COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-18980

February 13, 1942.

Honorable A. J. May, Chairman,

Committee on Military Affairs,

House of Representatives.

My dear Mr. Chairman:

I have your letter of February 10, 1942, as follows:

"In Re: S. 2032

"I transmit herewith the above Senate bill as passed by the Senate, with the advice that it came up for hearings before the Military Affairs Committee this morning, and in the course of the testimony by War Department officials, it appeared that the difficulty was some ruling of the Comptroller General's Office, and in my judgment, there is a possibility of wide-spread exchange of orders and obligations and even the transfer of Federal funds from any one Department of Government to any other Department of Government, and the Committee would like to have the views of the Comptroller General on the bill.

"More especially, the Chairman of the Committee would be glad to confer between now and next Tuesday with some legal representative of your office on this particular legislation with a view of obtaining advice as to how far the bill, if enacted as proposed by the Senate, would authorize contract liabilities against the Government.

"Your early attention to this matter will be greatly appreciated."

The bill S. 2032, as passed by the Senate, would amend section 7(a) of the act of May 21, 1920 (41 Stat. 613), as amended, to read as follows:

"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, equipped to render, or obtain by contract, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, 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, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: Provided, however, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made, pursuant to any such order, shall not be subject to audit or certification in advance of payment." (Underscoring supplied.)

The words "or obtain by contract" which I have underlined in the quoted bill represent the only change which the bill would make in existing law. In other words, section 7(a) of the act of May 21, 1920, 41 Stat. 613, as amended by section 601 of the act of June 30, 1932, 47 Stat. 417, is now in force and reads precisely the same as provided in the bill S. 2032 with the exception that it does not include the words "or obtain by contract." That is to say, ever since the enactment of section 601 of the act of June 30, 1932, *supra*, it has been provided by law that--

"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 * * *." (Underscoring supplied.)

The object of said section was to effect economies in the operations of the Government by authorizing one department or agency to furnish materials, supplies or equipment to another and, also, to perform work or services for another when it appeared such work or services could be performed in that manner at a less cost. Pursuant to such authority various items of work, services, etc., have been performed by one department or agency for another, including such items as the furnishing or manufacturing of supplies, materials and equipment; inspection and testing services; card punching and tabulating services; scientific and other investigations and studies; storage and servicing of trucks, etc. In each case of course it must be determined to be in the interest of the Government to follow such procedure; the agency called upon to furnish the supplies, etc., or perform the work or services must be in a position to do so; such work or services must be of a nature which the performing agency is not otherwise required by law to perform without reimbursement; and the funds transferred remain subject to the conditions and limitations applicable prior to their transfer. The said section does not authorize the transfer of funds for the purpose of defraying the regular administrative expenses of the agency to which the funds are transferred, nor does it authorize a transfer of funds to another department in order that such department may perform regular administrative functions of the department from which the funds are transferred.

In the construction of said section 601 of the act of June 30, 1932, this office consistently has held that one agency of the Government is not authorized to transfer funds to a second agency for the purpose of having the second agency procure the work or services by outside contracts, it being stated in this regard in a decision published at 19 Comp. Gen. 544, that—

> "The cited provisions of title 31 U. S. C. sec. 686, derived from section 601 of the Economy Act of June 30, 1932, 47 Stat. 417, do not authorize the transfer of funds from one Federal agency to another for the purpose of having the second agency procure the performance of work for the first agency by outside contracts, the authority being limited to orders for such materials, supplies, equipment, work, or services of any kind that the requisitioned agency 'may be in a position to supply or equipped to render.' 18 Comp. Gen. 262; A-70486, March 18, 1936. See, also, act of June 15, 1938, 52 Stat. 683."

The purpose of the bill S. 2032 is to provide additional authority so that, when it is determined to be in the interest of the Government to do so, one agency of the Government may, by means of an outside contract, procure materials, supplies, equipment, work, or services for another agency. As stated above, that is the only change which enactment of the bill would make in existing law. The desirability of authorizing one agency of the Government to delegate to another agency the discretion and responsibility involved in contracting for work which the Congress has authorized or directed the delegating agency to procure or perform is, of course, a matter for legislative consideration and determination. Should the Congress deem it appropriate to grant such authority this office would see no particular objection thereto. I might add that somewhat similar authority, to a limited extent, has been conferred on particular agencies of the Government by Public Law 135, approved June 28, 1941 (Civil Aeronautics Authority), and by section 35 of the act of June 25, 1910, as amended, 52 Stat. 683 (Federal Works Agency, see 20 Comp. Gen. 264).

I shall be glad to arrange for a representative of this office to confer with you on this matter at any time you may desire.

Sincerely yours,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.