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of widow's benefits. (The courts do not reason that it is the availability of support which is controlling, but speak in terms of such an annulled marriage having sufficient validity to preclude resumption of benefits.) In this area Congress should act to standardize rights to benefits throughout the United States.

Edna D. Barber

FORMAL AND DOCTRINAL DIFFERENCES BETWEEN GOVERNMENT AND PRIVATE CONTRACTS

I. INTRODUCTION

Justice Holmes admonishes us that "men must turn square corners when they deal with the Government."¹ This "Square Corner Doctrine" finds application in the extensive and expanding area of government contracting. This note surveys briefly some ways in which a contract between the United States Government and a private businessman or corporation may be at variance with a contract between private parties based upon common law principles.

II. DISTINCTIONS BETWEEN GOVERNMENT AND PRIVATE CONTRACT TERMS

A. Sovereign Immunity

Most areas of dissimilarity between government contracts and private commercial contracts involve mandatory clauses which are inserted into the government contract and which a contractor must accept if it chooses to do business with the government. However, one obvious dissimilarity derives from the nature of one of the contracting parties. This is the immunity of the sovereign to suit by the contractor. The doctrine of sovereign immunity has the effect of limiting the contractor's legal remedy for breach of contract by the government to such situations and to such forums as the government chooses.² The parties to a private contract need not contend with such a defense.

Prior to 1855 a government contractor's legal remedy for breach of contract by the government was limited to congressional action. The Act of 1855³ constituted a definitive step in the limitation of the doctrine of sovereign immunity by establishing the Court of

¹ *Rock Island, A.L.R. Co. v. United States*, 254 U.S. 141, 143 (1920).

² See *e.g.*, *Turner v. United States*, 248 U.S. 354 (1918); *Goodyear Tire and Rubber Co. v. United States*, 276 U.S. 287 (1927).

³ 10 STAT. 612.

Claims in which a contractor could pursue its remedies for breach of contract. A disappointed claimant had no opportunity of appeal until 1863 when a petition for writ of certiorari to the United States Supreme Court was authorized.⁴ The passage of the Tucker Act in 1887⁵ permitted suit to be brought against the United States not only in the Court of Claims⁶ but also in the United States district courts if the claim was less than \$10,000.⁷ Such suits had to be based "upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort. . . ."⁸ For most purposes this equalized government and private contract remedies.

Related to sovereign immunity is the distinction between common law rules of agency governing the private contract, and rules applicable to one who purports to act for the government. A government agent cannot bind the government beyond his actual authority.⁹ The common law principles of apparent authority and estoppel are not available to the contractor who acts in reliance upon instructions received from a mistaken or negligent government agent.¹⁰

Another distinction relating to sovereign immunity is that an attempted revocation of a bid may be ineffective under a regulation¹¹ providing that a bid may not be withdrawn after formal opening. This is contrary to the common law principle of contracts under which an offeror may generally withdraw, at any time prior to acceptance, an offer which has not been given for consideration.¹² This question was litigated and resolved in favor of the government in *Refining Associates, Inc. v. United States*.¹³

B. Disputes Clause

The Disputes clause¹⁴ most clearly sets apart a government contract from a private contract and was first employed in the late

⁴ 12 STAT. 765.

⁵ 24 STAT. 505 (now 28 U.S.C. §§ 1346(a)(2), 1491 (1958)).

⁶ 24 STAT. 505 (now 28 U.S.C. § 1491 (1958)).

⁷ 24 STAT. 505 (now 28 U.S.C. § 1346 (a)(2) (1958)).

⁸ 24 STAT. 505.

⁹ *Beach v. United States*, 226 U.S. 243 (1912).

¹⁰ *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384 (1947).

¹¹ 41 U.S.C.A. App., § 54.12 (1957).

¹² WILLISTON, *CONTRACTS* § 55 (rev. ed. 1936); *RESTATEMENT, CONTRACTS*, §§ 35(e), 41-45 (1932).

¹³ 109 F. Supp. 259 (Ct. Cl. 1953).

¹⁴ Armed Services Procurement Regs. § 7-203.12 (1958).

"DISPUTES (JAN. 1958)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the

1880's.¹⁵ The purpose of the clause is to provide a means whereby adjustments may be made and errors corrected on an administrative level, thereby avoiding a multiplicity of damage claims that might otherwise arise. The Disputes clause provides that any dispute concerning a question of fact arising under a government contract which is not settled by agreement between the parties shall be decided by the government contracting officer. This clause gives one party to the contract the sole right to decide a disputed question of fact. A private commercial contract containing a similar clause might not be upheld by the courts on the grounds of constituting an unreasonable arbitration clause or of making the dominant party's promise of performance too indefinite for legal enforcement.¹⁶

The clause permits an appeal by a disappointed contractor to the secretary of the government agency within thirty days after receipt of the contracting officer's adverse decision. Failure to exhaust this administrative remedy precludes judicial review¹⁷ by depriving the court of jurisdiction.¹⁸

To implement administrative review of the contractor's appeal, the following government agencies have set up boards of contract appeal: Department of Defense, Department of the Interior, Army Corps of Engineers, Post Office Department, Veterans' Administration, Department of Agriculture, Department of Commerce, General Services Administration, National Aeronautics and Space Administration, and the Atomic Energy Commission. These boards serve to mitigate a potential inequity in the Disputes clause, *viz.*, that of having as the final arbitrator of fact one of the interested parties to the contract.

Recognizing that the contracting officer and the head of the agency are not necessarily impartial expert arbitrators, are not held subject

Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This 'Disputes' clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; *provided*, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law."

¹⁵ NAVY CONTRACT LAW § 1.14 (2d ed. 1959).

¹⁶ WILLISTON, CONTRACTS § 42 (rev. ed. 1936); RESTATEMENT, CONTRACTS § 32 (1932).

¹⁷ Pyle v. United States, 163 F. Supp. 853 (Ct. Cl. 1958).

¹⁸ United States v. Smith, 152 F. Supp. 322 (E.D. Pa. 1957).

to professional standards as in commercial arbitration, and are employed by one of the parties to the contract, the Secretary of Defense has composed the Armed Services Board of Contract Appeals (ASBCA) of fifteen attorneys, all of whom must have been admitted to practice before the highest court of a state or the District of Columbia.¹⁹

In the actual employment of this disputes procedure, what is the finality of the government agency's fact decision? This question was in issue in *United States v. Wunderlich*.²⁰ The United States Supreme Court held (three Justices dissenting) that a judicial review of an administrative decision of a question of fact under the Disputes clause is limited to cases in which such decision was founded upon "fraud, alleged and proved."²¹ Fraud was defined by the Court as a conscious wrong-doing and an intention to cheat or be dishonest. The dissenting opinions would have broadened the basis for judicial review "to reverse an official whose conduct is plainly out of bounds whether he is fraudulent, perverse, captious, incompetent, or just palpably wrong . . .,"²² and also for a "gross mistake as necessarily to imply bad faith. . . ."²³

The majority opinion invited Congress, if it considered the Court's definition of fraud to be too restrictive, to legislate on the matter. Congress accepted the invitation and passed the first statute dealing with the Disputes clause, often referred to as the Wunderlich Act.²⁴ This act extended the grounds for judicial review and provided that an administrative decision was final unless the decision was "fraudulent [*sic*] or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence."²⁵

The Court of Claims and the district courts have not been in agreement on the precise sort of judicial review available to the contractor who is disappointed in the contracting officer's determination of a fact question. The Court of Claims has held²⁶ that the contractor is entitled to a de novo review of every aspect of its case. On the other hand, the district courts and courts of appeal have held that the review is limited to facts appearing in the original administrative record of the hearing before the board of appeals.

¹⁹ ARMED SERVICES PROCUREMENT REGS., APP. A, PART 1 (1963) (Charter for the Armed Services Board of Contract Appeals).

²⁰ 342 U.S. 98 (1951).

²¹ *Id.* at 100.

²² *Id.* at 102.

²³ *Id.* at 103.

²⁴ 68 STAT. 81 (1954), 41 U.S.C. § 321 (1958).

²⁵ *Ibid.*

²⁶ *H. L. Yoh Co., Inc. v. United States*, 288 F. 2d 493, 496 (Ct. Cl. 1961).

Therefore, when the appellant contractor believed that its case could be best presented by introducing evidence other than the record of the administrative review, it would have behooved the contractor to litigate in the Court of Claims.

These conflicting interpretations reached the United States Supreme Court in *Carlo Bianchi and Co., Inc. v. United States*.²⁷ The contractor was awarded a contract by the Army Corps of Engineers to construct a flood control dam. This work involved digging a water diversion tunnel. During the construction of the tunnel, unforeseen conditions created extreme hazards for workmen and the contractor was forced to make additional expenditures for protection of the workmen.

The contracting officer denied the contractor's claim for additional compensation. After pursuing its administrative remedies through the Corps of Engineers Board of Claims and Appeals, the contractor brought an action for breach of contract in the Court of Claims, alleging that the decisions of the contracting officer and the board were "capricious or arbitrary, or so grossly erroneous as necessary to imply bad faith, or were not supported by substantial evidence."²⁸ The Court of Claims allowed the contractor to recover after hearing evidence de novo.

The government appealed to the Supreme Court contending that the trial in the Court of Claims should have been limited to evidence contained in the record of the board proceedings. The Supreme Court granted certiorari and found for the government. The Court, relying on an earlier case,²⁹ held that the function of the Court of Claims in matters governed by the Disputes clause is in effect to give an extremely limited review of the administrative decision, and to give such previous determinations conclusive effect. Only where the plaintiff has pleaded fraud can the court receive new evidence.

Subsequent to the Supreme Court decision in *Bianchi*, the Court of Claims in *Stein Bros. Manufacturing Co. v. United States*³⁰ again based its decision on evidence de novo. In this instance the government had failed to make a timely objection to the admission of new evidence during trial in the Court of Claims. The court believed that the *Bianchi* case set forth a procedural or evidentiary requirement and not a jurisdictional requirement; and therefore by failing to object to the consideration of evidence de novo, the government had waived the prohibition expressed in the *Bianchi* case.

²⁷ 373 U.S. 709 (1963).

²⁸ *Id.* at 719.

²⁹ *Kihlberg v. United States*, 97 U.S. 620 (1878).

³⁰ No. 389-59, Ct. Cl., July 1963, 9 CCF ¶ 72,183.

This holding would not be of permanent importance since the government could object in future cases to the introduction of new evidence. However, the Court of Claims also noted that the *Bianchi* decision prohibited it from considering evidence de novo only in regard to questions of fact, and that the court still had general jurisdiction under the Tucker Act to consider all evidence relating to questions of law notwithstanding the Wunderlich Act or the *Bianchi* case. In its recent decision distinguishing the *Bianchi* holding, *WPC Enterprises, Inc. v. United States*,³¹ the Court of Claims stated that a question involving the proper interpretation of a contract specification is a mixed question of law and fact, and de novo evidence may be offered.

From these decisions it appears that the Disputes clause and the applicable appellate procedures provide means for settling fact disputes under government contracts which are different from those means available for determining private contract disputes.

C. Changed Conditions Clause

In a private contract a question sometimes arises whether one party is entitled to further consideration due to additional work being required on his part because of unforeseeable or changed conditions. The problem has been settled in private contracts in many ways such as rescission, reformation, cancellation, or modification by mutual consent. These solutions recognize the common law principle that impossibility of performance may excuse one's duty to perform.³² The principle is also extended to certain cases of impracticability of performance.³³

In a government contract a limited solution to the problem is dictated by the mandatory inclusion of the Changed Conditions clause. A typical example of this clause³⁴ provides that where the

³¹ No. 256-59, Ct. Cl., Oct. 1963, 9 CCF ¶ 72,289.

³² *Taylor v. Caldwell*, 3 Best & S. 826, 122 Eng. Rep. 309 (K.B. 1863).

³³ *Lloyd v. Murphy*, 25 Cal. 2d 48, 153 P. 2d 47 (1944).

³⁴ ARMED SERVICES PROCUREMENT REGS. § 7-602.4 (1961).

"CHANGED CONDITIONS (NOV. 1961)

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the 'Disputes' clause of this contract."

contractor encounters latent or unknown physical conditions differing materially from those contemplated in the contract or from those ordinarily encountered in that type of work, it shall be permitted to make a claim to the contracting officer for equitable adjustment of the contract cost. If the parties fail to agree on the amount of the contractor's claim, the question is then settled in accordance with the Disputes clause.

The purpose of the Changed Conditions clause is to allow a contractor to prepare its bid without including a contingency for unforeseeable or changed conditions which it may encounter. In theory then, these conditions requiring an upward adjustment in contract price will cause the government additional cost only when actually encountered. This clause provides an orderly method for handling the administrative problems resulting from the occurrence of unforeseeable conditions.

D. Changes Clause

A large number of the cases reaching the Armed Services Board of Contract Appeals (ASBCA) involve the question of an equitable adjustment in contract price, or cost and fee, resulting from changes made to the original contractual task. This question is covered by the Changes clause, one form of which appears in cost-reimbursement supply contracts.³⁵ The clause provides that the contracting officer may at any time make changes in the drawings, designs, or specifications of the items to be furnished under the contract, or in the method of shipping and packing, or in the place of delivery.

³⁵ ARMED SERVICES PROCUREMENT REGS. § 7-203.2 (1958).
"CHANGES (JAN. 1958)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled 'Disputes.' However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed."

This clause further provides that if any such change required by the contracting officer causes an increase or decrease in the contractor's cost to perform the contract an equitable adjustment shall be made in the contract cost, delivery schedule and fee.

The element which makes this procedure of revising the contractual task most variant from private contracting is the requirement that it is the contractor's duty to proceed with the work as changed unilaterally by the contracting officer. The contractor has no privilege of first negotiating a new price for this additional task before beginning work. Where negotiations fail to establish the equitable adjustment to be made in schedule, cost, or fee, the contractor may appeal the government's findings in accordance with the Disputes clause.

An interesting facet of the changes problem is whether the contractor is entitled not only to his additional costs but to increased fee for the additional work, where he originally contracted to perform a stated task on a cost-plus-a-fixed-fee (CPFF) basis.

Although there are relatively few cases in point, the general rule which seems to have evolved in CPFF contract cases is that the contractor may obtain an increase in fixed fee for additional work which was not originally contemplated by the parties, and is properly authorized by a change order, even though the additional work is within the general scope of the original contract.

In one example³⁶ the contractor agreed to build a bacteriological laboratory facility at an estimated cost of \$8,000,000. The actual cost ran to over \$16,000,000 due to additional tasks unforeseeable at the time of contracting and discovered only during the performance of the contract. In allowing an increase in fixed fee the ASBCA reasoned that the original fee was based on the cost of performing the task as contemplated by the parties at the inception of the contract, and that since the added requirements specified by the government increased the cost of performance, it would be equitable to allow an increase in fee.

In another construction contract an increase in fixed fee was denied.³⁷ Here the increase in cost resulted from schedule delays beyond the control of the contractor, but not from additional work and services formally directed by the government contracting officer. Therefore, the ASBCA held that the situation did not fall within the Changes clause and no additional fee would be allowed.

³⁶ H. K. Ferguson Co., No. 2876, Bd. Cont. Appeals, 6 CCF ¶ 62,302 (1957).

³⁷ Penker Construction Co., No. 1954, Bd. Cont. Appeals, 6 CCF ¶ 61,727 (1955).

It has also been held by the ASBCA that the contractor's fee may be adjusted upward where his claim is based upon work within the general scope of the contract but not contemplated in the plans and specifications as drawn.³⁸ In addition, fee adjustment has been authorized where the changes resulted in a project of a different nature from that which was originally contemplated by the parties.³⁹

The effect of the Changes clause is to place the contractor in the position of having to begin work at the direction of the contracting officer without the opportunity first to negotiate the cost and fee of the additional task. This provision is not a term commonly found in private contracts, perhaps out of concern that such a provision might be construed as rendering the private contract too indefinite to be enforceable.⁴⁰

E. Termination Clause

The Termination clause⁴¹ is another example of a government contract provision which differs from private contract terms. This extensive clause provides basically that the government may, at any time, at and for its *convenience* or for default of the contractor, terminate a government contract. Probably the first recorded case⁴² involving government use of a termination for convenience provision dates back to 1875.

While a termination for default clause is not an unusual term in private contracts, the government termination for convenience clause presents some distinguishable features. Contrary to traditional private contract law,⁴³ this clause specifies that the government will not be liable for any of the contractor's anticipated profits and will be liable only for a reasonable profit based on actual work performed.

The procedure set forth to fix the amount of the contractor's recovery after a convenience termination begins with the contractor and the government attempting to negotiate the contractor's settlement claim. If agreement cannot be reached, the government, *ex parte*, determines the amount to be paid to the contractor in accordance with formulae set forth in the Termination clause.⁴⁴ If the contractor wishes to appeal this decision, he may do so under the procedure set forth in the Disputes clause.

³⁸ James Stewart Corp., No. 384, Bd. Cont. Appeals, 3 CCF 103 (1942).

³⁹ Allen & Kelley, et al, No. 733, Bd. Cont. Appeals, 3 CCF 1 (1944).

⁴⁰ See, WILLISTON, CONTRACTS § 42 (rev. ed. 1936); RESTATEMENT, CONTRACTS § 32, ILLUS. 6 (1932).

⁴¹ 17 CFR 1791 (1952), ARMED SERVICES PROCUREMENT REGS. (ASPR) § VIII (1954).

⁴² United States v. Corliss Steam Engine Co., 91 U.S. 321.

⁴³ Cf., Wells v. National Life Ass'n. of Hartford, 99 Fed. 222 (5th Cir. 1900); United States v. Beham, 110 U.S. 168 (1884).

⁴⁴ ASPR § VIII PART 5 (1944).

The Termination clause was involved in the recent Court of Claims decision in *G. L. Christian and Associates v. United States*.⁴⁵ The government terminated Christian's contract for construction of a housing project. Due to what was probably an inadvertent omission by the contracting officer, the contract did not include the standard Termination clause. Under common law principles, the contractor could be entitled to the value of the contract less the cost to complete his performance.⁴⁶ The plaintiff claimed this amount as damages. The contracting officer refused to honor the contractor's claim for full anticipated profits but offered to insert the Termination clause into the contract subsequent to the termination action. The contractor understandably declined to accept, and thereupon filed suit in the Court of Claims.

The court found in favor of the government on the basis that, although the termination clause was not actually negotiated into the contract by the parties, the contract would be construed as if it contained the clause. The court reasoned that because the Armed Services Procurement Act of 1947⁴⁷ authorized the issuance of the Armed Services Procurement Regulations (ASPR), the regulations had the full force and effect of federal law. Since the regulations required the inclusion of the Termination clause in the contract, the contract would be construed as if containing the Termination clause. Thus a situation may exist in which a government contract includes a clause not expressly incorporated into the contract document.

The result in the *Christian* case goes beyond exemplifying a mere formal terminology distinction and extends into the area of doctrinal differences in interpretation of government vis-a-vis private contract obligations.

It is interesting to speculate whether the same result would obtain where the contractor wishes to avail himself of a provision which is required by the procurement regulations to be contained in, but which is omitted from, the actual contract document.

F. Renegotiation Clause

The policy of renegotiation provides a prime illustration of a disparity between government and private contractual agreements. The Renegotiation clause is required to be included in Government contracts.⁴⁸

⁴⁵ 312 F. 2d 418 (Ct. Cl.), *cert. denied*, 32 U. S. L. Week 3220 (U.S. Dec. 17, 1963).

⁴⁶ RESTATEMENT, CONTRACTS § 329 (1932).

⁴⁷ 70 STAT. 127 (now 10 U.S.C. §§ 2202, 2301-14 (1958).)

⁴⁸ ASPR § 7-103.13 (1959).

The implementation of renegotiation began with an executive order promulgated in 1942.⁴⁹ This order allowed government inspection of a contractor's accounting records. If it were determined that the contractor's profits were excessive, the executive order authorized the Price Adjustment Board to secure a refund. The principle of renegotiation was subsequently expanded by congressional legislation,⁵⁰ culminating in the Renegotiation Act of 1951.⁵¹ The purpose of the act is to safeguard the public purse from unreasonable profit taking by private contractors. It is applied where the contractor's profits are found to be unreasonable after the required work has been performed.

The Renegotiation Act established a separate Renegotiation Board, which is not part of any procurement agency, to supervise the renegotiation procedures. The following procedure is stipulated: a contractor is required to file an annual fiscal report showing profits made during the previous year under government contracts containing the clause. The Renegotiation Board and the contractor meet, if the Board has determined that the contractor's profits may be excessive, to negotiate the excess amount. If no agreement can be reached, the Board then sets an amount to be repaid to the government. The contractor has a right of appeal to the Tax Court which he must exercise within thirty days of receiving the Renegotiation Board's final determination.

This type of clause would be a strange member in a private contract. The inclusion of such a clause in a private contract would be substituting for a definite and agreed upon term (the price) a more indefinite term ("reasonable" profit). The right of one party unilaterally to amend his duty of payment under the contract subsequent to the other party's performance would probably be held to create an illusory contract unenforceable at law.⁵²

III. CONCLUSION

A private corporation or individual contracting with the government today undertakes greater duties than did the eighteenth century supplier who contracted to equip a naval force to defend against Barbary pirates. This is due to development of certain formal and doctrinal differences between standard government and private con-

⁴⁹ Exec. Order No. 9127, 7 Fed. Reg. 2753 (1942).

⁵⁰ 56 STAT. 226, 245, 246 (1942).

⁵¹ 65 STAT. 7, as amended, 50 U.S.C. APP. §§ 1211-33 (1958).

⁵² See, WILLISTON, CONTRACTS § 42 (rev. ed. 1936); RESTATEMENT, CONTRACTS § 32, ILLUS. 6 (1932).

tracts. Examples of formal differences in contractual terms are the Disputes, Changed Conditions, Changes, Termination and Renegotiation clauses appearing in government contracts. More subtle perhaps are the doctrinal variations; for instance, the principle of sovereign immunity, and the Court of Claims' holding in the *Christian* case which bound the contractor by terms not appearing in the contract document.

The authors do not regard these peculiarities of government contracting as inappropriate, because today's government contract is more than a procurement agreement. It is also an instrument through which the government executes socio-economic policies such as minimum wages, fair employment practices and small business aid. As a result, a contractor who elects to deal with the government must be prepared to undertake larger responsibilities, turning even "squarer corners."

Charles A. Lynch
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