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## ARMY PEARL HARBOR BOARD EXHIBIT No. 55

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, December 9, 1940.

3820 (National Defense)

Re. O. &amp; R. Chapter VII.

Circular Letter (Finance No. 226) (Contracts No. 21)

Rescinded by C/L Fin 41, 1941, file 103 (1941) 41

Subject: Procurements and Contracts for National Defense Purposes.

To: All Contracting Officers and Others Concerned:

The following procedure will govern the making of purchases and the letting of contracts for National Defense purposes by the Corps of Engineers. It includes instructions supplemental to Army Regulations, and, for the convenience of contracting officers, includes the pertinent requirements of Army Regulations, Procurement Circulars and special instructions of the Office of the Assistant Secretary of War pertaining to such purchases and contracts. It is issued as a new section to Chapter VII, Orders and Regulations, and will be kept up to date by supplemental Finance Circulars:

Section 13—Procurements and Contracts Without Advertising for National Defense Purposes.

772. Statutory provision.—Section 1 (a) of the Act approved July 2, 1940 (Public No. 703, 76th Congress) provides as follows:

"\* \* \* That (a) in order to expedite the building up of the national defense, the Secretary of War is authorized, out of the moneys appropriated for the War Department for national-defense purposes for the fiscal year ending June 30, 1941, with or without advertising, (1) to provide for the necessary construction, rehabilitation, conversion, and installation at military posts, depots, stations, or other localities, of plants, buildings, facilities, utilities, and appurtenances there-to (including Government-owned facilities at privately owned plants and the expansion of such plants, and the acquisition of such land, and the purchase or lease of such structures, as may be necessary), for the development, manufacture, maintenance, and storage of military equipment, munitions, and supplies, and for shelter; (2) to provide for the development, purchase, manufacture, shipment, maintenance, and storage of military equipment, munitions, and supplies, and for shelter, at such places and under such conditions as he may deem necessary; and (3) to enter into such contracts (including contracts for educational orders, and for the exchange of deteriorated, unserviceable, obsolescent, or surplus military equipment, munitions, and supplies for other military equipment, munitions, and supplies of which there is a shortage), and to amend or supplement such existing contracts, as he may deem necessary to carry [2] out the purposes specified in this section: Provided, That the limitations contained in sections 1136 and 3734 of the Revised Statutes, as amended, and any statutory limitation with respect to the cost of any individual project of construction, shall be suspended until and including June 30, 1942, with respect to any construction authorized by this Act: Provided further, That no contract entered into pursuant to the provisions of this section which would otherwise be subject to the provisions of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes,' approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41; secs. 35-45), shall be exempt from the provisions of such Act solely because of being entered into without advertising pursuant to the provisions of this section: Provided further, That the cost-plus-a-percentage-of cost system of contracting shall not be used under this section; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of War."

772.1 Applicability of the Act.—Procurements and contracts made without advertising will be referred to as negotiated purchases and contracts. Negotiated contracts may be distinguished as to form as (1) lump-sum contracts, and

(2) cost-plus-a-fixed-fee contracts. They include all construction, supply, service, and rental contracts for the purposes stated in the Act regardless of the actual or estimated amounts involved. The authority does not include procurements and contracts for River and Harbor and Flood Control works.

7722 Administrative directions.—The Acting Secretary of War on July 2, 1940, determined it to be necessary in the public interest and authorized contracts within the scope of Section 1 (a) of the Act to be entered into without advertising whenever that method of procurement will serve to expedite the accomplishment of the national defense program. By direction of the Assistant Secretary of War the general principles governing the letting of national-defense contracts and the labor policy adopted by the National Defense Advisory Commission (Document No. 950, 76th Congress) will be followed. Such principles and policy are set forth under the following subparagraphs (a) and (b).

(a) General principles governing the letting of defense contracts:

1. The essence of the preparedness program is the getting of an adequate supply of materials of the proper quality in the shortest space of time possible. Considerations of price alone are highly important, but in the emergency are not governing.

2. Speed of delivery of all items on the defense program is essential. This means:

(a) That orders should be placed in such a manner as to insure the most efficient use of each particular [3] facility from the point of view of the program as a whole;

(b) That proper consideration should be given to contributory industries, such as the machine tool industry, to avoid creating underlying bottlenecks;

(c) That once delivery dates are fixed, assurance be given that they will be met by the supplier.

3. Proper quality is also of prime importance. It is therefore necessary to determine first of all whether or not the supplier can meet the quality requirements, as specified. There should be a willingness on the part of both the Army and Navy, on the one hand, and of the supplier on the other to adjust specifications on a cooperative basis in order that such specifications may come as near as possible to meeting commercial standards while at the same time fulfilling the military requirements.

4. Price, while not the sole consideration, is of outstanding significance, and every effort must be made to secure a fair price. This must take recognition, among other things, of determination of proper cost factors.

5. The impact of the defense program upon the consumers must be recognized. This relates to such factors as:

(a) Due regard to the necessity of protecting civilian needs and morale;

(b) Proper health and housing conditions among employees;

(c) Consideration to possible off-season production in order to dovetail the military program into production for civilian requirements. Off-season production should also lead to lower overhead and consequently to lower prices for both the consumers and the Government.

6. Adequate consideration must be given to labor. This means compliance with the principles on this subject stated by the Commission in its release of August 31, 1940 (quoted under (b) below).

7. Undue geographic concentration of orders should be avoided, both as to procurement districts and as to industrial sections within any such procurement district. Reasons for such decentralization relate to factors of military strategy, as well as avoiding congestion that will slow down production.

8. Financial responsibility of the supplier should be examined. Ability to post a bond does not necessarily dispose of this problem. [4] The probability should exist that the supplier will be able to continue in business, at least long enough to complete his contract satisfactorily. Further, an ability to finance himself through private sources should take preference over necessity for securing Government aid.

9. The avoidance of congestion of transportation facilities should be sought. The same applies to warehousing facilities.

10. Due consideration should be given to the adequacy of power facilities, particularly where furnished by public utilities.

11. A general preference should be given to firms having experience with so-called educational orders.

12. The moral responsibility of the supplier is important, and in some respects, fundamental. There should be evidence of honest and sincere desire to cooperate

with the Army and Navy in producing what is called for, and on time, without profiteering; to assume some risks himself rather than attempting to shift all such risks to the Government; and to furnish a correct statement as to his capacity and his experience. The supplier's general standing and reputation among reputable businessmen (as distinct from his financial rating) is one index of such qualifications.

13. The Commission recognizes that competitive bidding is the better procedure in certain types of industry and circumstances. However, it is often impossible to make sure that the principles outlined above are followed when contracts are placed on the basis of price alone and are let to the lowest bidder. Therefore, in cases where competitive bidding will not fulfill the above stated needs of national defense, the Commission recommends that the use of the negotiated contract be authorized where necessary in order that these objectives be obtained in making defense purchases.

(b) Labor policy:

1. Primary among the objectives of the Advisory Commission to the Council of National Defense is the increase in production of materials required by our armed forces and the assurance of adequate future supply of such materials with the least possible disturbance to production of supplies for the civilian population. The scope of our present program entails bringing into production many of our unused resources of agriculture, manufacturing, and manpower. This program can be used in the public interest as a vehicle to reduce unemployment and otherwise strengthen the human fiber of our Nation. In the selection of plant locations for new production, in the interest of national defense, great weight must be given to this factor.

[5] 2. In order that surplus and unemployed labor may be absorbed in the defense program, all reasonable efforts should be made to avoid hours in excess of 40 per week. However, in emergencies or where the needs of the national defense cannot otherwise be met, exceptions to this standard should be permitted. When the requirements of the defense program make it necessary to work in excess of these hours, or where work is required on Saturdays, Sundays, or holidays, overtime should be paid in accordance with the local recognized practices.

3. All work carried on as part of the defense program should comply with Federal statutory provisions affecting labor wherever such provisions are applicable. This applies to the Walsh-Healey Act, Fair Labor Standards Act, the National Labor Relations Act, etc. There should also be compliance with State and local statutes affecting labor relations, hours of work, wages, workmen's compensation, safety, sanitation, etc.

4. Adequate provision should be made for the health and safety of employees.

5. As far as possible, the local employment or other agencies designated by the United States Employment Service should be utilized.

6. Workers should not be discriminated against because of age, sex, race or color.

7. The Commission reaffirms the principles enunciated by the Chief of Ordnance of the United States Army, during the World War, in his order of November 15, 1917, relative to the relation of labor standards to efficient production:

"In view of the urgent necessity for a prompt increase in the volume of production \* \* \*, vigilance is demanded of all those in any way associated with industry lest the safeguards with which the people of this country have sought to protect labor should be unwisely and unnecessarily broken down. It is a fair assumption that for the most part these safeguards are the mechanisms of efficiency. Industrial history proves that reasonable hours, fair working conditions, and a proper wage scale are essential to high production. \* \* \* Every attempt should be made to conserve in every way possible all of our achievements in the way of social betterment. But the pressing argument for maintaining industrial safeguards in the present emergency is that they actually contribute to efficiency."

(c) As to whether or not a prospective contractor is barred from receiving a contract by reason of findings made against him by the National Labor Relations Board, the following guide will be applied:

[6] While the labor policy of an industrial concern has an important bearing on its ability to carry out a proposed contract and the record of a concern in regard to the National Labor Relations Act may be an indication of such labor policy, the award of a War Department contract under the defense program is not to be considered as barred by the single fact that proceedings under the

National Labor Relations Act have been instituted or that findings of violations of the Act have been made by the National Labor Relations Board. In relation to this matter, consideration should be given to the seriousness of the offense charged, the stage which the proceeding has reached, the importance of the plant facilities of the particular concern to the national defense program, and similar factors. Emphasis must necessarily be placed on the prime importance of expeditious accomplishment of the defense program with due regard to efficiency and economy and to the various principles stated by the Advisory Board and approved by the President.

772.3 Authority of contracting officers.—District and division engineers, and other contracting officers specially designated by the Chief of Engineers with authority equivalent to that of a district or division engineer, may issue specifications and negotiate purchases and contracts without the approval of higher authority as provided in paragraphs 706.1 to 706.6, inclusive. Contracting officers who have been specially designated by the Chief of Engineers or by district or division engineers under paragraphs 706.1 (c) and (d), will act within the limits of authority contained in their respective letters of appointment. Specifications, awards, and contracts issued and negotiated by contracting officers not under the jurisdiction of a division office, which require the approval of higher authority, unless otherwise specifically directed, will be submitted for the approval of the Chief of Engineers.

[Handwritten in margin:] See C/L Fin 10, 1941.

772.4 Open-market purchases.—Purchases amounting to \$2,000 or less may be made in the open market under the same procedure as those set forth in paragraph 725.7, Orders and Regulations, and paragraph 4.o., AR 5-240.

772.5 Forms to be used.—(a) Lump-sum contracts.—Purchases amounting to \$2,000 or less may be made by purchase order as set forth in paragraph 725.3, Orders and Regulations, substituting the figure \$2,000 for the figure \$500 appearing in said paragraph. All negotiated lump-sum contracts and purchases in excess of \$2,000 will be entered into on the forms of contract prescribed in paragraphs 750.5 and 750.6, with the exception of (1), "E. D. Form No. 22," for expert services, which is exclusively for River and Harbor and Flood Control works. No standard form has been prescribed for lump-sum architectural and engineering services, and pending the issuance of such a form, they will be executed as provided in paragraph 750.6.

(b) *Cost-plus-a-fixed-fee contracts*.—All cost-plus-a-fixed-fee contracts will be executed only on standard or special forms approved by the Secretary of War. To date standard forms have been approved as follows:

- [7] 1. C. P. F. F. Form No. 1—Cost-plus-a-fixed-fee construction contract.
2. C. P. F. F. Form No. 2—Cost-plus-a-fixed-fee construction subcontract.
3. C. P. F. F. Form No. 3—Cost-plus-a-fixed-fee supply contract. (This form is applicable primarily to Air Corps contracts but may be of use as a basis for similar contracts pertaining to purchases in cases where cost-plus-a-fixed-fee form of contract is necessary and authorized.)
4. C. P. F. F. Form No. \_\_\_\_—Cost-plus-a-fixed-fee contract for "Architect-Engineer Services." (This form has not yet been formally approved but will be generally followed in the preparation of such contracts pending approval.)

(c) *Miscellaneous*.—For use in connection with (a) or (b) or otherwise as required, forms have been approved as follows:

1. Equipment Rental Agreement.
2. Lump-sum Construction Subcontract.
3. Emergency Plant Facilities Contract.

The standard forms will be followed without change in all possible cases. For construction works outside the continental limits of the United States, or in other cases where it is considered necessary, the form may be altered or redrafted to fit the particular needs of each case, and transmitted to the Chief of Engineers for his consideration and submission for the approval of the Assistant Secretary of War.

772.6 Preparation and distribution.—All negotiated contracts will be prepared and distributed as set forth in paragraphs 750 to 750.9, inclusive, except that:

1. One authenticated copy of all negotiated contracts (contract instrument only, less invitation, specifications, drawings, copy of bid, etc.) of \$1,000,000 or more, except those contracts which are classified as secret, confidential or restricted in accordance with AR 380-5, will be transmitted by the contracting officer executing the contract, immediately upon the final approval thereof, direct to the Assistant Secretary of War, Procurement Control Section, Washington, D. C. (AR Par. 15b (4) (a).)

[8] 2. When the contract contains terms and conditions relating to reimbursement of the cost of emergency facilities and the protection of the United States with reference to the future use and disposition of such emergency facilities, one additional copy (contract instrument *only*, but including the terms and conditions indicated), regardless of the amount of the contract, will be forwarded immediately upon final execution, direct to the Assistant Secretary of War, Procurement Control Section, Washington, D. C. (AR 5-200, Par. 15b (4) (b).)

3. The copy of all contracts required to be filed in the Returns Office, as set forth in paragraph 750.9, which are of a secret or confidential nature, shall be prepared for such filing as other contracts but will be transmitted direct to the Office, Chief of Engineers, Contract Unit, by memorandum, stating the secret or confidential nature of the papers which would warrant their not being immediately made available for public examination.

4. The signed ribbon copy of every contract required under paragraph 750.9 (b) to be forwarded to the Office, Chief of Engineers for examination and transmittal to the Audit Division, General Accounting Office, which is of a secret or confidential nature, will be transmitted by registered mail, or other special method of delivery, to the Office, Chief of Engineers, Contract Section, with memoranda stating that the contract is of a secret or confidential nature. Such contracts will be specially handled and personally delivered to the General Accounting Office where special arrangements have been provided for their safekeeping.

5. Copies of specifications and drawings made a part of negotiated defense contracts, and such contracts themselves, will not be distributed to publishers and others as set forth in paragraphs 735.8 (d), (e), (f), and (g).

772.7 Cost-plus-a-fixed-fee contracts.—(a) Approval of use.—The use of the cost-plus-a-fixed-fee form of contract requires the approval of the Secretary of War in each specific case. If a district engineer or contracting officer considers that the work can be best performed by the cost-plus-a-fixed-fee form of contract, he will submit a letter to the Chief of Engineers stating:

1. The nature of the particular work to be done.
2. The location and the estimated cost thereof.
3. The particular reasons for the use of the cost-plus-a-fixed-fee form of contract.
4. The amount of fixed fee proposed.
5. The name of the contractor proposed for the work with the reasons therefor.

[9] 6. The name of one or more alternate contractor or contractors believed to be suitable to perform the work.

7. Whether or not the proposed contractor or any alternate has been awarded any other national defense contract, and if so, the contract number, description of the work, location of the work, estimated cost, and fee for each such contract, if known to the contracting officer.

8. Waiver of bonds. (See paragraph 773).

This application with recommendations of the Chief of Engineers, will clear through the Office of the Assistant Secretary of War and the National Defense Council.

(b) Amount of fee.—The Act of September 9, 1940 (Public No. 781, 76th Congress) provides that the fixed-fee to be paid the contractor as a result of any such public works contract (cost-plus-a-fixed-fee), hereafter entered into, shall not exceed six percentum of the estimated cost of the contract exclusive of the fee as determined by the Secretary of War. The amount of the fees approved in existing construction contracts ranges from the maximum of six percent in smaller contracts of less than \$100,000 in almost a straight line to approximately two and one-half percent for contracts approximating \$30,000,000. Fixed-fees approximating three-fourths of one percent of the estimated project cost have been accepted as reasonable for architectural, engineering and design contracts.

(c) Inspection.—In addition to the inspections required by AR 5-360, such necessary inspections, audits, and supervision, to make certain that the interests of the Government are fully safeguarded with respect to quantity, quality, cost of labor, materials and services, which are to be charged against such contracts and paid for by the Government, will be made. In view of the many difficulties inherent in contracts of this nature and the necessity for the assurance of rigid honesty in their performance, the careful supervision by contracting officers is enjoined. Care will be exercised in the preparation of all cost-plus-a-fixed-fee contracts that no condition is included which would preclude or abridge the right and duty of the Government to make such inspections and audits. (See Circular Letter Finance No. 225, dated December 9, 1940.)

772.8 Designs and Specifications.—It is extremely important that designs and specifications, particularly those in connection with supply contracts, be care-

fully prepared and that all conditions or practices which might operate to delay both procurement and production be eliminated therefrom. It is further important that changes in such specifications or designs, when issued, be limited to cases of absolute necessity. It is, therefore, directed, insofar as practicable, that:

(a) Specifications will be so clear and complete that any competent manufacturer should experience no undue difficulty in preparing bids or estimates.

[10] (b) Unusual or unproven requirements will be avoided wherever possible.

(c) Tolerances and inspection standards will, to the greatest extent possible, conform to commercial practice and be capable of realization by mass production methods.

(d) Except in cases of absolute necessity changes in specifications or designs affecting work in process and affecting contracts to be placed will be avoided during the current emergency situation.

772.9 Approval of contracts.—(a) Lump-sum contracts.—All negotiated lump-sum contracts, both supply and construction, will be subject to the approval of higher authority as provided in paragraph 706.4, except that (1) all such contracts in excess of \$100,000 or less than \$500,000, will be submitted for the approval of the Chief of Engineers; (2) all such contracts of \$500,000 or more will be subject to the favorable recommendation of the Chief of Engineers and the approval of the Assistant Secretary of War and will not be binding until so approved.

(b) Cost-plus-a-fixed-fee contracts.—All cost-plus-a-fixed-fee contracts where the estimated amount is in excess of \$50,000 and less than \$500,000 will be subject to the approval of the Chief of Engineers, and all such contracts of \$500,000 or more will be subject to the favorable recommendation of the Chief of Engineers and the approval of the Secretary of War, and will not be binding until so approved.

(c) Letters or indorsements transmitting contracts for approval will state briefly, (1) the necessity for making the procurement without advertising; (2) bidders solicited; (3) comparative cost; (4) whether or not the contractor has been awarded any other negotiated contracts; and (5) any other pertinent data.

772.10 Priorities.—A committee, known as the Priorities Committee of the Army and Navy Munitions Board, has been established and a priorities system has been prescribed by it to insure the procurement of items of Army and Navy equipment and supplies, in the quantity needed, in the order of their military importance, and with the least practicable burden to industry. It is effected by the use, at the discretion of contracting officers, of a specific preference rating to be placed on individual contracts or orders for critical items, as directed by the Committee. They do not apply to contracts for River and Harbor and Flood Control works or procurements. The instructions and procedure prescribed by the Priorities Committee for the use of preference ratings on contracts will be published in a restricted Finance Circular Letter.

772.11 Delays due to priorities.—Under the standard form of construction contract, and under the liquidated damage article of the standard form supply contract, where delivery is delayed through the observance by the contractor of a voluntary preference obligation assumed at the instance of the Government under the system of priorities established by the Army and Navy Munitions Board on August 12, 1940, contracting officers will, in accordance with paragraph 754.1, grant such extensions of time of performance or delivery as may be warranted by the facts in each case.

[11] 772.12 Reports.—Reports of procurements and awards of contracts are required as follows:

(a) Reports of awards of contracts.—(1) Reports of awards of contracts in excess of \$2,000 under authority of the Act of July 2, 1940 (Public No. 703, 76th Congress) will be submitted by the district engineer or other contracting officer making the purchase at the time the award is made. In the case of items which have been classified under AR 380-5, the word "classified" will be substituted for the quantity and description of the item. Such reports will be made direct to the Assistant Secretary of War, Procurement Control Section, Washington, D. C., and a copy thereof will be transmitted to the Office, Chief of Engineers, Contract Section, Washington, D. C. These reports will be made on ordinary letter paper and will conform to the following outline:

Office----- Date-----

## REPORT OF CONTRACT SERIAL No. \_\_\_\_\_

Under authority of sec 1 (a), act July 2, 1940 (Public No. 703, 76th Cong.)  
 Project No. \_\_\_\_\_ Contract or production schedule No. \_\_\_\_\_  
 Name and address of contractor \_\_\_\_\_  
 Location of establishment or plant \_\_\_\_\_  
 where the contract will be performed \_\_\_\_\_  
 Quantity                      Item                      Unit Cost                      Grand Total,                      Total Cost

## DATES

a. Quotations requested \_\_\_\_\_  
 b. Award made \_\_\_\_\_  
 c. Contract executed or notice to proceed issued \_\_\_\_\_  
 d. Deliveries to commence \_\_\_\_\_  
 e. Contract to be completely performed \_\_\_\_\_  
 Number of quotations considered \_\_\_\_\_  
 Competitor was not obtained in the negotiation of this contract for the following reasons (when applicable) \_\_\_\_\_  
 The prices obtained in the negotiations of this contract are fair and reasonable.

Signature of Purchasing and Contracting Officer.

[12] (2) Every report submitted in accordance with (a) above will be serially numbered by the station submitting it and the first report submitted by a station will bear the notation "Serial No. 1" immediately below the date in the upper right hand corner. Subsequent reports will be similarly numbered. Such reports as have already been submitted and not so numbered will be assigned serial numbers by the stations submitting them and information as to the numbers assigned furnished by letter to the office indicated in (a) above.

(3) For any item, to which a preference rating has been assigned in accordance with the priorities instructions of the Army and Navy Munitions Board dated August 12, 1940, appearing in the report, a notation substantially as follows will be given:

"ANMB preference \_\_\_\_\_"  
 (insert rating)

(b) Purchases in excess of \$2,000, made through contracts entered into under authority of the Act referred to in paragraph (a) (1), will not be reported under entry 14 on War Department Form No. 8 as open-market purchases (par. 5, AR-240). The number of such purchases made and the total amount of funds so obligated during each month will be shown by an appropriate notation in the space below entry 9 on page one of that form. The amount reported in the notation will be included in the total shown under entry 10. The number of purchases reported in the notation will be included in the total number of "other" purchases shown under entry 12.

(c) The instructions contained in the preceding paragraphs, (a) and (b), are applicable to all purchases made from War Department funds appropriated for the fiscal year 1941. Reports referred to therein, which have not been furnished covering the obligation of such funds prior to the receipt of these instructions will be prepared accordingly. They do not apply to procurements from River and Harbor and Flood Control funds.

(d) Reports of cost-plus-a-fixed-fee contracts and land acquisitions.

(1) The Act of October 8, 1940 (Public No. 800, 76th Congress) requires the Secretary of War to submit monthly within ten days following the last day of each month, commencing on or about November 10, 1940, to the Chairman of the Committee on Military Affairs and Appropriations of the Senate and House of Representatives, certain information on all cost-plus-a-fixed-fee contracts and all land acquisitions within certain periods. The Act provides that the first report should cover the period from July 1 to October 31, 1940.

(2) Such reports will be submitted by the contracting officer who executed the contract directly to the Assistant Secretary of War, Procurement Control Section, Washington, D. C., and a copy thereof will be transmitted to the Office, Chief of Engineers, Contract Section, Washington, D. C. The report covering contracts executed during the [13] period July 1 to October 31, 1940 should

be submitted not later than November 5, 1940, and subsequent reports will be forwarded at the time the contract is executed in each case.

(3) Reports of cost-plus-a-fixed-fee contracts will contain substantially the following information:

Office ----- Date of Report -----  
Serial No. of Report -----

REPORT OF CONTRACT

Cost-plus-a-fixed-fee

Act Oct. 8, 1940

(Public No. 800, 76th Congress)

- (a) Object or objects of the contract -----  
 (b) Name and place of business of the contractor -----  
 (c) Estimated cost of the contract (exclusive of the fee) -----  
 (d) Amount of the fee -----  
 (e) Date of contract -----  
 (f) Location of the project where the contract will be performed -----

Signature of  
Purchasing and Contracting Officer.

(4) Reports of land acquisitions will contain substantially the following information:

Office ----- Date of Report -----  
Serial No. of Report -----

REPORT OF CONTRACT

Land Acquisition

Act Oct. 8, 1940

(Public No. 800, 76th Congress)

- (a) Location -----  
 (b) Area -----  
 (c) Intended use -----  
 (d) Purchase price -----  
 (e) Amount appropriated for the purpose -----  
 (f) Assessed value -----  
 (g) Date acquisition was accomplished -----

Signature of  
Purchasing and Contracting Officer.

(e) Press releases.—(1) Semi-monthly reports on the fifteenth and last day of each month of awards of contracts for supplies and Army construction will be submitted by the contracting officer executing the contracts, directly to the Assistant Secretary of War, Procurement Control Section, Room 2513, Munitions Building, Washington, D. C., and a copy thereof will be transmitted to the Office, Chief of Engineers, Contract Section, Washington, D. C. Such reports should be transmitted in time to reach the Office of the Assistant Secretary of War within three days of the period reported. Only contracts of sufficient importance to have news interest should be included. Awards of unusual interest and importance will be reported promptly at the time of award, rather than being held for the regularly semi-monthly release and items so reported need not be included in the semi-monthly report, but some mention should be made of them. Six copies of each semi-monthly and special report is required to be furnished the Office of The Assistant Secretary of War.

(2) Information on awards should include the contracting office, name and address of the contractor, the item or items contracted for, and the amount of each award as to quantity and money value and any other pertinent information. In addition thereto, the report will contain the completion date of deliveries for all contracts in excess of thirty days.



(3) The last release for each quarter of the fiscal year, will, in addition to the usual report of recent awards, include a summary showing the up-to-date status of the procurement program for the year by suitable items or categories, showing the amounts provided for in the annual program, the amounts contracted for to date, the amounts included in outstanding invitations, and other pertinent information.

(4) If the contracting officer considers that certain awards are of a confidential or other nature to make their publication inadvisable, recommendation to that effect should accompany the release.

(f) The term "contracting officer" as used herein means division and district engineers and other contracting officers specially designated by [15] the Chief of Engineers with similar unlimited authority. The reports of such contracting officers will include all procurements and awards by contracting officers with limited authority under their supervision or direction.

773. Bonds.—(a) Lump sum contracts.—Bid bonds will not be required. Performance bonds for all supply contracts, and construction contracts under \$2,000, are discretionary with the contracting officer and should be required only in exceptional cases. Performance and payment bonds must be required for negotiated construction contracts in excess of \$2,000.

(b) Cost-plus-a-fixed-fee contracts.—The Secretary of War is authorized under the Act of September 9, 1940 (Public No. 781, 76th Congress) to waive the requirements for performance and payment bonds for public works under cost-plus-a-fixed-fee contracts. Pursuant thereto the Secretary of War has determined that the requirements of performance and payment bonds for public works for the military establishment, entered into upon a cost-plus-a-fixed-fee basis, out of funds appropriated for the fiscal year 1941, or authorized to be entered into prior to July 1, 1941, shall be waived except in cases of special circumstances. If the district engineer or other contracting officer considers that the circumstances in any particular case are such that performance and payment bonds should be required, he will include a recommendation to such effect in his letter of application to the Chief of Engineers, (paragraph 772.7) setting forth in detail the facts upon which such recommendation is based.

773.1 Liquidated-damage provisions.—For use in Engineer Corps supply and construction contracts generally, see paragraphs 734.2 (d) and 734.3 (f). The inclusion of liquidated damage clauses in supply contracts under existing emergency conditions may frequently lead to complications in delivery or performance schedules with deliveries on other contracts under the system of priorities established by the Army and Navy Munitions Board on August 12, 1940. They will accordingly be included in negotiated supply contracts only in exceptional cases.

773.2 Walsh-Healey Act.—All negotiated supply contracts in excess of \$10,000 (both lump-sum and cost-plus-a-fixed-fee) will contain the Walsh-Healey Act provisions.

773.3 Bacon-Davis Act.—All negotiated contracts for the construction or repair of public works in excess of \$2,000 are subject to the provisions of the Bacon-Davis Act and must contain a schedule of minimum wage rates as determined by the Secretary of Labor.

773.4 Eight-hour Law requirements.—The provisions of the law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by Army, Navy, and Coast Guard contracts were suspended by the Act of June 28, 1940 (Public No. 671, 76th Congress, Section 5 (b)). All contracts for the construction or repair of a public work or for non-personal services in which the stipulation prohibiting work in excess of eight hours a day was theretofore required to be included, are now subject to the provisions of Section 303 [16] of the Act approved September 9, 1940 (Public 781, 76th Congress) permitting employment of laborers and mechanics in excess of eight hours per day upon payment at not less than one and one-half times the basic rate of pay. The following paragraph will be included in all such contracts:

"ARTICLE 11. Eight-hour law—Overtime compensation—Convict labor.—

(a) No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in the performance of this contract shall be com-

puted on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime."

773.5 Advance payments to contractors.—Section 1 (c) of the Act of July 2, 1940 (Public No. 703, 76th Congress) provides that advanced payments to contractors in amounts not exceeding 30 percent of the contract price, may be made prior to July 1, 1942, when necessary in the interests of the National Defense upon such terms and conditions and such adequate security as the Secretary of War may prescribe. Requests for advance payments by contractors may be made at any time after negotiations have begun. District engineers and other contracting officers upon receipt of requests from firms or contractors for advance payments will forward such requests to the Chief of Engineers who will transmit the request with his recommendation to the Assistant Secretary of War for appropriate action. The following information will be presented with each case:

- (a) Amount proposed to be advanced.
- (b) Amount and character of contract involved.
- (c) Whether award with or without advertising or on a cost-plus-a-fixed-fee basis.
- [17] (d) Terms of the proposed advance (including method and time of repayment or liquidation).
- (e) Necessity for the advance.
- (f) Security proposed to protect the Government against loss with the definite recommendation as to the adequacy thereof.
- (g) Financial position and the general character and responsibility of the contractor.
- (h) Any other information pertinent to a proper decision in the case.
- (i) Appropriation available.

773.6 Assignment of claims.—The Act of October 9, 1940 (Public No. 811, 76th Congress) provides that Sections 3477 and 3737, Revised Statutes, shall not apply in any case in which the moneys due or to become due from the United States, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency; provided that:

- (a) No claim shall be assigned, in the case of any contract entered into prior to October 9, 1940, without the consent of the Secretary of War. District engineers and other contracting officers will forward any requests for approval under authority of this subparagraph to the Chief of Engineers, who will transmit the request with his recommendation to the Assistant Secretary of War for appropriate action. All pertinent information necessary for action of higher authority will be submitted with the request.
- (b) An assignment may be made in the case of any contract entered into subsequent to October 9, 1940, providing its terms do not prohibit such assignment. Assignments under authority of this subparagraph will be submitted for the approval of the Chief of Engineers, but they do not require the approval of the Secretary of War.
- (c) Unless the terms of a contract provide otherwise, an assignment of the contract shall—
  - (1) Cover all amounts payable and not already paid.
  - (2) Not be made to more than one party.
  - (3) Not be subject to further assignment, except that an assignment may be made to one party as agent or trustee for two or more financing parties.
- (d) In case of an assignment, *the party to whom the contract was assigned* shall file written notice, and a true copy of the assignment with the—
  - (1) General Accounting Office.

## (2) Contracting Officer.

[18] (3) Surety or sureties upon the bond or bonds, if any, in connection with such contract.

(4) Disbursing officer, if any, designated in such contract to make payment.

Any contract entered into by the War Department after October 9, 1940, may provide that payments to an assignee of any claim arising under such contract shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of such contract.

773.7. Compulsory orders.—(a) Section 9 of the Selective Service and Training Act of 1940 (Public No. 783, 76th Congress) authorizes the President, through the head of the War Department or the Navy Department, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such establishment. Compliance with all such orders for products or material shall be obligatory.

(b) It is the policy of the War Department to continue procurement under the defense program on the basis of voluntary cooperation between industry and the Government wherever possible.

(c) In the event that in any particular case a satisfactory solution cannot be reached on such voluntary basis, a full report of circumstances will be submitted to the Chief of Engineers for submission with his recommendation to the Office of the Assistant Secretary of War. Such report of the contracting officer will include his conclusion that action under Section 9 of the Act referred to is necessary, together with the reasons therefor, and a statement that the product or material desired is normally produced or is capable of being produced by the person or corporation involved, that the price of the product or material desired as determined by him is fair and reasonable, and as to the preference over other contracts or orders to which the proposed order should be entitled. All pertinent correspondence or other documents relating to the case should accompany such report.

By order of the Chief of Engineers:

E. E. GESLER,  
Lt. Col., Corps of Engineers,  
Chief, Finance Section.

Special Order, Finance Section, Department of War, No. 10

10. CONTRACTING OFFICERS, CONTRACTING OFFICERS, CONTRACTING OFFICERS  
CONTRACTING OFFICERS CONTRACTING OFFICERS

Contracting Officer, Finance Section, Department of War, No. 10

The following information should be made to the contractor of any contract  
contracting officer, Finance Section, Department of War, No. 10

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The following information should be made to the contractor of any contract  
contracting officer, Finance Section, Department of War, No. 10

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