this does not take 30, 60, or 90 days necessarily. But it is the auditing of these cost and price submissions and the negotiating that follows that would take the rest of the time. It is not the actual submission of the form.

These then have to be audited by the DCAA, and then they serve as a basis for negotiating, which process takes varying lengths of time.

Senator Cannon. Yes, but I am saying the testimony was that it would take from 60 to 90 days for the competing companies to verify the prices from their own vendors.

Dr. Brooks. I will have to check that testimony, Mr. Chairman. I think the intent was that it would take 60 to 90 days longer to arrive at a firm contract.

General Anderson. The verification maybe being the DCAA verification versus their submission.

Senator Cannon. Under the crash procurement scheme the selected companies were required to submit ceiling prices by the 13th of April. In order to make a businesslike ceiling price proposal, the companies would have had to verify for themselves at least ceiling prices from their vendors, would they not, to come within that frame?

Dr. Brooks. They would have had to get budgetary estimates, Mr. Chairman, from their vendors, much as they submitted budgetary estimates to the Government. These, however, are not auditable. They are not in a form which will comply with the requirements of the act, and therefore, if the process had been hanged to require that they submit these firm prices, I think our estimate of 60 to 90 days longer beyond the middle of April would have been a fair one.

Senator Cannon. As a matter of fact, all four companies have informed the staff investigators that they had so verified the ceiling price proposal.

Now suppose that one of the companies might have required a few more days to have ascertained their prices, would it not have been a great advantage to the Government to allow them a few more days and proceed on that basis?

Dr. Brooks. Even if they had been able to verify them, the form in which they are presented, Mr. Chairman, is not a form which meets the requirements of the Truth in Negotiation Act.

The DCAA requires elaborate and complete data; for audit purposes, which we are going to receive of course from these contractors as they develop it, and I do not think we would have been benefited from a few additional days to verify the type of estimates that they were developing at that time.

Senator Cannon. Since it was already apparent from the technical evaluation of the original proposals of all four companies, that they were competent under those conditions, and it must have been apparent that they were competent under accelerated conditions, would it not have been a great advantage to have had the price factor as a means of elimination from among the four?
Dr. Brooks. Even if they had been able to verify them, the form in
man, and if they had been quoting on a 14-month production leadtime,
there would have been no question of the ability of the companies to
meet this normal schedule.

Again, however, I would say that even the most competent of these
companies undertakes a certain risk in being able to meet the ac-
celerated schedule which we were proposing. Therefore the risk which
we had to translate into getting in all probability less rifles from the
less competent contractor became the overriding element in our analy-
isis, and therefore we went to the relative competence, as we saw it, of
these companies to produce the rifles in the time required.

Senator Cannon. In your letter to the Comptroller you state that
price as a factor for consideration was not abandoned. Is it not cor-
rect that it was abandoned as a consideration of eliminating two
companies from the competition of the four?

Dr. Brooks. It was not abandoned, Mr. Chairman—

Senator Cannon. The price factor was not taken into consideration
as far as they were concerned?

Dr. Brooks. In selecting the two successful bidders, the process we
went through was to select them on the basis of their technical com-
petence, then to get budgetary estimates of ceiling prices from them.

Now if those budgetary estimates had been what we considered
unreasonable, then we would have gone to other contractors to get
budgetary estimates from them, because we were not in this case in-
tending to pay an unreasonable price for this accelerated schedule.

This did not happen. We were satisfied that these prices were rea-
sonable within our prior Government estimates. Therefore, we did not
go to the other companies.

However, the factor was there to be used, if the price had been in
our judgment unreasonable.

Senator Cannon. By the way, where did you draw the line of un-
reasonableness as to the price?

Dr. Brooks. The Government team, Mr. Chairman, made a separate
estimate for each contractor as to what would or would not be con-
sidered an unreasonable price.

Senator Cannon. And how did their bids actually compare, how
did their estimates actually compare as to that?

Dr. Brooks. In both cases, sir, they were lower than the Government
estimate.

Senator Cannon. How much lower were they, 30 percent of it or
60 percent of it, or 70 percent?

Dr. Brooks. Oh, no. They were around 80 to 90 percent of the es-
timates, sir.

This does not, of course, mean that we accept their estimate as a
reasonable price for final purposes. We will continue to negotiate
this price.

Senator Cannon. I understand.

Dr. Brooks. And we anticipate that reductions will be made where
appropriate.

Senator Cannon. Then the only remaining consideration of price
in signing the letter contract was whether or not the selected companies
came close to the ceiling price privately estimated by the Army. If that
is a fact, how can you say that price was a factor of any importance at all in selecting the contractor?

Dr. Brooks. As I say, Mr. Chairman, if the price had been outside those limits, we certainly would have considered other prices which we would look at to see whether they were within the limits of that contract.

Senator Cannon. Did you set a low ceiling as well as a high ceiling?

Mr. Brooks. No, sir. It was an estimate of what was considered to be an outside reasonable price for these purposes.

Senator Cannon. In your letter to the Comptroller you cite a Comptroller General decision which upheld the award to a company on a factor other than the best price. How can it be said that your procedures even brought price in as a factor in selection of the award?

Dr. Brooks. I would say, sir, as they have described it they provided for the use of price in those circumstances where they felt it might be required. That is, if we got an unreasonable price, unreasonable ceiling from one of the bidders judged most competent, or if there were no difference or negligible difference in technical evaluation, then there would be no other basis on which to go.

Senator Cannon. In the General Accounting Office statement to the Ichord subcommittee, he said in effect the prices you considered were your own estimates as to what the competing companies would probably submit. If that had any influence at all in making the award, the Army must have estimated that Maremont and Cadillac Gage would have been close to or higher than the other two companies; is that correct?

Dr. Brooks. No, sir; we had different estimates for each one of the companies.

Senator Cannon. That is not my question. Was their estimate close to or higher than the other two companies, your estimates for them?

Dr. Brooks. It depends which of the other two you mentioned, Mr. Chairman.

Senator Cannon. You select them. Just tell us what it was.

Dr. Brooks. The estimate for Maremont was, I believe, slightly lower than that estimated for Harrington & Richardson and for—substantially lower than the estimated for General Motors. Cadillac Gage, on the other hand, was higher than H. & R. and higher than Maremont.

Senator Cannon. Why did you estimate Maremont to be lower? Because they had a little more firm the matters at hand to fix their estimate on?

Dr. Brooks. No, sir. It was based on the Government's understanding of the technical proposal of the contractor.

Senator Cannon. So you actually then estimated that Maremont would be able to do the job at a lower price if they got the contract.

Dr. Brooks. That is correct, yes, sir.

Senator Cannon. And that is actually what they said they could do. What was the differential between Maremont and—

Dr. Brooks. I have the figures here, sir.

Government estimate, I can give you them here, Mr. Chairman, although this is a matter of sensitivity of course, because these contracts
are still under negotiation and we do not want the contractors to have a target which appears to be above what they are now getting.

Senator Cannon. This is a classified hearing.

Dr. Brooks. I understand, sir.

Senator Cannon. And certainly the record would not be made available for any of the contractors to come in and review.

Dr. Brooks. Yes, sir.

The Government estimate for General Motors was [deleted] million in total; for Harrington & Richardson, [deleted] million; Maremont, [deleted] Cadillac Gage, [deleted].

Senator Cannon. So with Maremont, you were willing to assume a price differential there of about $14 million on your figures.

Dr. Brooks. Yes, sir.

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EXPANDING COLT'S PRODUCTION TO MEET URGENT REQUIREMENTS

Senator Cannon. Now, while all of these proceedings were underway with the stated objective of meeting, as you told the Comptroller, a critical need for M-16 rifles in Southeast Asia, how do you explain that most detailed and urgent examination of Colt's expansion ability was not undertaken?

Dr. Brooks. We did undertake an examination of it, Mr. Chairman. Colt's came in with a proposal which we gave very careful attention to, to expand beyond what we had already committed them to, which was expanding to 50,000 a month. They proposed to expand to 75,000.

Senator Cannon. Did you in fact request Colt's in writing to match their maximum expansion capability with any terms or reference, or did you send representatives to their management to view the factories to make an on-the-spot evaluation of their expansion capacity?

Dr. Brooks. We had them come in, Mr. Chairman, to explain in detail to us and to the Weapons Command their plan. I do not know if we sent anyone.

Did we send anyone to Colt's? I believe there was an evaluation made. I do not know whether this was a visit.

General Anderson. We did not ask them in writing for this. They came it to us in our office.

Senator Cannon. They represented that they could expand very materiality, did they not?

Dr. Brooks. Yes, sir; they did.

General Anderson. To 75,000.

Senator Cannon. In view of the stated urgency, why did you decide not to make an intensive examination of their capacity, particularly since as early as March 16, Colt's in writing themselves proposed a scheme to go to 75,000 rifles per month, with only a minor alteration of the plan for them to go to 90,000 per month?

Dr. Brooks. We did, Mr. Chairman, make a very careful analysis of their proposal, and I think that we came out it was not a question in our minds that Colt's could not do this. That certainly there was some risk, but certainly no greater risk than we were attributing to the other offerors, the other competitors in the procurement.

The reason for not picking up that offer, there were several reasons. First was the fact that Colt's schedule that they proposed and that we felt they could probably meet was about as good as the best schedule which we could expect from the other bidders. That is to say, they
would about equal that expansion. We probably could get it from them, we felt, at a lower price than the other bidders. So this was an advantage for Colt's.

However, there was a substantial risk involved, we felt, in going from a pattern where we were looking for one contractor at 50,000, one at 25,000 and one at 25,000, to one contractor at 75,000 and another one at 25,000.

First of all, we were concentrating our rifle production in one company. Now they did propose to put it up in a separate plant, but the company would then be subject to all the risks of strikes, of management change, and other contingencies which can affect the ability of a company to produce.

We felt this was a real problem in being able to assure ourselves that we would get the rifles, and we have had experience, as you know, of a strike which affected the Colt's production quite seriously last year.

The second point was, with respect to future procurement of the rifles, we felt that if Colt's went to 75,000 and there was no other competitor in there at 25,000 a month, that we simply would prejudice to an unacceptable degree the possibility of future competition. There could be no real effective competition with Colt's, if their capacity was that high, and we felt, in future years, if we attempted to obtain competition, they couldn't simply overwhelm the other competitor and we would not have a truly competitive market.

Those were the two reasons, sir, on which we based our turn down of the Colt's proposal to go to 75 as an alternate.

COLT'S PRICE OFFER FOR PROPOSED ADDITIONAL RIFLES

Senator Cannon. And you did that, at the same time knowing that their offer price was much less than the $222 per rifle that you estimated the other four companies were going to have to produce at?

Dr. Brooks. We knew it would be somewhat less; yes, sir.

NUMBERS TO BE DELIVERED EARLY

Senator Cannon. And you knew at the same time that this would offer more rifles at an early date to meet those critical needs that you described in Southeast Asia?

Dr. Brooks. No, sir; it would not have offered more rifles. We felt it would have offered about the same number on the same schedule.

Senator Cannon. It would not have offered more?

Dr. Brooks. No, sir.

Senator Cannon: Senator Smith?

Senator Smith. I have no questions at this time.

Senator Cannon. Senator Miller?

Senator Miller. No questions.

Senator Cannon. Senator Gault's Staff?

ARMY EVALUATORS' VISITS TO PLANTS

Mr. Kendall. Thank you, Mr. Chairman.

Mr. Secretary, let me make sure I understand one or two of your answers.
Did you say that Army representatives did go to each of the four offerors—that is, General Motors, Maremont, Cadillac Gage, Harrington & Richardson—prior to the selection of General Motors and Harrington & Richardson, and made a detailed study of their plant facilities?

Dr. Brooks, I did say so, Mr. Kendall. That was my understanding.

Can I ask General Anderson?

General Anderson. I am not sure. I understand so, but I am not sure.

Mr. Kendall. You will check that, please, sir, and supply it for the record?

Dr. Brooks. Yes; I shall.

(The information requested follows:)

Special task groups, representing all the relevant disciplines from the Boston and Detroit Defense Contract Administration Services Regions, supplemented by small arms specialists from the Army Weapons Command, made separate and independent on-site surveys of each offeror’s plant. These surveys were made from late January through mid-February; these task groups explored all aspects of each offeror’s capability to perform in accordance with his Phase 1 technical proposal. The capability survey reports were reviewed and key individuals interrogated by the Source Selection Advisory Council during the period 11-15 March 1968. The Council’s findings on the capability surveys were incorporated into a Council report, dated 18 March 1968. The latter report was updated to reflect the proposal of each offeror made during the discussions of 4-5 April 1968.

SURPRISE OVER DIFFERENCES IN TECHNICAL EVALUATION

Mr. Kendall. Do I also understand, sir, that although the question of testing facilities and metrology laboratory were considered factors, at least in qualifying Maremont, that you are not prepared to respond today as to the details of what General Motors possessed on that? In other words, that you just do not know right now?

Dr. Brooks. Well, we will have to provide you the answer, Mr. Kendall, on what General Motors’ plan was.

Mr. Kendall. In other words, while this was considered an important factor, the question on those two points have caught you by surprise. That is the fact of the matter; is it not, sir?

Dr. Brooks. We do not have the detailed information, sir, that you have after the visit.

Mr. Kendall. Yes, sir.

This, of course—

Dr. Brooks. However, I would say that I believe that the board which made this report had looked into that and had made an analysis of it.

Mr. Kendall. This relates to the question that was asked as to why the absence of these facilities or the inadequacy of them—no, absence, because they existed in the case of Maremont—should be considered a weakness with respect to them and should not even be considered in the case of General Motors, and you are not prepared to respond to the question.
CONSIDERATION OF THIRD SOURCE FROM THOSE COMPETITING FOR SECOND SOURCE CONTRACT

Now going back for a little while, since last October when you were considering the question of selecting a second producer for the M-16, you considered the alternative also of continued competition for the second source, but selecting a third source producer while the competition was going on; is that right, sir?

Dr. Brooks. Last October?

Mr. Kendall. Yes, sir; since last October, sometime in the process.

Dr. Brooks. The consideration of a possible third source, sole source producer, Mr. Kendall, came up in——

Mr. Kendall. You considered several alternative courses of action?

Dr. Brooks. Yes, sir.

Mr. Kendall. I am quoting from page 6.

Dr. Brooks. Right. That came up in March of this year.

Mr. Kendall. Yes, sir.

The first was competition for a second source, but, in addition to selecting a third producer on a sole source basis among the four offerors who were then in the process of qualifying technical proposals.

I am reading from your statement:

In developing this alternative, discussions were held with General Motors Hydramatic Division in view of this company's outstanding performance on accelerated schedules, particularly production of the M-30mm. cannon.

Is General Motors the only company that you discussed that alternative with?

In other words, did you just say General Motors is it and "we are going to talk with you to see whether we want to proceed," or did you give any other companies conferences about that proposal?

Dr. Brooks. No, sir. We discussed it with General Motors on the basis that we indicated in my statement, that this company had an outstanding past record.

Mr. Kendall. Why eliminate companies like Harrington & Richardson, which had previous experience on the M-14, and companies like Marenost, which had had previous experience, and I think the Army said a fine record on the M-60 machinegun?

Dr. Brooks. Because their record, while good, classified as good, Mr. Kendall, was not the outstanding one that General Motors had provided us with, had provided for us.

OMISSION OF PRICE AS A FACTOR IN 1967 DETERMINATION

Mr. Kendall. Going back to your method of source selection and entering into the contract, in the 1967 determinations authorizing a negotiated contract, price was included as one of the factors, was it not?

Dr. Brooks. In the September 1967 determination?

Mr. Kendall. Yes.

Dr. Brooks. Yes, it was.
Mr. Kendall. And the determination issued on March 28 omits price as a factor. As a matter of fact, you advised the offerors not to submit prices until they were asked for it.

In other words, you said "Do not tell us what the price is until we specifically ask you"; that is correct, it is not?

Dr. Brooks. That is correct, sir.

Mr. Kendall. How can you square that situation with your statement that it was never intended to abandon price as a factor?

Dr. Brooks. We did not abandon price in the sense that we are still looking and still are looking, Mr. Kendall, for a fair and reasonable price on this procurement.

COMPETITORS READINESS TO SUBMIT PRICES

Mr. Kendall. Well, in your planning to meet the accelerated expanded production directed by the Defense Department, did you know that the bidding companies had to be prepared on April 13 to submit firm prices on the increased quantities which you directed on March 8?

Dr. Brooks. We knew that they were submitting, they were directed to submit firm prices. I believe it was April 6; is that correct, General Anderson?

General Anderson. I believe so.

Dr. Brooks. On the increased quantities, but on the same delivery schedule that we had set up beginning in the procurement last September. That was what I would call the normal 14-month leadtime.

Mr. Kendall. So in the March 8 direction you told them to be prepared to submit firm prices?

Dr. Brooks. That is correct on a 14-month leadtime.

Mr. Kendall. Yes, on the same quantity, and then on your determination on March 28 you told them not to submit prices. The thing that had changed since that time was an acceleration of the schedule?

Dr. Brooks. Acceleration of the schedule for that portion of the procurement which had been completed to be competitive at 14 months leadtime; yes, sir.

Mr. Kendall. All four of the companies have stated to our staff that ascertaining prices from the vendors under the expanded concept was no great problem, and that under any condition, at least ceiling prices from all four companies could have been obtained with a very few days' delay.

I still come back to the question, under those circumstances, what was the overriding factor which caused the obvious advantage to the government and the taxpayers, that is a lower price, to be discarded?

Dr. Brooks. The factor that became of the greatest significance, Mr. Kendall, was the capability of the producers, two producers, to produce more rifles and to come closer to or to beat the accelerated schedule.

Mr. Kendall. Then would not the best way to have gone, if that was the sole consideration, eliminating the requirements of the second source, would it not have been better to have gone with Colt's?

Dr. Brooks. No, sir. They were no better than the accelerated schedule that we were looking for. That would not have given us an advantage. That would have given us the two things that I mentioned to the chairman, a risk in concentrating our base in one producer, and the virtual elimination of the possibility of future competition.
KNOWLEDGE OF PROBABLE PRICE RANGE

Mr. Kendall. Just so that the record reflects this, you are saying that the Army made its own estimate of ceiling prices, and you have given the figures, also as to how they compared with the ceiling prices submitted by GM and Harrington & Richardson, so you are saying that the Army selected General Motors and entered into a contract with the knowledge and the information based on its own estimates that General Motors would be $14 million higher than Maremont or Cadillac Gage, or Maremont at least?

Dr. Brooks. That was what the estimates indicated; yes, sir.

However, we also had greater confidence in the ability of both General Motors and Harrington & Richardson to meet the schedule proposed than we had in the other two companies.

Mr. Kendall. And the basis of information which you have now available, the actual difference in the contract according to Maremont, what they said they would propose, is $20 million?

Dr. Brooks. Well, that is what their indication is, sir. I would like to point out here again, I appreciate the fact that this is a classified hearing, that in the period between the selection of the two bidders and the award of the contract, we went over the estimates in order to assure ourselves that they were indeed fair and reasonable. We were looking for two things, one was duplications, things that should not be in there. We found some of those. The other was omissions.

Now, we did find in Harrington & Richardson's proposal specifically that there were some substantial omissions, and Harrington & Richardson's price that they submitted to us by telephone, in their initial budgetary estimate, was quite a bit lower than the price of $41.6 million which was finally agreed on as the ceiling.

We pointed out those omissions. They went back and revised their estimate, so that I would say that the difference of $20 million may or may not be a valid one, but that we might have found similar omissions if we had obtained prices from Maremont.

Mr. Kendall. Since the Army was interested in price, according to what you say, and since it made its own estimate of ceiling prices, do you not think the Army would have been in a better situation if they had not precluded the offerors from coming in and saying, "This is our estimate of our price?" Do you not think that information would have been of some value to the Army in its proceeding with this situation, or did the Army prefer not to get confused by the question of price?

Dr. Brooks. No, sir.

The question in our mind was what value to us and to the taxpayer would the price have been if we had obtained it from contractors that had been judged less capable of performing than the two successful bidders.

Mr. Kendall. Is there any way in the world that General Motors could have been seriously considered for this award in view of the fact that three other contractors with a lower price were considered qualified, is there any way that General Motors could seriously have
been considered if you had had these price figures at the time you made the award?

Dr. Brooks. Yes, sir.

I think that with the rating that this company had, with its record of past performance, since we wanted that performance and we wanted to get the rifles as soon as possible, the award, I think, would have been made in the same way with or without the pricing.

Mr. Kendall. Do you not think you would have been in a little better situation to defend your award if you had taken into consideration the basis, the prices which the companies had in mind, to say "Yes, we did consider this, we considered this in connection with all of the other factors, and this was our judgment"?

Dr. Brooks. It would have been difficult for us, I think, Mr. Kendall, and this I am sure you appreciate is a hypothetical issue at present, it would have been very different in price against the urgency and the value to the Government of getting the rifles earlier.

Mr. Kendall. You are still faced with that problem in retrospect now, are you not?

Dr. Brooks. Yes, sir; I think we are certainly faced with the problem and I believe that we have submitted to you the justifications for doing what we did. I do not think the problem would have been any different if we had obtained prices.

QUALIFIED SOURCES

Mr. Kendall. I believe your testimony adds up to the fact that Maremont was a qualified source although not as qualified as General Motors; is that right?

Dr. Brooks. It was a competent source, sir. And as I indicated, with a risk schedule for all contractors, we would prefer not to characterize a source as qualified or unqualified, because that is a yes or no proposition. They are more or less qualified.

Mr. Kendall. Well, it is obvious from the debriefing given Maremont that they were considered a qualified source, Mr. Secretary. I have it here; I do not want to go into it and take up a lot of time, but I am sure you are familiar with it.

Dr. Brooks. Yes; I am, sir.

Mr. Kendall. The debriefing gave us some pretty strong recommendations in certain areas, and I think you will agree that the overall conclusion of the debriefing, that they were qualified but not as qualified as General Motors in the peculiar circumstances of this award.

Dr. Brooks. That is what the debriefing officer said.

QUOTATIONS FROM MAXIMUM OR MINIMUM NUMBER OF SOURCES

Mr. Kendall. Yes; so when you refer to ASR 8-101, saying that price quotations shall be solicited from the maximum number of qualified sources, you actually in this case solicited from the minimum of qualified sources, two out of four.

Dr. Brooks. The ASR clause, Mr. Kendall, goes on to say consistent with the nature of and the requirements for the supplies and services.

Mr. Kendall. Yes, sir.
Dr. Brooks. Now, consistent with the requirements, we then bring in the question of urgency.

Mr. Kendall. Yes, sir; but when you refer to the maximum and you are going to select two, and you had four offerors, you actually considered price from the minimum number, not the maximum?

Dr. Brooks. No, sir.

Mr. Kendall. You had to consider at least two.

Dr. Brooks. We felt that the minimum in this case would be the same as the maximum, because the number of sources to be solicited consistent with the requirement was such that we felt the overriding urgency required that we solicit the prices from the two people who had been judged most capable.

Senator Miller. Would counsel yield?

Mr. Kendall. Certainly, sir.

PROSPECTS FOR DOWNWARD NEGOTIATION

Senator Miller. In connection with this, I believe you said $14 million additional cost—

Mr. Kendall. That was the original Government, Army estimate.

Senator Miller. For General Motors?

Mr. Kendall. As compared with Maremont; yes, sir.

Senator Miller. Yes, but there is another factor that the Secretary did bring out in his testimony, which I think fits with this, and that is you have laid emphasis on the fact that these prices are subject to negotiation.

Dr. Brooks. Yes, sir; that is correct.

Senator Miller. Downward, and that the Army tends to aggressively negotiate with a view to getting them down.

Do you have any idea how much you might be able to get them down?

In other words, the 14 is a tentative figure. It might turn out that way, but you are going to try to lower that figure?

Dr. Brooks. That is correct, Senator.

Senator Miller. In negotiation, downward.

Do you have any ideas on how much of that could be negotiated downward?

Dr. Brooks. We do expect to obtain reductions, primarily, principally in the General Motors ceiling price, Senator. I would hesitate to speculate on a figure right now. We have not yet received the submissions from the two companies. We will get those, and as I indicated in the statement, we will negotiate on that basis.

Senator Miller. Well, would it be unrealistic to suggest that this might possibly be negotiated downward by half of that difference?

Dr. Brooks. I would hesitate to comment on that, but we do expect, Senator—?

Senator Miller. I am not asking for a commitment. I am just asking on the basis of your experience what would be a ballpark possibility on this.

We are talking now about $14 million difference out of what is the total procurement contract. What does that amount to?

Dr. Brooks. The present estimate for General Motors is $56 million.

Senator Miller. Fifty-six million dollars. Well, if you cut it down
by 10 percent, that would be getting near half that figure. Is it unrealistic to look for the possibility of a 10-percent reduction?

Mr. Brooks. I do not think that is unrealistic; no, sir.

Senator Miller. You do not think it is unrealistic?

Dr. Brooks. No, sir.

Senator Miller. What has been your experience on these renegotiations downward?

Dr. Brooks. In procurements of this kind we have frequently experienced, Senator, a 10-percent reduction upon doing this.

Senator Miller. Thank you.

Mr. Kendall. Now, Mr. Secretary, on page 11 of your statement, I just want to make certain that I understand one of the sentences here, the third sentence in the first full paragraph on page 11 you say:

This was not a situation in which a ceiling price solicited from a competitor from whom, after an objective evaluation, we expected to get fewer rifles could be significantly compared to a ceiling price from a competitor judged more capable of producing.

What are you really saying there, that you expect to get fewer rifles from Maremont and therefore it would be unrealistic to compare it with General Motors? Is that what you are saying?

Dr. Brooks. Yes, sir.

Mr. Kendall. I assume you mean fewer rifles earlier?

Dr. Brooks. That is correct; fewer rifles against the schedule.

SIZE OF URGENT REQUIREMENTS

Mr. Kendall. With reference to the requirements, I need to get a little assistance on a point or two here.

You say on page 2 that:

Increases for free world and U.S. forces in Southeast Asia have led to a total increase of approximately [deleted] rifles for Southeast Asia forces. Of these, approximately 250,000 have been characterized by the Joint Chiefs of Staff as being urgently needed.

In the briefing which General Woolwine gave to Senator Muskie he furnished a chart showing the requirement. He said the JCS requirement for Southeast Asia was [deleted] as soon as possible. I assume as soon as possible equates with urgent.

Dr. Brooks. Yes, sir.

Mr. Kendall. So could you give me some explanation of the difference of [deleted] there?

Dr. Brooks. Yes, sir.

I was referring here, Mr. Kendall, to that portion of the increased requirement which was characterized as urgently needed. The JCS in their statement did characterize [deleted] as urgently needed. Of that, a little over 100,000 were requirements which were not increased.

In other words, these were requirements for the ARVN maneuver battalions, for the U.S. forces remaining in South Vietnam, which were requirements existing at the time that the increases came about. So that the total urgent requirement, [deleted], the total urgent increased requirement, [deleted].

Mr. Kendall. I certainly hope that you will meet these requirements as quickly as you hope, Mr. Secretary.
Dr. Brooks. Yes, sir.
Mr. Kendall. As you know, we have been talking to you since 1965 and trying to get some sense of urgency into this program, although without regard to the contract award I must say that I am pleased that the urgency did develop.

Dr. Brooks. We feel it, sir.
Mr. Kendall. I think General Shaw would like to ask you a few questions.

Senator Cannon; General Shaw?

General Shaw. On the matter of industrial production equipment to be installed, is it the point as to what has to be moved into place in the plant, and connected up to the power sources and adjusted and retooled? Is that the point, in making that observation about how much had to be obtained?

Dr. Brooks. Well, there are two kinds of sources of production equipment, General Shaw. One is of course the equipment that is available either at the plant, has to be rearranged but it is there, or it is available elsewhere.
The other is the equipment that the contractor has to go out and buy.

Now in our answer clarifying the point on what percent of equipment was available, we will go into that in detail as to what had to be bought, what was available in inventory, what was available at the plant.

General Shaw. You just lost me. They were limited originally to only buying $4 million worth?

Dr. Brooks. That is right, sir.

General Shaw. And I believe no company planned to exceed that, and General Motors only planned to buy 72 pieces at $3.9 million, so they told us. But a large amount of this equipment they would draw from the DIPEC or ASOD lines and elsewhere?

Dr. Brooks. And from their own plant.

General Shaw. That would not be in the plant. They would have to be obtained as new pieces, physically moved from somewhere?

Dr. Brooks. Yes, physically moved.

However, its availability is guaranteed. It is a little different when they go out and buy it.

General Shaw. Muremont, they were not going to buy more than $4 million worth either?

Dr. Brooks. That is correct; yes, sir.

General Shaw. So in that respect they were equal to General Motors then?

Dr. Brooks. Oh, yes,

I was not suggesting a difference in that respect. I was just trying to point out the different category.

HYDRAULIC DIVISION NOT THE PLANT CITED AS BASIS FOR CONFIDENCE IN ACCELERATED PRODUCTION

General Shaw. As a matter of expanding on the information, you cited General Motors' record in the ammunition and M-60 tank transmission production as a factor of their assuredness in meeting a rapid schedule.
Was that Hydramatic that performed those, or was it some other division?

Dr. Brooks. No, Hydramatic has had one contract recently and that is the M-39, which was also an outstanding job.

General Shaw. But Hydramatic was not involved in the mortar ammunition, or the M-60 tank transmission?

Dr. Brooks. That is correct.

However, they did use on this, and the company did provide to other accelerated programs, the resources of the corporate management.

ORIGIN OF DIRECTIVES FOR CHANGING TO ACCELERATED PRODUCTION

General Shaw. In getting this accelerated production started, did you receive a directive from the Defense Department to expedite the M-16 production?

Dr. Brooks. We certainly received—yes, very strong.

General Shaw. Could you say from whom?

Dr. Brooks. I am trying to recall the specific point. I am sure it came from the originator of it, was the Deputy Secretary of Defense, Mr. Nitze.

General Shaw. Could you say when?

Dr. Brooks. There were a succession of them, General Shaw. I think the latest one was, essentially it went to the question of maximizing production. I think it was the end of February or early March.

General Shaw. When we had this briefing by General Woolwine, he used a chart which quoted a March 27, 1968, directive. They were told to change objectives to two sources, make selections as soon as possible, a desired award date of April 15, conduct intensive negotiations with all offerors who had submitted proposals, and make selection primarily on the basis of production capability together with the high level of confidence in ability to meet an accelerated schedule while maintaining good quality.

Did that directive come from—

Dr. Brooks. That came from me.

General Shaw. That is your directive?

Dr. Brooks. Yes, sir.

General Shaw. To the Army Materiel Command?

Dr. Brooks. Yes, sir.

General Shaw. What was the significance of the April 15 deadline date, referring back particularly to the timing of the price quotation?

Dr. Brooks. Because we felt this was the earliest possible date at which we could reasonably expect to award a contract under this procedure, and we wanted to accelerate that as much as possible.

In other words, we were looking for a gain of some 2 months over the June 15 contemplated award to April 15 through this procedure, and therefore getting into production 2 months earlier on that basis.

CONSIDERATION GIVEN TO THE EXISTING MOBILIZATION BASE

General Shaw. Now turning to the matter of General Motors, and your negotiations with them. When the urgency came upon you, and discussions were held with General Motors as a sole source producer,
there were then three companies being paid by the Government to maintain rifle lines as a mobilization base, TRW, Olin Mathieson, and H. & R.

As I understand it, you held no discussions with them.

Dr. Brooks. That is correct, General Shaw.

The case of Olin Mathieson and TRW was quite clear. They had declined to enter the original competition. At this point, therefore, and I am speaking about early March, they were not in possession, for example, of the Colt’s drawings which had been furnished to the other bidders, and we felt that they would have a much too long a time to catch up, to get familiar with the technical aspects of the procurement, to make them candidates for the award, for the sole-source award.

We did look at the H. & R. capabilities of course as we did the other bidders, and we felt that again among those four, that the outstanding one in terms of potential for a sole source award was General Motors.

I would say that the Source Selection Evaluation Board concurred fully with that conclusion.

General Shaw. Then paying these companies to maintain these lines as part of the mobilization base is not paying off very well?

Dr. Brooks. Well, they are M-14 lines, General Shaw, and we are maintaining them for that purpose. This M-16 is of course a different rifle.

General Shaw. We understood that the present decision is to build no more M-14’s.

Dr. Brooks. If there were a mobilization requirement today or in the near future, we would have to build M-14’s. That is why, as we get further into the M-16 base, of course, we will phase down the M-14.

General Shaw. You mean you do not have sufficient assets on hand with rifles plus the production capability of M-16’s to equip the forces we have mobilized?

Dr. Brooks. Oh, indeed we have, yes, sir.

The problem is of course of continuing to support them, and this is what we maintain a mobilization for, is to continue indefinitely being able to support forces with the rifle with which they are equipped, and for NATO forces that is the M-14.

Now, in order to provide such support and a continuing basis, to replace losses, we would have to activate one or more of those lines.

DUAL CONSIDERATION OF GENERAL MOTORS AS CONTRACTOR

General Shaw. As I understand it, we were informed by the General Motors people that you commenced your negotiations with them on the 7th of March on this single procurement.

Dr. Brooks. Yes, sir; I believe that is correct.

General Shaw. Was this in writing or verbal, the proposal?

Dr. Brooks. You mean the negotiations?

They were initially verbal. I do not know whether they made any written submissions or not.

General Shaw. We were also informed by a General Motors official that they were not informed that the sole-source plan was called off until sometime shortly after the 29 March telegram shifting to the two source competition.

Dr. Brooks. That is correct, sir.
General Shaw. Then until this time General Motors was in effect having a double shot at the job, was it not, one competitive and one noncompetitive?

Dr. Brooks. They were still in the competition.

What we were trying to do, General Shaw, was to be ready to move in whatever direction that seemed appropriate as soon as possible.

Now during March, what happened was that the requirements that we saw as of the 1st of March kept going up. There were, for example, I mentioned the civilian irregular defense group requirement in Vietnam. This was not known to us at the beginning of March. This is something that came in as the traffic went back and forth and as the requirements became defined. It appeared at the beginning of March that we could satisfactorily do the job with one accelerated producer, one additional accelerated producer, and one on a normal schedule.

That became less and less likely as we went through March, and it appeared that we were beginning to get more and more requirements. Therefore, we decided to get two producers in and get them accelerated as fast as possible.

General Shaw. I have nothing more.

Mr. Kendall. That is all the questions the staff has.

Senator Cannon. Anything further?

Senator Smith. Yes, Mr. Chairman.

As I listened to the Secretary’s statement, which is marked “Secret,” I would like to ask just what is secret about this statement except the charts in the back?

Dr. Brooks. That is the part of it, Senator, and the numbers of course of assets and requirements in the body of the statement.

Senator Smith. So that the statement without the numbers and without the charts could be released?

Dr. Brooks. Yes.

Senator Smith. I do not intend to release it, but I did want to talk about it.

Dr. Brooks. It could be.

Senator Cannon. Would you provide to the committee a nonclassified copy in the event that requests are made for it, if someone should desire it?

Dr. Brooks. We could, yes, sir. We will be glad to do so.

Senator Smith. Mr. Chairman, as I said at the beginning, it seems to me this is a very shoddy, shabby record, and that it may be that legislation is needed so as not to have repetition.

I want it well understood that I hope to do something about it.

Senator Cannon. Certainly in the course of these hearings we will be better able to form a good judgment on that, but I, myself, am very much concerned about the position taken with respect to this picture so far.

Senator Miller?

Senator Miller. Thank you, Mr. Chairman.

Going back to my question about the possibilities of negotiating downward these figures, I wonder if you could provide for the record some examples in rifle procurement where this has been done, so that we would have an idea of what you have been doing over the years, and what you have for a basis for optimism or pessimism.
Dr. Brooks. Yes, sir. We will certainly do that, Senator. I do not know whether we can do it for rifle procurement, because I am not aware of instances in which we have used—we have. I will correct that. We have used a letter contract, one or more in the past. I would suggest that we do it in small amounts.

Senator Miller. For rifle procurement it would be good, and then contracts with General Motors it would be good, so we might see (a) in the rifle area, (b) in the area of General Motors contracts.

Dr. Brooks. Yes, sir; we will be delighted.

There were two actions with Colt's involving the use of ceiling prices. In December 1965 Colt's was awarded a letter contract for M16A1 rifles at a ceiling price of $116. The firm price in the contract definitized in June 1966 was $111.50, a reduction of 3 percent.

A modification to the June 1966 contract contained an option clause with ceiling prices of $90.50 for the M16 and $107 for the M16A1. Prices on the option quantities were definitized in December 1966 at $90.65 for the M16 and $102.30 for the M16A1. These prices represented reductions from the ceiling prices of 4 percent for the M16 and 5 percent for the M16A1. It should be noted that Colt's had extensive historical cost data upon which the ceiling prices were based.

There are two prime examples of letter contracts with General Motors.

On one letter contract for 105mm high explosive projectiles, the ceiling price was $9.00. The definitized contract set the unit price at $8.675, a reduction of 4 percent.

On a contract for 81mm mortar projectiles, the ceiling price was $9.76. The negotiations prior to definitization of the award led to a unit price of $7.82, a reduction of 20 percent.

Senator Miller. On the last page of your testimony, the middle of the paragraph, you say:

"The equipping of South Vietnamese forces is a major step in our efforts to shift the greater portion of the war to their shoulders."

I was wondering if there was any significance to that word "the" as distinguished from the word "a"?

Dr. Brooks. I do not think it was intentional, sir.

I understand your point. I do not think any of us can predict at this time who will be carrying the major share of combat. Of course it depends on many factors, and I would be the first to say that the rifle is one of them.

Senator Miller. Yes; and I understand the predictability and all that, but I am wondering if that word "the" was your word, or if that came from some other policy statement that you drew from in making that statement.

Dr. Brooks. I do not believe so, sir.

I think the—

Senator Miller. Could you check with whoever helped you prepare that statement?

Dr. Brooks. We will check on it.

Senator Miller. And find out the source of the word "the."

Dr. Brooks. Yes, sir.

Senator Miller. I will appreciate it very much. And furnish it for the record.

Dr. Brooks. I shall.

(The information requested follows:)

As indicated on line 2, page 2, and line 10, page 11, of my opening statement, it is our plan to provide more M16 rifles to South Vietnamese forces so that they could assume a larger share of the combat. The use "the" in line 10, page 12, in reference to the burden of the war to be shifted to the South Vietnamese shoulders was unintentional.
Senator CANNON. If there are no further questions, the hearing will be recessed until 10:30 tomorrow morning. I say 10:30 because the Armed Services Committee is meeting at 10 o'clock, and we will resume at 10:30 here.

(Whereupon, at 12 noon, the committee recessed, to reconvene at 10:30 a.m., Thursday, June 20, 1968.)
ADDITIONAL PROCUREMENT OF M-16 RIFLES

THURSDAY, JUNE 20, 1968

U.S. Senate,
M-16 Rifle Subcommittee of the
Preparedness Investigating Subcommittee
of the Committee on Armed Services,
Washington, D.C.

The subcommittee (composed of Senators Cannon (chairman), Stennis, Smith, and Miller) met, pursuant to recess, at 10:45 o'clock a.m., in room 224, Old Senate Office Building, Senator Howard W. Cannon presiding.

Present: Senators Cannon and Smith.
Also present: James T. Kendall, chief counsel; Samuel R. Shaw and Robert M. Neal, professional staff members.

Senator Cannon. The hearing will come to order.

This morning we continue the hearings which we opened yesterday into the Army's issuance of contracts for additional procurement of M-16 rifles.

Our first witness this morning will be Senator Edmund S. Muskie of Maine. The subcommittee is conscious of Senator Muskie's active interest in all matters that affect the national security and the keen awareness he has for those things which affect his own State of Maine and the welfare of the citizens of that fine State. We are delighted to have the opportunity to hear Senator Muskie on this matter. This portion of the hearing will be in open session.

Following Senator Muskie's presentation, we will hear from representatives of the Marent Corp., from Saco, Maine, one of the unsuccessful competitors in the M-16 bidding. Their appearance here today is in order to give them the opportunity to shed light upon several matters on which we had testimony from the Army yesterday.

STATEMENT OF HON. EDMUND S. MUSKIE, A U.S. SENATOR FROM THE STATE OF MAINE

Senator Muskie. Thank you very much, Mr. Chairman, Senator Smith.

I debated whether or not I should try to read my complete statement or try to highlight it, and I think that perhaps I ought to read it, notwithstanding the fact that it repeats a lot of the facts about this whole situation which I am sure are familiar to you now, but I think perhaps by reading it, I can present my impression of the facts to you, and my very real concern that they reflect a cause for concern about the way in which this procurement was handled, so that I will read my statement, and perhaps make some additional comments.
First of all, I appreciate the opportunity to appear before you today to discuss the recent Army announcement that contracts had been awarded to the General Motors Corp. and the Harrington & Richardson Co. for the manufacture of M-16 rifles. Each award was for 240,000 rifles.

My interest in this particular Army procurement is threefold: First, I question the propriety of the Army contract award to General Motors and to the Harrington & Richardson Co. at ceiling prices of $56 and $42 million, respectively, when the Maremont Corp. was prepared to manufacture the same number of rifles for a ceiling price of $36 million.

Secondly, my concern about the first point is intensified in the light of the fact that Maremont's qualifications to handle this contract are so clear and strong from the Army's own evaluation.

Finally, I have a special interest in this matter since it was a Maine corporation that was declared an unsuccessful bidder. The loss of this contract by Maremont Corp. will affect not only the company but more importantly, the economy of the area in which it is located.

I would like to review briefly the history of this procurement action with you.

The M-16 rifle has since its inception been produced by the Colt Industries. In an attempt to establish a second source of supply for this rifle, and I emphasize that point because it seems to me it has been lost by the Army in its shifting of gears on March 29, we are talking about a second source of supply, not about an emergency procurement, but in an attempt to establish a second source of supply, the Department of the Army purchased the necessary rights and licenses from Colt's in June 1967. The Army then issued a two-step request for bids calling for the procurement of 167,000 rifles with delivery scheduled for August of 1969. The procurement was multi-year; that is, a 3-year program. It should be noted that in this request for bids the Army stated that "** the contract will be awarded to that responsible offeror whose proposal would be most advantageous to the Government, price, quality, and other factors including special standards, considered **": Phase I of the procurement, the submission of technical proposals, was to have been completed by January 20, 1968, and Phase II, the submission of price proposals, was to have been completed by May 10, 1968, but the due date was later accelerated to April 5, 1968.

May I point out that that date was prior to the time, April 22, when the awards were made.

A ceiling of $4 million was set at the amount that could be spent for the purchase of manufacturing equipment, to be used by the successful bidder. This equipment would be purchased for the Government's account.

A number of technical proposals were submitted by various companies in January 1968.

On March 8, 1968, the Army increased the quantity from 167,000 to 358,000 units and at the same time accelerated the rate of delivery. On March 19, four corporations, including Maremont, were considered technically qualified and were authorized to proceed with Phase II, the preparation of the price proposal.
On March 29, 1968, the Army canceled Phase II of the procurement and revised the request for proposal to indicate that two manufacturing sources would be selected rather than one. At the same time, on the basis of a JCS directive dated March 27, 1968, the delivery schedule was substantially advanced and the quantities to be manufactured by each of the selected producers were reduced, thus suggesting that the increase in total quantity representing a decrease in the quantity to be procured from any one producer could not have materially affected the ability of any one of the four technically qualified to deliver.

The Army stated that the awards would be made on the basis of the technical proposals that had been submitted under Phase I, but that the awards would be by means of letter contracts subject to agreement on a reasonable price. A letter contract would state a price ceiling, the actual price would be negotiated at a later date.

The March 29 provision also eliminated price as a factor to be considered and instead indicated that the procurement would be made from those sources "which will afford to the Government the highest degree of confidence in their ability in meeting or exceeding the accelerated schedule ** while maintaining good quality and provide the Government the strongest mobilization base." In effect, this made the "confidence factor" the sole element in the procurement.

The March 29 revision also permitted the offerors to propose modifications to the $4 million ceiling that had been set for purchase of the equipment to be procured for the Government account. In addition, the incentive and penalty clauses which had been previously included were deleted, to me a rather strange requirement in the light of the fact that they would seem to contribute to the delivery deadlines which the Army has emphasized were so much a part of the change in the rules.

On the same day, March 29, the four companies qualified under Phase I were asked to report to the Army Weapons Command on April 4 and 5 to discuss proposals regarding the new ground rules. These companies were Hydranatic Division of General Motors, Harrington & Richardson, the Maremont Corp., and the Cadillac Gage Corp.

In a conversation with the vice president of the New England Maremont Corp., he told me that he met with the Army representatives on April 4 and testified that the Maremont Corp. had the ability to adjust to the Army's changes and presented the necessary revisions in the Maremont technical proposal to meet the accelerated schedule. He also indicated that the Army did not ask any questions to clarify misunderstandings in the Maremont oral presentation nor did they ask questions in the areas that the Army later claimed they lacked sufficient detailed information.

A few examples of the Army's failure to seek out information can be cited from the Army debriefing statement.

Incidentally, if that debriefing statement is not a part of the record, I would like to suggest, Mr. Chairman, that it be made a part.

Senator CANNON. The debriefing statement is part of the committee's files.

Senator MUSKRAT. I assumed it would be.
I quote from the debriefing statement:

(a) "There is a deficiency in the explanation of responsibility for the engineering element. Assignment of responsibility to engineering must be assumed mostly from a study of organization structure.

If the Army needed greater clarification—and that seems to be the only question raised by this objection—of engineering responsibilities; why didn't they ask for it?

(b) "There is no indication that professional safety personnel are available to administer the range safety program or inspect operations."

How simple it would have been to ask this question and find out that the company has a safety officer and that Maremont has operated a firing range testing the M-60 machinegun and other weapons for the past 9 years without an accident. I am surprised the Army contracting officers were not aware of this fact, in view of the succession of M-60 contracts between the Army and Maremont.

(c) "The information submitted by the company was lacking in sufficient detail to arrive at an in-depth judgment. Except for the quality assurance manual, written standard operating procedures had not been provided * * *

On page 42 of amendment No. 7, the Government states, "unnecessary elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are not desired." I agree with the premise that "unnecessary elaborate brochures * * * are not desired," but I also believe that every attempt should have been made by the Army to obtain the facts and information they needed to make a meaningful decision.

The attitude displayed by the Army representatives at the Maremont proposal presentation leads me to believe that charts, graphs, brochures, in a word "showmanship," was the important ingredient in deciding the best qualified. I cannot conceive that a company would be asked to make a presentation of fact, and during the presentation not be asked questions pertinent to the subject being presented.

It is obvious to me, Mr. Chairman, that the Army did indeed go outside the presentations made by General Motors and Harrington & Richardson, in order to reassure itself upon the one criteria that became critical, the criteria of confidence. They could have gone just a little further, it seems to me, to have asked those questions which would clarify Maremont's presentation, in order to justify or disprove Maremont's eligibility under the confidence factor.

What value would a hearing before this Senate subcommittee be if the Senators present could not, or did not ask questions to clarify or develop information?

It is also significant to note that at no time was the Maremont Corp, asked to submit budgetary estimates of selling prices despite the fact that such estimates were prepared by April 18, as the Army had requested, and in ample time to be considered before any awards were made. On April 22, 9 days later, the Army released to the press an announcement that indicated that contract awards had been made to General Motors and Harrington & Richardson.

When I learned that there might be some question about the propriety of this procurement action, I immediately asked the Army to give me a briefing so that I might have the benefit of both sides of the story.
After hearing the Army's side, I was far from satisfied. It has never been satisfactorily explained why money was not a factor in the procurement nor could the briefing officers explain to my satisfaction the written debriefing statement of April 26, 1968 in which the Army repeatedly praised the capabilities of the Maremont Corp. Statements such as:

"* * * the strongest point in your proposals is the evidence of your successful manufacturing experience since 1962 on Government contracts for the M-60 machine gun * * * you were given a superior evaluation in the packaging aspects of your proposal."

Now that kind of a judgment, Mr. Chairman, surely bears upon the question of confidence.

Another one: "in the important areas of barrel straightening and chromium plating the proposal also reflects a thorough understanding of the facilities and techniques required * * *"

"the proposal shows that personnel designated for assignment to the M-16 program are well qualified by education and/or experience * * *"

"the response was considered very good in respect to company history and high-grade engineering capability." 

"* * * in-house manufacturing of parts, in-process inspection and assembly is sound * * * your plans set forth in this part of your response were very good."

Certainly all of these, and there are others, Mr. Chairman, I have indeed selected only a few and there are others, are just a few examples of the statements that the Army made about the Maremont Corp. before turning down their bid. Surely they bear upon the question of confidence, which became the critical factor.

The briefing by the Army representative did not help resolve the contradictions. The Army, never adequately explained:

How it could have such high regard for the Maremont proposal, and yet refuse to honor that proposal;

How, in turn, the Army could show preference for General Motors, even though that corporation has never manufactured small arms, and its bid was $20 million more than Maremont's;

And how, finally, the Army could further disregard its own judgment about Maremont's capability by contracting with Harrington & Richardson, even though the Harrington & Richardson bid was $6 million more than Maremont's.

And indeed, the curious thing about that debriefing, considering that the Army was in the position having changed the rules, of having to supplement its information in order to form a judgment on the question of confidence, in view of that fact and in view of the fact that the Army was now relying upon a wholly subjective judgment to make comparisons between these offerors, the Army at the outset of its debriefing pointed out that it was interested only in presenting its own case, and not getting engaged in argument, thus at the outset of the debriefing discouraging any attempt that Maremont might have attempted to make to clarify questions which had been raised by the Army to supplement information that might be useful in forming the new judgment, a positive discouragement of any inclination Maremont might have had understandably to supplement information already in the hands of the Army.
The major reason given at the briefing for selecting the General Motors Corp. was that the Army had more confidence in the General Motors Corp. to complete the contract on schedule. The Army's position concerning Maremont's qualifications was summarized in a question and answer session following the briefing as follows:

You were not amongst the two who gave us the highest degree of confidence and that is the way the award was made. I am not saying that you were disqualified on any point. On the contrary, I can tell you point blank that you were not disqualified on any particular point. It is the matter of which two gave us the greatest degree of confidence.

The Army has demonstrated that General Motors is so much more deserving of confidence as to justify $20 million more plus unlimited amounts to tool up General Motors.

And how is this committee or anyone else to test that kind of subjective judgment, as long as the procuring officers, whoever they may be at the moment, have subjectively decided that one of three or four qualified offerors to inspire in him the highest degree of confidence, no one is to question that subjective judgment, and the Army is not required to present any objective evidence to support that subjective judgment which can be tested against reasonableness and rationality and the legitimate interest of the taxpayer and the other offerors involved.

The defense, in other words, rests wholly upon a subjective factor which cannot be adequately tested and which, in my judgment, is suspect because of the record which shows that the Army itself concluded Maremont is deserving of such confidence.

My reason for appearing before you today, Mr. Chairman, is to request that a complete investigation be made by this committee into the procurement action, and I understand that is underway. The investigation should be made from the standpoint of legality to determine whether the procurement regulations or procedures have been followed. I understand the House has asked GAO for such an investigation and that the GAO has submitted their report, which I have not seen.

Secondly, and more important, it is our responsibility as Members of Congress to question the judgment of the Department of the Army when in our opinion this judgment has been bad.

I want to make it clear that I do not suggest nor do I think it is necessary to prove that there were any dishonest acts committed by anyone in the Army: But one gets the impression that the decision-makers in this case were taking the easy way out, by giving the General Motors Corp. an open checkbook. I am sure that they will get their rifles, but this decision was made at the expense of the American taxpayers. It is also significant to note that the decision was made at a time when every level of government is being asked to cut back, to economize, a time when we are looking for means to cut the President's budget by $6 billion.

In closing, Mr. Chairman, I would like to submit for the hearing record a letter from Congressman Peter N. Kyros, First District, Maine, to the Honorable Richard Ichord, chairman of the House Special Ad Hoc Subcommittee to Investigate the M-16 Rifle Contract. I ask that because his letter undertakes to do what I have not had an opportunity to do, and that is to prepare a detailed brief of the
legal issues involved. I think it is important that this committee should have that, if it doesn't. 
(The letter referred to follows.)

Hon. Richard H. Ichord, 
Chairman, Special Subcommittee on the M-16 Rifle Program, Committee on 
Armed Services, U.S. House of Representatives, Washington, D.C.

May 15, 1968.

Dear Mr. Chairman: I have listened carefully to the Army's explanation as to why it selected General Motors and Harrington and Richardson as the two additional sources for the production of the M-16 rifle under RFP DAAE03-68-R-0014. That explanation, although I have subsequently studied the text carefully, still leaves unanswered the charges which I made in my statement to the Subcommittee on Monday, May 13, 1968. Indeed, the explanation raises more questions than it answers. With your permission I would like to take this opportunity to make the following comments on the record concerning the Army's explanation of its recent actions with respect to the M-16 rifle program.

1. It would appear that the Army's explanations have confirmed my previously expressed contention that the Army had already decided on a special sole-source procurement of the M-16 rifle from General Motors in early March 1968 and merely used this procurement as a means of awarding a contract to General Motors despite its obvious inexperience in the small arms field.

2. Nothing credible was said by the Army representatives to indicate that General Motors was more qualified than, or as qualified as, my constituent, Maremont, to produce the M-16 rifle on the accelerated delivery schedule.

3. Although the Army placed a great emphasis on the risk of non-delivery on the accelerated schedule and although this was 'given as the principal reason for making the award to General Motors, nothing was said which would in any way support the Army's contention that there would be a greater risk of non-delivery or slow delivery from Maremont.

4. Although lip service was paid by the Army's representative to competitive pricing, there was no explanation as to the incredible differences among the prices of Cole's, General Motors', Harrington and Richardson's, and Maremont's.

5. The only protection cited by the Army as to its price vulnerability, vis-a-vis General Motors, was the Truth in Negotiation Act. There is nothing in that Act to protect the Government against either crude inefficiency or as against high pricing.

6. The award to General Motors was improper in that it violated the spirit, intent, and provisions of ASPR.

The Army, prior to the March 29 Amendment of the RFP, was predisposed to make an award to General Motors.

The Army admitted that discussions had been held with the Hydramatic Division of General Motors prior to the March decision to award to two sources under the Request For Proposal. It is significant that the Army did not mention any other companies with which similar discussions had been held. Indeed, this Subcommittee is aware that the Army was specifically considering an award to General Motors at that time. The question is immediately to be asked—"Why General Motors"—particularly in view of the Hydramatic Division's total inexperience in small bore rifle manufacture and in view of the mammoth tooling-up charges required. The only suggestion as to reason was the company's capacity and outstanding performance against accelerated delivery schedules. Is General Motors the only company known to the Army which can meet accelerated delivery schedules or is the inference to be drawn that only the biggest corporations in America can qualify when large procurements on an accelerated basis are involved?

Subsequent events bear out my contention of favoritism. Among those items which support my conclusion that the Army was predisposed to the Hydramatic Division of General Motors are the following:

1. The elimination in March of the previously existing $4 million ceiling, entailing a total to be paid for by the Government. It was obvious that General Motors could not meet this requirement of the Request For Proposal, and it appears that the change was made in order to permit General Motors to qualify.
(2) The pointed avoidance of the question of price by the Army.

No amount of explanation can avoid the requirements of ASPR, or ever dissuade me from my present belief that, in a procurement of this magnitude, the Government should have a clear picture of the approximate prices intended. The only logical inference to be drawn is that the Government already had some indication of the magnitude of General Motors' price and was therefore most anxious to avoid any price comparison.

(3) The pointed avoidance of questions to my constituent, Maremont, with respect to the alleged deficiencies in its Proposal.

The major criticism made of Maremont's Proposal was that there was, in some cases, insufficient detail. This criticism was leveled, despite the explicit instructions of the Army that the offerers' Proposals should not include a mass of detail, and despite the fact that a few questions at the April 4th meeting could have resolved all problems.

(4) The elimination of incentives and penalties.

It is common knowledge that General Motors as a matter of "corporate policy" usually resists any effort to impose liquidated damages. The sudden elimination of this provision without any discussion with other contractors can be considered only to be a concession to that General Motors corporate policy and a further manifestation of the Army's favoritism. Parenthetically, it is amazing, in view of the Government's insistence on the importance of meeting the delivery schedules, that it should suddenly relinquish its insistence on liquidated damages, which are a powerful incentive for timely performance.

MY CONSTITUENT, MAREMONT CORPORATION, IS AS QUALIFIED AS, OR MORE QUALIFIED THAN, GENERAL MOTORS

I am submitting herewith the evaluation by the Department of the Army of Maremont's qualifications, as given to Maremont on April 28, as a part of a debriefing session. I am also attaching herewith the transcript of questions and answers on that same debriefing session.

It will be noted that Mr. Seeds of the Army, as Page 9 of the transcript of questions and answers, in response to the question as to whether Maremont was qualified, answered affirmatively and stated that Maremont was not disqualified on any point.

A close examination of the debriefing report shows that there was no real criticism of Maremont other than with respect to purely tangential matters. Thus, for example, it was noted that a weakness of Maremont was that only half of its personnel were college graduates. This criticism is senseless in light of the preceding finding that the personnel involved were experienced and well qualified in small arms manufacture. Another weakness cited by the Army was that Maremont would have to mix its production line with the M-60 machine-guns, line. This criticism was meaningless when, as it is realized, that Harrington and Richardson must, in fact, mix its production in and, in light of the fact that it was obvious that General Motors almost certainly would have to extensively reorganize and re-tool its production lines.

When the apparent deficiencies of General Motors are compared with those of Maremont, it becomes evident that the Evaluation Board has gone wrong somewhere. When it is realized that General Motors had no experience in the manufacture of small bore weapons and that General Motors would require extensive rearrangement of its production lines and would require extensive tooling, it is hard to see how the criticisms made of Maremont could throw the balance of the scales toward General Motors.

THE ARMY HAS ADVANCED NO REASONS TO SUPPORT ITS CONCLUSION THAT GENERAL MOTORS WOULD HAVE A HIGHER CONFIDENCE FACTOR IN RECEIVING ACCELERATED DELIVERY SCHEDULES

The Army explained its position by the repetition of its justification that it had more confidence that General Motors would be able to meet the accelerated delivery schedule, than the other two bidders. A careful examination of these explanations, however, gives no indication as to how the Army can support this conclusion. It is clear that General Motors has had no experience in the manufacture of small bore rifles and that Hydramatic Division's exposure, in the ordnance field, was limited to 4000 20mm. cannon. The statement that General Motors has had an outstanding record for meeting difficult delivery schedules is matched by Maremont's almost unblemished record for having delivered in...
of 100,000 machineguns on time and for having delivered on other ordinance contracts on a timely basis.

The inescapable decision is that the Army is really saying that bigness is the only favorable criterion when an award is made on a contract requiring tight delivery schedules. This conclusion is totally unacceptable to me as a Congressman and as a taxpayer. I appreciate the Army's requirements for confidence. I do not believe, however, that there are only a handful of corporations in the United States which can qualify on such contracts because they are big.

THERE WAS NO EXPLANATION BY THE ARMY OF THE INCREDIBLE DISPARITY IN PRICES

Incredibly, the Army's explanation contains not one iota of discussion of the central problem in this procurement and that is how there could be such an overwhelming discrepancy between the prices of Colt's, General Motors', Harrington and Richardson's, and Marlemont's proposals. Even taking the Army's explanation of the apparent high cost of a first procurement, there is still no explanation as to why there should be such a wide difference between General Motors' price and the prices of the other producers.

If the Army was prepared to spend $20 million additional, it would appear that the Army would have a rational and reasonable explanation of the difference. This is particularly true in view of your Subcommittee's repeated criticisms of the Colt's price. I know that your Subcommittee will pursue that point in detail.

THE TRUTH IN NEGOTIATION ACT DOES NOT, PER SE, PROTECT THE U.S. GOVERNMENT AGAINST EXCESSIVE PRICE

The Army's attempts to make it appear that the taxpayers' interests will be protected by the fact that General Motors' proposals will have to be supported by the information required by the Truth in Negotiation Act (Public Law 87-538). The fact is that that Act and the regulations and forms issued thereunder do not require that General Motors agree to any price reduction proposal by the Army. The Act requires instead that General Motors provide complete, accurate, and up-to-date information as to its estimates as to the cost of production. This includes such items as the cost of purchased components, overhead rates, hourly rates, and the like. If General Motors has started production on this contract and the Army does not like General Motors' estimates or does not like General Motors' profit margins, there is little that it can do. Paraphrased, it should be noted that there is no protection against inefficiency or gold-plating practices.

I would have thought that the Army would have relied, on the, assurance of competitive pricing as required by ASRR, rather than relying on the furnishing of information after the fact by General Motors.

The Army's action was illegal.

The Army's actions violated the letter, spirit, and intent not only of ASRR, but also of controlling legislation and decisions of the Supreme Court of the United States and the Controller General.

Section 2004(5) of Title 10, United States Code, establishes the strict requirement that price must be considered as a critical factor in all negotiated procurements. That Section provides as follows:

(5) In all negotiated procurements in excess of $5,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be selected from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered. Provided, however, That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of all initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.
Furthermore, the ASPR provisions directed toward negotiated procurement, which implement the directives of the above statutory provision, are explicit and clear that "price quotations * * * shall be solicited from the maximum number of qualified sources of supplies." Thus, Section 5-101 of ASPR provides the following:

Whenever supplies or services are to be procured by negotiation * * * price quotations, supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the contracting officer * * * shall be solicited from the maximum number of qualified sources of supplies or sources consistent with the nature of and requirements for the supplies or services to be procured, in accordance with the basic policies set forth in Section I, Part 3 * * *, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Unless award without written or oral discussion is permitted under 3.306.1(a), negotiation shall thereupon be conducted, by contracting officers and their negotiators with due attention being given to the following and any other appropriate factors:

(1) comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multi-shift and over-time costs, and any other factor relating to price, such as profits, cost of transportation, and cash discounts; * * * (Emphasis added.)

In addition, it is the basic policy of ASPR in all procurements, including negotiated procurements, to require the Government to obtain the most advantageous contract prices on its contracts. This basic policy is set forth in Section 1-302.2 of ASPR as follows:

Irrespective of whether the procurement of supplies or services from sources outside the Government is to be affected by formal advertising or by negotiation, competitive proposals * * * shall be solicited * * * from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the Military Department concerned, and thereby to obtain for the Government the most advantageous contract prices, quality, and other factors considered. (Emphasis added.)

The statutory and regulatory scheme quoted above has been recently interpreted by the Supreme Court to make active price competition mandatory in negotiated procurements such as the M-16 procurement here involved. In the recent case of Paul v. United States, 371 U.S. 246, decided in 1963, the Supreme Court analyzed the foregoing statutory and ASPR language in the following categorical and unambiguous terms:

The Armed Services Procurement Regulation speaks in unambiguous terms of a policy "to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered."

The Regulation states, "Such procurement shall be made on a competitive basis, whether by formal advertising or by negotiation, to the maximum practicable extent * * *" What ever method is used—formal advertising or negotiation—"competitive proposals", must be, "solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure such full and free competition as * * * to obtain for the Government the most advantageous contract—price, quality, and other factors considered." If advertising for bids is used, the contract is to be awarded "to the lowest responsible bidder." Moreover, even when advertising for bids is not used, competitive standards are not relaxed. The policy is "to procure supplies and services from responsible sources at fair and reasonable prices calculated to result, in the lowest ultimate over-all cost to the Government." The fact that a procurement is to be negotiated does not relax the requirements for competition. Whenever supplies * * * are to be procured by negotiation, price quotations * * * shall be solicited from all such qualified sources of supplies or services as are deemed necessary * * * to assure full and free competition * * * to the end that the procurement will be made to the best advantage of the Government, "price and other factors considered. The Regulation then specifies 20 separate considerations for the selection of a supplier in case of a negotiated procurement. The first of these is a "comparison of prices quoted."

We have said enough to show that the Regulation does more than authorize procurement officers to negotiate for lower rates. It directs that nego-
tions or, wherever possible, advertising for bids shall reflect active competition so that the United States may receive the most advantageous contract.

In caustic disregard of the explicit mandates of the Supreme Court, the Army has made no effort—and in effect admits to having made no effort—to procure the M-16 rifles "at fair and reasonable prices calculated to result in the lowest ultimate cost to the Government."

Despite the fact that the Army specifically directed the four qualified offerors to have their price proposals ready by April 13, 1966, it nonetheless did not give Maremont and Cadillac Gage any opportunity to present such price proposals. It is noted that: Maremont had its proposals ready on April 4, which was a full 9 days before the Army had directed them to be ready. The Army's conduct in this respect is particularly outrageous in light of its own admission that Maremont and Cadillac Gage were fully qualified on their technical proposals. Indeed, the Comptroller General has required the Government to consider pricing proposals, and to negotiate with the lower-priced contractor even where that contractor's technical proposal was deemed to be inferior to the higher-priced contractor and even where the contract involved was a R & D contract in which price is not as important as in a supply contract. In Comptroller General Decision No. B-1571,50, decided on January 10, 1966, the Comptroller General thus held as follows [45 Comp. Gen. at pp. 426-27]:

"We find it difficult to understand how a current contractor may have its technical proposal on a task specifically related to its current contract missions categorized, not as unacceptable but as inferior, for a period of over 2 months without affording such an offeror at least an opportunity of discussion and explanation, especially when its cost proposal represented significant savings to the Government. It is provided in ASPR which has the force and effect of law, at paragraph 3-101 that when procurements are undertaken pursuant to negotiation, maximum competition should be obtained to the end that the procurement will be made to the "best advantage of the Government, price and other factors considered."

In this context, we believe that an obligation to negotiate with AAI existed notwithstanding that JTFEL's proposal was determined to be technically superior to AAI's. We find nothing in the record which would indicate that JTFEL's proposal was so technically inferior as to preclude any possibility of meaningful negotiation with such offeror. This is what both the law and the ASPR require in order to assure the competition contemplated.

(Emphasis added.)

Indeed, in the present case the Army has not even suggested that Maremont's proposal was "technically inferior", and therefore its refusal to consider comparative prices is all the more blatant.

The Army may be justified in undertaking a procurement by negotiation rather than formal advertising, under the authority of Section 2504(a)(16) of Title 10 of the U.S. Code, and Section 3-210 of ASPR. However, those provisions categorically do not warrant the Army's disregard of price competition and do not change the requirements of law discussed above.

The only permissible conclusion is that the Army was determined to award the contracts to Hydramatic Division of General Motors and Harrington and Richardson regardless of cost and despite the mandates of Congress, the Supreme Court, the Comptroller General, and the ASPR that price competition is absolutely essential even in negotiated procurements.

The Army's explanations have obscured the situation on two scores:

(1) The effort is made to assimilate this procurement to a research and development contract where price is secondary to the adequacy of the proposal.

This is not a research and development contract, but a supply contract.

Further, in the Comptroller General's view there must be price competition even on a research and development negotiated contract.

(2) The effort is made to make it appear that I take the position that a letter contract is illegal.

I do not take that position, but I do take the position that a letter contract without price competition where there are other qualified offerors is illegal.

In closing, I would like to clear up the major misconception which has become apparent from the press stories that the Army's actions were justified by General Motors' ability to meet the accelerated deliveries. That contention is false since