International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 4; Issue 2; March 2018; Page No. 226-232

Government contracts: An American perspective

J Ravindran[1], JK Mittal[2]
[1] Ph.D. Scholar, Amity University, Noida, Uttar Pradesh, India
[2] Guide, Professor Emeritus, Amity University, Noida, Uttar Pradesh, India

Abstract
United States of America is considered to be a leader in the branch of government contracts. In the field of judicial review, it is the first country to have recognized the very concept of judicial review. It has gained heavily from its early independence and many countries of the world have modelled judicial review and government contracts upon the framework adopted by America. In many ways United States of America has been a major source of inspiration for the rest of the world. Any study in the field of judicial review and government contracts, which fails to take into consideration the American perspective will be a mere fallacy. This paper is aimed at understanding the concept of government contract in United States of America and the way it can be reviewed by the judiciary. The concept of government contract and judicial review is inextricably linked up and thus it is only fair to take up the study of both the subjects together. This paper is library based and is doctrinal in its approach. The paper is directed towards the following objectives:- (a) to understand the concept of judicial review in United States, (b) to expound the study of government contracts as prevailing in United States, and (c) to analyses the manner in which government contracts can be judicially review in United States. This paper draws heavily from the precedents as has been laid down by the Supreme Court of the United States. References has also been made to the Constitution of United States of America and Statutes, wherein so required. In the ultimate analysis the paper has been developed with the idea of giving a concrete picture as to how judiciary has reviewed the government contract in United States.

Keywords: judicial review, government contracts, federal acquisition regulation

1. Introduction
The American Constitution provides for a rigid separation of governmental powers into three basic divisions, the legislative [1], executive [2] and judicial [3]. It is an essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. It is beyond the pale of reasonable controversy that in America the judicial power of the State is located in the Judiciary. Judicial review is one of the distinctive features of the American Constitutional Law. In America equal protection of the laws is based on the concept of due process of law. The general rule is that the Legislature may not destroy, annul, set aside, vacate, reverse, modify, or impair the final judgment of a court of competent jurisdiction, so as to take away private rights which have become vested by the judgment. A statute attempting to do so has been held unconstitutional as an attempt on the part of the Legislature to exercise judicial power, and as a violation of the constitutional guarantee of due process of law. The Legislature is not only prohibited from reopening cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment. That the statute is under the guise of an act affecting remedies does not alter the rule. It is worthy of notice, however, that there are cases in which judgments requiring acts to be done in the future may validly be affected by subsequent legislation making illegal that which the judgment found to be legal, or making legal that which the judgment found to be illegal [4].

The Supreme Court of United States of America in *U. S. v. Brown* [5], stated the main reason as to why the power to pass Bill of Attainder was taken away from the Congress. It was held that everyone must concede that a legislative body, from its numbers and organization, and from the very intimate dependence of its members upon the people, which renders them liable to be peculiarly susceptible to popular clamor, is not properly constituted to try with coolness, caution, and impartiality a criminal charge, especially in those cases in which the popular feeling is strongly excited - the very class of cases most likely to be prosecuted by this mode. It won't be wrong to say that the Supreme Court was able to establish the supremacy of law in *Brown* and thereby the sanctity of judicial review.

The American Supreme court, in the context of the special American conditions and needs, after leaning towards a recognition of State Sovereignty in *Ware v. Hylton* [6], and *Dred Scott v. Sandford* [7], and at others towards a recognition of the dual system of Government which has prevailed in America in *Gibbu*s v. Ogden [8], has, on the whole opted, for the "Sovereignty of the People" which unifies the nation. A. V. Dicey, the celebrated profounder of the doctrine of the sovereignty of Parliament, had discussed about the supremacy of constitution in United States. He has opined that the court derives its existence from the Constitution and stands therefore on an equal footing with the President and with Congress [9].

2. Judicial Review

The power of judicial review over discretion is now crystalized in United States of America in the 'arbitrary', 'capricious' and 'abuse of discretion' clause of the Federal Administrative Procedure Act. They confirm the judicial authority to intervene where discretion has been abused. Abuse of discretion is supposed to occur when the power has been exercised in an arbitrary or capricious manner. The test applied in all such cases is the test of reasonableness. Accordingly it amounts to an abuse of discretion where this exercise is based upon considerations which should not have entered into the decision. Moreover, a discretionary decision based upon extraneous considerations is invalid as it is bound to be unreasonable and is, therefore, liable to be interfered with by the courts in exercise of their overall power of judicial review. The principle of 'reasonableness', referred to above, is of an ancient origin and is so firmly imbedded as a doctrine of administrative jurisprudence that it still holds the field in regard to matters which fall within the discretionary powers of the authorities concerned.

The judicial review of a statute was first enunciated by Chief Justice John Marshall of the U.S. Supreme Court in *Marbury v. Madison* [10]. It is in fact the first of the decision laying down the principle that the Constitutional Courts have power to declare a Statute unconstitutional. The principle laid down in *Marbury* has been followed thereafter in most of the countries. It is well settled since *Marbury* that the Constitution is the fundamental law of the land and must prevail over the ordinary statute in case of conflict, on the other hand the Court must not seek an unnecessary confrontation with the legislature, particularly since the legislature consists of representatives democratically elected by the people. Chief Justice Marshall's historic judgment delivered in 1803, made meaningful the exercise of constitutionally entrenched judicial power in American Courts when writ of mandamus was issued by him, obviously exercising the jurisdiction contemplated under the Judiciary Act of 1789. He made history for eternity when he declared thus - *'it is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each. This is of the very essence of judicial duty'.* The wisdom of *Marbury* is that it is the Court's role in deciding issues of alleged governmental infringement of individual rights protected by the Constitution and that they are required to act forcefully in such situations, by creating a presumption against the validity of a contested action. In *Marbury*, Chief Justice Marshall had, in unmistakable terms, echoed the words of President John Adams that the Government of United States is a government of laws and not of men. It rings true of any other democratic republic, if not the United States.

The capacity of the United States government to enter into contact was first recognized in *United States v. Tingey* [11]. It was held that the United States government has in its political capacity a right to enter into a contract or to take a bond in cases not previously provided by law. It is an incident to the general right of sovereignty, and the United States, being a body politic, may, within the sphere of the constitutional powers confided to it and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law and appropriate to the just exercise of those powers.

3. Government Contracts

The edifice of government contract in United States is largely statutory in character. The most notable statutes which recognizes government contracst as a form of contract are Armed Forces Procurement Act of 1947, Federal Property and Administrative Services Act of 1949, the Work Hours Act of 1962, the Miller Act, Tucker Act, Wunderlich Act, the False Claims Act, the Small Business Act and the Disputes Act. The federal government's basic procurement or acquisition process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing these items, and carrying out the acquisition. Although this process is simple in theory, any given procurement can be complex, involving a multitude of decisions and actions. A Contracting Officer may need to determine, for example, whether to use a federal supply schedule or what type of contract to use, whether simplified acquisition procedures may be used, or whether the procurement should be set aside for small businesses. The primary source of federal procurement information and guidance is the Federal Acquisition Regulation, which consists of Parts 1-53 of Title 48 of the Code of Federal Regulations (CFR) [12].

With a few exceptions, a firm that wants to compete for federal government contracts must meet at least two requirements: (1) obtain a Data Universal Numbering System (DUNS) number, which is a unique nine-digit identification number for each physical location of a business, and (2) register with the government's System for Award Management (SAM). Essentially, the federal acquisition process begins when an agency determines its requirements and how to purchase them. If the agency's Contracting Officer determines that the appropriate method for procuring the goods or services is a contract, and the contract amount is greater than $25,000, then the agency posts a solicitation on the Federal Business Opportunities, that is, FedBizOpps. At a minimum, a solicitation identifies what an agency wants to buy, provides instructions to would-be offerors, identifies the source selection method that will be used to evaluate offers, and includes a deadline for the submission of bids or proposals. Agencies also may post solicitations on their own websites and, in exceptional circumstances, may post solicitations on their websites instead of on FedBizOpps. Following the deadline for companies to submit their offers, agency personnel evaluate offerors' submissions, using the source selection method and criteria described in the solicitation. Unless multiple suppliers or firms are needed, such as for a supply schedule, the agency awards a contract to one firm [13].

Government resources in regard to government contracts could be classified as follows:- (a) The General Services Administration is perhaps best known, in terms of contracting opportunities and resources, as the agency that maintains numerous supply schedules. A schedule is a list of goods and/or services provided by GSA-selected multiple vendors at varying prices. Hence, these schedules are known as multiple

award schedules (MAS). The process for getting a schedule is similar to that for obtaining a government contract: GSA issues a solicitation for particular goods or services, companies submit offers in response, and then GSA evaluates the offers and awards contracts to multiple vendors for the same goods or services. Schedule solicitations are posted on FedBizOpps, and GSA also posts them on its website [14]. (b) The Minority Business Development Agency, which is part of the Department of Commerce has been created specifically to foster the establishment and growth of minority-owned businesses in America. The agency's network of business development centers provides a variety of management and technical assistance services, and its Phoenix/Opportunity Matching System, a free online system, is designed to match entrepreneurs with federal government and private sector contracting opportunities [15]. (c) Although the Procurement Technical Assistance Program is administered by the Defense Logistics Agency (DLA), it is available to assist companies that market products and services to all federal agencies, and state and local governments. Services are provided through 94 Procurement Technical Assistance Centers (PTACs), which have over 300 local offices. The centers provide assistance through classes, seminars, and individual counseling sessions. (d) The Small Business Administration offers a variety of services and assistance to current and would-be government contractors. The SBA also offers training and counseling services through its Office of Entrepreneurial Development [16]. (e) Other resources that firms may find useful in identifying procurement opportunities, navigating the government's procurement process, and marketing their goods or services include professional, trade, and industry organizations, publications, and events; local chambers of commerce; and consultants. Books are available providing for information about the federal procurement process. Magazines such as 'Government Executive' and 'Homeland Defense Journal' include articles with information about government procurements and industry workshops or conferences. Industry and trade organizations, such as the Professional Services Council, are another source of useful information [17].

4. Judicial review & government contracts

Judiciary in United States has not merely tested the validity of government contracts on the touchstone of doctrine of reasonableness, but also has developed new concepts such as the Christian Doctrine. The Christian Doctrine derives its name from the Court of Claims' decision in *G.L. Christian and Associates vs. United States* [18]. In that case, a construction contractor sought to recover damages, including lost profits, for the Government's alleged breach of contract that resulted from the Government's unilateral termination of a contract that contained no express termination for convenience clause. A principle of government contract law known as the *Christian* doctrine states that certain clauses are of such importance in public procurements so as to be considered incorporated by operation of law. The government has a responsibility to notice vendors of contract requirements, whether expressly or through incorporation by reference. However, since *Christian* [19], a mandatory contract clause that conveys a deeply ingrained strand of public procurement policy is considered to be included even if it is not actually in the agreement. It has also been applied to incorporate less fundamental or significant mandatory clauses if they were not written to benefit or protect the party seeking the incorporation as has been clarified in *Chris Berg, Inc. v. United States* [20]*, and General Engineering & Mach. Works v. O'Keefe* [21].

In *Public Utilities Comm. of State of California v. United States*, [22] it was held that the federal procurement policy, which required competitive bidding as the general rule and negotiated purchase or contract as the exception, prevailed over California's regulated rate system. That case, like *United States v. Georgia Public Service Comm,* [23] concerned transportation of commodities. But the federal policy at the times relevant here was the same for procurement of supplies and services. The statutes in effect at the time of the Public Utilities Commission of State of California case are still the basic provisions governing all procurement by the Armed Services out of appropriated funds. They require that contracts be placed by competitive bidding, the award to be granted to the responsible bidder whose bidding will be the most advantageous to the United States, price and other factors considered. There are exceptions, the most relevant being purchases of and contracts for property or services is made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. If use of such method is not feasible and practicable, the head of an agency, subject to the requirements for determinations and findings, may negotiate such a purchase or contract, if (i) the purchase or contract is for property for authorized resale; (ii) the purchase or contract is for perishable or nonperishable subsistence supplies; (iii) the purchase or contract is for property or services for which it is impracticable to obtain competition; and (iv) the purchase or contract is for property or services for which he determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency and the negotiated price is the lowest negotiated price offered by any responsible supplier.

In *James v. Dravo Contracting Co*, [24] the Supreme Court considered the issue as to the constitutional validity of a tax imposed by the state upon the gross receipts under contracts with the United States. In addressing that issue, the Court concluded that the fact that the gross receipts tax may increase the cost to the government would not invalidate the tax where its legal incidence falls elsewhere. The abstraction 'legal incidence' has never been explicitly formulated by the Supreme Court. In confronting this issue on a case-by-case basis, however, the Court in *United States v. County of Fresno* [25], has upheld state taxes which were levied against those doing business with the United States where the tax: (1) was nondiscriminatory; (2) did not substantially interfere with the performance of federal functions; (3) was not required to be passed on to and was not otherwise directly imposed on the United States or its duly appointed agents; (4) was not precluded by Congress; and (5) was an otherwise valid

exaction.

The plaintiff alleged the bidding procedure followed by the Government was a mere sham to conceal an intention to let the contract to a favored bidder in *Heyer Products Co. v. United States* [26].

There the plaintiff's bid was the low bid but was rejected and the contract was awarded to the seventh lowest bidder. The court held in *Heyer* that the invitation for bids and the bid created an implied-in-fact contract that all bids would be honestly considered by the Government and not wantonly disregarded. Further, if the plaintiff could prove that the Government had breached that obligation, it was entitled to recover its bid preparation costs, but not its anticipated profits. In *Keco Industries, Inc. v. United States* [27], the court extended the *Heyer* rule to situations where the Government's conduct was something less than 'wanton disregard' in making the award to another contractor. It was held that *Heyer* stated a broad general rule which is that every bidder has the right to have his bid honestly considered by the government, and if this obligation is breached, then the injured party has the right to come into court to try and prove his cause of action.

The plaintiff was seeking a declaratory judgment against the Federal Aviation Administration (FAA) on the ground that it had violated the Federal Procurement Regulations promulgated under the Administrative Procedures Act in *Scanwell Laboratories, Inc. v. Shaffer* [28]. It was held for the first time, that plaintiff had standing to sue the FAA for violating the procurement regulations. That United States cannot be held liable under the Tucker Act for commercial injuries resulting from a failure or wrong in the course of the normal regulatory process was laid down in *Eastport Steamship Corp. v. United States* [29]. It was clarified in *Trone v. United States* [30] that *a fortiori* the same principle must apply when the federal officials have committed no such wrong in the regulatory process but have merely tried to redress failures or improper activity by business entities through compulsion on those persons to comply with the proper standards. In *Data Processing Service v. Camp,* [31] it was pointed out that little value is to be gained from generalizations about standing to sue in the federal courts. Beyond the constitutional requirement that there be an actual 'case' or 'controversy' the first inquiry is 'whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise.' If this standard is met, the court must then determine whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. It was further stated that the question of whether a plaintiff has a 'legal interest' conferred by a statute or regulation whose violation has caused him to seek judicial review of administrative action goes to the merits of the case and is not an issue in determining whether plaintiff has standing to sue. A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review

It was held in *Perkins v. Lukens Steel Company* [32], by the Supreme Court that bidders for government contracts have no standing in a federal court to obtain a declaratory judgment and injunction restraining officials and agents of an executive department with respect to public contracts. The Court found that no legal rights of the plaintiffs in that case had been invaded or threatened and that neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such.

The Court further held that such bidders do not have standing to vindicate any general interest which the public may have in the construction of the Act by the Secretary and which must be left to the political process. The Court pointed out that the Public Contracts Act, under which the plaintiffs sought to proceed embodies the traditional principle of leaving purchases necessary to the operation of our Government to administration by the executive branch of Government, with adequate range of discretion free from vexatious and dilatory restraints at the suits of prospective or potential sellers. It was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government - but not private litigants can complain. At the conclusion of the opinion, Mr. Justice Black, disclaiming that the standing issue rested upon a technicality, wrote *'We rest it upon reasons deeply rooted in the constitutional divisions of authority in our system of Government and the impropriety of judicial interpretations of law at the instance of those who show no more than a mere possible injury to the public* [33]*.'*

The circuit court of appeals for the district of Columbia held in *United States v. American Renaissance Lines,* [34] that the government contracts were required to be in writing before they could be enforced. The main question in *Paul* v. *United States* [35] was whether California could enforce her minimum wholesale price regulations as respect milk sold to the United States at three military installations located within California and used for strictly military consumption, for resale at federal commissaries and for consumption or resale at various military clubs and post exchanges. Justice William O. Douglas expressing the opinion of the majority held that in view of the conflicting federal procurement policy which demanded competition, the California policy, which effectively eliminated competition, must give way insofar as milk was purchased by the United States for strictly military consumption and for resale at federal commissaries. Justice William O. Douglas in *United States* v. *Georgia Public Service Commission* [36] ruled that the Federal Property and Administrative Services Act of 1949, as amended, manifested a federal procurement policy of negotiated rates for transporting household goods of federal employees, and that the Georgia policy, which was opposed to the federal policy, must give way. In *John R. Sand & Gravel Company* v. *United States,* [37] Justice Stephen Breyer writing for the majority held that the special statute of limitations governing United States Court of Federal Claims required the court to raise on its own timeliness of lawsuit filed in Court of Federal Claims, despite Federal Government's waiver of issue. *United States* v. *Carlo Bianchi* [38] involved interpretation and application of the Wunderlich Act, an Act designed to permit judicial review of decisions made by federal departments and agencies under standard disputes clauses in government contracts. The issue

was whether, in a suit governed by this statute, the court is restricted to a review of the administrative record on issues of fact submitted to administrative determination or is free to receive new evidence on such issues. Justice John M Harlan delivering the opinion of the majority held that the Act permits review of decisions of the heads of departments involving questions arising under government contracts and provides in substance that a departmental decision on a question of fact rendered pursuant to a 'disputes' clause shall be final and conclusive in accordance with the provisions of the contract unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In *Clearfield Trust Co.* v. *United States*, [39] which involved the law governing the right of the United States to recover the amount of a check drawn on the Treasurer of the United States and paid by him when presented, with a forged endorsement, Justice Douglas, for the majority ruled that the rights and duties of the United States on commercial paper which it issues are governed by federal rather than local law. Prime government contracts are to be interpreted according to the 'general law' without limitation by the law of any particular state. Where the interests of the United States appear to be extremely limited, the state law will apply. The present law governing the finality of Board's decision in federal contract disputes is derived from *United States* v. *Wunderlich.* [40] In that case, a contractor agreed to build a dam under a contract containing an article which provided that all disputes involving questions of fact were to be decided by the contracting officer, with the right of appeal to the head of the department 'whose decision shall be final and conclusive upon the parties thereto'. Despite this language, the contractor appealed to the Court of Claims from an adverse decision by the Secretary of the Interior. The court set aside the decision claiming that it was 'arbitrary' and 'capricious' The United States Supreme Court reversed, because only fraud would permit setting aside the Secretary's decision and fraud was neither alleged nor proved. The court noted that the contractor was not compelled or coerced into making the contract. It was a voluntary understanding on their part and in the absence of finding of fraud, the decision of the department head must stand as conclusive.

It is a longstanding rule that parties owing debts to the Federal Government must pay prejudgment interest where the underlying claim is a contractual obligation to pay money [41]. *In Board of Comm'rs of Jackson County v. United States*, [42] it was held that common law right extends to debts owed by state and local governments, but cautioned that a federal court considering the question in an individual case should weigh the federal and state interests involved. The requirement that private parties must pay prejudgment interest on contractual debts owed to the United States is a common law rule of long standing. Over a century ago, an equally well-established exception to that rule was established: the United States is not entitled to recover interest from a State unless the State's consent to pay such interest has been expressed in a statute or binding contract [43]. The reason for this exception is not any sovereign immunity attributable to a State, but the venerable presumption that a sovereign State is always ready, willing and able to discharge its obligations promptly.

The presumption that a sovereign State is 'always ready to pay what it owes' may well have been just as fictional as the presumption that the King could do no wrong, but it nevertheless was firmly embedded in the common law. Moreover, even today, the tradition of according special respect to a sovereign State whenever it is subjected to the coercive powers of judicial tribunals is very much alive [44]. The ancient common law presumption and a continuing recognition of the importance of ensuring that the State's dignitary interests can be fully vindicated, best explain why Congress deliberately omitted any provision for the collection of interest from a sovereign State when it enacted the Debt Collection Act in 1982.

Interest, when not stipulated for by contract, or authorized by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled; and, as has been settled on grounds of public convenience, is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers was the principle laid down *United States v. Sherman* [45]. It was held in *United States v. Sanborn* [46], that interest is not recovered according to a rigid theory of compensation for money withheld but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.

In *Barlow v. Collins* [47], the Court found that a group of plaintiffs clearly belonged within the zone of interests protected by a statute because they were 'persons aggrieved by agency action within the meaning of a relevant statute' quoting the language Section 10 of the Administrative Procedure Act (APA), 5 U.S.C. § 702. The Court cautioned that the determination of whether a particular agency action is reviewable involves the often difficult task of finding congressional intent, and that an intent to preclude judicial review may be either found in express language or inferred, but should not be lightly inferred.

In *Sierra Club v. Morton*, [48] and *United States v. SCRAP*, [49] the Supreme Court dealt with cases where plaintiffs claimed noneconomic injury as the result of agency action. In *Sierra Club*, the Court recognized that noneconomic injuries to interests that are widely shared may be alleged in support of standing but pointed out that this broadening of the categories of injuries is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury. The Court discussed the difference between situations where a plaintiff relies on a specific statute authorizing judicial review and those where no such statute exists. Dealing with this situation the Court stated that where, however, Congress has authorized public officials to perform certain functions according to law and has provided by statute for judicial review of those actions under certain circumstances, the inquiry as to standing must begin with the determination of whether the statute in question authorizes review at the behest of the plaintiff. The Court found that the *Sierra Club* lacked standing because it had not alleged that it suffered injury itself from the agency actions which it questioned. On the other hand, in *United States v. SCRAP*, the plaintiff, which was also a public interest group, was found to have brought itself within the requirement of 5 U.S.C. § 702

that it be 'adversely affected' or 'aggrieved' by agency action. In *Merriam v. Kunzig*, [50] the plaintiff was a landlord who already had government tenants and was about to lose them because of an allegedly illegal award of a new lease to his competitor. The court held that he had suffered sufficient injury in fact to permit him to seek to vindicate the rights of the public as well as his own and that his interest was within the zone of interests of the procurement statute under which he made his bid. Since the district court had dismissed the complaint for lack of standing, the court of appeals did not reach the issue of the harmful effect of injunctive interference with executive decisions.

In *Wilke v. United States*, [51] the court of appeals affirmed the granting of a declaratory judgment. In approving the denial of an injunction to the disappointed bidder it noted that the plaintiff could seek recovery of bid preparation costs in the Court of Claims. In every case where injunctive relief is sought a court must balance the psublic interest in having a government procurement process which can be administered without disruptive court-ordered restraints against the interests of the party seeking the injunction [52]. Though an unsuccessful bidder must have suffered an 'injury in fact' to have standing to bring an action for judicial review of an award, the 'essential thrust' of its claims is to satisfy the public interest in having agencies follow the regulations which control government contracting.

5. Conclusion

Government contracting in the United States, apart from the power granted to the state under the Federal Constitution, is through several principal statutes and various specific legislations. The principal statutes have to be read with their respective regulations to understand the scope of government contracting. Mostly matters are finally adjudicated up to the Court of Appeals for the Federal Circuit with very few cases going up to the United States Supreme Court. Judgements delivered by the United States Supreme Court in the last fifty years indicate that the provisions of only the Tucker Act, Disputes Act and False Claims Act and no other have come up for interpretation. The power given by the Constitution to the Congress, the power given by the Congress to the Executive for government contracts in the form of various laws and regulations to provide for best deal to both the government and the contractor while keeping in mind the social and economic security of its citizens has been the practice of government contracting in the United States.

Three major characteristics distinguish government contracts from private ones. They are, firstly, government contracts are subject to myriad statutes, regulations and policies which encourage competition to the maximum extent practicable, ensure proper spending of taxpayer money and advance socioeconomic goals. Secondly, they contain mandatory clauses which afford the government special contractual rights, including the right to unilaterally change the terms and conditions of the contract or even terminate them. Thirdly, due to the government's special status as a sovereign entity, claims and litigation follow the unique procedures of the Contract Disputes Act. Government contracts are subject to several statutes, including the Competition in Contracting Act and the Federal Acquisition Streamlining Act. In addition to statutes, there are a multitude of regulations which govern acquisitions by executive branch agencies. Foremost among these is the Federal Acquisition Regulation. From the view point of the government, the contractor is to furnish the product, construction, or services at reasonable prices or costs stipulated in the contract in a timely manner and in the quality and quantity stipulated in the contract subject to provisions for changes or terminations for convenience. From the view point of the contractor, he would wish to be paid a fair and reasonable price in a timely manner for its products, construction or services in accordance with the terms and conditions of its contract.

6. References

1. The Constitution of United States, Art.I
2. *Id*. at Art. II.
3. *Id*. at Art. III.
4. *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.
5. 381 U.S. 437 (1965).
6. 3 U.S. (3 Dall.) 199 (1796).
7. 60 U.S. (19 How.) 393 (1857).
8. 22 U.S. (9 Wheat.) 1 (1824).
9. Dicey AV. The Law of the Constitution, 159 (Oxford, 10th Ed.).
10. 5 US 137 (1803).
11. 30 U.S. (5 Pet.) 115 (1831)
12. Elaine Halchin L. CRS Report for Congress: Overview of the Federal Procurement Process and Resources, 1 (American National Government, 2012).
13. *Id.* at 2.
14. *Ibid.*
15. *Id.* at 3.
16. *Ibid.*
17. *Id.* at 4.
18. 312 F.2d 418 (Ct. Cl. 1963).
19. *Ibid.*
20. 426 F. 2d 314, 317 (Ct. Cl. 1970).
21. 991 F.2d 775, 780 (Fed. Cir. 1993).
22. 2 L.Ed.2d 470 (1958).
23. 371 U.S. 285.
24. 82 L.Ed. 15 (1937).
25. 429 U.S. at 462-65, 97 S.Ct. 699.
26. 140 F. Supp. 409, 135 Ct.Cl. 63 (1956).
27. 428 F.2d 1233, 192 Ct.Cl. 773 (1970).
28. 424 F.2d 859 (1970).
29. 372 F.2d at 1009-1011.
30. Ct. Cl., 553 F.2d 105.
31. L.Ed.2d 184 (1970)
32. 84 L.Ed. 1108 (1940).
33. *Ibid.*
34. (1974) 494 F. 2d 1059.
35. 371 US 245.
36. 371 US 285.
37. 552 US 130.
38. 373 US 709.
39. 318 U.S. 363 (1943)
40. 342 U.S. 98 (1951).
41. *West Virginia v. United States*, 479 U.S., at 310.
42. 308 U.S. 343 (1939),
43. *United States v. North Carolina*, 136 U.S. 211 (1890).

44. *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy*, Inc,506 U.S. 139, 146 (1993).
45. 98 U.S. 565.
46. 135 U.S. 271.
47. 397 U.S. 159.
48. 405 U.S. 727.
49. 412 U.S. 669.
50. 476 F.2d 1233.
51. 485 F.2d 180 (4th Cir. 1973).
52. *M. Steinthal & Co. v. Seamans*, 455 F.2d at 1301.