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Record of Negotiations
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RHTG # 81,012²
BOX # ~~48~~ 155

relating to the cancellation of Sun Indemnity Company of New York Extra-Hazardous Insurance Policies upon expiration, on 2 September 1944, and substitution therefor of Benefit Funds in connection with certain contracts between the Government and the University of California, University of Chicago and Columbia University, respectively Contracts Nos. W-7405 eng-36, W-7405 eng-48 (California), W-7401 eng-37, W-7405 eng-39 (Chicago) and W-7405 eng-50 (Columbia).

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Box # 155

This Record of Negotiations is for the purpose of setting forth the understanding of the undersigned with respect to the reasons for the cancellation of Sun Indemnity Insurance Policies and the substitution therefor of Benefit Funds under the several contracts.

On or about 30 December 1943, Lt. Col. Vanden Bulck addressed a letter to each of the said Universities advising them of the plan to terminate the Sun Indemnity Insurance Company policies. These letters were written in confirmation of verbal statements made to each of the Contractors during November 1943, at which time it was pointed out:

1. The Sun Indemnity policies now in effect provide duplicate coverage for normal industrial hazards since same are also covered by Workmen's Compensation insurance.

FOUNDER
BOX NO. RHTG Box # 155
HRE # 187
COLLECTION Doc # 81,012
REPOSITORY Oak Ridge Operations Records Holding Center

DECLASSIFICATION AUTHORIZED
MALCOLM THEISEN, ANALYSIS
Name (ADD) - Organization
7-29-94
Date

DECLASSIFICATION RECOMMENDED
R.B. Burchett, Analysis
Name (ADC) - Organization
7/27/94
Date

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2. The Sun Indemnity coverage would in any event terminate immediately upon cessation of work and would not, therefore, provide protection against industrial diseases which might develop at a later date.

At a conference held in Chicago on 14 December 1943, attended by Colonel K. D. Nichols, Lt. Col. Vanden Bulck, Major Peterson, Mr. Underhill, Mr. Campbell and Mr. Harrell, it was tentatively agreed that:

1. The Sun Indemnity Special Hazards Insurance policies would remain in effect until termination of the present certificates of insurance early in September 1944.

2. Consideration would be given to cancellation of the policies before that time where upon review by the Contractor it was found that such individuals were no longer subjected to special hazards.

3. It would be satisfactory to the several Contractors to discontinue the Sun Indemnity coverage in September 1944, provided:

a. Mutually satisfactory amendments to the contracts referred to herein are executed to cover such special hazards.

b. The Contractors are given an opportunity to review and approve the statement of the special hazards to be covered and to be set forth in the "Secret" letters.

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at a conference held in New York on 7 March 1944 attended by Colonel Nichols, Lt. Col. Vanden Bulck, Lt. Col. Correll, Lt. Col. Stewart, Capt. Miller, Capt. K. Irwin, Capt. Grotjan, Dr. Wenzel and Mr. [redacted] representing the District, and by Messrs. Underhill and Burdon of California, Mr. Campbell of Columbia and Messrs. Huansoke and Harrell of Chicago, it was agreed that:

1. The Contractors would undertake to develop service contracts with the insurance underwriters carrying their Workmen's Compensation insurance to service any voluntary payments which might be made from the Benefit Funds, if established.

2. The Benefit Funds, if established, could be retained by the Contractors for a period of ten (10) years after work ceases.

The general understanding reached at this conference was summarized in a letter from Mr. Underhill to Col. Nichols dated 23 March 1944, delivered to Lt. Col. Vanden Bulck 15 May 1944. This letter was held by Mr. Underhill pending discussion with Contractors and the Government scheduled for 15 May 1944.

A general plan for administering such Benefit Funds, suggested schedule of "welfare or gratuity payments" and a schedule of services charges to be made by an insurance company for servicing the payments was summarized in a letter to Col. K. D. Nichols dated 27 April 1944 from Mr. Harrell.

-3-
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Comptroller General of the United States
Washington

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The Honorable,

The Secretary of War.

My dear Mr. Secretary:

I have a letter of October 13, 1943, from Brigadier General L. R. Groves, Corps of Engineers, requesting advice as to whether this office would be required to object to otherwise proper payments made under two provisions which are to be incorporated into a certain cost-plus-a-fixed fee contract proposed to be entered into by your Department.

Certain payment provisions of the proposed contract were considered in my decision of April 19, 1943, to you. However, it now is stated in the letter of October 13, that a number of unforeseen developments have delayed the actual signing of the formal contract and have brought about the necessity for making two important changes therein. The two changes are stated to consist of the inclusion in the contract of additional provisions whereby the contractor is authorized to utilize sums advanced to it by the Government for the purposes (1) of establishing and replenishing a collateral or guarantee fund or funds to secure the payment of premiums for such insurance coverage as may be required or approved by the contracting officer and (2) of establishing and replenishing an "Employees Benefit Fund" from which special payments are to be made to or on account of employees who may be totally and permanently disabled or killed as a result of exposure to unpredictable hazards that may be encountered in the course of work under the contract.

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With respect to the first of these funds, it is stated that a public liability insurance policy has been obtained by the contractor, with the approval of the contracting officer, from an insurance company and an indemnity company, which policy provides for the establishment and maintenance with the said companies of a collateral fund to secure the payment of premiums. It is stated further that this was the only basis on which an insurance company could be found which would undertake to underwrite the risk. With respect to the Employees Benefit Fund, it is stated that such fund is to be established and maintained by the contractor with Government funds because no insurance company could be found which could be persuaded to underwrite this risk and that, for reasons of sound public policy and to protect the persons who will be employed under the contract against the unpredictable hazards involved, as well as to protect the United States from suits and claims, it will be necessary to maintain this fund. Also, it is stated that both the collateral insurance fund and the Employees Benefit Fund are to remain available for use throughout a period of ten years after termination of manufacturing operations under the contract involved.

The pertinent provisions of the contract pertaining to the establishing of the collateral or guarantee fund for securing payment of insurance premiums are contained in sections 8 and 9 of Article XIV thereof. Section 8 provides, in substance, that the contractor is authorized to make such payments in advance out of the special account made available to it by the Government and that the contractor shall

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not be subject to any liability with respect to the funds so advanced except to return or credit to the Government such amount of such funds as shall be returned to the contractor by the insurance carrier. However, it is stipulated that the contract of insurance is to contain a provision providing for the handling of the funds so advanced in the following manner: Until liquidated, the advanced funds are to be deposited by the carrier or carriers in a special bank account at a bank which is a member of the Federal Reserve System or a bank which is insured with the Federal Deposit Insurance Corporation. Such funds are to be carried separate and distinct from the general or other funds of the carrier or carriers and are to be used exclusively for carrying out the contract of insurance and not for any other business of the carrier or carriers. It is proposed that all or any part of the funds advanced may be invested by the carrier or carriers in United States Government securities and that the interest earned from such investments, less expenses incurred in the investment, management, custody and safekeeping of the funds shall be paid to the contractor for the account of the Government. The insurance carrier or carriers are to have the right to draw on the special account subject only to the provisions of the contract of insurance. The bank or banks with which the funds may be deposited are to furnish periodic reports to the contractor showing the amount of cash on hand in the special account and the face amount of the securities deposited with it and, also, are to report any increase or decrease in the face amount of securities purchased by the carrier with the advanced funds.

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The pertinent provisions of the contract relative to the establishment of the Employees Benefit Fund are contained in Article XXVIII of the present contract, which recites that: In view of the serious and unusual hazards which may be involved in the performance of the contract and since the contractor has been unable, despite extended efforts with the assistance of the contracting officer, to obtain satisfactory insurance coverage for his employees, the Government agrees that the contractor shall have the right to establish, maintain and utilize a benefit fund from which payments in addition to those provided for by workmen's compensation laws or other statutes or under the terms of the contractor's employee welfare plans and policies--may be made to or on account of employees who become totally and permanently disabled or die as a result of such hazards. Therefore, the article authorizes the contractor to withdraw from time to time from sums advanced to it by the Government, pursuant to Article XIV of the contract, amounts sufficient to establish and replenish an Employees Benefit Fund. The benefit fund is to be established immediately upon the execution of the contract and is to be maintained for a period of ten years after the termination of manufacturing operations thereunder.

The said Article XXVIII provides further that whenever the contractor shall determine, with the approval of the contracting officer, that any employee has become totally and permanently disabled or has died as a result of any hazards resulting from performance of the contract, the contractor shall have the right to pay from the benefit fund to such employee or to his named beneficiary or legal representa-

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tive, the sum of \$10,000, but that when such payment has been made to an employee who has become totally and permanently disabled, no further payment shall be made by reason of the death of such employee. The payment is to be made only upon the securing of a release relieving the contractor and the Government, to the extent of the payment, from all claims of the employee on account of any disability or death, except claims under workmen's compensation laws or other occupational disease statutes.

Also, it is provided in Article XXXIII that the benefit fund is to be held in cash in a special account in a bank which is a member of the Federal Reserve System or that it may be invested, in whole or in part, in United States Government securities which securities are to be kept in a safety deposit box in the same bank. The bank is to report to the contracting officer any increase or decrease in the face amount of any securities which may be purchased with any of the benefit funds and, in addition, the bank is to furnish periodic reports to the contracting officer showing the amount of cash on hand in the special deposit account and the face amount of securities in the safety deposit box. Any interest earned from the investment of the benefit fund, less expenses incurred in connection with the investment, management and safekeeping of said fund, is to be paid over to the Government by the contractor. The benefit fund is to be used by the contractor solely for the purpose set forth in the contract and any sums remaining in such fund at the expiration of ten years after the termination of manufacturing operations are to be paid or credited to the Government by the contractor.

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It appears from the record that, pursuant to the authority vested in him by the First War Powers Act, 1941, the President has approved the entering into of the proposed contract and the incorporation therein, if deemed advisable by the Chief of Engineers, of provisions providing that all work under the contract is to be performed at the expense of the Government and that the Government shall indemnify and hold the contractor harmless against any loss, expense (including expense of litigation) or damage (including personal injuries and deaths of persons and damage to property) of any kind and from any cause whatsoever arising out of or connected with the work. The assumption of such liability by the Government has been undertaken in Article XXXIII of the proposed contract and, with respect thereto, you were advised in my decision of April 19, 1943, that, for the reasons stated herein, this office would not be required to object to otherwise proper payments to the contractor in accordance with said article to the extent that funds may be available therefor.

It appears from the provisions of Article XXXIII of the proposed contract, outlined above, that the Employees Benefit Fund, which is to be established by the contractor from funds advanced by the Government, is to be set aside and used for the sole purpose of making benefit payments to or on account of employees who may be totally and permanently disabled or who may die as a result of hazards arising out of the performance of the contract. Likewise, while Article XIV does not specifically state that the collateral or guarantee fund to be established pursuant thereto, is to be used for the purpose of making premium payments to insurance carriers as they become due, it appears that such is the contemplated procedure, as section 9 of said article

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provides that, upon the request of the contractor from time to time throughout the effective period of the contract, the Government shall advance to the contractor, without interest, such sums as may be necessary to replenish in full the collateral or guarantee fund provided for by section 8 thereof. Hence, it appears that the funds to be established would be used solely for the purpose of fulfilling the obligation assumed by the Government under Article XIXII of the contract to indemnify and hold the contractor harmless against damage, including personal injuries and death of persons and damages to property, arising out of or connected with the work.

Since it is reported in the letter of October 18 supra, that, in view of the unusual nature of the work to be performed under the proposed contract, the establishment of the collateral or guarantee insurance fund and the Employees Benefit Fund are the only means by which the Government may fulfill its obligations under the contract, and since it appears that, under the plans outlined in Articles XIV and XXVIII of the contract for the handling of the funds which would be established, the interest of the Government thereon would be adequately safeguarded and protected and that any amounts remaining in the funds at the expiration of the ten-year period are to be returned to the United States, you are advised that this office will not be required to object to otherwise proper payments made under the two provisions here involved.

It is to be understood that such advances as are required to be made from time to time throughout the effective period of the contract,

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pursuant to section 9 of Article XIV, necessarily the subject to
availability of funds therefor.

Respectfully,
(Signed) Linda J. Warren

Comptroller General
of the United States.

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