MILITARY PROCUREMENT REGULATIONS

14 December 1953

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INDUSTRIAL COLLEGE OF THE ARMED FORCES

Washington, D. C.

Brigadier General Robert P. Hollis, USA, Commanding General, New York Quartermaster Purchasing Agency in New York City, was born at Lafayette, Indiana, 25 February 1901. He attended Purdue University for one year, 1918; was graduated from the United States Naval Academy, 1922; Field Artillery School, 1928; Quartermaster School, 1936; Command and General Staff College, 1940; and the Industrial College of the Armed Forces, 1947. He was appointed second lieutenant, Field Artillery, in January 1923, was detailed to the Quartermaster Corps in 1935, and transferred on 14 May 1938. He was officer-in-charge, Manufacturing Division, Philadelphia Quartermaster Depot; assistant to department quartermaster, Panama Canal Department; two years at Headquarters, ASF in Stock Control and Distribution; he served successively in the Office of the Chief Quartermaster as OIC of the Petroleum and Fuels Division; chief of operations at Frankfurt, Germany, and finally as theater chief quartermaster, European Theater. He was on duty in the OQMG as chief, Purchase Control Branch, Supply Division, then two and one-half years as chief, Personnel and Training Division. On 19 April 1951 he assumed duty as chief of the Supply Division. He was appointed brigadier general on 28 July 1951. General Hollis assumed command of the New York Quartermaster Procurement Agency on 12 November 1951. Upon its activation, he was appointed as chief of agency staff of the Armed Services Textile and Apparel Procurement Agency--a joint activity. Upon deactivation of ASTAPA on 1 November 1953, he assumed his present command. This is his first lecture at the Industrial College.

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CAPTAIN RICHTER: I think it very appropriate that we should start this week off and practically carry the whole week through on the "procurement" business because I know that everybody here is very deeply involved in procuring for the 25th of December. Now in the process of your procuring, however, I know that you are not going to have to go over any of these hurdles that these procurement officers have to go over, but, of course, there is one major hurdle, and that is the financial end of it.

This morning we have as the subject of our lecture "Military Procurement Regulations." Our speaker this morning has been involved in procuring for many years and has been intimately associated with all these hurdles that we think of and know of. I won't mention them here because he will tell you about them.

You know from his biography that he is a graduate of this college in the Class of 1947. He is also a graduate of the United States Naval Academy. I am sure a great many questions have been asked about how that came about. One question I would like to ask him is just which side of the fence his emotions took him to at the Army-Navy game last week.

It is with a great deal of pleasure that I present to you Brigadier General Robert P. Hollis, USA, Commanding General, New York Quartermaster Purchasing Agency, New York City, who will speak to us on "Military Procurement Regulations."

GENERAL HOLLIS: Admiral Hague, Captain Richter, members of the faculty, and students of the Industrial College: That is a question I have had to answer now for about 31 years and the answer is that I always think of it as a school game and I didn't have a very good time about a week ago last Saturday. I can think of no more difficult a hurdle for a speaker to be put across, including these procurement hurdles, than to be asked to make a talk before his plebe battalion commander as I am this morning. I shall do my best.

I have for presentation to you this morning the subject of "Military Procurement Regulations," which is one singularly lacking in glamor.

The regulations which I shall briefly describe this morning represent a "Missouri Compromise" of many divergent interests affecting

military procurement. Apart from the obvious purpose of securing the best supplies and services for the lowest cost, the regulations are intended to insure that all eligible sources of supply have a fair opportunity to obtain Government business, that small business firms and firms operating in distressed labor areas are preferred over others, that domestic materials and domestic firms are preferred over foreign, that adequate industrial capacity for mobilization is maintained or added to existing sources, and that stock levels are kept to the minimum level of safety. The attempt to serve these and many other ends, despite frequent conflicts in purposes, accounts in large measure for the resulting labyrinth.

Slide 1 (slides were not reproduced) shows the basic sources from which flow to the Armed Forces their authority for making procurements. I will leave that on for reference. From the termination of hostilities of World War I until 1940, Army procurement was primarily on a formal basis. The exceptions to the formal bid requirements of the basic procurement statute (R.S. 3709) were:

1. Emergency procurements.
2. Purchases from the Indians.
3. Purchases of less than $500.
4. Secret apparatus for the Ordnance Department.
5. Procurement of horses and mules.
6. Aircraft and accessories.
7. Medical supplies.
8. Resale subsistence.
9. Gages, dies, and jigs for production of arms and ammunition in time of war.

The exceptions to the formal bid requirements were contained in numerous separate laws passed from time to time over a period of many years and they did not adequately cover wartime needs. Public Law 703, which was enacted in mid-1940, permitted procurement "with or without advertising" for supplies, construction, and other services under the fiscal year 1941 appropriations "in order to expedite the building up of the national defense." This negotiation authority was further expanded by the First War Powers Act of 1941 to include advance payments and broad powers for modification of contracts with or without consideration.

In 1947 the Congress made a careful study of the existing statutory procurement authorities in relation to peacetime and mobilization needs. The result was the enactment of the Armed Services Procurement Act of 1947, which was intended to provide negotiation authority during peacetime, where such authority was clearly in the interest of the Government, as well as broader powers during a period of national emergency, thus obviating the need for special legislation upon the happening of an emergency.

The act has two principal features. The first of these was to provide authority to negotiate contracts, in lieu of advertising for bids, in 18 different types of circumstances including, in time of emergency, authority to negotiate when deemed to be in the public interest; and, second, authority to make advance payments to finance Government contractors whose financial resources were inadequate to help them over the hurdle of a large-scale Government contract.

Although not required by law, in May 1948 the Secretaries of the Army, Navy, and Air Force jointly issued the Armed Services Procurement Regulation, which is referred to here, pursuant to the Armed Services Procurement Act of 1947. This regulation was made applicable to procurements by all three departments and was designed to secure the maximum possible uniformity of practice and procedure.

Section 638 of the fiscal year 1953 Appropriation Act made the Secretary of Defense responsible for the supply management functions of all three departments. This responsibility included the issuance of regulations governing procurement. Since this provision was made effective 60 days after the enactment of the law, as an interim measure, the Secretary of Defense adopted the Armed Services Procurement Regulation and placed upon the Chairman of the Munitions Board the responsibility for amendments, modifications, and supplements thereto. In August 1953 the Secretary of Defense delegated his authority and responsibility for procurement regulations to the Assistant Secretary of Defense for Supply and Logistics. Procedures for handling some types of problems, such as mistakes in bids, are detailed in the Armed Services Procurement Regulations. In others, such as fraud cases, the procedures are left to the discretion of each department.

Departmental Procurement Regulations implementing Department of Defense directives and supplementing the Armed Services Procurement Regulations are, in turn, supplemented by regulations issued by the bureaus and technical services. Considering the number of sources of procurement policy, procedure and authority, statutes, Executive orders, Department of Defense directives, joint and individual departmental regulations, as well as bureau and technical service regulations, it is not surprising that the contracting officer occasionally finds himself forced to choose between two inconsistent mandates.

Delegations of authority to make final determination on procurement matters differ widely among the departments and also among the bureaus and technical services of each department. To the extent that the higher echelons of command retain authority to make day-to-day procurement determinations, the time required to effect procurement is necessarily prolonged and the work of the procuring activity is complicated. This problem is particularly acute in the case of determinations involving acceptance or rejections of bids when option times are short. G-4 of the Army currently is studying this problem with a view to the maximum possible decentralization of procurement authority.

Since my own experience relates to the procurement of "soft goods" under Army regulations, my comments on procurement regulations and problems thereunder are made with that background. Other types of commodities and services and the regulations of other departments necessarily differ and I am not in a position to explain or express an opinion on them. With this limitation in mind, I am going to make brief comments on the regulations governing methods of procurement, launching on a more detailed explanation of current trends in procurement at the close.

Slide 2 covers one aspect of Government procurement, a rather unusual one, where common-use supplies are provided under different methods, with which I am sure you are generally familiar and which I will discuss further in my talk. I bring that up particularly because many of them are somewhat controversial.

Common-use items, such as office and housekeeping supplies, gasoline, coal, subsistence, hand tools, paper and paper products, and paint are normally procured for all the armed services by one of the individual services or another Government executive agency. General Services Administration (GSA) procures most of the office and housekeeping supplies for the armed services. These are requisitioned by the using activity, either directly from the GSA contractor or from a GSA service stores depot. Pursuant to law, certain types of common-use items, such as shoes, blankets, mattresses, and brooms are purchased from Federal prison industries or from institutions for the blind, unless these organizations waive their right to fill the particular requirements. They are required to keep their prices within the market range in order to retain this privilege.

As an example of single-service procurement, subsistence is procured for all the armed services by the Market Center System with headquarters in Chicago, operated by the Quartermaster General of the Army; paint, by the Navy; petroleum items, by the Armed Services Petroleum Purchasing Agency; and for 13 months, clothing, footwear and equipage were procured by the Armed Services Textile and Apparel

Procurement Agency. In addition, the Economy Act provides for inter-service procurement of any item by mutual agreement, as, for example, the Department of Agriculture may step in and buy raw wool for the armed services by informal agreement from time to time.

By declaring a national emergency on 18 December 1950, the President brought into action the statutory permission to negotiate all contracts when in the public interest. But, after a period of rather extensive use of this authority, the Army again restricted negotiation to the pre-emergency situations, plus two additional ones--broadening the industrial base and procurement of high-priority items in emergencies. Special regulations also provide for the negotiation of purchases from small business firms and firms located in surplus labor areas under detailed directives from the Department of Defense.

There are, of course, a wide variety of types of contracts authorized but to the extent feasible in military procurement as in civil practice the normal form is the fixed-price contract. In certain cases which will not fit into this category and to provide for broad fluctuations in material or labor costs in long-term contracts, an escalation clause may be added; and, if the item is new or the contractor has had no experience producing it, a price redetermination clause may be used to permit repricing after all or part of the work is completed.

A recent innovation in fixed-price contracting is the continuation-type contract which permits the Government to extend the original contract for an additional period and to increase the quantity ordered up to an agreed maximum, the price of the additional quantities being negotiated when the contract is extended.

While rarely used in "soft goods" procurement, other items, such as aircraft, tanks, and construction work are frequently purchased under cost, cost-plus-a-fixed-fee, or time-and-material contracts. I have no personal experience with their use and will not attempt to discuss them here.

Slide 3 is a listing of the 20 required clauses which go into fixed-price contracts. These clauses are of extreme importance to the purchasing and contracting officer. I would like for you to glance over them briefly and I will go into the high points of those that have the greatest importance in the administration of contracts. These 20 clauses were prescribed by the Armed Services Procurement Regulation for use in all fixed-price contracts. Some of them cover statutory provisions, such as the assignment of claims and the covenant against contingent fees.

The Assignment of Claims clause recites the protection granted by Congress to lending institutions which finance Government

contractors against reduction in payments on an assigned contract arising from claims outside the scope of the contract. Notably, it gives the bank protection against claims arising as a result of its customer's bankruptcy.

The covenant against contingent fees reflects congressional disguse with the "five-percenters," but does not affect established, legitimate relations between selling agents and Government contractors.

Other mandatory clauses specify the changes which may be made by the Government without the contractor's consent--changes in specifications, in packing, and in place of delivery. An equitable adjustment in contract price or delivery terms is required if such changes are made. If the parties cannot agree on the adjustment, another mandatory clause comes into play, the Disputes Article. This clause is available to the contractor in connection with any disagreement of fact relating to the administration of the contract with the Government. Settlement of such disputes is handled by means of a quasi-judicial action before a panel of the Armed Services Board of Contract Appeals, acting in the name of the appropriate departmental Secretary.

Another required clause which should be mentioned covers the inspection of the supplies procured. Inspections are handled by separate organizations, such as the Army Quartermaster Inspection Service, the Office of Naval Material, the USMC, and, for perishable subsistence, the Department of Agriculture and the Surgeon General of the Army. Acceptance of supplies which meet specifications, as determined by the inspectors, is practically automatic, but rejection of nonspecification supplies offered or their correction or acceptance at a reduction in price is handled by the contracting officer.

The Walsh-Healey Public Contracts Act is administered by the Department of Labor but it has very definite effects on the administration of Defense Department contracts. In any contract of a value of $10,000 or more, the contractor must agree to conform to the provisions for minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions required by the act, unless an exception is obtained from the Secretary of Labor. No contract may be made with a firm which has been banned from doing business with the Government for violation of the wage and hour provisions of the act. A contractor must also be a manufacturer or regular dealer in the supplies being procured in order to comply with the act.

One further clause deserving of comment implements a statute which has given rise to considerable, recently published criticism, the Buy American Act. In substance, this act requires the contracting officer to reject bids offering foreign supplies unless they are not available from United States sources or the price of the domestic product is unreasonable. Another important exception is that it need not be applied when inconsistent with the public interest.

In May 1951, the Secretary of Defense directed the Munitions Board to review defense procurement policy with respect to administering the provisions of the Buy American Act in order to determine whether or not it was consistent with the objectives of the Mutual Security Programs and United States Foreign Economic Policy. The Munitions Board directed the amendment of the Armed Services Procurement Regulations, effective 1 June 1952, to make it mandatory, in any case involving foreign bids of less than 25 percent differential where the total amount of the lowest acceptable foreign proposal exceeds $25,000, for the contracting officer to submit the matter for consideration to the Secretary of the military department concerned. The purpose of this amendment was to assure that proposed awards will be evaluated at secretarial level in such a manner as to give due weight to the objectives of the Mutual Security Program.

These limitations of the Buy American Act are carried even further with respect to articles of food, clothing, cotton, and wool by the so-called Berry amendments to the 1953 and 1954 Defense Appropriation Acts, which require that they be grown or produced in the United States. Under the Buy American Act, a field jacket, for instance, may be purchased even though it contains foreign wool, if the weaving of the cloth and the fabrication of the garment is performed in the United States. The Berry amendment carries that one step back and requires that the wool for that jacket must be grown in this country, unless a sufficient quantity of domestic wool is not available at United States market prices.

Contract clauses also include a prohibition against gratuities by contractors to Government representatives. This clause supplements statutes and regulations governing relations of Government officers and employees with contractors which forbid a former officer or employee from representing a contractor in a matter with which he was concerned while in Government employ and forbid actions by officers or employees which even give the appearance of collusion or favoritism. Strict enforcement of a high ethical standard among procurement personnel is essential to successful operations. My own policy, which I follow in my own relations with contractors and which I require personnel under my command to follow, precludes the acceptance of any favor, regardless of value. Even the acceptance of lunches, which is more or less standard procedure in private business relations in New York City, is barred.

In the survey of contract clauses, there remain two optional clauses to be noted, the liquidated damages clause and the advance or progress payments clauses. In the procurement of high-priority items, it is sometimes useful to specify that a certain amount, usually a fixed percentage of the unit price, will be deducted for each day's delay in delivery. This tends to insure maximum effort

by the contractor, but does cause a certain amount of administrative expense on the part of the Government in running computations and not infrequently adjudicating the claim of the contractor who may contend that if this or that unfortunate episode has not happened, the delay would not have occurred.

Under certain circumstances, financing of a contractor by means of advance payments or progress payments on a contract may be in the Government's interest if sources of supply are limited and the requirement is particularly important. That has been used with some regularity. The Department of Defense is currently endeavoring to restrict the use of that particular proviso insofar as possible.

The inclusion in the contract of the required clauses and, to a considerable extent, the optional clauses previously mentioned is part of the administrative function of the procuring agency. The requisitioning agency, on the other hand, which needs the supplies furnishes the specifications or purchase descriptions, the quantities, sizes, and method of packing; the delivery dates and places, any special contract clauses desired, and the allowance for Government-furnished property. It also cites the allocation of funds to pay for the supplies.

I have referred to Government-furnished property. It is customary for the Government to furnish the cloth to manufacturers of clothing and equipage. This arrangement tends to secure uniformity of quality and shade, but probably more importantly it overcomes a very serious hurdle for the contractor because most of the cut, make, and trim trade would be unable to subsidize the raw material inventory which is involved. It is a terrific migraine headache to administer and I have racked by brains and have had my people racking theirs to find a satisfactory way to get out of that business. Thus far, we have not been able to do it.

In the past, end-item unit allowances of each component supplied by the Government were prescribed by the requisitioning agency. More than a year ago, a change in procedures was adopted, requiring bidders to establish their own allowance of Government-furnished property rather than having such allowances fixed by the Government. In other words publish the Government-established allowance and permit it to bid on a percentage of that allowance, not to exceed 100 percent. We have found that we have made substantial savings on that.

The old practice gave little incentive to a contractor to effect maximum possible savings of Government property since he received no direct benefit. Competition between bidders, based on efficiency of using Government property as well as on price of the end item, has shown substantial savings. Usage in excess of allowances subject the contractor to a charge for the excess material at rates fixed in the contract.

As previously mentioned, contracts were awarded either on the basis of bids received after formally advertising the procurement or by negotiation. Adequate competition is necessary under either method to insure that the best terms available are obtained. Where formal advertising is used, announcements are sent to trade journals, chambers of commerce, and otherwise given publicity. We send copies to all manufacturers on our bidders' lists. Those lists in some cases run as high as 1,000 firms.

The bids submitted are publicly opened and read on the specified day and hour. Prior to the opening, a bid may be modified or withdrawn, but after the opening this is not allowed unless the bid was clearly erroneous or unless in the Government's interest and without prejudice to any other bidder. If prices offered in all or part of the bids are unreasonably high, such bids may be rejected and any unplaced portion of the procurement may be secured by negotiation. Bids may also be rejected if they vary in any material way from the requirements of the invitation; if the bidder does not have the necessary financing, plant capacity, or technical experience; or if the bidder's past performance on Government contracts makes it extremely doubtful that he will produce satisfactorily in this instance.

Prior to awarding a contract, a preaward survey of the contractor's plant is made unless one has been made recently, to determine that he has the equipment and the capacity to meet the schedule required by the contract.

Suspension of a Defense Department contractor usually results from fraudulent actions, such as attempts to bribe inspectors or to conceal the delivery of nonspecification supplies. The surprising frequency of such actions is illustrated by an incident in my office not long ago.

One afternoon at the close of business, my secretary brought me some outgoing mail for signature and placed it on my desk in three piles saying, "You have to get two of these out this afternoon. The first is an answer to a congressional inquiry. This one is urgently needed in the Quartermaster General's Office. These others can wait until tomorrow morning; they are just routine fraud cases."

After the nonresponsive bids and nonresponsible bidders are weeded out, awards necessary to procure the entire quantities are normally made to the remaining bidders offering the lowest overall cost to the Government. In practice, determining which bids are lowest is sometimes an extremely involved and difficult problem.

These figures are typical. Last spring we had a pretty good procurement load in New York for which there were 80 bidders in an

invitation which might have four items and each item that was to be sent out to contractors was available f.o.b. destination versus f.o.b. place of origin. Bids were received both ways. Therefore, we had to make computations of freight costs to every manufacturer, the cost to destination, the problem of freight from various depots, and for GFP to contractor's plant.

If you add to that block bidding, where a contractor bids so much for 100,000, so much more for the next 200,000, so much more for a quarter of a million; and if you add to that his authority to bid on all or none, or to say he will take no more than a quarter of this item because he can't handle it the complexities are multiplied. If you add to them the authority we give them to condition this bid for item No. 3 on what we gave him in terms of item No. 1, or to condition his bid on item No. 3 in terms of what we gave him on an award which opened three days prior, you begin to approach the infinite.

We have had a very interesting experiment in our office with a good deal of success toward the end that we cannot make a mistake in this thing. We have explored the possibility of using an electronic computer. Through the courtesy of the Navy, I was introduced to the George Washington University and, with the cooperation of the Bureau of Standards, we have been successful in solving this comprehensive problem, which has taken six months of research and dry runs. After the initial spadework by the mathematician, the machine solved accurately in seven minutes a typical computation which required six man-days of work by competent analysts using ordinary electric calculators. It was actually computed by one of our expert analysts that to exhaust all permutations and combinations for one exceptionally complex bid, abstract in my office would have required two man-years, a computation which is obviously out of the question when there are options expiring in a very short time.

As contrasted with formal advertising and processing, the negotiation of contracts is a relatively expeditious job. Normally, requests for proposals are mailed to the firms on the bidders' list and advertised to the trade in the same manner as under formal advertising. There is no formal opening or public announcement of proposals received and the contracting officer continues negotiations until the best possible terms are secured. Because of the limited use of the negotiation method permitted by current Army regulations, appropriate determinations and findings are usually required to justify it.

This topic would not be complete without mentioning two of our major problems, the preference for awarding contracts to small business firms and the preference for firms operating in distressed labor areas. The recently created Small Business Administration and its predecessor agency were given authority to certify to the capacity and credit,

that is, to the plant facilities, technical experience, and financial responsibility, of any bidder for a Government contract. This certificate is binding on Defense Department contracting officers.

My own experience with these certificates has not been a happy one. In several cases, firms which were so certified to contracting officers of the Armed Services Textile and Apparel Procurment Agency and which received awards against the judgment of the contracting officer, failed miserably in performance and cost the Government substantial losses in delivery time, administrative expense and ultimate end-item prices.

This situation is particularly galling in "soft goods" procurement because, without any intervention by the Small Business Administration, the number of procurements awarded to small business firms was normally equal to or greater than the portion of small business firms in the industries involved. No substantial increase has resulted from the new procedure.

In September 1953, a procedure was established under which the contracting officer may appeal to higher authority in the event he determines that acceptance of such a certificate would not be in the best interest of the Government.

The preference for distressed labor areas promulgated by the Director of Defense Mobilization affects "soft goods" procurement primarily in the textile field. It was decided in that office to alter the usual policy and instead of basing it on distressed labor areas, they would consider the entire textile industry as a distressed industry. Accordingly preference would be given to firms which will agree to operate 80 hours a week or less rather than those operating in surplus labor areas.

To give effect to the preference, each procurement is scrutinized to determine whether a portion should be set aside for negotiation with manufacturers who will make this agreement. This negotiation is done through a fairly elaborate set of rules which I do not think of interest to you, giving certain priorities to small business, distressed areas, and so on down the line. Such set-asides result in prolonging the procurement time by making necessary two or more complete procurement actions where one would otherwise have been sufficient.

This brings me now to the most timely topic of the discussion, current trends in procurement. These trends fall into two major groups, the trend toward coordination of procurement and the trend toward limitations in expenditures, stock levels, and quantities under contract.

The question of coordination of logistical and procurement activity among the armed services has been the subject of extensive controversy within the past two years in the Department of Defense, in the Congress, and in the press. This is true to an extent which makes reference to it in a lecture of this sort almost inevitable, even though I approach so controversial a subject with reluctance. I have had some personal experience with this field during the past 18 months as the chief of agency staff of the Armed Services Textile and Apparel Procurement Agency, jointly staffed by the Army, Navy, Air Force, and Marine Corps. What I am about to say here reflects my personal opinion and in nowise constitutes official doctrine of the Department of the Army or the Department of Defense.

Slide 4.--Within the "soft goods" commodity field, there are five possible solutions which can be utilized for this problem by the Department of Defense, either in whole or in part. They are:

1. The historic pattern of independent, uncoordinated action by the individual armed services--everybody buying for his service and the devil take the hindmost.

2. The device of informal collaboration on procurement by mutual agreement between two or more services.

3. Joint conduct of these activities, as examplified by the Armed Services Petroleum Purchasing Agency, the Armed Services Medical Procurement Agency, and the Armed Services Textile and Apparel Procurement Agency.

4. The assignment of procurement responsibility to a single service as the agent of the others.

5. Assignment of the requirements of all the armed services to the General Services Administration or other Executive agency of the Government in limited commodity fields, primarily common-use, commercial-type items.

No one of these solutions is perfect and the decisions of the Department of Defense in this field are of necessity guided by the application of common sense, experience, and good judgment to the commodity field concerned.

To clarify the issue, it is my personal conviction that a great deal of benefit can be achieved at low cost by the resolution of problems of requirements and property excesses among the services prior to initiating procurement. My remarks here will assume that, as in the commodity fields in which I have recently dealt, this project has been successfully carried through and the issue at hand relates only to the fields of purchasing, contract administration, and acceptance inspection.

Dealing with each of these in turn, it is my belief that the vices attributed to uncoordinated purchasing have been somewhat overemphasized in the press as they relate to a period of limited procurement which is less than total national effort. At a time of full mobilization, however, and under conditions of an overtaxed national economy, the shortcomings of uncoordinated procurement becomes magnified and result in competition among the services, not only as to price, but in demands for facilities and manpower, to a degree that could not be tolerated.

The expedient of coordinating procurement among the services does ameliorate these conditions to a considerable extent. Its shortcoming is that it is dependent on voluntary agreement and its success is conditioned in part on the personalities involved. Any total collapse of such coordinated effort would then become a problem to be resolved by the Department of Defense by edict on a case-by-case basis, which is an expensive and time-consuming procedure. However, the authority to enforce collaboration which was recently granted to the Assistant Secretary of Defense for Supply and Logistics may avoid the inherent difficulties in this solution.

Joint procurement, if vested with sufficient autonomy, can be made to work successfully and to achieve certain economies in terms of standardization of specifications, elimination of duplication of inspection, economies and uniformities in practice as to freight rates and certain other fields as they pertain to specialized commodities.

One of the difficulties inherent in administering a joint agency is that, by its very nature, the joint agency reports to a committee rather than to a single chief, and this tends to delay certain decisions which are urgent for the joint agency. The committee, in turn, is fettered by the desires of its members to coordinate agency actions with their own services' policies and procedures. The fact that, in some cases, joint agencies are dependent for their existence upon the budgetary activities of three military departments renders their continued existence precarious and increases management difficulties.

The differences in logistical organization of the services jointly involved contribute to a diversity of administrative problems which must be haggled out on a committee basis between the joint agency and the services. The greater the degree of autonomy vested in the commander of the joint agency, the less this problem becomes, but great care must be taken to insure that what appears to be a simple, expedient, and optimum solution from the viewpoint of the joint agency does not cause some serious administrative repercussion within the customer service in terms of storage or issue problems which may transcend the importance of the basic issue involved at the procurement level.

The expedient of single-service procurement is intended to reduce overhead and to streamline the procurement organization. Whether these benefits are always obtained has been seriously questioned. The shortcoming most often attributed to it is that single-service procurement is not so immediately responsive to the fluctuating and sometimes urgent requirements of the individual customer services which are dependent upon it for the life blood of their supply.

An important precedent in favor of this method was set in February 1942 when the Navy Department subscribed to an agreement with the Army--which then included the Air Force--for the procurement of perishable subsistence for all of the armed services by the Army Market Center system. I have never heard it reliably asserted that this activity has not performed creditably throughout its existence. I have, on the other hand, heard a senior and experienced logistical officer of the naval service state at a seminar held under the auspices of the Treasury Department, that he personally took much pride in having sponsored the original proposal successfully to the Navy Department.

The utilization of GSA as the procuring agent for the military services in certain commercial-type, common-use items is a trend which is presently in the ascendancy within the Department of Defense. It has the advantages and disadvantages which are inherent in single-service procurement. The storage problem, however, ceases to devolve upon any of the armed services, but this arrangement may not prove an unmitigated blessing.

Any significant transfer of procurement and warehousing functions to GSA would apparently require a corresponding increase in facilities and personnel by GSA. The mere substitution of one Federal supply distribution system for another does not in itself guarantee equivalent quality and completeness of service or lead necessarily to greater economy. Initially, at least, reduced effectiveness and increased costs could be anticipated by such a transfer and it would violate one of the basic policies of the Department of Defense that the procedures and methods of operation for the system of supply practicable for war will govern techniques used in time of peace.

I am running a little over my time. I am not going into the remaining things I have here except to say that there are two other new trends which may be of interest to one or more of you. They are the so-called continuation-type contracts where we may contract with a given supplier for a limited period for a fixed quantity of supplies, with a provision in the contract that we may extend that contract and establish a price by negotiation beyond the end of the contract period, which is a stipulation that is in accordance with the desire of the Department of Defense not to have more than the necessary amount of their funds tied up in the pipeline at any time.

One other development that I think is of interest and is a very drastic change in fiscal procedure within the Army and may or may not apply to the other services. A chief of a technical service who has been given an annual appropriation can actually obtain only 18 percent of this appropriation in any given quarter, except as he may redefend and justify a manifest need for a larger sum. Petroleum is treated on the same basis except that 40 percent only is authorized for the semiannual period.

I will try to the best of my ability during the question period to answer such questions as you may have. Thank you very much for your patient attention.

QUESTION: General Hollis, there were two agencies, the Armed Services Medical Procurement Agency and the Armed Services Textile and Apparel Procurement Agency, shown on your chart. The Textile agency fell into disfavor apparently with the Congress, while the Medical agency seems to be going along pretty well. I understood that they were both patterned the same way and in their intentions were to carry out the same objectives. I would like your comment on why one is going out of existence while the other one is staying with us.

GENERAL HOLLIS: I don't know all about the answer to that question myself but I know a good deal of it.

I was designated very early in the game to command this thing as soon as it was determined that the Army was to have the first chief of agency staff. I had some views about its organization which I expressed. Some of them were adopted and some were not. Perhaps it is just as well that some of them were not. In any event the thing went along for 13 months, and you will have a pretty hard time getting me to admit that it did not function successfully. I firmly believe it did. We have made a boner or two as we made a boner or two in the Army agency before we had it and as we probably will make next spring.

Fundamentally, I think the answer to your question was summed up in a remark by one of the directors of that organization, and I might digress a moment to tell you who the directorate was. The thing was set up with the Chairman of the Munitions Board to operate this agency. The directorate was composed of the Quartermaster General of the Army; the Chief of the Bureau of Supplies and Accounts, Navy; the Commanding General of the Air Materiel Command, Air Force, or his representative; and the Quartermaster General of the Marine Corps. That directorate met once a month.

After the action by the Congress last summer, there was a meeting in the office of Mr. Thomas, Assistant Secretary of Defense, Supply and

Logistics, at which the obsequies were held and which the Secretary conducted. The members of the directorate were all present. I had a great deal of information which I didn't think particularly appropriate for me to bring out until I was asked to bring it out. But I was most unhappy at the meeting since the organization was my "baby," and I felt it was doing pretty well. Nobody else seemed to think so.

So Mr. Thomas called on one of the members of the directorate who made this statement. He said: "The statement has been made here today that the services could do it cheaper individually. I question whether that is strictly accurate. There are so many ramifications and tentacles that go out so far that, without an elaborate and time-consuming job, we could not prove otherwise. That would take another action and I question whether anyone can take that action with impunity. I think the real answer is that the services are apprehensive that the joint agency will not be so immediately responsive to their demands as when they have the reins in their fingers. None of the services liked it when it was proposed. They did not like it when it was adopted. And they do not propose to like it now."

As to the place the guillotine was erected, the agency was legislated out of business by the Appropriations Act for the Department of Defense for 1954, in which the statement was made: "No part of the funds herein shall be used to support this agency after 31 December 1953." There were protracted hearings before the Senate committee; the hearings were printed and are available to you. They are very brief; it won't take long to read them.

I think the action stems from this: Before the agency was ever created, it was the dictum of one of the Secretaries of one of the individual services that, so far as he was concerned, he did not want or propose to take on his own service the burden of funding a project for four services. He felt in all fairness--and this is certainly ethically all right--that each service should support its share of the ASTAPA budget, as it had agreed to carry its own officers who were assigned to that service on the basis of 7-4-4-1, in that ratio, which was roughly representative of the strength of the Army, the Navy, the Air Force, and the Marine Corps. Its financial support was exactly the same way so that when the 1954 Appropriations Act was submitted and defended, it had to be defended not once but four times in a Congress which was so economy-minded as the one last spring. I think it is self-evident that to have defended once and reiterated three times the defense of a project was bad psychology in the first place as was proved.

Secondly, the ground rules of the Comptroller required that if you put an item into your budget which had not appeared under this guise in a prior year, it should be carried as additional funds.

With the same viewpoint on the part of Congress, I think very naturally they would trip over something additional, something not in there last year, when trying to see what economies they could make and not how they could expand the budget.

Those factors were the principal ones which had to do with the operation of this agency. We had little problems, day-to-day problems about the elimination of inspection where people's prerogatives came into jeopardy or where someone was afraid he wouldn't get all the people he had some other time.

As a whole, we did not have any serious rifts at the New York level. It was largely a matter of policy of the armed services from the top, and I still consider to be the most significant of the whole thing the statement of the member of the directorate who said that it was partly emotional on the part of all the services.

That, I think, is about as much as I can give you. Does that answer your question?

STUDENT: Yes, sir.

QUESTION: General, the example that you gave of this mobilization--the computation and evaluation of bids and the very large formal advertising of the thing seems to be one of the best examples of the complexities involved. I wonder if you would comment at all on whether it would be possible to negotiate on that procurement. Would it be essentially easier, essentially not economical to handle?

GENERAL HOLLIS: Under negotiation, we do not normally deal with so many firms. I reiterate, we make very sure we have competition when negotiating, but in this cut, make, and trim field, when people sew up garments, we have literally over a thousand bidders on that bidders' list. Not all of those bidders respond. About 80 valid bids coming in is not an unusual case.

In negotiating we will probably deal with a half dozen firms and the chances are that by the sheer weight of numbers it will not entail elaborate computation. There are not likely to be so many qualified bids. There is also the situation where a bid is opened this morning and a bidder will come to the purchasing officer and say, "If you gave me somthing on the one submitted on the 10th, I can't handle this one." The sheer multiplicity of situations come in to balance conditions in that case, so I think it is a very successful operation. We did not put it into effect until we felt we had many safeguards of checks and balances. It is much more rapid.

I mentioned it here primarily because I am enthused about it and because there must be elsewhere in the procurement of the armed services

particular areas where it might be useful to one of you or some purchasing and contracting officer. This would not apply to contracts for fighter aircraft or tanks, but in certain areas where there are lots of bidders for a relatively common-use item, it might be very useful.

QUESTION: General, you indicated and we have also heard from others that there is a trend toward common procurement through GSA. Do you think there is a possibility that this trend will continue to the point where most of our military procurement would be through an agency over which we have no control and do you consider this to be good?

GENERAL HOLLIS: I have a couple of people off the first team in the audience whom I have here to backstop questions that I might not be able to answer. One of these gentlemen is very conversant with the Washington scene.

My personal opinion is that it would be most unfortunate if any of the military services were to have their procurement of highly technical items or items of particularly acute need, for example--ammunition, fall outside their own hands to a point where they could not dictate a higher muzzle velocity for a tank gun or higher speed for a ship, or certain characteristics in an airplane, for example.

As to the current trend I based my statement on the fact that certain commodities--paper products--currently charged to my present command, which is the New York Quartermaster Purchasing Agency, have been segregated and are being transferred in the early future to the GSA. It is my understanding that other items are under consideration, but it is also my understanding that not everyone who has dealt with the problem is in favor of that trend. As to its current status, I would like to call on one of the best procurement people I know, Maurice O'Connor of the Quartermaster General's Office.

MR. O'CONNOR: Well, recently the Department of Defense has agreed to transfer procurement responsibility of many commercial-type items to the GSA, but on the basis of the information I have been able to obtain, the Department will never willingly transfer its procurement responsibility for military-type items. It would have to be forced by the Congress or by the President. It will never be given up willingly.

GENERAL HOLLIS: Is that an adequate answer to your question?

STUDENT: Yes, sir.

QUESTION: General, I discovered from looking into contracts that the Government, except on construction jobs, rarely uses the penalty

clause. Do we have any obvious reason that we never have a penalty if the contractor doesn't make good.

GENERAL HOLLIS: I am, unfortunately, unable to talk about the construction angle because I don't know it. We have in my office under consideration with the Department of Defense the question of resumption of use of the liquidated damages clause, to which I referred here earlier. There has been a full cycle of that clause. There was a time when virtually every quartermaster contract that went out employed that article. It went full circle and came back to a point where we didn't use it.

The reason for using it is to get expeditious deliveries, making the contractors interested in getting them to you. The reasons for not using it generally are these. The contractor makes a late delivery and the people who make up the vouchers automatically assess these liquidated damages. Then the contractor comes in and complains that we have delayed him or that he has been delayed by a strike, which is considered an excusable delay. There is a list of excusable delays. This all has to be sifted out. That means a full-dress conference, a hearing before the purchasing contracting officer and the contractor. Following that, if the contractor is not happy, he appeals to the Army Board of Contract Appeals. The Army Board of Contract Appeals has--this is not intended as a criticism of the Board--a tendency to be generous or openhanded on the side of the contractor, and percentagewise a substantial number of those liquidated damages collected are remitted. This involves considerable cost. It has the effect of having the clause lose its teeth.

There are views both ways. We may use it but we are going to use it very guardedly because of the expense and because of the reason that is inherent in operating it, the fact that you are never sure, as you used to be 20 years ago, you would charge it to him on the cash register and there it was. It stuck. That is not quite so any more.

QUESTION: General, in line with a previous question, would you care to give your reaction to the British Ministry of Supply system?

GENERAL HOLLIS: I am afraid that my answer wouldn't be very authoritative. The most that I know about the British Ministry of Supply I acquired in these hallowed halls about seven years ago. I certainly don't believe that would constitute me an authority on that subject. Suffice to say that I am one of the adherents to the philosophy that the armed services should not do anything that would antagonize the Congress in a way which might result in somebody's deciding for them, that they would lose control of the design aspects of the highly important and complex technical military items. That is as much as I can say on that.

QUESTION: General, you mentioned contingent fees in your discussion. What safeguards do you follow in your procurement agency to safeguard you against so-called five-percenters or people who are not really bona fide agents.

GENERAL HOLLIS: Again, to be sure I have covered the entire field, I am going to ask another gentleman here in just a minute to give some of the details on that.

In the case of myself, as to some of these people, I know them and know them by name. Usually after I get to know them by name, they don't get inside the building. But the receptionist at the door notifies me first when they come in the door. They have to see me first. That is one way to handle it.

There is a clause in the contract that makes the contractor liable for that thing. They understand that and are apprehensive, in most cases, about employing them. But the textile business in very large measure has a system of selling agents on Worth Street in New York. They sell expertly for a mill in South Carolina or in Connecticut which doesn't have a sales force. That is recognized and accepted.

I would like to introduce to you Mr. Thomas Rooney of my own staff to see if he can elaborate on that. He has been conversant with this operation for several years.

MR. ROONEY: If the bid is signed by an authorized agent of the contracting bidder and the award is to be made in the name of the bidder, there is no objection to it. In other words we have in New York on Worth Street, which is the center of the cotton goods industry, people like the Reeves Brothers, who are agents for several mills. They will bid as agents for the mills. There is no objection to that. If the bidder is paid a contingent fee, he must indicate so in a certain part of the bid. In any event we send out Form 19 to the individual contractor in which he tells exactly what this bidder does for him to obtain the bid, whether he supervises production or expedites payment the way he prefers it. If there is any doubt as to whether the fee is legitimate, we refer the case to OQMG. They investigate and indicate whether the agent may be recognized. That is the way it is done.

QUESTION: General, would you please comment on the contractual performance aspect of the Government contracting with a prime contractor with one contractor, where the contractor is responsible for all aspects of that contract versus a multiplicity of contracts where the Government contracts directly with the suppliers to the prime contractor?

GENERAL HOLLIS: In our particular field, we have a relatively small amount of subcontracting. We do have some. We are asked by the Department of Defense to encourage it and we have so encouraged it. It is to our advantage in obtaining expeditious deliveries from time to time, and, again harking back to the textile business, it is a practice of many mills to make what are known as "gray goods," raw cloth, and send it to another firm on a subcontract to have it finished; either party may be the prime contractor there. We do not have very often any problems arise with this question of mutual problems between prime and subcontractors where the Government is involved. They have their own direct contract in our field and not infrequently the prime contractor falls back and collects from the subcontractor because of the supply of inferior material or late deliveries.

We had one the other day where a very highly reputable, well recognized textile firm was given yarn for textile manufacture and who submitted--all in good faith, I am sure--his product only to find it was slightly deficient in wool content and was held up for acceptance. The subcontractor came to me and complained; we gave it another lab test to see whether it would check or whether this was just a stray shot--whether it was an accident. It is still in the lab so I can't say how it came out. The subcontractor had to agree to pay for the lab test in order to make his adjustment and solve the case with the prime contractor.

But the basic principle involved is, of course, that the Government has its contract with the prime contractor and the problem thereafter is one for him to solve with his own subcontractor. We deal primarily with the prime contractor.

COLONEL KEARNEY: General Hollis, I am sure from the reaction of the audience that you are satisfied that you took what you called an unglamorous subject and made it very interesting. I think if it didn't have glamour for them, they were pretty close to the edge of their seats at least. For Admiral Hague, I express our sincere thanks for your coming down here and giving us this fine talk.

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