COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

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Chairman,
United States Maritime Commission.

Sir:

Further reference is made to correspondence between your Commission and this office relative to the legality of contracts MCc-95, dated July 13, 1938, and MC-59-A, dated October 15, 1938, which were awarded to the involved contractors- [redacted] [redacted] and [redacted] [redacted] [redacted]--without competitive bidding.

In the case of contract MC-59-A, which involved the furnishing of certain interior decorating services in connection with a newly constructed vessel, this office was advised by Commission letter dated July 28, 1939, that "There was no advertising in connection with this contract due to its highly specialized requirements." As authority for dispensing with competitive bidding under such circumstances reliance was placed in said letter upon section 207 of the Merchant Marine Act, as amended, 52 Stat. 954.

In the case of contract MCc-95, which involved the furnishing of certain architectural services, blue prints, etc., for a proposed vessel, this office was advised by Commission letter dated October 28, 1940, that -

"* * * The record shows that there was no available competitor; that this was known to the Commission especially after its negotiations with the only other organization which was physically equipped to do the work and that no advertising was required to establish this fact."

Again, as authority for dispensing with advertising under such circumstances there was cited section 207 of the Merchant Marine Act, as amended.

Section 207 provides -

"The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this Act, * * * in the same manner that a private corporation may contract within the scope of the authority

conferred by its charter. All the Commission's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): Provided, That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission from the provisions of this Act."

I assume it would not seriously be contended that the statement in this section that the Commission may enter into contracts necessary to carry on activities authorized by the act "in the same manner that a private corporation may contract within the scope of the authority conferred by its charter", means that in the making of contracts it is within the discretion of the Commission to ignore statutory requirements without regard to whether there be necessity for such action. However, section 207 does appear to contemplate that the Commission shall be permitted a considerable amount of latitude in contractual matters, and that if a departure from the usual rules governing the making of Government contracts is necessary because of the unusual or business character of the activities involved then the Commission in the exercise of the broad discretion vested in it by the act may authorize such departure. But there must, of course, be basis for such action of the Commission; the discretion vested in it to relax the rules as need arises may not be exercised arbitrarily.

If a contract is made by the Commission without adherence to the usual rules, and no showing of a reasonable justification for the failure to adhere to those rules is made, it is considered to be the duty of this office in the audit of the accounts of the disbursing officer involved to question the validity of such contract and the expenditures made thereunder. However, if the Commission in such a case asserts that the failure to comply with the usual statutory requirements was considered necessary or expedient because of the business nature of the authorized activity involved--and a reasonable showing in support of the action is made--then it is considered that this office is justified in allowing credit for the expenditures involved. This is understood to be the meaning of the provision in section 207 that -

"* * * it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. * * *"

In the present case, as above noted, it is reported by the Commission that contract MCo-95 was entered into without advertising because competition was not available and that contract MC-59-A was awarded without advertising because of the specialized character of the services involved. Under the circumstances presented these explanations appear reasonable and are considered sufficient to justify the conclusion that the act of the Commission in dispensing with advertising was not improper. Accordingly, the procedure followed in making these contracts will not be further questioned.

To facilitate the audit of the Commission's financial transactions and the settlement of its accounts, it is suggested that, in all cases hereafter arising in which there is a departure from the established rulings covering the making of public contracts and the expenses of public funds, there be transmitted to this office, along with the involved contracts or vouchers, a full showing as to the basis and reason for the action of the Commission. I understand this procedure was agreed upon at a recent conference between representatives of the Commission and of this office and it is believed it will obviate the necessity for the interchange of correspondence, with attending delays, such as has taken place in the past. Your cooperation in this regard will be appreciated.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.