

Senator NELSON. Well, do I understand you correctly that the General Accounting Office has authority under the present law to examine all negotiated contracts for drugs and medicines and to require price and cost information from the suppliers who are supplying medicines?

Mr. SHNITZER. Sir, there is a statute which was enacted in 1951 which says in effect that any negotiated contract awarded pursuant to either the Federal Property Act or the Armed Services Procurement Act, which would cover the two major acts, has to contain a provision which gives the General Accounting Office access to the books, documents, papers and records of the contractor or his subcontractors which relate to the contract.

However, in terms of the cost and pricing data, there is the Minshall bill, which would provide access to the cost actually incurred in order to verify the accuracy and currency and completeness of the data provided. However, of course, if the contract were exempt from the provisions of the Truth-In-Negotiations Act in the first place, then this latter provision would not have any application.

Mr. STAATS. This is the one I was referring to a minute ago.

Senator NELSON. But the purchasers of drugs are not exempt, are they?

Mr. SHNITZER. Well, if the price is based on current catalogue prices and these are items which are sold in substantial quantities to the general public, this is a basis for exempting that procurement from the Truth-In-Negotiations Act.

However, this would not have any effect on our other right to examine the books, documents, papers and records of the contractor or his subcontractors with respect to transactions under the contract.

Mr. STAATS. What Mr. Shnitzer is saying, Mr. Chairman, in other words, is that even though we had access to the records pertaining to the contract, neither we nor the procurement agency, VA or Defense, for example, would have the right to insist that the supplier furnish the Government with their current known costs of production.

Mr. SHNITZER. In the negotiation of the contract.

Mr. STAATS. At the time of the negotiation of the contract. After the contract is negotiated, obviously then we do have authority with respect to all the pertinent records pertaining to that contract, but still we could not go behind the supplier's statement of what his costs are in the contract entered into by the Government.

Senator NELSON. What good is it, then?

Mr. SHNITZER. I think it is very good for the purpose of determining what costs the contractor actually incurred in the performance of the contract as compared to the contract price. We can do that.

Senator NELSON. Are you referring to the costs the seller in a negotiated contract incurred as a consequence of the negotiations? Is that what you are saying?

Mr. SHNITZER. No. What I am saying is, and we do have a case which ultimately went up as far as the Supreme Court, is that under our 1951 authority, the contract is required to include a provision which gives the GAO the right to examine records of costs, direct and indirect, generated in the performance of that contract. So if a contract is awarded to company A and it comes within the purview