

RELIEF WHERE FORMAL CONTRACTS HAVE NOT BEEN  
MADE IN MANNER REQUIRED BY LAW.

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DECEMBER 19, 1918.—Committed to the Committee of the Whole House on the state  
of the Union and ordered to be printed.

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Mr. DENT, from the Committee on Military Affairs, submitted the  
following

REPORT.

[To accompany H. R. 13274.]

The Committee on Military Affairs, to whom was referred the bill  
(H. R. 13274) to provide relief where formal contracts have not  
been made in the manner as required by law, having considered the  
same report thereon with a recommendation that it do pass with the  
following substitute:

Strike out all after the enacting clause and substitute the following  
in lieu thereof:

That the Secretary of War be, and he is hereby, authorized to adjust, pay, or dis-  
charge any agreement, express or implied, upon the basis of reasonable value, but  
in no case greater than the agreed price, that has been entered into in good faith  
during the present emergency and prior to November 12, 1918, by any officer or  
agent acting under his authority, direction, or instruction, with any person, firm,  
or corporation for the acquisition of lands, or the use thereof, or for any supplies,  
material, or equipment, to be used in the prosecution of the war, when such agree-  
ment has been executed in whole or in part, or expenditures have been made or  
obligations incurred upon the faith of the same by any such person, firm, or cor-  
poration prior to November 12, 1918, and such agreement has not been executed in  
the manner prescribed by law:

*Provided*, That payment under such agreement shall not exceed the fair value of  
the property transferred or delivered and accepted by the United States, as deter-  
mined by the Secretary of War, and where no property has been transferred, delivered,  
or accepted payment shall not be in excess of the actual cost incurred in preparation  
for performance as such cost is determined by said Secretary:

*Provided*, That this act shall not authorize payment to be made of any claim under  
such agreements after June 30, 1919:

*Provided further*, That the Secretary of War shall report to Congress at the beginning  
of its next session following June 30, 1919, a detailed statement showing the nature,  
terms, and conditions of every such agreement and the payment or adjustment  
thereof:

*Provided further*, That nothing in this act shall be construed to confer jurisdiction  
upon any court to entertain a suit against the United States upon any agreement of  
the character herein provided for:

*And provided further*, That no settlement of any claim arising under any such agree-  
ment shall bar the United States Government through any of its duly authorized

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agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right of recovery of any money paid by the Government to any party under any settlement entered into, or payment made under the provisions of this act, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any such party or parties:

*And provided further,* That nothing in this act shall be construed to relieve any officer or agent of the United States from criminal prosecution under the provisions of any statutes of the United States for any fraud or criminal conduct:

*Provided further,* That this act shall in no way relieve or excuse any officer or his agent from such criminal prosecution because of any irregularity or illegality in the manner of the execution of such agreement:

*Provided further,* That the names of such contractors and the amounts of such partial or final settlements shall be filed with the Clerk of the House for the information of Congress and printed in the Congressional Record or in the Official Bulletin, or as a public document, ten days before confirmation, and payment is authorized upon such contracts.

In support of the measure there is attached hereto a statement showing the reasons and necessity for this legislation prepared by Hon. G. H. Dorr, Assistant Director of Munitions. The statement is as follows:

WAR DEPARTMENT,  
OFFICE OF THE ASSISTANT SECRETARY, DIRECTOR OF MUNITIONS,  
Washington, D. C., December 18, 1918.

Memorandum for: Hon. S. H. DENT, Jr.,  
Chairman Military Affairs Committee, House of Representatives.

### CLASSES OF AGREEMENTS NOT PROPERLY EXECUTED.

The signing of the armistice has left numerous persons and corporations engaged in supplying or preparing to supply the war needs of the United States, at the request of the War Department, without contracts covering the services to be rendered by them executed in the manner required by law. The situations as to these persons and corporations may be classified as follows:

1. There are outstanding a very considerable number of agreements carefully reduced to writing in the forms used by the Ordnance Department. They are valid contracts except for the fact that, instead of being signed by the Chief of the Procurement Division of the Ordnance Department, who was the contracting officer for that bureau, they have been signed by one of his principal assistants. Under a recent ruling of the Comptroller of the Treasury, such signature does not comply with the statutory requirements of a valid contract. There are similar contracts in other bureaus invalid by reason of similar defective signatures. As an example of this situation a manufacturer with a contract for wagon parts adapted only for Army use is stated to have expended \$400,000, and was just about to commence deliveries when he was notified to discontinue production. Upon negotiations being undertaken for an adjustment, it was found that the contract had been signed by a deputy of the contracting officer and consequently no settlement could be made.

2. There are outstanding a very considerable number of written purchase orders, which contain a direction by the Government as to the supplying to the department of certain articles—very frequently specifying in considerable detail the character, amount, price, and time of delivery of the articles to be delivered, but not valid under the ruling of the Comptroller of the Treasury for the reason that they were not signed by both parties at the end of the writing. These orders follow the form of orders that were used by the Chief of Engineers in securing supplies for river and harbor work, and under special provision of the statutes they were valid contracts when so used, but now appear to be invalid for the war emergency, for which they were continued to be used by the officers who were accustomed to the peace procedure.

3. In a considerable number of cases negotiations for contracts had been terminated and the terms completely agreed upon, and the contractor requested by the department, in view of the exigencies of the war, to proceed immediately with procuring the necessary material and entering upon the execution of the work, without waiting for the agreement arrived at to be put in final form and duly executed. The following are typical cases illustrating this situation: On October 7, 1918, the cotton-goods procurement branch, as the result of public advertisement and of bid opened Sep-

tember 30, awarded a contract for 500,000 linen and cotton crash towels, deliveries to begin week ending October 19, 1918, and to be completed December 31, 1918. The contractor was immediately notified and in order to make deliveries on time was obliged to purchase materials and commence manufacture before the receipt of an executed contract. In view of the armistice the contract has not been executed and delivered and no adjustment can be made. There are stated to be seven other awards of contracts for towels placed between October 7 and October 21, which are in the same situation. On bids from a manufacturer of motor-truck parts he was awarded an order for 5,000 frames for Army trucks on October 3, 1918, with the statement that "formal contract would follow." On October 11, 1918, the department pressed for speedy production, and the manufacturer proceeded with the work, making expenditures it is stated of over \$500,000. The armistice was signed prior to the execution of a formal contract, and an adjustment can not now be proceeded with.

4. In a considerable number of cases, while negotiations were still under way and before definite terms had been arrived at as to price or quantity, suppliers have been requested by the department to proceed to prepare for and to enter upon the execution of work for the department in advance of any final agreement upon the terms upon which they were to be remunerated, and so necessarily in advance of the reduction of the agreement to the form required by statute. Yielding to the exigencies of the war situation, such contractors put the work of production ahead of the work of negotiation, and have often put themselves in a position where their only reliance was the good faith and fairness of the Government in finally fixing the terms of the agreement. For example, in the manufacture of a certain important type of gun, it was thought impracticable to determine the proper price basis at the time the order for the production of the gun was given, as there was insufficient experience as to what the cost of manufacture would be and the determination of the price; and so the final execution of the formal contract was left until there would be sufficient actual manufacturing experience for the Government to make a proper determination as to price. Further, there are a number of instances where the Government, in execution of its plans for the erection of a munition plant or the creation of a cantonment, induced the occupants of land to vacate it and go to considerable expense, without any agreement as to compensation for the purchase or use of the land having been actually reached. With the armistice the plans of the Government have been so changed that the Government can not properly now proceed with the purchase of the land in question, and there is nothing between the Government and the persons who have vacated their land but a vague, implied agreement to compensate them. An instance of this is the situation at Racine, Wis., where the Government proposed to erect a TNT plant. Expedition was necessary. A large tract of land had to be obtained and a large number of people were induced to move out of their houses—sometimes selling out their stock or household goods—without any formal agreement for compensation or the purchase of the land having been executed. With the armistice it immediately became inadvisable for the Government to proceed with this plant and, in the view of the comptroller, it is impracticable to make fair adjustment with the people, who have acted in reliance upon the Government's request, without remedial legislation from Congress.

#### NECESSITY FOR LEGISLATION.

Under all the foregoing classes of cases the contractors have, at the request of the United States and in response to the needs of the war emergency, made expenditures and incurred obligations in preparing, or actually entering upon, the task of supplying the war needs of the country. They have a part, and in many cases an essential part, of their working capital tied up in the expenditures they have made in preparing to begin work, in the creation of facilities, in actual materials purchased, wages paid to labor employed, or in work in process. In order that this working capital may be returned to them so that they may as speedily as possible go into commercial work, it is essential that there be a prompt adjustment under these informal or implied agreements. In this matter time is of the essence. To effect such adjustment under the foregoing classes of cases it is necessary, under the decisions of the comptroller, to secure the remedial legislation now proposed. Contractors who have had formal written contracts should not be penalized for the reason that it now develops that the Chief of the Procurement Division of Ordnance could not deputize his principal assistants to sign a contract. Nor should the patriotism be penalized of those who in the exigencies of the war have gone ahead to produce instead of waiting to bargain. It is true that such persons have nothing to rely on except the good faith of the United States, but surely there should be no more solid ground for reliance than that good faith.

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##### MACHINERY FOR THE ADJUSTMENT OF AGREEMENTS WHERE NO FORMAL CONTRACT HAS BEEN ENTERED INTO.

The problem presented to the War Department of the adjustment of agreements informally made is of the same character as that presented where formal valid contracts have been entered into. In each case the first question to be determined is what, if any, part of the work is to be completed, and what amount is to be paid for the article so delivered. Second, what expenditures have been made under the agreement, formal or informal, in the preparation for or in the actual performance of the contract and for which the contractor is not reimbursed in payment for articles actually delivered. In neither event is the Government concerned with estimating prospective profits. The machinery of the department for ascertaining these facts would be substantially the same where no contract had been formally executed as where it had. In the plants in which the services were performed, or where preparations were made for their performance, irrespective of whether a formal contract had or had not been made, the department had its inspectors and ordinarily a commissioned officer on duty who is familiar with just what has been done by the contractor at the instance of the Government and what expenditures have been made.

The question of adjustment will ordinarily be taken up by the contractor in the first instance with a local board headed in the case of Ordnance by the Ordnance district chief, and in the case of substantially all other supplies by the zone purchase officer. These local boards which are already operating as to adjustments under properly executed contracts are composed of men who have been engaged in supervising the actual production prepared for or carried on. They number among their members, where the nature of the contract makes it advisable, technical production men and cost accountants. They have at their right hand the knowledge and the records of the Government inspectors at the plants and commissioned officers who have had direct supervision over the work. The action of the local boards is forwarded to Washington where it is reviewed by boards of officers in the respective bureaus especially selected for this purpose. The action of these boards is supervised and, where the importance or the difficulties of the questions involved, or other circumstances make it seem prudent and desirable, reviewed by the Board of Contract Adjustment, acting as immediate advisers to the Secretary of War. This machinery is equally adapted to a situation where the contract has been validly executed or where there is some defect in its execution. Cases where there has been informality in the negotiations and indefiniteness in the terms will receive the especial attention of the reviewing authorities.

##### LISTS OF AGREEMENTS WHERE NO FORMAL CONTRACT HAS BEEN PROPERLY EXECUTED.

As progress is made in working out proper adjustments for informal agreements lists of such agreements will be compiled. The compilation of a complete and accurate list will be a matter of weeks if not of a longer period. Lists of such agreements as they are taken up for adjustment might from time to time be forwarded to Congress for its information if it were desirable.

