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CONTRACT FORMS AND STANDARD CLAUSES  
11 February 1946

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CONTRACT FORMS AND STANDARD CLAUSES

February 11, 1946.

COLONEL BROWN:

Gentlemen, it is a very beautiful white world out in the country. This morning when I got up and looked out the window I said, "If I were the President of the United States I would just send for my secretary and say to him, 'Tell the boys to take a holiday. Everybody else is taking one.'" I really wish we could have done that this morning. I think it would have been wonderful to have gone back to boyhood days and just tramped all through the forest, hunting. But here this morning we have to hunt and think of other things; hunt ideas; criticize ideas.

Anyone who has lived through the "battle of Washington", particularly on contract forms, has really lived through some battle. Now I, personally, do not know all the details of the battle. But Captain Roth, of Procurement Judge Advocate's Office, A.S.F., is going to tell us all about contract forms and standard clauses this morning.

Captain Roth is a graduate of New York University. Of course he is a fellow Judge Advocate. You can tell that by the insignia he is wearing. I was noticing something peculiar about him. According to my stenographer and the extract that was handed to me, it says, "Captain Roth was a practicing attorney in the City of New York until he was inducted into the Army as a private. Later he attended Officer Candidate School, and received his commission upon graduation. He served as an instructor in the Judge Advocate School at Ann Arbor, Michigan."

Captain Roth is now a legal assistant in the Procurement Judge Advocate's Office. The subject of his talk is "Contract Forms and Standard Clauses".

Now I would say that was pretty good for a man who was inducted into the Army. Gentlemen, Captain Roth.

CAPTAIN ROTH:

I am not going to tell you all about contract forms. A fifty-minute talk must, of necessity, confine itself to some of the basic principles. So I think we may best spend our time this morning in getting a broad picture rather than one of such detailed information unnecessary at this particular time.

At the outset I would like to discuss one important distinction for anybody working with Government contracts. That is, when we speak of the concept of "Government", we can mean either of two separate and distinct things. I may best illustrate this distinction by giving you two actual cases.

At the end of the last war the Government had a great deal of property on its hands and was anxious to get rid of it. We now call it surplus property. The Quartermaster had many thousands of yards of silk. It advertised this silk for sale. A man by the name of Horowitz bid for the silk, and was the high bidder. He entered into a contract with the Government whereby the Quartermaster was to deliver the silk upon receipt of his telegraphic communication.

Well, he did send that communication but the Government did not send the silk until some time later, with the result that Horowitz lost a good deal of money and instituted suit for damages. It was disclosed at the trial that the reason the silk had not been delivered was that the Railroad Administration, an arm of the Government, had created an embargo on the shipment of silk.

The case went to the U. S. Supreme Court. The court held the Government was within its rights and power in creating an embargo on silk. Therefore, it was affecting the Government contract in a legitimate manner, and the War Department was not liable for breach of contract.

Now, keeping those facts in mind, let us think then of this other case.

In the last war the Government sold insurance to the men in the Service--war risk and term insurance. In the event of death, the beneficiaries of the insurance policies were to receive sums depending on the size of the policy. Well, one man in the Service took out such a policy. He died in 1934. His beneficiary instituted suit against the Government on the policy that the Government had refused to pay. The refusal to pay was predicated on the Economy Act, which said that the Government shall not pay under that type of insurance.

The case also went to the U. S. Supreme Court. The Supreme Court held "no dice". The Government has to pay because when Congress passed the Economy Act, saying that the Government will not pay that type of insurance, it was really acting only in breach of its own contract.

Notice the distinction, gentlemen: In the Horowitz silk case, we are creating an embargo on all shipments of silk; and in the Lynch insurance case we are saying the Government can breach a contract. Now there is this distinction: In the Horowitz case the embargo was in the nature of a sovereign act, an act of government, an act of a king if ours were the type of government England has. In the Lynch case we are saying with one of our bodies, "we shall not pay", and "we agree to pay" with another of our bodies, the distinction being between the Government as a sovereign body and the Government as a contracting body.

The general rule is that the Government is liable for all of its acts as a contracting body but is not liable for any of its acts as a sovereign body. Now let us not get into any discussion as to when it may not act as a sovereign body under the Constitution.

In so far as the Government acts as a contracting body, it enjoys the same privileges and is subject to the same obligations as a private individual. There are exceptions to most rules, and there are a number of exceptions to the general rule that the Government incurs the same obligations as a private contractor.

First of all, I would like to point out one important misconception as far as Government contracts are concerned; the fundamental law whereby the Government has the power to contract. Gentlemen, you can search the Constitution from Article I to the last Amendment and you will find no wording therein the Government is given the right to enter into contracts. You will search the statute books from Compiled Statutes (Vol.I) to date, and you will find no statute giving the Government, as such, the power to enter into contracts. Its power to enter into contracts comes from the basic common law. It is a sovereign body; it is a body politic and therefore has the right to enter into contracts - just as you and I, as individuals, have that inalienable right.

Starting from that premise we go through the statute books and we find any number of restrictions placed upon the Government's power to enter into contracts. The first and most important one from the fiscal viewpoint is that no Government agency may enter into a contract unless there is an appropriation. Thus if you desire to purchase ordnance for the Army the first thing you must theoretically worry about is whether the Government has the money; whether Congress has appropriated it. You have all sorts of ramifications as to the carry over of appropriations, which are not particularly important to us now.

Government contracting is similar to private contracting in that you must have all the elements of contract law. You have got to have an offer and you have got to have an acceptance. Either the Government asks a contractor to produce certain materials and the contractor agrees, or else, in the usual situation, the contractor is offering and the Government is accepting that offer.

A further point of similarity with private contracting is that a contract, if it pertains to an illegal proposition, cannot be collected upon. So, during the days of the Volstead Act, if the Government had sought to purchase alcoholic beverages in an illegal manner it would have entered into an illegal contract and no party would have had any rights thereunder.

We find one rule in Government contracting that leads to a good deal of confusion. That is, the question of agency. Government, as such, in order to enter into a contract must enter through an agent.

If I were a salesman in a store and you walked in--and the store happened to be a clothing store--and you asked me how much a certain suit was and I told you, and you asked me whether that included alterations, and I said "yes", and then later, after we had agreed on the sale, the boss came over and said, "No dice. I want more money and we are not going to alter the suit." Leaving out some of the minor details, you would have the right to get that suit.

Some of you may ask, "Why?" Simply because I am an agent of the store and I have what is known in law as the "apparent authority" to enter into that contract.

If I wear the insignia of Quartermaster Corps and walk into a shoe factory and order a hundred thousand pairs of shoes and the fellow delivers in accordance with my request, if I do not have the authority he is just out of luck. It has to be shown that I have delegated authority; that my source of authority is true and unencumbered. The contractor with the Government must, at his own peril, ascertain the contracting authority of the Government agent.

We have one further troublesome rule restricting the right to enter into Government contracts and that is the rule established by Revised Statute 3709. Normally, Government contracting agents may not go out and say to a man, "Send the Government depot at such and such a place a hundred thousand pairs of shoes". Revised Statute 3709 says that the Government agent must enter into a contract after advertising for a reasonable period of time. Around that simple phrase is built a large body of law. He must issue invitations for bids. They must be in certain form. The contractors must submit bids. They must be rendered to the Government by the time specified in the invitation. The bids thereafter are evaluated and the lowest responsible bidder is awarded the contract.

There is one further restriction on the right to enter into contracts: Contracts over \$500 must be in writing. They must be signed by the parties responsible.

Still another: The Government does not have the right to pay in advance. The earliest it can pay is cash on delivery.

Now, please note that all these restrictions I have mentioned are based on Federal Statutes. In this connection I would like to tell you of an interesting problem that arose about three years ago. A contracting officer for Ordnance had entered into a contract in the State of Michigan. It was during those days when everybody was working seven days a week. The contractor came into the office on a Sunday morning and executed that contract. Now it so happens that the State of Michigan has a statute on its books which says that any contract executed on a Sunday is null and void.

The question came to the Judge Advocate General as to whether that was a proper contract. He held, and correctly so (as it was ultimately determined), that the Federal Government is not subject in its contracting to any restrictions placed by State statutes.

I merely bring that case up as an example of the restrictions you must worry about in connection with Government contracting, and those that you need not worry about. As we have hastily run through these various restrictions I think something becomes readily obvious: if you are going to stick to all of them, if you have a big job to do, you will never get it done.

That fact was obvious to Congress in 1941. Congress therefore passed, in December of 1941, the famous First War Powers Act. I would like to read to you one or two phrases therefrom.

The First War Powers Act provides that the President may authorize any department of the Government to enter into a contract or into an amendment or modification of a contract, without regard to any provisions of law relating to the making, performance or modification of contracts, whenever he deems such action necessary in facilitation of the prosecution of the war.

Now, notice the First War Powers Act was not self-operative. It did not actually give the War Department any rights. It merely gave the President the right to give powers to the War and Navy Departments and other departments. He did that in the now-famous Executive Order 9001, when, using the same language, he gave the War and Navy Departments the right to enter into contracts, modifications, and amendments without regard to any law covering the making, performance or amendment of contracts whenever in the judgment of the department such action is necessary in facilitation of the prosecution of the war, with the result that with the promulgation of Executive Order 9001, most of these restrictions that I have hastily discussed with you were shelved.

Ultimately the question arose, "How long were they shelved?" The Procurement Judge Advocate has held that they were shelved until September 2, 1945. We have received a good many inquiries as to why. It all hinged on the phrase, "facilitation of the prosecution of the war". In other words, it is a rare case now, when you can point to any action by any contracting officer or technical service, and say that his action is now necessary to the facilitation of the prosecution of the war.

Some few actions we have held will facilitate the prosecution of the war. One of these is when you are actually buying something necessary for overseas installations. We most frequently get the request referred to us when a contractor comes in and, states that he had entered into a contract to deliver so many items at a dollar apiece; that he has had a strike, or had other costs rise on him, and therefore, would like the War Department to raise the price to \$1.10!

In peacetime we could not do that. In wartime, with Executive Order 9001, we could do it if we found it was for the facilitation of the prosecution of the war. In that connection I will tell you this: Our office has already drafted a statute which, although it keeps a good many of the restrictions that existed prior to the emergency, adopts some of the principles we have been able to evolve during the war. That statute is going to be finished soon--that is, the bill by the War, Navy, and Treasury Departments and the Maritime Commission--and will probably be submitted to Congress shortly.

The effect of this statute will be to broaden the field in which we can continue to negotiate contracts. There were very few fields in which we could negotiate before the emergency. We could dicker for contracts where there was an emergency or there were facts making it impracticable

to indulge in advertising. In other words, we could contract direct if we were dealing with a type of thing for which competition was not practical--for instance, it would not pay to go out and secure bids if we were looking for electric power for a particular Army post. There is, usually, one and only one power company available in the district.

Assuming we have found in the situation confronting us that we have the power to enter into a contract; that the money is available; that we have determined whether we must proceed under the old restrictions or may proceed under emergency legislation, we then have any number of forms of contract that we can use. In other words, the type of transaction is then subject to our own discretion, there being very few restrictions on that. Most of the restrictions, then, are those that we ourselves have placed on contracting. In the Navy Department, they are placed by Navy Procurement Directives. In the War Department they are placed by the Procurement Regulations. I assume they both are familiar to all of you.

We classify any contract, first, into one of two categories: you either have a formal contract or an informal contract. The formal contract is the type of thing you generally think of when you go down to a lawyer's office. It is usually several pages long, is stapled together, and is signed at the end thereof. That, gentlemen, is a formal contract. It is one instrument containing all of the information.

Now we can also have an informal instrument. I will write a letter to you: "How much will you charge me for a hundred thousand pairs of shoes in accordance with Army-Navy Specifications 123?" You write back and say, "Five dollars apiece. I can deliver within 30 days." I then write back, saying "Ship it." That, gentlemen, constitutes an informal contract, the reason being it is not one instrument. That is the sole distinction.

There are any number of different forms that we use. War Department Contract Form No. 1 is a sample of the formal contract. Form No. 47 and any number of others are informal contracts, where you use an offer and the Government, or the contractor, in turn, signs another instrument and sends it back.

Within those several categories we can have any number of different forms of contracts, using the word "form" in a different sense. We can have, first, lump-sum or fixed-price contracts. That is, we will sell you 100 thousand pairs of shoes for 500 thousand dollars, or at five dollars a pair. Now if we quote five dollars a pair, that is a fixed-price contract. We specify a particular price for a definite article. On the other hand, if we should say 500 thousand dollars for the hundred thousand pairs, then that is known as a lump-sum contract. Generally, we speak of lump-sum contracts only in the construction field. It is indeed rare that you will use the phrase "lump-sum contract" in contracts where you have a quantity of items.

Then, again, we have distinctions as to the type of contract--supply or construction. Construction deals principally with public works and that phrase, in and of itself, is fairly broad. For example, raising a sunken vessel from the bottom of a river has been held to be a contract for public work and that naturally would imply that you must use a construction contract form.

You also have several other classifications; that is, classifications as to the manner in which the contractor is to be paid. When you say you will pay him five dollars a pair, that is a fixed-price contract. When you say you will pay him his costs and, in addition, pay him a profit then you must determine in what manner you will figure his profit. If you should say you will pay him a profit of five per cent of his costs, then you have a cost-plus-a-percentage-of-cost contract.

Gentlemen, never say that to a Congressman; that is strictly illegal. You may say that you will pay him his costs plus a flat figure of 50 thousand dollars for his work in connection with the contract. That then becomes a cost-plus-a-fixed-fee type of contract. Please get into the habit of using the entire phrase rather than C.P.F.F. because most people do not fully understand that very vital distinction--and it is vital!

Under a cost-plus-a-percentage-of-cost contract the contractor stands to make more if he builds up his costs. I might say it happens not only theoretically, but as a practical proposition. When you have a cost-plus-a-fixed-fee, he doesn't have anything to gain by building up his costs. Actually, he can only make the 50 thousand dollar fee.

Then we have another classification of contracts and that is the long form or the short form. Notice, these classifications in a great many instances overlap. Again your War Department Contract Form No. 1 is a long form; Form 47 is a short form. It implies just what we would normally think, whether there is a lot of verbiage or but a little, relatively speaking.

The difference between the long form and the short form of contracts is that in the long form we may have a lot of common law. We find almost everything we want to find in the long form contract. In the short form contract we merely cover it briefly and leave a lot of things to common law.

Due to the fact most of you are not attorneys, I might dwell a moment on that. It is possible for me to enter into a contract with you, saying, "Deliver 100 thousand pairs of shoes at five dollars a pair." That is actually our complete contract. The layman will come along and say, "Well, when in God's name is he supposed to deliver them?" We have many situations like that on the law books. Gentlemen, the law under those circumstances would imply a reasonable time for delivery.

The question would again arise, What about the Government's right in the event there is a possible defect in the shoe? We then enter upon a large body of law--as to the law of sales, warranties, implied warranties, expressed warranties. The Government does not like to rely on common law and leaves little out of the contract; as little as possible. So that, in your long form contract all these things are covered in explicit detail.

In the average contract you will have 22 mandatory clauses, if you use a long form of contract; that is, the form you make up yourself. Theoretically then you have to run through the Procurement Regulations or the Navy Directives and determine just what clauses you must insert in that contract.

Well, one of the first things you must insert is a Definitions Article: Who is the contracting officer? Who is the Secretary of War?

Another thing to be considered is the Inspection Article: Under what conditions will the items delivered be inspected? What stringency will be applied in inspecting the items? When must they be inspected? Who must pay for the inspection?

We then come across another contract article that generally must be included in there and that is the Delays Damages Article. That, gentlemen, is the article that says what will happen in the event the contractor does not perform in accordance with the remainder of the terms of the contract.

We also come across a Disputes Article, which is a rather novel one in contracting; however, it is not novel in connection with Government contracting. Later on we will dwell a little more in detail with respect to the Disputes and Delays Damages Articles.

Then you will also have any number of articles that are required by specific Congressional enactments. For example, you have your Renegotiation Article, required until December 31, 1945, which said that with any contract over 100 thousand dollars you had to have the contractor agree he would disgorge his excessive profits to the Government in accordance with the provisions of that statute.

You also have articles setting forth detailed labor provisions: How many hours may the contractor work his laborers? How much must he pay them? What will happen in the event of a strike?

Those articles are required by such statutes as the Walsh-Healy Act, the Bacon-Davis Act, the Copeland Anti-Kickback Act, etc. Also, the Eight-Hour law is another important one. These statutes are rather confusing, gentlemen, but we cannot help it. It would, of course, be much easier if Congress would repeal them all and enact one complete labor act. They have not done that and that is why, at times, you will look at your contract and see that a contractor violates two separate and distinct articles, namely, the Eight-Hour law and the Walsh-Healy Act, or the Eight-Hour law and the Bacon-Davis Act.

They are necessarily repeated because of such quirks in the acts as this: A contractor under any Government contract over 10 thousand dollars in amount guarantees that he will not hire boys under 16 and girls under 18. That is required not only by the Walsh-Healy Act but also by the Bacon-Davis Act. However, there is more of a penalty if he does it under the provisions of the Walsh-Healy Act than under the Bacon-Davis Act. To go into all of the ramifications, gentlemen, is quite confusing; suffice it to say they are all required by statute.

We have another group of articles required by Executive Order of the President. We never, in Government contracting, had an article prohibiting discrimination because of race, color, or creed, until Executive Order 9001 came through. Executive Order 9001 vested the War and Navy Departments

with the powers that the President could vest them with under the First War Powers Act. However, the First War Powers Act said the President may promulgate rules and regulations thereunder. And he did. He promulgated a number of them. One of the things he said was that every contract shall include the anti-discrimination article. That now, gentlemen, is required in every single one of your contracts--long form, short form, formal, informal, and anything else.

Another thing that is required is the covenant against contingent fees. In negotiating, a contractor may not employ one of these fellows that meet you down in one of these Washington hotel bars and says, "How about a contract for a buddy of mine back home?"

I have merely brushed over some of the 22 articles that are usually found in contracts. When you get into an unusual case, you may have other worries. Right now, if you are dealing with a contract as to an item that is intended to go into a completed aircraft, you have something that is revived. Those of you who were in contracting prior to 1940 will remember, I am sure, the Vinson-Trammell Act. Since January 1, that act is back with us. You now have to put that article in, whereas during the war you did not because the Vinson-Trammell Act had been suspended during such time as excess-profits legislation was on our books. Excess profits, as you know, went out on January 1; therefore the Vinson-Trammell Act was back in as of January 1.

If you are dealing with oil or combustible fluids it may be you are required by the procurement regulations or directives to include an article pertaining to the return of containers.

In other words, strictly speaking, we have no boiler-plate requirements or specifications. That misconception led to any number of gray hairs in the Judge Advocate General's Department. Every situation must be studied to make sure that you have each and every article. If you don't, you may not have a contract. There, again, I may bring up the question of a remedy. If you did not have a contract, normally the contractor was out of luck. So Congress, when it was discussing contract termination legislation and when it passed the Contract Settlement Act of 1944, included one revolutionary article. That is Section 17, which says that if a man appearing to be a contracting officer and having apparent authority, purchases merchandise for the Government, the contractor may be paid therefor, under certain conditions.

Again you see, that during the period of the emergency, Congress has attempted to do away with as many of the restrictions as possible.

In discussing the program with Captain Lovenstein it was pointed out that some of the articles were more important than others. It was agreed that I take up two of them in my discussion this morning, and Mr. Neale, General Counsel for the Navy, will continue the discussion tomorrow, and take up any number of the other important ones. I will confine myself to the Delays Damages Article and the Disputes Article in what time I have left.

First of all, the Delays Damages Article generally, in Article I of a contract it is provided that the items shall be delivered in accordance with certain specifications, at a certain time. We will say, for example, that a contractor has agreed to deliver a hundred thousand pairs of shoes each month for a period of six months beginning February 1st. February 1 comes around and, lo and behold, the contractor has not

delivered a hundred thousand pairs of shoes. Then the contracting officer comes around and starts discussing what the Government may do. The answer to that will be found in the Delays Damages Article. If you will read the article you will find the Government has a number of alternative remedies. The first thing the contracting officer can do is write the contractor a letter and say, "Call the contract off. You have committed a breach or a default. We are going out and are going to buy them elsewhere."

Second, he can say, "Never mind delivering the 600 thousand. Deliver only 500 thousand and go out and buy the 100 thousand as to which there has been a default". He can also tell the contractor, "Call it quits, but deliver what you have got."

He has all of those alternatives, gentlemen. Having declared a default, he can go out and buy against the contractor's account. That means he goes out and buys elsewhere. If he has to pay \$5.10 a pair for the shoes, ultimately he will say to the contractor that defaulted, "Pay the Government ten cents for each and every pair of shoes." That is what is known as recovering the excess cost.

Those of you with practical experience will realize that there is rarely a contractor who will admit that his default is the result of his own negligence. He will more often come around with a sob story and say, "Oh, the transformer broke and my whole plant had to close down". During the war, contracting officers could say, "Yes, I realize that. We will extend your time". However, during normal times you may not do that.

The contractor is kept close to the line. The article says he is responsible for any delay where it occurs--I will go back and put it another way. An excusable delay is any delay that occurs without the fault of the contractor and which is due to unforeseeable causes beyond his control. The article goes on to enumerate some of the things that may fall within that definition: floods, strikes, etc.

Now, not every flood will excuse the contractor. That is a concept that the Judge Advocate General's Office has had difficulty in pointing out to the Technical Services. Assume we are in a locale where we have floods every March 1. The contractor enters upon the performance of a contract. He has a flood on March 1. It breaks down his power plant; he is delayed. He will not be able to rely on that flood as a means of extending his time. He should have known he would meet that condition. That is, we will assume that the water rises three feet in that locality each and every year. There, gentlemen, we have something that is foreseeable. It is beyond his control and is not the result of his own fault; but it is foreseeable. If you have the article, as it is set forth in the Regulations, he is liable for the delay.

True, we will all agree that there we have a rather unjust result, so that the regulations now provide that you may omit the word "unforeseeable". In that instance, you would have an excusable delay as being one without the fault or negligence of the contractor and beyond his control. So, leaving out that word "unforeseeable", as you see, makes a drastic change in the legal effect.

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As to strikes: It may well be that a strike is within the control of the contractor. A strike was called when four men were discharged by the contractor because they were members of a union. We could then say that the delay resulted from his arbitrary and illegal action; that is, the strike was his fault and that he should therefore be liable for the resulting delay.

Going back to the flood example, we have one further thing that very many people lose sight of. You can have the flood arising not one but fifty feet, yet the contractor will still be liable for the delay. That is due to a phrase in the article which says that the excusable delay is only excusable if, within ten days of the start of the state of facts relied on as the excuse, the contractor notifies the contracting officer. In other words, if that flood occurs on March 1 he must notify the contracting officer by March 11. Lots of contractors have come to grief because of their failure to do the simple thing of writing a letter to the contracting officer and calling the state of facts to his attention.

Now to go on to the Disputes Article. Incidentally, most frequently the Disputes Article is brought into play by the Delays Damages Article. The Delays Damages Article says he has to perform by a certain date. If he does not, the contracting officer will assess damages. He does that, in many instances, under a Liquidated Damages Article which was used extensively by Quartermaster and Engineers during the emergency and probably will appear in almost all contracts from now on.

Well, the contracting officer says, "Contractor, you pay the Government such and such an amount." The contractor, in turn, says "No, it was an excusable delay." There is an impasse. What happens? The Disputes Article says that where a dispute as to a question of fact arises, the contracting officer shall be the final judge as to disputed questions of fact. That is, gentlemen, a vital power that the Government has reserved to itself for almost 80 years now. The U. S. Supreme Court has held it is a valid contract article.

It all goes back to the days shortly before the War Between the States when the Government entered into a contract with a company that ran stage-coaches. In those days there were not very many good maps to show the distance between towns out in the Far West. It was provided in the contract that the contracting officer should determine the number of miles between certain points. With all of the conflicting maps in existence at the time, of course, that was a very vital power, since the contractor was paid on a mileage basis. Out of that case evolved the principle that the Disputes Article is valid.

The contracting officer determines questions of fact, and fact only. He is not given the power to determine questions of law. Any discussion as to what is a question of fact and what is one of law would take not 50 minutes but many hours. Suffice it to say, the contractor each time must determine whether it is one of fact or one of

law. If it is one of fact, the contracting officer's determination is final; and I mean final. A man has only one remedy and that is to appeal to the Secretary of War within 30 days. Gentlemen, that 30 days has caused more grief than we can possibly imagine. Many cases have been thrown out and contractors have lost many dollars because they have not appealed within 30 days. It is vital that they so do. The time cannot be extended.

The Secretary of War, under the Disputes Article, is given the power to designate a board to hear such appeals. He has done so during the emergency and has set up the Board of Contract Appeals which sits in the Munitions Building.

Assuming that it is a question of fact, he must appeal to the Board of Contract Appeals. The Board of Contract Appeals may uphold the decision of the contracting officer or it may upset it. In any event, its determination is always final.

Again, all of this is subject to the question whether there has been arbitrary action or fraud. Now if there has been arbitrary action or fraud, or if it is a question of law, then the contractor may go to the Court of Claims.

I think my time is now about up. Probably at least one question has arisen in someone's mind. I will be glad to take a crack at answering it, if I can.

COLONEL BROWN:

Captain, I think you could carry on a debate until the cows come home tonight. Now while I do not want to deprive anyone the right to ask a legitimate question, yet I think we had better not try the patience of our speaker; besides, some of you may not be so interested in the various legal problems.

Thank you very much, Captain Roth.

(11 July 1946 -- 200.)P

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