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JAN 8 1946

JAN 3 1946

Colonel Harry Foster, P.D., U. S. Army,
c/o Chief of Finance,
War Department.

Dear Colonel Foster:

There has been received, by reference from the Office of the Chief of Finance, your letter of September 16, 1946, as follows:

"1. Attached hereto is a voucher for adjustments between appropriations and/or funds in favor of the Commodity Credit Corporation in the amount of \$3,230.21 covering termination charges under Delivery Order No. 1, O.I. No. 6158-S executed on behalf of the War Department by the California Quartermaster Depot, Oakland, California which has been presented to the undersigned, a disbursing officer, for payment.

"2. Delivery Order No. 1, O.I. 6158-S appears to have been executed under the authority of Public Law 670-77th Congress (31 U.S.C. 686) as amended and Executive Orders No. 9418, 1 February 1944, No. 9440, 12 May 1944 and No. 9577, 3 July 1945, there being no basic purchase agreement to cover this transaction.

"3. The Contract Settlement Act of 1944 (Public Law 395-78th Congress) which authorizes the settlement of termination claims of War Contractors by the United States sets forth the following definitions:

"Sec 3 (a) 'The term "Prime Contract" means any contract, agreement, or purchase order heretofore or hereafter entered into by a contracting agency and connected with or related to the prosecution of the War; and the term "Prime Contractor" means any holder of one or more prime contracts.'

"Sec 4 (f) 'The term "Government Agency" means any executive department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States in the executive branch of the Government, and includes any contracting agency.'

"4. The undersigned is in doubt as to

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"(a) the legality of a supplemental termination agreement executed under authority of the Contract Settlement Act of 1944 to a delivery order executed under authority of Public Law 670-77th Congress where no basic purchase agreement exists.

"(b) the competency of two Government agencies, as defined in the Contract Settlement Act of 1944, to contract with each other under the authority of that act.

"5. It is requested that the attached voucher be forwarded to the Comptroller General of the United States for advance decision."

Delivery Order No. 1, O. I. 6158-S, dated September 19, 1945, covers an order placed by the War Department with the Commodity Credit Corporation, Office of Basic Commodities, for 6,163,080 pounds of wheat for export shipment. It appears that under date of October 8, 1945, the contract was terminated for the convenience of the War Department. By Supplemental Settlement Agreement, Modification A, dated November 13, 1945, entered into under purported authority of the Contract Settlement Act of 1944, 58 Stat. 649, ⁶⁵² the parties entered into an agreement for the payment by the War Department of the sum of \$3,230.21, in full and final settlement of the costs incurred by the Commodity Credit Corporation as a result of the said order of September 19, 1945, which was terminated October 8, 1945. The voucher involved proposes payment or transfer to the Commodity Credit Corporation of the amount stipulated in such agreement.

Public Law 670, 77th Congress, generally referred to as the Economy Act of June 30, 1932, 47 Stat. 411, 31 U.S.C. 686, ⁶⁸⁶ cited as the authority under which Delivery Order No. 1 was issued, provides under section 601 thereof, as amended, in pertinent part, as follows:

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"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof * * * may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request * * * all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies * * * shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned * * *.

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"Orders placed as provided in subsection (a) shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors. * * *"

Pursuant to the above-quoted provisions of the Economy Act, there is no question but that, with respect to supplies and materials furnished by one Government agency to another, the amount to be paid therefor is properly for adjustment and determination by agreement between the agencies concerned. Likewise, where an order issued pursuant to said act is terminated after the establishment receiving said order has incurred expenses incident thereto the amount of such expenses or costs is for determination and adjustment by agreement between such agencies. Consequently, and notwithstanding the doubt as to whether the Contract Settlement Act properly may be regarded as authority for the settlement of termination claims between Government agencies, there would appear to be ample authority for an agreement between the agencies here concerned to effect an adjustment of the appropriations and/or funds of said agencies on the basis of the actual amount of the costs or expenses incurred. Also, in this connection, see section 4 of the

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act of July 16, 1943 (57 Stat. 566; 15 U.S.C., Supp. IV, 713a-9),
 which provides that full reimbursement shall be made to the Commodity
 Credit Corporation for services performed, losses sustained, operating
 costs incurred, for commodities purchased or delivered to or on behalf
 of any Government agency from the appropriate funds of such agency.

Accordingly, you are advised that if the amount stated on the
 voucher includes only the actual costs or expenses incurred by the
 Commodity Credit Corporation as a direct result of the order of
 September 19, 1945, and its subsequent termination, payment thereon
 is authorized.

The voucher, together with accompanying papers, is returned
 herewith.

Respectfully,

Comptroller General
 of the United States.

Enclosures.