

tion a year ago that under sole negotiated contracts the Government has the right to then go to the manufacturer after the purchase and examine the cost of production. I understood that the companies you have gone to have refused, even though it is in the contract, to let you look at their cost-of-production figures.

Is that correct?

Mr. STAATS. We were going to develop that point a little later.

Senator NELSON. So they have it coming and going all ways. They get the specifications drawn up by industry so somebody else can't compete. Then instead of having a competitive bid, they negotiate a bid. The Government is not in an arm's length deal because the Government does not know the cost. In the contract, they agree and understand that the law authorizes the Government to examine their production figures.

So now, that has apparently never been done. We raised the question with the GAO a year ago. You now go to the manufacturers, who have this marvelously, elaborately designed method of protecting them so they do not get a competitive bid, and you say to them, "Now, under the law, and in your contract, you have agreed that you will comply with the law and we can look at your production figures"; and the company says, "Go to hell."

Is that not the status?

Mr. CROWTHER. We have not looked at their cost records.

Senator NELSON. This is shocking to me. I think they ought to be hauled right into court. But I think you ought to take a further look at this business and see what kind of funny game they are playing with their specifications.

Have you tried, for example, taking a case where the Government agency ends up with a negotiated contract and compare it with the price paid by a big purchaser like New York City?

In other words, I am referring to a negotiated contract with the Federal Government, where you suspect that it may be a case where the specifications have been designed by the manufacturer, and then take a look to see if New York City does, in fact, have a competitive bid, and if so, what the difference is in price.

Mr. CROWTHER. No, sir.

Senator NELSON. I think there is a lot of negotiated bidding going on which is absolutely unnecessary, in which the Government, as the colonel suggests, is accepting the specifications supplied by the manufacturer. And then the drug companies have refused to let the GAO look at their cost figures, despite the fact that that is what the law says, despite the fact that that is what is in every contract that they signed. I suspect that the taxpayers are being cheated, and I think the drug firms ought to be hauled into court and fast.

Mr. STAATS. Mr. Chairman, if this information is available from large cities like Chicago or New York, I think it would be worth pointing out here that they would be buying most likely, today, the largest quantities in connection with medicaid. They would be making the procurement, reimbursed to the States. But this is an interesting idea and we will give it some thought.

I think we are talking at this point in our statement about the matter of specifications which would result in greater competition. That is really all we are dealing with at this point in our statement.