



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

JUN 21 1939

B-4252

Chairman,

National Resources Committee.

Sir:

I have your letter of June 9, 1939, as follows:

"The National Resources Committee proposes to enter into an agreement with the National Academy of Sciences for the preparation and publication of a report on Industrial Research Facilities, as shown by the attached draft contract.

"The National Academy is specially qualified to undertake this work because of the previous research and publications in this general field issued by their National Research Council. The Act of Congress of March 3, 1863, establishing the Academy, specifies that 'the Academy shall, whenever called upon by any Department of the Government, investigate, examine, experiment and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments and reports to be paid from appropriations which may be made for the purpose'.

"The National Resources Committee in a report on 'Research -- A National Resource', transmitted to the President the recommendation of its Science Committee that studies should be made of research resources of industrial laboratories and by contract with appropriate national research agencies. In this connection the Committee cited the precedent established by the contract between the Bureau of Public Roads and the National Research Council under date of June 7, 1938.

"The proposed contract is agreeable to both parties and is now ready for signature. It will be appreciated if you will advise us whether you have any suggestions for changes in whole or in part. We are anxious to proceed with the immediate signature of the proposed contract, and because of the time involved for action by both

the Academy and this office in securing signatures of persons not ordinarily in Washington, we would appreciate your expediting action as much as possible."

The proposed contract is worded as follows:

"THIS AGREEMENT, made this day of June, one thousand nine hundred and thirty-nine, by and between the National Academy of Sciences, a corporation duly organized and existing by Act of Congress, hereinafter called the Academy, party of the first part, contracting in respect to the activities of its committee known as the National Research Council, hereinafter called the Council, and the National Resources Committee, party of the second part.

"WHEREAS, the parties hereto desire to cooperate in the publication of a report on industrial research facilities in the United States;

"NOW, THEREFORE, it is mutually agreed as follows:

"(1) That the National Resources Committee will pay to the Council from the funds available under appropriation warrant No. C-9-7-1-38 the sum of thirty thousand dollars, payable as follows: Ten thousand dollars on signature of this contract, five thousand dollars on October 1, 1939, five thousand dollars on January 1, 1940, five thousand dollars on April 1, 1940, and the balance on delivery of printed reports as provided under item (4) of this contract.

"(2) That the Council shall appoint a competent committee to be responsible for the completion of a document reporting on the industrial research facilities of the United States in accordance with the general plan described in a memorandum submitted by the Council entitled Preliminary Report on the Proposed Survey of Industrial Research Facilities, which memorandum is attached to this agreement and is made a part thereof, without, however, binding the Council to adhere to the detailed procedure described in that memorandum.

"(3) That the Council will submit to the National Resources Committee two copies of the report on or before the first day of June, nineteen hundred and forty and will give consideration to any modifications of the report which the National Resources Committee or its Science Committee may suggest.

"(4) That the Council will publish the report without further expense to the National Resources Committee through the Government

Printing Office in the form in which reports of the National Resources Committee are ordinarily published and will supply to the National Resources Committee free of all expense one thousand copies of the published report.

"IN WITNESS WHEREOF, the said National Academy of Sciences has caused its name to be signed by its President, and its corporate seal to be hereunto affixed, attested by its Executive Secretary, and the said United States of America has caused its name to be signed by the Chairman of the National Resources Committee, and its seal to be hereunto affixed, the said Academy on the day and year first above written, and the said United States of America, on the day of June, 1939."

The extract quoted in your submission from paragraph 3 of the act of March 3, 1863, 12 Stat. 806, omits a very pertinent portion thereof, which follows immediately after the quoted portion, to wit: "but the Academy shall receive no compensation whatever for any services to the Government of the United States." As the proposed contract provides for a stated consideration which does not appear to be confined to reimbursement of actual expenses to be incurred by the Academy, its execution would be in contravention of that provision of the act of 1863 omitted from your submission. The contract referred to by you between the Bureau of Public Roads and the National Research Council of the National Academy of Sciences, A4pr-34495, provides only for specified payments toward defraying expenses incurred by the Council which is not objectionable under the statute in question.

Furthermore, the proposed contract provides for payments in advance of the rendition of the service which is in contravention of

section 3648, Revised Statutes. It must be held, therefore, that the execution of the contract in its present form would not be authorized.

It may be suggested for consideration that any contract to be entered into as contemplated in this matter, in addition to including the usual provision with respect to members of, or delegates to, Congress (section 1782, Revised Statutes) should limit the consideration to be paid thereunder to the payment of actual necessary expenses, neither the Academy nor the Council to receive any compensation whatever for any services rendered by them to the Government, and should provide for the payment of such consideration on a reimbursement basis, periodically if so required, with a limitation as to the maximum amount to be paid under the contract.

It may be noted in this connection that the National Resources Committee is to be abolished effective July 1, 1939, and its outstanding affairs wound up by the National Resources Planning Board.

Respectfully,

(Signed) Fred H. Brown

Comptroller General
of the United States