

B-80012

Chairman,

Atomic Energy Commission.

My dear Mr. Lilienthal:

There has been received from the General Manager of the Commission, a letter dated September 10, 1948, requesting a decision as to whether this Office would be required to object to payments made by the Commission under prime contract No. W-31-109-Eng-52 with the General Electric Company for costs incurred by the company pursuant to a subcontract, No. G-174, proposed to be entered into with E. I. du Pont de Nemours and Company.

It is stated in the aforesaid letter that the prime contract is a cost-plus-a-fixed-fee contract between the Commission and General Electric Company for certain production, research, construction, and maintenance services connected with the Commission's installations at Hanford, Washington, and Schenectady, New York, and provides in pertinent part, as follows:

"ARTICLE XI - Expert Technical Assistance. When in the judgment of the Contractor, the complexity and nature of the project are such as to require expert technical assistance, or services, or advice in connection with special phases of the work, such as site planning, manufacturing processes, or other problems of a highly technical character, the Contractor may employ, by contract or otherwise, with the written consent and approval of the Contracting Officer obtained in advance, such supplemental professional services as are necessary for the proper performance of this contract."

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Also, it is stated that Article XIII of the prime contract provides for the reimbursement for all of the contractor's costs incurred in the performance of the work, including specifically "all payments and expenditures made pursuant to subcontract entered into for the purpose of carrying out this contract." It is stated farther that du Pont has insisted that the terms of the subcontract, including particularly the overhead (Article XVI) and indemnity (Article XIII) provisions, conform generally to the provisions of its original contract No. W-7412-Eng-1 with the Manhattan Engineer District; that, accordingly, the terms of the proposed subcontract follow substantially the provisions of the original du Pont contract which was submitted to this Office for review by the War Department in 1943; that the Commission entertains no doubt as to the legality of the proposed subcontract; that the subcontract would be in the best interests of the Government; and that any questions which might be presented by the terms of the proposed subcontract appear to have been settled by decision of this Office, B-33801, dated April 19, 1943, to the Secretary of War, but du Pont has insisted that the proposed subcontract be approved by the General Accounting Office prior to its execution.

The draft of subcontract proposed to be entered into between the General Electric Company and E.I. du Pont de Nemours and Company "on a cost-plus-a-fixed-fee basis" contemplates that du Pont shall lend certain of its personnel and furnish consulting

services to General Electric Company for the purpose of assisting it in carrying out certain phases of the construction program called for by contract No. W-31-109-Eng-52 between the General Electric Company and the Government. In view of the above-quoted provisions of Article XI of the prime contract specifically authorizing the procurement by the contractor of expert technical assistance by contract or otherwise, there appears to be no doubt that the proposed subcontract properly may be entered into under the prime contract and that, under the provisions of Article XIII of the prime contract, the contractor may be reimbursed for the costs properly incurred thereunder.

As stated in the General Manager's letter, the provisions of the proposed subcontract appear to follow substantially the provisions contained in cost-plus-a-fixed-fee contract No. W-7412-Eng-1, which provisions were considered in the referred-to Office decision of April 19, 1943, and were held not to be objectionable. It follows that, since the provisions of the proposed subcontract are in all material respects similar to those contained in the prime contract there involved, what was said in that decision equally is for application here.

Accordingly, should the proposed subcontract be entered into, this Office would not be required to object to otherwise proper payments thereunder.

Respectfully,

Comptroller General
of the United States.