



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

B-8816

March 9, 1940

The Honorable,

The Secretary of State.

Sir:

I have your letter of February 27, 1940, requesting decision as to the availability of appropriated funds for the construction of certain proposed buildings in connection with the Lower Rio Grande Flood Control Project as set forth in the letter of February 20, 1940, from the Acting American Commissioner of the International Boundary Commission, United States and Mexico, as follows:

"Under date of January 3, 1940, the United States Section, International Boundary Commission, United States and Mexico, issued Specification No. L-2085 calling for bids for the construction of certain buildings in connection with the Lower Rio Grande Flood Control Project. The buildings referred to were designated in the specifications as the Harlingen Garage, Harlingen, Texas, and the McAllen Warehouse and Hidalgo Division Office Building, McAllen, Texas. Bids for the construction of the buildings were received and opened on January 31, 1940, in accordance with the provisions of the specifications.

"The authorization and appropriation acts for the Lower Rio Grande Flood Project provide in broad general terms for the construction, operation, and maintenance of the project, and it is, therefore, the opinion of this office that funds appropriated therefor are available for the construction of all structures necessary and incidental to the construction, operation and maintenance of the Project. The proposed buildings are necessary and incidental to the construction, operation, and maintenance of the Lower Rio Grande Flood Control Project. However, in view of the fact that buildings are not specifically mentioned in the acts appropriating funds for the project, and the fact that one of the proposed buildings is designated in the specifications as a Division Office Building, it is considered necessary to set out the pertinent facts and submit to your office for

determination prior to the award of a contract, the matter of the availability of appropriated funds for the construction of the buildings under consideration.

"The construction of the Lower Rio Grande Flood Control Project was commenced in 1933 pursuant to an allotment of \$1,500,000 by the Federal Emergency Administrator of Public Works. Under date of September 29, 1933, Decision A-50968, it was held by the Comptroller General after the consideration of a proposed letter of instructions from the Secretary of State to the American Commissioner authorizing the initiation of construction of the project that:

"With respect to the availability of funds here in question for the several purposes as stated in proposed letter of instructions, pages 6 and 7, it is noted that the allotment as authorized in list No. 1 of approved Federal public works under date of July 14, 1933, provides in general as to the allotment of \$1,500,000 for international flood control works including floodway excavation, levee embankment, and structures on the Lower Rio Grande Valley in Texas.'

"Later an additional allotment for the project was made by the Federal Emergency Administrator of Public Works. Since the passage of the Act of August 19, 1935, as amended (49 Stat. 660-1370) annual appropriations have been made by Congress to continue the construction of this project.

"The Department of State appropriation act for the fiscal year 1940 provides in part as follows:

"Construction, operation, and maintenance, Public Works Projects: For the construction (including surveys and operation and maintenance and protection during construction) of the following projects under the supervision of the International Boundary Commission, United States and Mexico, United States Section, including \* \* \*: For the United States portion of the project for flood control of the Lower Rio Grande as authorized by the act approved August 19, 1935, as amended (49 Stat. 660, 1370) \$800,000, together with the unexpended balances of the appropriations for this purpose for the fiscal year 1939; Provided that no part of this appropriation for the Lower Rio Grande Flood Control Project shall be expended for construction on any land, site, or easement until title thereto has been conveyed to the United States by donation and the same has been approved by the Attorney General of the United States.'

"The appropriation under consideration is being expended under appropriation symbol 1901065, Lower Rio Grande Flood Control, Department of State, 1940.

"The sites upon which the proposed buildings are to be constructed have been conveyed to the United States by donation and the titles to such sites have been approved by the Attorney General of the United States. These sites are now being used as storage yards in connection with the construction of the project.

"The proposed buildings have been designed from a consideration of the permanent future operation and maintenance requirements for the project, rather than from a consideration of present construction, operation and maintenance requirements only.

"The warehouse at McAllen and the garage at Harlingen are needed for the storage of equipment, materials, and supplies which must not be exposed to the elements, and to provide a place to store and service the automobiles, trucks, tractors, and other construction and maintenance equipment which must be serviced and kept in repair by employees of the Commission. The maintenance and operation of the project requires that there be immediately available at all times for emergency use during floods, a large stock of sacks, cement, wire fabric, lanterns, tools, and other material and equipment items.

"Your attention is specifically invited to the fact that the proposed structure at McAllen, Texas, which is designated in the plans and specifications as the Hidalgo Division Office Building, is designed to serve as a caretaker's house and as a maintenance headquarters building after the completion of the construction of the project, but will be used as an office by the engineering force during the period of construction.

"Inasmuch as the last day for the award of this contract in accordance with the terms of the advertisement is March 21, 1940, your early consideration and decision as to the availability of appropriated funds for the construction of the proposed buildings will be greatly appreciated."

Section 3733, Revised Statutes, provides:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

While the appropriation does not specifically provide for the construction of buildings, it does provide broadly for construction

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for the United States portion of the project and, if it be administratively determined that the construction of the buildings in question is essential to the construction and maintenance of the project as authorized by the appropriation, said appropriation may be considered available therefor.

Respectfully,

Acting Comptroller General  
of the United States.