

I thank you, Mr. Chairman.

Chairman PROXMIRE. Thank you, Mr. Minshall. I want to congratulate you on pressing so hard for this legislation. What you have done in the House in advancing it I think is absolutely invaluable and essential. You deserve a great deal of credit for that.

I want to tell you that—I am sure that other members of this committee, and I also, will do all we possibly can to encourage its passage in the Senate, and also, of course, in the House.

Now, you point out that—and I think this is an excellent point—the Comptroller General says—and I think that our interrogation yesterday of the Assistant Secretary of Defense for Logistics, Mr. Morris, confirmed the point—that Secretary Nitze's memorandum is silent on the agency's right of access to subcontractors' performance records, which was specifically provided for in our bill.

NEED FOR POSTAUDIT LEGISLATION

He indicated that, of course, the prime contractor would have the obligation to follow up on this. But I think that this is a special reason why this legislation should be enacted.

Now, in addition to that, even if the Nitze memorandum were revised to provide access to subcontractors on the same kind of basis, still the enactment of legislation, as you say, is most essential. And I think we are essentially aware of it today. In the last couple of days we have been made aware that the Secretary of Defense is going to move on to another job. And it could be that an entirely new administration of the Defense Department would come in. Under these circumstances, regulations of this kind could be changed very promptly.

We also know that there is always opposition. After all, it has taken a long, long time—5 years—to get any action under the Truth in Negotiations Act—any complete action. There is opposition to making this Truth in Negotiations Act effective, and that opposition could work its influence on a new Secretary of Defense. And under these circumstances, the one security that the taxpayer has would be the enactment of a law.

So I think that the points you make here this morning are most welcome, and logical.

I might clarify what I said about the response of the Defense Department. The question was as follows:

“Does this”—referring to the Nitze memorandum—“extend to subcontracts—this Nitze order—or is it only confined to prime contracts?”

Mr. Malloy stated—who was responding for Mr. Morris—

Mr. Chairman, there is a flow-down from the prime contract to the subcontract. In other words, this audit right follows the same line as the law itself. Wherever the law is applicable, and it is applicable at the subcontract level under certain conditions.

And I said where it is not applicable.

Mr. MALLOY. It is not applicable under the same conditions that it would not be applicable in a prime contract; namely, if there is adequate price competition, or if the purchase is for catalog items, or for items the price of which is set by law or regulation.