COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-176209

SEP 11 1972

Dear Mr. Ruckelshaus:

By letter dated June 8, 1972, the Assistant Administrator for Planning and Management has requested our decision on several questions concerning the authority of the Environmental Protection Agency (EPA) to participate in and to contribute to contracts financed by interagency transfers of funds. The Assistant Administrator's letter states, in part:

> "It furthers the purposes and programs of this Agency to enter into agreements with other Government departments and agencies concerning joint research or demonstration projects, the performance of which is needed by both EPA and the other agency. Often the agreement provides that one of the agencies will execute a contract thereunder with a private contractor for the performance of a project and that both agencies will contribute a portion of the contract cost. Through such an agreement there is avoided duplication of effort (on the part of both contractor and Government), and the work product's usefulness is greater, relative to cost to the Government.
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> "While we feel that such agreements have great practical value to the Government, we have questions concerning the extent of our legal authority with respect to them.* * *"

The questions concerning EPA's legal authority in this regard arise in consideration of the act approved May 21, 1920, ch. 194, §7, 41 Stat. 613, revised by the act of June 30, 1932, ch. 314, § 601, 47 Stat. 417, as amended, 31 U.S.C. 686, popularly known as section 601 of the Economy Act. 31 U.S.C. 686 provides in relevant part:

> "(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, 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, * * * all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; * * * Provided, That the Department of the Army, Navy Department, Treasury Department, Federal Aviation Agency, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract * * *."

Since EPA is not specifically authorized to place orders to be rendered or obtained by contract under the above-quoted proviso, it is suggested that 31 U.S.C. 686(a) might be interpreted to prohibit the transactions here contemplated by the Agency. However, the Assistant Administrator maintains that this statute does not apply when both the requisitioning and the requisitioned agency have an interest in certain projects:

> "31 U.S.C. 686(a) is not indicative of a Congressional intent to cover the factual situation mentioned at the start of this letter, i.e., the jointly-beneficial project for which joint funding is contemplated. * * *
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> "* * * Both the statute itself and your decisions interpreting it indicate that Congress' intent was to provide a means for one agency to obtain property or services needed by it alone, through another agency which was better prepared to furnish the needed property or services."

The Assistant Administrator cites several statutory provisions which relate to such joint activities by EPA, quoted, in part, as follows: Section 5(a) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1155(a):

> "The [EPA] Administrator shall conduct and encourage, cooperate with, and render assistance

to other appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies, relating to the causes, control, and prevention of water pollution. * * *"

Section 5(c) of the same statute, 33 U.S.C. 1155(c):

"The [EPA] Administrator shall, in cooperation with other Federal, State, and local agencies having related responsibilities, collect and disseminate basic data * * *."

Section 204 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 3253:

"(a) The Secretary [EPA Administrator] shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies * * *.

"(b) In carrying out the provisions of the preceding subsection, the Secretary [EPA Administrator] is authorized to—

* * * * *

"(2) cooperate with public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and the conduct of such research and other activities; and

"(3) make grants-in-aid to public or private agencies * * * and provide for the conduct of research, training, surveys, and demonstrations by contract with public or private agencies and institutions and with individuals; * * *."

Section 102(b) of the Clean Air Act, as amended, 42 U.S.C. 1857a(b):

> "The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government."

Section 103 of the same statute, 42 U.S.C. 1857b:

> "(a) The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—
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> * * * * *
>
> "(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities * * *.
>
> "(b) In carrying out the provisions of the preceding subsection, the Administrator is authorized to—
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> * * * * *
>
> "(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities * * *."

We are asked to determine whether any or all of the above-quoted statutory provisions authorize EPA to enter into interagency agreements where—

(1) work is performed by a contractor under a contract with the other agency, where the work is needed by EPA but not by the other agency and where funds sufficient to cover the entire contract price are transferred by EPA to the contracting agency;

(2) work is performed by a contractor under a contract with EPA, where the work is needed by the other agency but not by EPA and where funds sufficient to cover the entire contract price are transferred to EPA by the other agency;

(3) work is performed by a contractor under a contract with EPA, where the work is needed by both agencies and where part of the contract price is borne by EPA and the remainder is covered by fund transfers to EPA by the other agency; or

(4) work is performed by a contractor under a contract with the other agency, where the work is needed by both agencies and where part of the contract price is borne by the other agency and the remainder is covered by fund transfers from EPA to the other agency.

We must first consider the effect of 31 U.S.C. 686(a). The purpose of this provision, enacted by section 601 of the Economy Act, 1932, was explained in H. Rept. No. 1126, 72d Cong., 1st sess. 15-16, as follows:

"TITLE VIII

"INTERDEPARTMENTAL WORK

"PURPOSE OF LEGISLATION

"The purpose of this title is to permit the utilization of the materials, supplies, facilities, and personnel belonging to one department by another department or independent establishment which is not equipped to furnish the materials, work, or services for itself, and to provide a uniform procedure so far as practical for all departments.

"Your committee also believes that very substantial economies can be realized by one department availing itself of the equipment and services of another department in proper cases. A free interchange of work as contemplated by this title will enable all bureaus and activities of the Government to be utilized to their fullest and in many cases make it unnecessary for departments to set up duplicating and overlapping activities of its own.

"REASONS FOR LEGISLATION

"It frequently happens that one department may need certain services which it can not advantageously perform for itself. Where such services can be furnished by another department at a less cost or more conveniently, the department needing such services should have the privilege of calling upon any department of the Government that is equipped to provide such services. For illustration, the Navy maintains a highly specialized and trained inspection service. Why should not this personnel, when available, be used by other departments to inspect materials and supplies ordered to make certain that such materials comply strictly with specifications? Or if a department needs statistical work that can be more expeditiously done by another department it should have the right to call upon the agency especially equipped to perform the work. The Bureau of Standards is a highly specialized agency and its equipment and technical personnel should be made available to other services. Frequently the engineering staff of one department might be utilized by another department to great advantage.

"The War and Navy Departments are especially well equipped to furnish materials, work, and services for other departments. Whenever such materials, work, and services can be furnished at a less cost, your committee believes that private concerns should not be called upon to furnish, do, and perform what Government agencies can do more cheaply for each other.

"The Treasury Department, Department of Justice, Interior Department, and Shipping Board have many vessels at sea. The Government navy yards should be available to these whenever repairs or other work can be done by the Navy Department as expeditiously and for less money than the materials and services will cost elsewhere.

"Illustrations might be multiplied but the above are sufficient to give a general idea of what may reasonably be expected under the title."

In the form enacted in 1932, the statute contained no specific provision relative to interagency requisitioning of services to be obtained by contract. The only express limitation upon the requisitioning authority here relevant was that the requisitioned agency "be in a position to supply or equipped to render" such services. 47 Stat. 418. However, several decisions

of the Comptroller General construed this statute as not authorizing one agency to call upon another for the provision of services by contract. Thus a decision at 19 Comp. Gen. 544 (1939) disapproved a proposed order issued by the Civil Aeronautics Board to the Navy Department for the construction of air navigation stations on two remote islands at which Navy contractors were then engaged in construction projects for the Navy. Noting that the Navy contractors were not obliged to perform work beyond the scope of the ongoing Navy projects, the decision held that the Navy Department was not "in a position to supply or equipped to render" the requested services within the meaning of the statute. The foregoing approach was followed in 20 Comp. Gen. 264 (1940), a decision which also involved an effort to apply section 601 to the construction of aviation facilities. See also 18 Comp. Gen. 262, 266 (1938), and an unpublished decision of March 18, 1936, A-70486, to the general effect that this statutory provision cannot be used as a vehicle for the delegation by one agency to another of statutory duties vested in it. Compare, on this point, 46 Comp. Gen. 73 (1966).

The version of the statute enacted by section 601 was amended generally by the act approved July 20, 1942, ch. 507, 56 Stat. 661. Among other things, the 1942 amendment added the proviso granting to certain specific departments and agencies authority to requisition services to be obtained by contract. The Senate Report on the bill eventually enacted in 1942 (S. 2032) discussed proposed interdepartmental services by contract as follows:

> "There are a number of conditions under which work contemplated under S. 2032 could be performed. For example:
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> "1. Where one department already has a contractor working at the desired location and the other department deems it advantageous to have the same contractor perform work for it at this place under the same contract.
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> "2. Where two departments are to perform similar work at the same location, each has funds available therefor, and it is desired that the work be performed under a single contract.
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> "3. Where one department desires another, due to its organization or special knowledge, to perform certain work for it." S. Rept. No. 840, 77th Cong., 1st sess. 2.

The House Report contained a similar explanation of the scope of the bill. H. Rept. No. 2267, 77th Cong., 2d sess. 2. However, while the Senate-passed version would have extended the authority to obtain services by

contract to all departments and agencies, the House limited its application to specified agencies, to avoid "trading going on among too many departments," 88 CONG. REC. 5622 (Remarks of Mr. May), and the House-passed version was accepted. See Conference Report on S. 2032, H. Rept. No. 2329, 77th Cong., 2d sess.

The legislative history discussed above clearly demonstrates that 31 U.S.C. 686(a) was designed for application, at least primarily, to work or services for the requisitioning agency--such as equipment maintenance inspection of agency supplies--with respect to which the requisitioned agency would have no need for its own purposes, and no specific interest apart from the provision of a routine service. In this connection, we note that the interagency requisitioning authority of 31 U.S.C. 686(a) is by its terms inapplicable where work or services can be as conveniently or more cheaply performed by private agencies. By contrast, EPA seeks, in part, to enter into agreements with other Government agencies concerning joint research and demonstration projects which relate directly to the substantive needs and interests of both agencies. The statutes administered by EPA quoted previously indicate by their nature that the subjects dealt with are of sufficient significance to more than one agency that interaction between or among various agencies is mandated or specifically authorized. Moreover, we recognize that the concept of EPA as a source for the coordination of Government interests and activities relating to the environment was a central factor in the creation of the Agency. The EPA was established by Reorganization Plan No. 3 of 1970, 35 F.R. 15623, 84 Stat. 2086, 5 U.S.C. App. In his message to the Congress of July 9, 1970, submitting this reorganization plan, H. Doc. No. 91-366, 1, 2, 4-5, 116 CONG. REC. 23528, 23529-30, the President stated, in part:

"ENVIRONMENTAL PROTECTION AGENCY (EPA)

"Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

* * * * *

"In organizational terms, this [an effective approach to pollution control] requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements--in research

and in aids to State and local anti-pollution programs, for example--to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

* * * * *

"This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment--biological as well as physical. With these data, the EPA would be able to establish quantitative 'environmental baselines'--critical if we are to measure adequately the success or failure of our pollution abatement efforts.

* * * * *

"Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area."

In view of the foregoing, it is our opinion that 31 U.S.C. 686(a)--including the limitations contained therein--does not apply to interagency agreements entered into by EPA in accordance with the cooperation and coordination functions set forth in the statutory provisions cited by the Assistant Administrator; and that these statutory provisions may be employed as authority for such interagency agreements in appropriate cases. With reference to the four specific situations set forth by the Assistant Administrator, the third and fourth items clearly fall within the purview of these conclusions. On the other hand, the first and second items describe situations in which work is needed by EPA or by another agency alone. These situations are not within the scope of the general statements contained in the Assistant Administrator's letter; and do not relate to

the views expressed herein. Rather, they illustrate matters squarely within the application of 31 U.S.C. 686(a). Nothing contained herein questions the well-established effect of 31 U.S.C. 686(a) as it relates to agreements for services needed only by a requisitioning agency. Accordingly, since EPA is not one of the agencies specifically granted authority under 31 U.S.C. 686(a) to requisition or to provide (except, of course, to agencies which are included in the proviso) services to be obtained by contract, EPA may not undertake agreements under the circumstances described in items one or two of the submission, except, insofar as item two is concerned, as authorized by the proviso. Of course, we would not, question the propriety of transactions described in item one where EPA acts as a grantor pursuant to specific authority to make grants to other Federal agencies.

Sincerely yours,

R.F.KELLER

Acting Comptroller General
of the United States

The Honorable William D. Ruckelshaus
Administrator, Environmental Protection Agency