

MILITARY PROCUREMENT REGULATIONS

20 January 1955

1417

CONTENTS

	<u>Page</u>
INTRODUCTION--Colonel W. J. Baird, USA, Vice Deputy Commandant, ICAF.....	1
SPEAKER--Major General Robert P. Hollis, USA, Commanding General, Philadelphia Quartermaster Depot.....	1
GENERAL DISCUSSION.....	18

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INDUSTRIAL COLLEGE OF THE ARMED FORCES

Washington, D. C.

Major General Robert P. Hollis, USA, Commanding General, Philadelphia Quartermaster Depot, was born in 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 in New York City on 12 November 1951. Upon its activation, General Hollis 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 command of the New York Quartermaster Purchasing Agency in New York. On 1 June 1954 he assumed his present command.

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COLONEL BAIRD: Admiral Hague, members of the class: General of the Army Omar Bradley, in the early and hectic days of the African campaign, stated that the technical services, having qualified men trained in the art and techniques of military procurement, and then having soldiers on the battlefield well trained in supply discipline, any commander could develop a fighting force comparable with the best.

I mention the statement of General Bradley this morning because our distinguished guest speaker fulfills the first qualification to which General Bradley referred.

You will recall that last week Mr. Rockwell, who is the Chairman of the Board of the Rockwell Manufacturing Company, spoke to us on the subject of "Coordinated Procurement," mentioned an officer, though not by name, who, in his opinion, was a specialist, was most capable and enthusiastic and outstanding, and was very desirous of doing an expert job as the Commanding General of the Armed Services Textile and Apparel Procurement Agency (ASTPA). The man to whom Mr. Rockwell referred was General Hollis.

General Hollis has spent a considerable amount of his military service on the firing line of procurement. He knows well the heartaches and the headaches and the hazards which are the lot of the contracting officer. His opinion in the field of procurement today is highly respected.

We are most fortunate in having as our guest speaker this morning a graduate of the Industrial College and the Commanding General of the Quartermaster Depot in Philadelphia. General Hollis.

GENERAL HOLLIS: Admiral Hague, Colonel Baird, members of the staff and faculty of the Industrial College, and students of the Industrial College: I have been asked to speak to you this morning on the general subject of procurement by the armed services. I propose to discuss this topic under four general headings, as follows:

1. A brief resume of the laws, regulations, and policies under which procurement activities operate.
2. Current trends in procurement within the Department of Defense (DOD).
3. The coordination of procurement among the armed services.
4. Some of the major problems which confront the chief of a field procurement agency.

A wide diversity of laws and regulations must be adhered to in carrying out any procurement mission. I have a chart which shows the basic sources of procurement authority. (Charts were not reproduced.)

The basic law, the Armed Services Procurement Act, was enacted by Congress in 1947 and provides principally for negotiation in peacetime, in addition to the traditional method of formal advertisement, when such a resort is in the best interest of the Government. Seventeen different types of circumstances are cited in the law as a basis for invoking this authority. In a period of national emergency, this law invests broader powers in departmental management. The law further authorizes governmental financial aid to be extended in the form of advance payments in order to permit contractors to carry out their contracts, which they might otherwise be unable to subsidize.

For the purpose of insuring uniform application of the Armed Services Procurement Act of 1947, the Secretaries of the Army, Navy, and Air Force jointly issued the Armed Services Procurement Regulation in May 1948. The Secretary of Defense adopted this regulation and in August 1953 delegated his authority and responsibility for regulating the procurement function to the Assistant Secretary of Defense for Supply and Logistics.

The Armed Services Procurement Regulation details the procedures for handling certain types of problems, while for other areas the procedures are left to the discretion of each department. Each department has in turn implemented this regulation by issuing its own departmental procedures. In addition the various bureaus and technical services, based on DOD directives, have issued supplemental instructions for the guidance of their own contracting officers.

Considering the number of sources of procurement policy, procedure, and authority stemming from statutes, Executive orders, DOD directives, joint and individual service regulations, and bureau and technical service implementing instructions, it is not surprising that a contracting officer occasionally finds himself forced to choose between two apparently somewhat inconsistent mandates.

Delegation of authority to make final determination on procurement matters differs widely among the departments, and even among the bureaus and technical services of each department. The completion of procurement actions is necessarily prolonged in those cases where the authority to make final decisions is reserved by higher echelons of command.

As to the basic policies which underlie the procurement function, it is the objective of each department to use that method of procurement which will be most advantageous to the Government--price, quality, and other factors considered. Although formal advertising does not permit the same flexibility identified with the negotiated method, it does lend itself to a very orderly procurement procedure. This method assures full and free competition in that it requires sealed bids and public reading of bids, and prescribes that awards be made on the basis of the lowest overall cost to the Government--price, discounts, transportation, and other factors considered.

When the negotiated method of effecting procurement is utilized, the policy is to award fixed-price contracts whenever possible, unless other permissible types are demanded by compelling circumstances. However, under no circumstances may a cost-plus-a-percentage-of-cost contract be utilized. The prime contractor is further prohibited from using such a contract with a subcontractor. It should be especially noted that the authority to negotiate does not in any way absolve the contracting officer from his obligation to obtain wide competition and to achieve the lowest possible cost to the Government, save in the exceptional and fully supported cases of sole supplier, broadening the industrial base, or continuing in production an essential facility which is manufacturing a critical item.

Regardless of the method of procurement employed, an award may be made only to a responsible bidder who has submitted a responsive bid.

In the case of negotiated procurement, deviations from applicable specifications are acceptable during the period of negotiation, provided all other bidders are given equal opportunity to alter their bids; but, under formal advertising, in order to consider a bid as responsive to an invitation, all essential requirements of the specifications must be met, so that there may be no breach of the inherent rights of competitors.

In evaluating bids under either type of procurement, some of the factors requiring consideration are:

1. Discounts by various bidders.
2. The freight on the end items to multiple destinations.
3. Freight on Government-furnished property, when applicable.
4. Stipulated economies to be achieved in the consumption of Government allowances, in applicable cases.
5. Block bids.
6. Stipulations as to minimum and/or maximum quantities, or both, acceptable to the bidder.
7. Stipulations by the bidder that his instant bid will have been invalidated in the event that his productive capacity shall have been preempted by an earlier award on an independent invitation which was still pending at the time the instant bid was filled out.

In order to assist the contracting officer in this highly complex analysis, specialists in the field of cost and price analysis are provided to advise him by evaluating bids in order to arrive at the bid or combination of bids offering the lowest overall cost to the Government.

The simultaneous consideration of so many variables has rendered this operation so complex that the Purchasing Office under my jurisdiction has arranged with the National Bureau of Standards in Washington, D. C., for the utilization of the Standard Eastern Automatic Computing machine. We have had splendid returns from this investment, both in terms of assurance of accuracy of the computation and in time saved in solving this complex arithmetical problem which relates directly to the period for which options are offered by bidders.

After a contract has been awarded, the contracting officer is faced with the problem of contract surveillance. Day by day, and contract by contract, problems arise which require the immediate attention of the contracting officer. In many instances they are routine, as, for example, the release of documents or expediting the assignment of an inspector. However, in some instances the problems may involve the consideration of a rejection of a lot of end items, a request for a deviation from specification, or the interpretation or clarification of a drawing or specification. Failure to act promptly upon such requests may impede the contractor's progress in producing in accordance with the required delivery schedule. At times of peak procurement workloads, the importunities and urgencies of issuing invitations and making awards before the expiration of options so far consume the time and attention of the contracting officer that there is a natural human tendency for matters of contract administration to take second priority. Repercussions from the Government's failure to take prompt action in contract administration matters can have results which are fully as disastrous as inadequacies in the initial award of contracts, and it is advisable for the procurement agency chief to assure himself by internal checks that the myriad details of contract administration are handled punctually and effectively.

Post audits by our Inspector General, numbering, in the case of my own office, several hundred, have made almost no criticism of the contractual operations up to the point of award, but have noted numerous minor discrepancies in the field of contract administration.

The workaday tools of the contracting officer are the regulations and the contract form. I have a chart listing 20 required clauses which are incorporated in every fixed price contract. I will deal with some of them.

Some of these, such as items 8, 12, and 15, are law and are in effect superseded by the Walsh-Healey Act. They are simply in there because no one has ever removed them from the books, so to speak. Others of them are of the utmost importance and are very alive and very active. I will discuss some of the key clauses briefly. Some of these clauses are administrative in nature and some of them are rooted in statutes.

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 was designed to eliminate the "five-percenter" and the "influence peddler" from the scene, but does not affect established, legitimate relations between proper selling agents and Government contractors.

Other mandatory clauses specify the changes which may be made by the Government without the contractor's consent, such as 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, as distinct from the law, relating to the administration of his 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 covers the inspection of the supplies procured. Inspections are handled by individual service organizations, such as the Army Quartermaster Inspection Service, the Office of Naval Material, the United States Marine Corps, or, 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, occurs more or less as a matter of routine, but rejection of nonspecification supplies offered or their correction and acceptance at a reduction in price, is handled by the contracting officer.

The Walsh-Healey Public Contracts Act, to which I referred, is administered by the Department of Labor, but it has very definite effects on the administration of DOD contracts. In any contract of a value of 10,000 dollars 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 for the individual case. No contract may be made by the Government 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.

Executive Order 10557, dated 3 September 1954, prescribes a nondiscrimination clause for contracts entered into by the Departments. This clause is mandatory for all contracts involving labor except those to be performed outside the continental limits of the United States, where no recruitment of workers within the continental United States is involved, and those to meet special requirements or emergencies, if recommended by the Committee on Government Contracts.

This clause obligates the contractor not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin; to insert a similar provision in his subcontracts, except those for standard commercial supplies or raw materials, and to post in conspicuous places, available to employees and applicants for employment, notices furnished by the contracting officer.

One further clause deserving of comment implements a statute which has given rise to a considerable amount of 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 the 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. A recent Executive order has amended the differential formulae which may be applied in considering bids on foreign material.

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 Defense Appropriation Acts since 1953, which require that such items be manufactured or produced from raw materials grown or produced in the United States. Under the Buy American Act, a field jacket, for instance, might have been purchased even though it contains foreign wool, if the weaving of the cloth and the fabrication of the garment are performed in the United States. The Berry Amendment carries that one step further 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 to which I demand adherence from personnel under my command, precludes the acceptance of any favor whatsoever, regardless of value. Even the acceptance of an invitation to luncheon, which is more or less standard procedure in private business relations and is probably quite innocent, can have repercussions. A disappointed bidder goes down to a restaurant for luncheon and sees my contracting officer having lunch with the successful bidder; he immediately draws a totally unwarranted conclusion. I think it is better to be a little rigid in that particular requirement.

In the survey of contract clauses, there remain two optional clauses to be noted, the "Liquidated Damages Clause" and the "Advance or Progress Payments Clause." 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 on the stipulated schedule. This tends to insure maximum effort by the contractor, but does cause a certain amount of administrative computations and, not infrequently, adjudication of the claim of the contractor who may contend that, if this or that unfortunate episode had not happened, the delay would not have occurred.

When this clause appears in the contract, it frequently happens that the contractor is able to seize upon some minor neglect on the part of the Government, or an action by a labor union, or an act of God, or some other cause, to establish the delay as falling within the so-called "excusable" category. If this is the case, the contracting officer will almost inevitably be required to remit the liquidated damages that have been withheld. It happens often enough, but we do not employ it often.

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.

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 a 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 to be included, and the allowance for Government-furnished property, if used. It also cites the allocation of funds to pay for the supplies.

I have referred two or three times to Government-furnished property. It is customary for the Government to furnish exterior fabrics to manufacturers of clothing and equipage. This arrangement tends to secure uniformity of quality and shade; but, what is even more important, it overcomes a very serious hurdle for the contractor because the majority of clothing manufacturers would have insufficient capital to finance the raw-material inventory which is involved. In the past, end-item unit allowances of each component supplied by the Government were prescribed by the requisitioning agency.

More than two years ago, however, 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. The Government-established allowance is stated in the invitation to bid and the contractor is invited to bid on a percentage of that allowance, not to exceed 100 percent. 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 saving. Usage in excess of the contractor's stipulated allowances subjects the contractor to a charge for the excess material at rates fixed in the contract.

The Small Business Administration is authorized by legislation to demand that selected procurements be set aside for award to small-business concerns in accordance with established criteria.

Prior to rejecting a small-business concern which is otherwise responsible and which has submitted a responsive bid, for lack of finances or plant capacity, the concurrence of the Small Business Administration must be obtained through the representative assigned to the procurement agency. The Small Business Administration is authorized by law to issue a certificate of competency as to a bidder's

financial and/or plant capacity. This certificate is conclusive and binding upon the contracting officer.

The Director of Defense Mobilization has some time ago issued Manpower Policy No. 4 which establishes rules for the preferential treatment of concerns substantially performing contracts in distressed labor areas.

In the procurement of textiles, however, preferential treatment is granted to those manufacturers who warrant that their total weaving operation during the performance of the contract will not exceed 80 hours per week. In placing contracts under these priorities, preference is given to small-business concerns prior to negotiating with large-business concerns.

It is not the function of the procurement agency to debate the validity of the philosophy on which these procedures were made. It is significant to such an agency, however, that they are time and labor consuming. If a partial set-aside is made for small business, one procurement in effect becomes two. If the entire procurement is set aside for small business, the procurement agency has no assurance that optimum quotations have been received. The techniques prescribed to administer procurement under Manpower Policy No. 4, previously referred to, routinely require double procurement.

There is a requirement based on the law that certain eleemosynary agencies have priority over run-of-the-mine business in Government contracts. Certain items to be procured are required to be purchased from the Federal Prison Industries, Inc., institutions for the blind, and the General Services Administration (GSA). Excluding permitted exceptions, a specific clearance must be obtained prior to solicitation of bids or proposals for these items from private industry.

The Government has taken cognizance of the fact that its contracts occasionally have disastrous effects upon contractors. For the purpose of granting relief to contractors under prescribed circumstances, title II, First War Powers Act (as amended), an Executive order, and permissive delegations authorize the Department of the Army to complete the following actions:

1. Amendment of contracts without consideration accruing to the Government.

2. Correction of certain unilateral or mutual mistakes in contracts.

3. Formalization of informal commitments.

Authority has been delegated to heads of procuring activities--such as a chief of a technical service within the Army--to do the following:

1. Correct mutual mistakes and ambiguities in contracts within a limit of 50,000 dollars.

2. Approve contracts formalizing informal commitments within the limit of 50,000 dollars.

3. Deny applications for relief under title II, First War Powers Act, within its discretion.

All other actions coming within the purview of the authority cited above are reserved to the appropriate panel of the Armed Services Contract Adjustment Board.

I think that ends up the dangerous discussion of laws and regulations. The next topic on which I want to touch is "Certain Present Day Trends in Procurement." I have a slide which I would like to have you look at briefly.

Those I want to discuss are:

1. The desire toward reducing stock levels to an irreducible minimum, and a cutback to the least possible figure of quantities under contract.

2. The limitation of expenditures and reduction of the funding cycle in order to keep the money under obligation to the minimum.

3. The coordination of procurement as among the armed services.

In order to reduce inventories on hand to a minimum and to eliminate freight handling and storage costs to the greatest extent possible, and to reduce to a minimum the amount of funds under obligation, a diversity of specific policies is currently in effect.

In compliance with dictates of higher authority, short lead-time items, with the exception of mobilization reserve, may not be stocked beyond a three-month level of consumption, nor is it permissible to have more than a six-month requirement under contract at any given time.

Call-type and open-end type contracts must be utilized to the utmost when commercial-type items are procured. Call-type contracts, although guaranteeing a definite quantity and obligating a definite amount of funds at fixed unit prices, provide for flexibility of deliveries and permit the depots, through the contracting officer, to order shipments direct to using elements.

Open-end type contracts, on the other hand, estimate a quantity to be purchased without obligating any funds, without obligating the Government to place any orders, and permit the placing of delivery orders directly against the contract. For commodities of the appropriate type, call-type contracts have worked effectively. The open-end type contract, on the other hand, has occasioned some disappointment among bidders when the estimated quantity stipulated in the contract has failed to materialize in terms of orders.

This was particularly true in one case in which the successful contractor provided himself with oversea packing cases of specification type, and then received no orders at all for the duration of his contract.

Items which will not lend themselves to these types of contracts are procured under fixed-price supply contracts for short periods, usually for three or four months.

In addition to the restrictions mentioned, the placing of contracts is further governed by controls upon the certification and obligation of funds. Funds are allotted to cover procurement needs on a quarterly basis in accordance with a schedule of proposed awards. Funds for a particular procurement can no longer be certified appreciably in anticipation of award. This procedure is intended to permit more flexibility in use of available funds and to prevent funds from being frozen for purposes which may not materialize. Even though a technical service chief has successfully defended his portion of the appropriation, he must again justify the use of such funds in the form of the quarterly procurement program to secure the release of these funds by apportionment by the Bureau of the Budget.

The question of coordination of procurement among the services has of recent years been given much attention within the DOD and the Congress. There are five possible solutions which can be utilized for this problem by the DOD, either in whole or in part. They are as shown in this chart.

1. The historic pattern of independent, uncoordinated action by the individual armed services.
2. The device of informal coordination of procurement by mutual agreement between two or more services.
3. Joint conduct of these activities as exemplified by the Armed Services Petroleum Purchasing Agency and the Armed Services Medical 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 GSA 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 DOD in this field are of necessity guided by the application of commonsense, 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 setting off against each other, requirements and property excesses among the services prior to initiating procurement. My remarks here will assume that this project has been successfully carried through and that 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 the time of full mobilization of the country's resources, however, and under conditions of an over-taxed national economy, the shortcomings of uncoordinated procurement become magnified; this results in competition among the services, not only as to price, but in demands for facilities and manpower to a degree that will create serious national problems.

The expedient of informal coordination of 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 DOD by edict on a case-by-case basis, which is an expensive and time-consuming procedure. However, the authority to enforce collaboration, which is now vested in the Assistant Secretary of Defense for Supply and Logistics, may avoid the difficulties inherent in this solution.

The establishment of a joint procurement agency is not necessarily a panacea for all these problems. The fact that items are procured by a single agency does not eliminate the necessity for a decision as to priority among services at a time when commodities are inadequate in supply and needs are acute. Because joint agencies are normally governed by a board composed of senior representatives of all the concerned services, there is no assurance that questions of service prerogative can be resolved at that level, and even routine operation of the joint agency may be slowed down from time to time by the necessity to await the establishment of policy by such a governing body.

Also--I think this may be a very significant comment--there have been indications that the various services do not welcome the creation of such joint procurement activities, on the thesis--and I think it is a very sincere one--that they cannot be adequately responsive to the needs of an individual service since the agency does not fall within its command jurisdiction.

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 occasionally 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 as it would be if it were an agency of the individual service itself.

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 performed otherwise than creditably throughout its existence, and it has operated generally to the complete satisfaction of the customer services.

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 DOD that the procedures and methods of operation for the system of supply practicable for war will govern techniques used in time of peace.

The utilization of GSA as the procuring agent for the military services in certain commercial-type common-use items has been given much study within the DOD. It has some of the advantages and all of the disadvantages which are inherent in single-service procurement. The storage problem, moreover, ceases to devolve upon any of the armed services, but this arrangement may not prove an unmitigated blessing.

The last aspect of procurement which I have to present this morning concerns administrative problems faced by the chief of a field procurement agency. He is, perhaps to a unique degree, subjected to extreme pressures brought to bear by bidders, contractors, business and trade associations, and elected officials on behalf of their constituents. Replies to these inquiries often require many man-hours of painstaking research, review of completed and current records, and the compilation of extracted data. I cannot overemphasize the importance of adopting a fixed and uniform policy in dealing with intervention of this kind.

An apparently minor administrative matter, but one which proves to be of great practical importance, is the need for constant emphasis on the careful documentation of decisions and agreements arrived at by the contract administrator during the life of the contract. A corollary to this is the need for constant vigilance and followup in terms of punctuality of replies to communications from contractors, with the utilization of interim replies where they may be necessary.

The problem of accepting end items containing deviations from original specifications requires a great deal of attention. The service

frowns upon deviations, but practical considerations frequently make it necessary to grant them. In determining the acceptability of end items containing deviations from specifications, the following factors must be carefully weighed:

1. The effect on performance, serviceability, and appearance of the end item.
2. The urgency of the requirement for the item.
3. The degree of criticality of raw materials or component parts involved.
4. Savings achieved by the contractor as a result of the deviation which must be recouped to the Government.
5. Additional cost to the Government, which is sometimes effected.

It is desirable to cut such deviations to the minimum in order that the contractor may not be led to feel that rigid compliance with specifications is of minor importance. It is particularly important to make such price adjustments consistent with similar adjustments involving other contractors. It must be remembered that unsuccessful bidders who learn that a deviation has been approved will frequently allege in such cases that they would have bid a much lower (and successful) price had they been aware that such a deviation would be accepted.

A conflict in objectives sometimes occurs between the element of the procurement agency which is responsible for industrial mobilization planning and the current procurement section responsible for meeting day-to-day needs. The mobilization planner must do his utmost to woo manufacturers whose expectation of profit from planning agreements must of necessity be very remote. The same manufacturer may currently be engaged in a dispute with the current procurement office of the same installation. During the surge of procurement which eventuated as a result of the outbreak in Korea, many planned producers who were high-cost manufacturers were quite articulate in their disappointment at the fact that purchases of the items allocated to them were made on the basis of formal advertising and that the planned producers were unsuccessful with their bids.

In order to assure that all the statutes, regulations, policies, and procedures are complied with and that contract files are adequately

documented, a post procurement action review program has been established. This program, the responsibility of the legal office, requires monthly reviews on a spot-check basis. These monthly reports are utilized for the purpose of instituting remedial or corrective action whenever deemed appropriate. I think it is generally salubrious for the contracting officer to know that his work is subject to routine administrative review.

In many instances, contemplated procurements, particularly those involving new items, are referred to procurement activities for comment concerning specifications, patterns, drawings, inspection, or pertinent clauses or conditions under consideration. Formulating constructive replies quite often necessitates calling Industry Advisory Committee meetings for the purpose. Extreme caution must be exercised in handling these matters in order to prevent dissemination of advance information prior to the solicitation of bids or proposals, thereby giving some contractors undue advantage over their competitors. Committee meetings are required to be conducted in accordance with rather elaborate prescribed procedures in order to comply with statutes and regulations.

One inescapable problem grows out of the speed of current technological progress, and the fact that nothing less than the latest and most effective item is considered by the using forces to be acceptable for combat conditions. This frequently results in the crystallization of a research-and-development item into a production specification and drawings before the development phase has been truly completed. The adoption of modifications to the original specification and the acceptance of minor deviations from it add substantially to the work of the contract administrator.

I am sure that General Niblo will recall the episode during the war when a fellow was sent around to the various theaters to introduce new gadgets and weapons. The theater commanders licked their chops and said, "Send them to us." The fellow told them, "We can't as yet. These are development items, pilot items. But we will send them to you as soon as we can." These urgencies always make us open to the crystallization of specifications just a little too early.

In conclusion, then, the compulsions and the preoccupations which confront the purchasing office today are very different from its urgent problems in 1943 and 1951. In those years, the emphasis was on urgent delivery of critically needed items from an overtaxed industry at a time

of furious competition for raw materials and components. In general, the problem today is to meet the requirements of the armed services for relatively moderate quantities of supplies from an industry hungry for business, but with a plethora of resources, and at the same time to comply with an increasing array of restrictions which have been established in pursuance of national policy. In addition, the purchasing office must maintain sufficient flexibility to cope with cutbacks and fluctuations of business stemming from drastic and unexpected alterations in authorized strength and appropriations as they reflect changes in the international scene. The problems posed by all these forces are not at all insurmountable, but they will probably require searching reassessment and simplification in the event that we should at some future time be required to support the armed services under conditions of total war.

I will try, to the best of my ability, to answer such questions as you may have.

COLONEL SMITH: General Hollis is ready for your questions.

GENERAL HOLLIS: Before I answer any specific one, I have been advised that there is a subject that is of some antecedent interest that was brought up by another speaker recently, I believe last week, in connection with the set-aside for the serge for the new Army shade-44 uniform. It was suggested that perhaps a few of the figures on what happened as a result of the set-aside might be of interest currently. Although the figures are likely to be dreary, I might give you a few statistics on it. Since nobody can possibly carry those in his head, Colonel Kearney, I will leave it for you.

First of all, in that procedure, we go out with an invitation for the submission of formal bids. A decision must first be arrived at as to what portion of the total quantity will be set aside. In the instant case, as I think the speaker told you, it was decided to go out for 60 percent by formal procurement. We sent out on that formal invitation 168 bids. We received 55 bids in response to the 168 invitations, which is a very high order of return and indicates an unusual interest on the part, as I said earlier, of a hungry industry.

Of the 55 bids received, eight bidders received awards. Mind you, this is still the formal advertisement. The eight bidders receiving awards were in distressed areas. Six of the eight were large-business firms and two were small-business firms.

The weighted average price of this high-grade serge, a very excellent price, was \$3.3599 per yard. Then, after having received those bids and having determined the weighted average price, we were permitted to go out and negotiate with manufacturers whose plants we had surveyed. Yet we start, because of Government policy, with the small-business men first. This time we solicited 36 small-business firms initially; ultimately we had also to solicit six large-business firms. Of the 36 small-business firms, four were given awards at a figure not to exceed that weighted average price, after they sharpened their pencils a little.

We then found it necessary to go in turn to large-business firms, and of course we quit when we got through successfully. We quit as soon as we had fulfilled the requirement. There are a lot of details to the technical requirements. The bidder must have wanted to be subject to negotiation; must have bid within 120 percent of the highest price awarded on the formal advertisement; and so on. Even if you are not particularly interested in these, they give you some idea of what the net result was.

Nine of the total of ten bids again went to distressed areas, which I am sure was what the speaker meant when he said he felt, as I understand it, that that had been a highly successful operation in carrying out the announced Government policy of trying to relieve industries which are in true distress; that the average price paid on the formal advertisement was a matter of a few hundredths of a cent lower than the average price paid on the procurement.

Does that cover the subject adequately?

COLONEL KEARNEY: Yes, sir.

QUESTION: General, would you comment on your contract placement in distressed labor areas?

GENERAL HOLLIS: Well, I have given you about as much as I could give you, figures on the distressed labor areas, which are likely to be in that position because they are not truly competitive. I am sure you know of the flow of certain types of manufacture from one center of the country to a new field where labor can be acquired at a cheaper rate. I am not prepared to give you anything statistical or very conclusive much further than this.

In order to backstop questions that I might not be able to answer to fully, I have asked two technicians here, for whose opinions I have the highest respect, to be with me this morning. They are Mr. Rooney, from my own office, and Mr. O'Connor, from the Office of the Quartermaster General. Mr. Rooney, can you expatiate on that any further?

MR. ROONEY: I don't quite understand the question. Would you mind repeating it? What angle of the set-aside do you want to discuss?

STUDENT: How much contract placement.

MR. ROONEY: You mean percentagewise?

STUDENT: No, very rough figures on the industry in general, other than textiles.

MR. ROONEY: You mean because of the set-aside?

STUDENT: No; deliberately. Do you follow policies to throw business into distressed areas?

MR. ROONEY: We don't have too many of them except on textile procedure. It is not on a geographic basis. Performance is given to the manufacturer who works with his weaving operation and states that he will not exceed 80 hours a week during the performance of the contract. It is not a distressed labor area that gets preference. He mentioned the distressed labor areas because the awards happened to fall into those areas--not because of the set-aside.

GENERAL HOLLIS: I might have confused that issue in mentioning it. Mr. Rooney worked up these figures. I understood the speaker had made reference to the distressed areas.

There are two general policies in Manpower Policy No. 4. There's the general policy of looking after an area that is hurt. But when it came time to treat with that wide problem of textiles, the entire industry was down on its heels at the moment, and it was decided to create special policy and deal with the industry on the basis that the industry was nationally distressed. It is the perpetual desire of its representatives to run on a 3-shift basis in that particular industry, and they feel that they are in a hardship situation when they can do only two shifts or fewer. That is the basis for the 80-hour situation.

The number of awards within distressed areas was coincident rather than otherwise. It put it in because it had been commented on. Does that answer the question?

STUDENT: Yes, sir.

QUESTION: We started out on a 80-20 basis on that deal as a recommendation. What percentage actually went to small business by reason of negotiation? It will be less than 20.

GENERAL HOLLIS: I don't believe I have it here.

STUDENT: Just in general--was it less than 20 percent? Normally you recommend 80-20. At that time we finally went out on 60-40. Was 80-20 a pretty good guess at the start? Was it roughly 20, less than 20, or over 20?

GENERAL HOLLIS: Mr. Rooney, can you handle that?

MR. ROONEY: From the figures there I might be able to pick it out.

COLONEL SMITH: While he is looking up the figures we will have another question.

QUESTION: I am aware of what an inspector's general experience in Philadelphia has become up to the point of award. Would you comment some more on the preaward survey?

GENERAL HOLLIS: Yes. That's a very important operation in terms of keeping down delinquencies in delivery, keeping down contract terminations, and everything else. We make a very meticulous pre-award survey for every sizable contract on, say, plant equipment, skilled personnel, financial capacity. The thing we were prone to overlook, that made us skin our nose a couple of times, was the fact that an inspector would go out, technically qualified, and look at the plant, but did not investigate the commitments against the capacity. In other words, we were inspecting total capacity rather than open capacity. It is quite a different thing. It gave us problems, until we took the pledge and reformed a year ago on that. We have had better experience since. Does that answer the question?

STUDENT: Yes, sir. Thank you.

MR. ROONEY: On the formal portion, 3,611,000 yards were awarded. Of that, large business got 3,061,000 and small business got 550,000. On the negotiated portion, the award was 2,097,000 to large business, and 310,000 to small business.

QUESTION: General, would you comment on your experience with small business, as to producibility and reliability of product, or any other problems encountered?

GENERAL HOLLIS: I think any remark I may make on that would have to be considered in the light of the type of commodity with which we deal. We have a lot of paper products, office supplies, and miscellaneous items like that--chemicals, soaps, detergents, as well as fabrics, and, in certain industries, notably the so-called "cut, make, and trim" field, the clothing manufacturers. In the last figure I recall we had something in the order of 1,000 bidders on the bidders' list, of whom something like three or four were large bidders. In other words the whole industry is small business. I think small business in that particular field can, and frequently does, perform well.

In the case, however, of their ability to compete on cutthroat financial bidding, the figures that Mr. Rooney has just quoted, in the formal program, one-seventh went to the small business in the way of open competition, which is significant in showing that it simply can't get down to the prices that the big, integrated mills can bid. This is just axiomatic. In order to maintain a staff, people will and do make bids and take contracts at prices at, or conceivably minutely below, cost in order to keep a staff together, hoping that spring business will come along. When you have a situation like that, the financial capacity of the big operation can stand it better than the little fellow can who is working to make Friday's payroll.

QUESTION: I have a hypothetical question. You touched very little on it in your presentation. Have you had an opportunity to formulate any ideas as to what type of contracts would be either desirable or feasible in the event we had a major attack on this country?

GENERAL HOLLIS: First of all, I think that possibility is implicit in the present-day situation, and your hypotheses are so terrific I think it is hard to say. I think we have to take probably all the stops off and do it largely by negotiation. I think even the Korean situation brought out that it was necessary to do some curbstone agreement and formalize the contracts later. There were a great many letters of intent sent



out, which had to be swept up and made into formal contracts. Afterwards, it became a backlog situation.

I recall when I was a student at this school I was on a committee where we had to go over and see the Department of Justice record of alleged violations of the Antitrust Act. This particular industry asserted that it had won the war, because without its product the war would not have gone on, and it had saved an ungrateful Government which was prosecuting it in violation of the Antitrust Act as a result. We went over, two or three of us on the committee, and talked to an attorney in the Department of Justice, who very explicitly pointed out, and had it documented, that on 7 December 1941 the Department shoved the Antitrust Act back on the shelf, and every violation complained of, both criminal prosecutions and civil statutes stemming from those alleged violations, occurred either before Pearl Harbor or subsequent to V-J Day. Many of the presidents of corporations were under personal indictment and used to make a joke of it among themselves.

That is one of the sort of restrictions that would have to be taken off. I made reference a minute ago in the lecture to the use of the Industry Advisory Committee. The edict of the Department of Justice, and probably a perfectly proper one--I am not criticizing, but none the less it makes it awkward and somewhat embarrassing, occasionally, when you have one of the industry advisory committees together, the topics which you can discuss are limited to those on the Government's agenda, and it must be a Government proceeding. No new topic can be introduced. A verbatim transcript must be maintained. We don't use them very often.

We had one two or three weeks ago. This is not intended as criticism, but it is awkward when a fellow who didn't know all the ground rules held up his hand and asked a perfectly pertinent question, and we had to give him a song and dance and say, "We will be glad to answer your question, but we can't answer it here. You will have to go privately and individually and see the contracting officer, and he will answer your question." We are bound by certain regulations. That is what I mean, that some of those certain restrictions will have to be removed in the event of total war. I am sure they will be removed permanently under those conditions. The basic authority in the Procurement Act of 1947 is a large start, and, with enough latitude under that act, efforts can be made to considerably reduce formalities in procurement within the framework of the existing law. Does that answer it?

STUDENT: Yes, sir. Thank you very much.

QUESTION: Sir, how rigidly do you require adherence to your specifications? A lot of industries think that because of their experience they can possibly improve on military specifications. Second, does the single-service procurement, which has authorization to change specifications for the requiring service, go along with that?

GENERAL HOLLIS: No, sir. The user is the final authority on the matter of specifications. We, for example, procure clothing, textiles, and certain other things, paper products, and that sort of thing, for all the armed services. The question of deviation may come up, and we have to go to the consumer service. To answer the second part of your question first--the first part of the question is a little difficult to define--we try never to accept a deviation, but lots of times we are compelled to accept one. What we usually try to do is make the contractor bring it up to specifications. It is sometimes difficult to do so.

During the interval I was referring to the nylon duck which is a basic component of the armored vest, where the manufacturers have had a great deal of difficulty. In order to meet the physical specifications stipulated, a panel of 12 plies of that nylon duck was hung out and fired at with the prescribed ballistic velocity, which penetrated the panel. There were great moans and claims coming in that perhaps we could not get requirements if everybody got burned fingers. Maybe so, maybe not. They claimed we had not right to require velocity on the ballistic specification. Yet the velocity ballistic specification in the final analysis was all we were interested in. If we could have it 1/16" thick and perform the same function, it was much better. One or two of the firms decided to pull the stuff back in and rework it by shrinking it and pulling it up to the figures which we had. We actually had an agreement that gave them a waiver in fractions of an ounce per square yard on the ground that the cumulative total of the fraction of an ounce would not break the soldier's back as to weight but might save his life, because the fabric was reworked around the ballistic specification.

Does that answer your question?

STUDENT: Yes, sir.

QUESTION: In order to make single-service procurement work, the requisitioning service has to keep its fingers out of your business. By the same token, the supplying service has to defer to the requisitioning

service. Would you like to unbutton your coat and tell us what the things are that each service should do in order to make this thing work?

GENERAL HOLLIS: I am thinking of whether I can tell you that. I think I made it clear by some statements here that I am willing to unbutton my coat. We have had very reasonable success, I think, in that field. I have very limited, personal experience in the field of subsistence, where the Quartermaster General has widespread responsibility. So far as I know, this has not constituted a very great problem in that field. Has it, Mike?

MR. O'CONNOR: No, sir.

GENERAL HOLLIS: In the field of such things as teletype paper, which comes in quadruplicate, with carbons between, and so on, an unnecessary departure from a commercial standard hampers the procuring agency and runs up the price on that phase of it. I think all the services are from time to time guilty of setting up a specification where the standard item produced by industry routinely for the rest of the country would serve as well. If that can be avoided, it will help. Certainly, I think liaison between the requiring service and the procuring service is constantly needed. We had some problems of delinquency which I am happy to say we have cut down very drastically. Some 18 months or 2 years ago we were badly plagued by delinquencies because there was some civilian business, a priority of orders from civilian customers, which tended to take priority in the minds of this manufacturer unless we objected vigorously. Those delinquencies were complained of vigorously and have since been improved.

This is a pretty sketchy answer to your question. Does it help or not? Have you anything more specific?

STUDENT: This question of specifications has always caused quite a bit of trouble. The DOD steps into the picture with a standardization program and requires that there be standard items of contracts for all three services. I don't think any of us like it too much when it gets into the functional area. I have the feeling that other things give you trouble and make it difficult to do a procuring job. The Air Force and the Navy have difficulty procuring for the Army, too. What is the balance that should exist? Who should make the final decision on specification? Who should make the final decision on contract forms, for example?

GENERAL HOLLIS: I think the principal thing is that the user makes the final decision on specifications. I think he should be fairly openminded. If, for example, the Navy wants a mattress for a ship's bunk, and the ship's bunk is 32 inches wide, it can't use a 36-inch mattress there. That might not comply with specifications. On the other hand, I think in such matters as sulphite paper, we frequently get arbitrary in those things. There is little middle ground. I think the using service should condition its compliance with the requirement from the procuring agency, whatever service that may be, to the actual need, rather than simply to a rigid specification.

Mike, have you any comment on that? This is Mr. O'Connor from the Office of the Quartermaster General.

MR. O'CONNOR: I think the experience of the Quartermaster General in that area has been good. We have had no trouble with the other services. As you mentioned in your lecture, we invariably refer deviations to the requisitioning agency for its approval. We won't buy unless that agency approves it.

GENERAL HOLLIS: Thank you, Mike. I think the answer is contained in one sentence. It has not been a significant problem with my office. Probably that is the best answer.

COLONEL SMITH: General Hollis, you have stimulated a great deal of interest in this audience. It is very nice of you to share your experience and knowledge with us and I thank you very much.

GENERAL HOLLIS: Thank you. It is a pleasure to be here.