



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-59941

✓  
OCT 8

460

Administrator,

War Assets Administration.

My dear General Littlejohn:

Reference is made to your letter of August 14, 1946, as follows:

"The War Assets Administration, a disposal agency under the Surplus Property Act of 1941 (58 Stat. 765, 50 U.S.C. app. 1611), as amended, is charged by Section 11 (d) thereof with responsibility for the care and handling of property declared surplus to it pending the disposition of such property. In fulfilling this responsibility, the Administration maintains some 190 storage facilities at central locations throughout the country for the purpose of caring for, storing, handling, processing and otherwise treating such property in order to facilitate its ultimate sale or other disposition. These facilities are generally operated by experienced warehousemen as independent contractors under cost-plus-a-fixed-fee contracts.

"It is found desirable, for the reasons set forth hereinafter, to enter into a blanket insurance contract with a commercial insurance carrier whereby such insurer will, through the services of its inspectors, fulfill this Administration's needs for high grade inspection of boilers and other pressure vessels and will supply boiler insurance coverage for the protection of contract operators. Since the Government's practice of self-insurance is one of policy and not of positive law, it is believed that premiums for this blanket insurance coverage would be allowable in conformity with the principles set forth in your decision B-35379 of July 17, 1943 which states in part: 'The very economy sought to be attained under the general rule would be defeated if the purchase of such insurance were not permitted, in an otherwise appropriate case, when sound business practice indicates that a saving can be effected or that services or benefits not otherwise available can be obtained thereby.'

"In storage facilities maintained by the Administration in its warehousing operations, a program of fire prevention, safety and accident prevention has been instituted under the supervision of trained employees of the Administration for the purposes of minimizing the risk of loss to surplus property and of promoting the efficient handling thereof. As an essential part of this program, it is necessary to provide a boiler inspection service of high standard. Consideration has been given to the

recruiting and training of inspectors or the requisitioning of the services of inspectors from other government agencies on a reimbursable basis, but it has been found that the travel involved in inspecting facilities, located in 36 states, and the short-term nature of the facilities, the operation of which depends entirely upon the rapidity with which the inventories of surplus property are liquidated, would make these methods unduly costly.

"In the usual cost-plus-a-fixed-fee contract with the independent operator the Administration is obligated to reimburse the independent contractor for costs incurred by him in complying with local laws and regulations and is generally obligated to indemnify him, by authorizing him to obtain insurance coverage or by reimbursement, against loss to his own equipment used in the operation and against liability for injuries to third parties within the scope of operations of the facility. Thus, the Administration, even though it provides its own inspection service, would be required to reimburse the contractor for certain items attributable to the use of boilers otherwise avoidable by the procurement of a boiler insurance policy which furnishes inspection acceptable to all state and local requirements and indemnification sufficient to meet the contractual obligations mentioned above. I am informed that an examination of the financial statements of the various companies writing pressure-vessel insurance will indicate that while the premium charged for such coverage includes a loading for expected losses, the bulk of the premium is intended to cover inspection costs.

"It is recognized that your decision A-36981 of August 8, 1931 (11 Comp. Gen. 59) indicated that a practice by securing boiler inspection by means of purchasing insurance, a practice previously instituted by a corporate predecessor of the Government department involved, should be discontinued as not being authorized by law or under available appropriations. In that case, however, there was no showing that inspection could not have been arranged by the Government economically or that the Government was obligated in the operation in question to reimburse an independent contractor for costs of inspection or to indemnify others for certain losses incident to operation of the boilers.

"Based on the experience of Reconstruction Finance Corporation and its subsidiary, War Assets Corporation, with a blanket insurance contract covering the same or similar facilities up to March 25, 1946, when the facilities were transferred to the Administration under the operation of Executive Order No. 9639, it is believed that the cost of the boiler insurance herein would not exceed \$8000 per year. This Administration has determined that it cannot obtain comparable inspection service, either by recruitment or on loan from other Government agencies, for an equal amount and, when the avoidance of the costs involved in indemnifying contractors in the event of losses actually sustained in

the performance of the contracts and of any required inspection fees is considered, it appears to be in the interest of the Government to procure inspection and insurance in the form indicated.

"In addition to the warehousing facilities referred to herein, the Administration is chargeable with the responsibility for the care and handling of a large number of industrial, airport and other properties being declared surplus and assigned to it from time to time for disposal. I am informed that the maintenance of such properties will in many cases require inspection of boilers and other pressure vessels which may be operated thereon and it is contemplated that any boilers which may be so operated on properties under conditions similar to those obtaining in warehousing facilities would be included in the blanket insurance coverage.

"Since it appears that in this case it is sound business practice and is in the interest of the Government to enter into a blanket boiler insurance contract after prior compliance with Section 3709, Revised Statutes and other applicable procedures, I would appreciate your early advice as to whether the General Accounting Office would be required to object to disbursements from appropriated funds, proper in all other respects, for premiums due under a pressure vessel insurance contract."

It is the established policy of the Government to assume its own risks of loss--on the theory that the magnitude of its holdings and resources and the wide distribution of its risks permit it to do so and thus effect a saving of the profits that ordinarily would be included in the premiums charged by private insurers. In line therewith, this office consistently has held that appropriated moneys are not available for the payment of insurance premiums generally on Government-owned property in the absence of specific statutory authority therefor. See 21 Comp. Gen. 928.

However, the Government's practice of self-insurance, as stated in the decision of July 17, 1943, S-35379, to the Secretary of Commerce, is one of policy and not of positive law, and an exception to the general rule has been recognized, growing out of the fact that the economy sought to be obtained thereunder would be defeated if, in an

otherwise appropriate case when sound business practice indicates that a saving can be effected or that services or benefits not otherwise available can be obtained, the purchase of such insurance were not permitted. Thus, in the said decision, a procurement of airplane hull insurance by the Civil Aeronautics Administration was approved where the Administration did not have in its employ, and was unable at the time to recruit, an adequate force of qualified personnel required to appraise damage, arrange for and supervise immediate repairs, adjust liabilities, dispose of salvage, etc., in connection with aircraft damaged in the course of operations conducted by the War Training Service but such services were obtainable through insurance coverage. In this connection, it appears that the personnel problems confronting the War Assets Administration in the present matter are similar.

One of the reasons given for objecting to the practice of securing boiler inspection services by means of purchasing insurance in the case to which you refer—reported at 11 Comp. Gen. 59—was that "the inspection of Government steam boilers is a matter of personal service ordinarily required to be performed by regularly appointed Government employees under responsible administrative supervision and is not such type of service as is authorized to be procured under contract with private firms." The situation you outline may be distinguished from the one there involved, since provisions

contained in the Third Deficiency Appropriation Act, 1946, Public  
Law No. 521, approved July 23, 1946, <sup>to Stat 637</sup> expressly authorize the—

"\* \* \* temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof \* \* \* by contract or otherwise, without regard to the civil-service and classification laws \* \* \* procurement of supplies, equipment, reports, and services in connection with the care, handling, and disposition of surplus property without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon determination by the Administrator or by any official designated by him for this purpose that such method of procurement is necessary \* \* \*."

Under the circumstances, and in view of your determination as to the necessity and economy of purchasing pressure vessel insurance in the present case, including essential inspection services, this office will interpose no objection to the use of otherwise available War Assets Administration funds to defray the cost thereof.

Respectfully,

Comptroller General  
of the United States.