

TITLE XLIII.

PUBLIC CONTRACTS.

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Advertisements for proposals.

2 March, 1861, c. 84, s. 10, v. 12, p. 220.

U. S. vs. Speed, 8 Wall., 77; *Childs vs. U. S.*, 4 Ct. Clms., 176; *Mason vs. U. S.*, 4 Ct. Clms., 495; *Wentworth vs. U. S.*, 5 Ct. Clms., 302.

Opening bids.

31 Jan., 1868, Res. 8, v. 15, p. 246.

Inspection of fuel in District of Columbia.

11 July, 1870, c. 243, s. 1, v. 16, p. 229.

Appointment of inspectors, &c.

SEC. 3709. All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.

SEC. 3710. Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

SEC. 3711. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made. The person so appointed shall, before entering upon the duty of inspector, weigher, and measurer, and to the satisfaction of the appointing officer, give bond, with not less than two sureties, in the penal sum of five thousand dollars, and with condition that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be

so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. The inspector, weigher, and measurer so appointed shall be entitled to receive from the vendors of fuel weighed and measured by him twenty cents for each ton of coal weighed, and nine cents for each cord of wood measured by him. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.

SEC. 3712. The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section.

SEC. 3713. It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood, unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer.

SEC. 3714. All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively. [See §§ 512-515.]

85, s. 3, v. 1, p. 610.—U. S. *vs.* Adams, 7 Wall., 463; Parish *vs.*

SEC. 3715. Contracts for subsistence supplies for the Army, made by the Commissary-General, on public notice, shall provide for a complete delivery of such articles, on inspection, at such places as shall be stipulated.

16 July, 1798, c. U. S., 8 Wall., 489.

SEC. 3716. The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon.

SEC. 3717. Whenever the Secretary of War invites proposals for any works, or for any material or labor for any works, there shall be separate proposals and separate contracts for each work, and also for each class of material or labor for each work.

SEC. 3718. All provisions, clothing, hemp, and other materials of every name and nature, for the use of the Navy, and the transportation thereof, when time will permit, shall be furnished by contract, by the lowest bidder, as follows: In the case of provisions, clothing, hemp, and other materials, the Secretary of the Navy shall advertise, once a week, for at least four weeks, in one or more of the principal papers published in the place where such articles are to be furnished, for sealed proposals for furnishing the same, or the whole of any particular class thereof, specifying the classes of materials and referring bidders to the several chiefs of Bureaus, who will furnish them with printed schedules, giving a full description of each and every article, with dates of delivery, and so forth. In the case of transportation of such articles, he shall advertise for a period of not less than five days. All such proposals shall be kept sealed until the day specified in such advertisement

Appointments to be notified to accounting officer.

Ibid, s. 2.

No payment without certificate.

Ibid.

Contracts for the military or naval service, how controlled.

16 July, 1798, c. U. S., 8 Wall., 489.

Contracts for Army subsistence.

14 April, 1818, c. 61, s. 7, v. 3, p. 427.

3 March, 1835, c. 49, s. 1, v. 4, p. 780. 2 March, 1861, c. 84, s. 10, v. 12, p. 220.

Advertisements for supplies for Quartermaster's Department.

13 July, 1866, c. 176, s. 4, v. 14, p. 92.

Separate proposals required for works, &c.

23 June, 1866, c. 138, s. 3, v. 14, p. 73.

Naval supplies to be furnished by contract.

3 March, 1843, c. 83, v. 5, p. 617.

28 Sept., 1850, c. 80, s. 1, v. 9, p. 513.

5 Aug., 1854, c. 268, s. 1, v. 10, p. 585.

17 April, 1866, c. 45, s. 4, v. 14, p. 38.

for opening the same, when they shall be opened by or under the direction of the officer making such advertisement, in the presence of at least two persons. The person offering to furnish any class of such articles, and giving satisfactory security for the performance thereof, under a forfeiture not exceeding twice the contract price in case of failure, shall receive a contract for furnishing the same.

Guarantee of bid.

10 Aug., 1846, c.
176, s. 6, v. 9, p. 101.

SEC. 3719. Every proposal for naval supplies invited by the Secretary of the Navy, under the preceding section, shall be accompanied by a written guarantee, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of the Navy, give bond, with good and sufficient sureties, to furnish the supplies proposed; and no proposal shall be considered, unless accompanied by such guarantee. If, after the acceptance of a proposal, and a notification thereof to the bidder, he fails to give such bond within the time prescribed by the Secretary of the Navy, the Secretary shall proceed to contract with some other person for furnishing the supplies; and shall forthwith cause the difference between the amount contained in the proposal so guaranteed and the amount for which he may have contracted for furnishing the supplies, for the whole period of the proposal, to be charged up against the bidder and his guarantor; and the same may be immediately recovered by the United States, for the use of the Navy Department, in an action of debt against either or all of such persons.

Record of bid and report to Congress.

3 March, 1843, c.
83, v. 5, p. 617.

SEC. 3720. All such proposals for naval supplies shall be preserved and recorded, and reported by the Secretary of the Navy to Congress at the commencement of every regular session. The report shall contain a schedule embracing the offers by classes, indicating such as have been accepted. In case of a failure to supply the articles or to perform the work by the person entering into such contract, he and his sureties shall be liable for the forfeiture specified in such contract, as liquidated damages, to be sued for in the name of the United States.

Purchases without advertisements.

3 March, 1845, c.
77, s. 3, v. 5, p. 794.
3 March, 1847, c.
48, s. 2, v. 9, p. 172.
3 Aug., 1848, c.
121, s. 11, v. 9, p.
272.
2 March, 1865, c.
74, s. 7, v. 13, p. 467.

SEC. 3721. The provisions which require that supplies shall be purchased by the Secretary of the Navy from the lowest bidder, after advertisement, shall not apply to ordnance, gunpowder, or medicines, or the supplies which it may be necessary to purchase out of the United States for vessels on foreign stations, or bunting delivered for the use of the Navy, or tobacco, or butter or cheese destined for the use of the Navy, or things contraband of war. Contracts for butter and cheese for the use of the Navy may be made for periods longer than one year, if, in the opinion of the Secretary of the Navy, economy and the quality of the ration will be promoted thereby. The Secretary of the Navy may enter into contracts for tobacco, from time to time, as the service requires, for a period not exceeding four years; and in making such contracts he shall not be restricted to the lowest bidder, unless, in his opinion, economy and the best interests of the service will be thereby promoted.

What bids may be rejected.

3 March, 1863,
Res. 32, s. 2, v. 12,
p. 823.

SEC. 3722. The chief of any Bureau of the Navy Department, in contracting for naval supplies, shall be at liberty to reject the offer of any person who, as principal or surety, has been a defaulter in any previous contract with the Navy Department. Parties who have made default as principals or sureties in any former contract shall not be received as sureties on other contracts; nor shall the copartners of any firm be received as sureties for such firm or for each other; nor, in contracts with the same Bureau, shall one contractor be received as surety for another. Every contract shall require the delivery of a specified quantity, and no bids having nominal or fictitious prices shall be considered. If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected; and no person shall be received as a contractor who is not a manufacturer of, or regular dealer in, the articles which he offers to supply. All persons

Opening bids.

offering bids shall have the right to be present when the bids are opened and inspect the same.

SEC. 3723. No chief of a Bureau shall make any contract for supplies for the Navy, to be executed in a foreign country, except it be on first advertising for at least thirty days in two daily newspapers of the city of New York, inviting sealed bids for furnishing the supplies desired; which bids shall be opened in the presence of the Secretary of the Navy and the heads of two Bureaus; and contracts shall in all cases be awarded to the lowest bidder; and paymasters for the Navy on foreign stations shall render, when practicable, with their accounts, an official certificate from the resident consul, or commercial or consular agent of the United States, if there be one, to be furnished gratuitously, vouching that all purchases and expenditures made by the paymasters were made at the ruling market-prices of the place at the time of purchase or expenditure.

SEC. 3724. Where articles are advertised and bid for in classes, and in the judgment of the Secretary of the Navy any one or more articles appear to be bid for at excessive or unreasonable prices, exceeding ten per centum above their fair market-value, he shall be authorized to reject such bid.

SEC. 3725. All hemp, or preparations of hemp, used for naval purposes by the Government of the United States, shall be of American growth or manufacture, when the same can be obtained of as good quality and at as low a price as foreign hemp.

SEC. 3726. The Secretary of the Navy is authorized to procure the preserved meats, pickles, butter, and desiccated vegetables, in such manner and under such restrictions and guarantees as in his opinion will best insure the good quality of said articles.

SEC. 3727. The Secretary of the Navy is authorized to purchase, in such manner as he shall deem most advantageous to the Government, the flour required for naval use; and to have the bread for the Navy baked from this flour by special contract under naval inspection.

SEC. 3728. The Secretary of the Navy, in making contracts and purchases of articles for naval purposes, shall give the preference, all other things, including price and quality, being equal, to articles of the growth, production, and manufacture of the United States. In purchasing fuel for the Navy, or for naval stations and yards, the Secretary of the Navy shall have power to discriminate and purchase, in such manner as he may deem proper, that kind of fuel which is best adapted to the purpose for which it is to be used.

SEC. 3729. The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury may enter into contract, in open market, for bunting of American manufacture, as their respective services require, for a period not exceeding one year, and at a price not exceeding that at which an article of equal quality can be imported.

SEC. 3730. The Secretary of the Navy may relinquish and pay all reservations of the ten per centum upon deliveries made under contracts with the Navy Department, where these reservations have arisen and the contracts have been afterward extended, or where the contracts have been completed after the time of delivery, by and with the consent of the Department, or where the contracts have been dissolved by the like consent, or have been terminated, or an extension thereof has been prevented by operation of law, where no injury has been sustained by the public service.

SEC. 3731. Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received, unless so marked and distinguished.

Contracts for foreign supplies for the Navy.

3 March, 1871, c. 117, s. 3, v. 16, p. 535.

Rejection of excessive bids.

4 July, 1864, c. 252, s. 7, v. 13, p. 394.

Hemp.

14 July, 1862, c. 163, s. 11, v. 12, p. 554.

Preserved meats, &c.

18 July, 1861, c. 7, s. 7, v. 12, p. 265.

Flour and bread.

3 March, 1863, c. 118, s. 4, v. 12, p. 818.

Home manufactures to be preferred.

28 Sept., 1850, c. 80, s. 1, v. 9, pp. 513, 515.

Bunting.

2 March, 1865, c. 74, s. 7, v. 13, p. 467.

Relinquishment of reservations on deliveries.

17 June, 1844, c. 107, s. 5, v. 5, p. 703.

Name of contractor to appear on supplies.

17 July, 1862, c. 200, s. 15, v. 12, p. 596.

If n authorized contracts prohibit-
ed. SEC. 3732. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

2 March, 1861, c. 84, s. 10, v. 12, p. 220.
The Floyd Acceptances, 7 Wall., 666.

No contract to exceed appropriation. SEC. 3733. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose. [See § 5503.]

25 July, 1868, c. 233, s. 3, v. 15, p. 177.
Restrictions on commencement of new buildings. SEC. 3734. Before any new buildings for the use of the United States are commenced, the plans and full estimates therefor shall be prepared and approved by the Secretary of the Treasury, the Postmaster-General, and the Secretary of the Interior; and the cost of each building shall not exceed the amount of such estimate. [See § 3663.]

15 July, 1870, c. 292, v. 16, p. 296.
Contracts limited to one year. SEC. 3735. It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

31 Jan., 1868, Res. No. 8, v. 15, p. 246.
Restriction on purchases of land. SEC. 3736. No land shall be purchased on account of the United States, except under a law authorizing such purchase.

1 May, 1820, c. 52, s. 7, v. 3, p. 568.

Neilson vs. Lagow, 12 How., 98.

No transfer of contract. SEC. 3737. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

17 July, 1862, c. 200, s. 14, v. 12, p. 596.
Wheelan vs. U. S., 5 Ct. Clms., 504.
Eight hours to be a day's work. SEC. 3738. Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the Government of the United States. [See § 3689.]

28 June, 1868, c. 72, v. 15, p. 77.
Members of Congress not to be interested in contracts. SEC. 3739. No member of or Delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded, by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.

21 April, 1808, c. 48, s. 1, v. 2, p. 484.
What interest members of Congress may have. SEC. 3740. Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement, made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of Congress, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

Ibid., s. 2.

SEC. 3741. In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.

Stipulation that no member of Congress has an interest.

Ibid., s. 3.

SEC. 3742. Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement in writing or otherwise, other than such as are hereinbefore excepted, with any member of Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars.

Penalty against officer for making contract with a member of Congress.

Ibid., s. 4.

SEC. 3743. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited in the office of the First Comptroller of the Treasury of the United States, within ninety days after their respective dates.

Deposit of contracts.

16 July, 1798, c. 85, s. 6, v. 1, p. 610.

SEC. 3744. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return. [See §§ 512-515.]

Contracts to be in writing.

2 June, 1862, c. 93, s. 1, v. 12, p. 411.

Lindsley vs. U. S., 4 Ct. Clms., 359; Burchiel vs. U. S., 4 Ct. Clms., 549; Bernheimer vs. U. S., 5 Ct. Clms., 65.

SEC. 3745. It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided."

Oath to contract.

Ibid., s. 2.

SEC. 3746. Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months.

Penalty for omitting returns.

Ibid., s. 3.

SEC. 3747. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer, under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.

Instructions.

Ibid., s. 5.