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GOVERNMENT CONTRACTS AND CLAIMS

Lecture by

Mr. J. Robert Anderson

Special Assistant to the Attorney General

1. Mr. Anderson spoke informally of the relations between the Department of Justice and the executive departments. He emphasized the difficulties which confront the Attorney General's office in settling claims against the Government.

2. The outstanding difficulties, he said, were: First, the inadequate information furnished the Department by the contracting agency, and, second, the waiver of Government rights, consciously or unconsciously, but usually unconsciously, by a Government officer. He said that frequently the contracting officer did not indicate in his records the precise point at issue between him and the contractor and exact decisions made by him from time to time. If his records did show his decisions it frequently was not clear the basis on which the decisions were made.

3. Extension of Time

He emphasized the fact that wherever an extension of time was given to the contractor, due to causes other than those attributable to the negligence or fault of the contractor, the contracting officer should indicate specifically the reasons for granting the extension and the reservations which the Government made when it gave such a grant. He indicated that in the main contracting officers unconsciously waived the Government's right to liquidated damages when they did grant extensions. The grant of an extension of time should be in specific and positive terms.

4. Liquidated Damages

In nearly every contract, he indicated, there were delays or faults on each side and the Government frequently lost the right to claim liquidated damages because the contractor, through clever attorneys, was able to place the main burden of proof upon the Government. He emphasized the fact that throughout the performance of the contract the contracting officer should keep the record clear and settle each question as it arises. In other words, when final

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payment is made there should remain no question at issue which can later be raised to substantiate a claim against the Government.

5. Final Payment and Release of Claims Against the Government

Mr. Anderson said that it would facilitate greatly the work of his department if contracting officers would insist that at the time of each payment there would be a definite and positive written understanding of the relative rights of the two parties at that time. He then said that when final payment is made the contracting officer should endeavor to secure from the contractor a release in full of all claims against the Government. Such a release the Supreme Court has held bars the contractor from raising any issue, other than fraud or bad faith. Frequently, he said, the contractor refuses final payment, thereby reserving to himself the right to prosecute a claim against the Government. In such cases the contracting officer should endeavor to reduce to writing, and obtain approval thereof by the contractor, of the exact situation and the precise points at issue.

6. Quartermaster Corps Contracts

He referred to the case of Swift and Company vs the United States. In this case the Supreme Court held that contracts made by the Quartermaster Corps would bind the Government if the terms had been reduced to writing and signed by the parties. In other words, a letter from the contractor and a written reply by the proper Quartermaster officer would constitute a binding contract. This case differentiates Quartermaster contracts from all other contracts in the War Department and excepts such contracts from the provisions of R. S. 3744.

7. Reservation in Contract of Right to Terminate Contract

Referring to certain coal Quartermaster contracts, made by the Quartermaster General in 1920, in which there was a reservation of the right on the part of the Quartermaster General to terminate such contracts with fifteen days notice, he cited two cases. In the first, which has been determined by the Supreme Court, it was held that where a subordinate officer, in behalf of the Quartermaster General, orally terminated the contract the Government was in breach and the contractor could recover the market value of the coal involved, as of the day of breach, this in spite of the fact that the contractor in this instance was merely a broker. The second case he cited has not yet come to trial. In this case the Quartermaster General gave a verbal order to a subordinate and the subordinate in turn gave a telephone notice to the contractor. The contractor apparently acquiesced in the decision but later asserted his rights and brought suit.

8. Unliquidated Damages

The question was asked with respect to the policy of the Comptroller General in settling unliquidated damages. Mr. Anderson gave it as his personal opinion that the Comptroller General had no such authority and he indicated that before long there would be some judicial determination of the question.