

SECTION VIII
MANDATORY AND OPTIONAL CONTRACT PROVISIONS

PART I—VARIOUS CONTRACT CLAUSES
(Paragraphs 322 through 369, inclusive)

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(1) Review of all existing contracts and initiation of such modifications or changes as are considered to be required to comply with the principles expressed in the President's directives.

(2) Review of proposed contracts and of proposed supplements to existing contracts, if such supplements extend the time, alter the contract price, or make any other substantial change in the contract terms, to assure that such contracts and supplements are consistent with the principles expressed in the President's directives.

[[394.3] Representatives of War Department Power Procurement Officer.—The Repairs and Utilities Divisions of the Army, ZI, Engineer Offices are designated as representatives of the War Department Power Procurement Officer. These representatives will carry out, under his direction, such field activities as may be necessary in connection with contracts and supplements to contracts for electrical service to all establishments within the geographical boundaries of the Armies, ZI, where the War Department has an interest in the cost of electric service. Commanding Officers at all such establishments will cooperate with these representatives by making available such information as is required for their review of existing and proposed contracts and supplements.

[[394.4] Liaison with War Department Power Procurement Officer.—The Commanding General, Army Air Forces, and the chiefs of the technical services are directed to designate an officer or civilian representative to maintain liaison with the War Department Power Procurement Officer on matters pertaining to contracts for electric service. The latter should be notified of such appointment and of the address and telephone number of the person designated.

[[394.5] Required provision in contracts and supplements.—All contracts and supplements of the character referred to in paragraph 394.2 will contain a provision that the contract or supplement is subject to the approval of the War Department Power Procurement Officer or Deputy War Department Power Procurement Officer and will not be binding until so approved. Such contracts and supplements which are Army Air Forces utility contracts (see par. 397.1) will be forwarded as provided in paragraph 397.1, to the War Department Power Procurement Officer for approval. Such

contracts and supplements which are not Army Air Forces utility contracts (see par. 397.1) will be forwarded through the Repairs and Utilities Division of the Army, ZI, to the War Department Power Procurement Officer, Office of the Chief of Engineers, for approval.

[[395] Contracts for services of architects, engineers and other technical and professional personnel.

[[395.1] Statutory authority.—Section 8, Military Appropriation Act, 1947 (Public Law 515, 79th Congress) provides:

"Whenever, during the fiscal year ending June 30, 1947, the Secretary of War should deem it to be advantageous to the national defense, and if in his opinion the existing facilities of the War Department are inadequate, he is hereby authorized to employ, by contract or otherwise, without reference to section 3709, Revised Statutes, civil-service or classification laws, or section 5 of the Act of April 6, 1914 (38 Stat. 335), and at such rates of compensation (not to exceed \$40 per day and travel expenses, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized in travel orders or letters of appointment for individuals) as he may determine, the services of architects, engineers, or firms or corporations thereof, and other technical and professional personnel as may be necessary."

[[395.2] Application of statutes.—Except as may be provided in other applicable statutes (see, e.g., Section 12, Public Law 580, 77th Congress), the statutes above-quoted affect (a) each War Department contract for architectural, engineering, technical or professional services (1) made with any individual; or (2) made with a firm or corporation which is engaged primarily in the business of furnishing such services, and (b) each War Department contract for the employment of the services of accountants or other experts to assist in inaugurating new or changing old methods of transacting business of the Department. Except as above stated, they do not apply to any contracts with firms or corporations for services related to the development, invention, design, procurement, production, repair, or maintenance of war supplies, materiel or facilities or for research or services concerning any such supplies, materiel or facilities, or to any other type of War Department contract.

[§ 395.3] Approval required.—Notwithstanding anything contained in Section II of this Procurement Regulation No. 3, each contract of the type described in the first sentence of paragraph 395.2 above, regardless of amount, and each award of any such contract, and each supplemental agreement or change order making a material change in such a contract, will contain a provision stating that it is subject to the approval of the Secretary of War or Under Secretary of War and will not be binding until so approved; and such contract, supplemental agreement or change order will be forwarded by the chief of the technical service involved for approval by the Secretary of War or Under Secretary of War through the Chief, Current Procurement Branch. The chief of the technical service, in recommending approval, will refer specifically to the applicable statute above quoted and will furnish a full statement of facts supporting the findings and determination required by that statute to be made by the Secretary of War (Under Secretary of War).

[§ 395.4] Citation of statutory authorities.—Each such contract, supplemental agreement and change order will cite as authority the applicable statute above quoted, the First War Powers Act, 1941, Executive Order 9001, and Public Law 703, 76th Congress, as extended by Public Law 580, 77th Congress.

[§ 395.5] Limitation on compensation.—Where such contract is with an individual, it will expressly limit the compensation payable to him to not more than forty dollars per day, plus additional compensation for overtime pursuant to the provisions of the Federal Employees Pay Act of 1945 (Public Law 106, 79th Congress, approved 30 June 1945) as amended by the Federal Employees Pay Act of 1946 (Public Law 390, 79th Congress, approved 24 May 1946).

[§ 396] Management consultant contracts.—(1) Contracts for "management consultant" services, or awards thereof, and supplemental agreements or change orders thereto which involve a substantial change in the nature of the services or substantial increase in the amount of the services to be performed, must be approved as provided in paragraph 395.3. "Management consultant" services are defined as including assistance in inaugurating new or changing old methods of transacting business of the War Department, or in investigating, devising or developing procedures, methods, systems, forms or the like for accomplishing the

business of the War Department. Assistance in developing systems of item identification, nomenclature or interchangeability of war materiel is an example of "management consultant" services within the meaning of this paragraph 396. The character of the work to be performed determines whether the services involved are "management consultant" services within the meaning of this paragraph 396; the question whether the proposed contractor is engaged primarily in the business of furnishing such services, and the dollar amount of the project, are irrelevant to the determination.

(2) It is the policy of the War Department that to the extent possible, firms shall not be employed to perform "management consultant" services on continuous operating activities, on projects which should be carried on by the War Department with its own personnel, or in lieu of the direct employment of individuals by the War Department or the employment of individuals as consultants. Where it is necessary to employ corporations or firms to perform "management consultant" services, the agreements should be made on a temporary basis and provision should be made for recruiting and training War Department personnel to take over the performance of such services as soon as practicable.

(3) Requests for approval of awards under this paragraph 396 will include the information indicated below or such parts thereof as are relevant to the particular transaction:

(a) Name and address of proposed contractor; its qualifications to perform the services; prior experience, if any;

(b) Necessity for and full description of the work to be performed;

(c) Types of personnel to be employed (for example, clerical, supervisory, engineers, draftsmen) and number of each type;

(d) Period of time required to complete the contract;

(e) Explanation of why the work cannot be accomplished by War Department personnel or by the employment of individual consultants, and steps taken to recruit such personnel;

(f) Price and justification;

(g) Reference to form of contract to be used, noting and justifying any provisions requiring approval of higher authority, or referring to any such approval previously obtained (see, for example, paragraphs 306.2 and 306.4).