4-17. **Authority of Agents.** Generally speaking, an agent has the power to alter the legal status of the principal. In selling property, making a contract, or in conducting business within the scope of his authority, the agent creates new rights and liabilities which inure to the principal. This power to create or to change the legal relations between a principal and third persons is the cardinal element of an agency relationship. Generally, the authority of an agent to exercise such power is categorized as express, implied, or apparent. Definitions of these categories follow.

EXPRESS: authority which the principal communicates either by word or by conduct.

IMPLIED: authority which is reasonably necessary to execute express authority; therefore, implied authority is often referred to as authority "incidental" to express authority.

APPARENT: authority which results from a "holding out" of an agent by a principal to the detrimental reliance of a third party.

4-18. Note that these definitions of authority are similar to the definitions of types of agencies earlier in this section. Express and implied authority can further be categorized as "real" authority. Apparent authority on the other hand, is not "real " authority in its strongest sense, but is in the nature of "ostensible" authority (i.e., there seems to be authority though in fact no authority exists).

4-19. A cardinal difference between the rules governing agency in Federal Government contracts and those in the general commercial world is that the doctrine of apparent authority does not usually apply to Government contracts. The fundamental rule in Government contracts is that a contractor is charged with notice that the Federal employee he is dealing with has *in fact* the authority that is professed. Where the contractor fails to clarify the authority of the professed Government agent, he in effect is dealing "at his peril" that a fully enforceable obligation will result.

4-20. This difficult and sensitive area in Government contracts must be considered more closely. The courts have observed that when the sovereign United States deals in the commercial market place, the "royal robe" is left behind and the principles of commercial law shall govern. The courts have also observed that "persons must turn square corners when dealing with the Government." The observations obviously are at polar ends.

4-21. The power of the United States to contract is incident to its sovereignty. Though the Constitution nowhere expressly defines the power to contract, many express powers admit of at least a fair implication of authority to contract. The courts have sustained this implied power to contract in pursuance of express powers properly exercised. Further, the courts have reiterated that the sovereign is subject to commercial rules of law. The contractor then, it would seem, would be safe in assuming that a Government contract is no different from any ordinary commercial contract.

4-22. In practice however, such assumptions will prove to be false. The ultimate realization that a contrary doctrine also applies may come too late to preclude economic disaster. This second doctrine requires that representations on behalf of the Government, to be binding, must be authorized *in fact.* Thus, where the businessman in the commercial world is protected by the doctrine of apparent authority, he normally cannot avail himself of this protection where an obligation of the Government is involved.

4-23. Generally speaking, the rules of commercial law protect one who relies to his detriment upon the apparent authority of an agent knowingly held out by the principal. Further, a principal is generally estopped to deny the authority of persons whom the principal's conduct or misrepresentations would impute with such authority.

4-24. In Government contracts, however, neither the doctrine of apparent authority nor of estoppel has the same force. The logic here is elementary. A public agent receives his authority from statute, usually by proper delegation. Since statutes are public records and "all persons are presumed to know the law," no one is justified in reliance of an appearance of authority contrary to that which is contained in the law *in fact.*

4-25. The problem at the contract administrator's level is not that of authority per se, but usually involves the interpretation of the delegation of proper authority. The contractor is charged with notice of proper authority, and has the further duty of determining the extent and limitations of that authority. The danger here lies in the reasonable interpretation by the contractor of an authorized contracting officer's actions, or the actions of a contracting officer's representatives whether authorized or unauthorized.

4-26. It is readily apparent that an authorized agent must exercise care in using his authority. He must be careful not only of his word, but also of his deed! On the contractor's part, it should never be assumed that an eager engineer, zealous expediter, negotiator, buyer, pretentious project officer, or resourceful resident agent is in fact a contracting officer (or agent of such) authorized to obligate the Government.