



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

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The Commissioner,

United States Section,

International Boundary Commission, United States and Mexico,

First National Bank Building,

El Paso, Texas.

My dear Mr. Lawson:

I have your letter of July 30, 1942, as follows:

"This office has before it two matters of immediate concern which may be affected by S. 2032, signed by the President on July 20, 1942, entitled, 'An act to amend 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), to authorize interdepartmental procurement by contract, upon orders placed by the War Department, Navy Department, Treasury Department, and Civil Aeronautics Administration.'

"(1) By agreement between the Departments of State, Treasury, and Justice, an interchange of funds is being effected for the purpose of permitting the erection by this section of the International Boundary Commission at the site of the New Ysleta-Zaragoza international bridge, of a building to house employees of the Immigration and Naturalization Service and the Bureau of Customs, either by force account or by contract, or partly by each. The reason for this is that the new bridge is being constructed by the American Section of the International Boundary Commission, United States and Mexico, and consequently the new building at the site of the American end of the bridge can more efficiently be built by the same organization.

"(2) The Defense Plant Corporation is interested in securing the transfer to it of certain equipment under the jurisdiction of the International Boundary Commission, and which the Commission may be in a position to dispose of.

"The Act (S. 2032) as finally passed and signed by the President is not yet before us, and we are unable to determine precisely the effect of the Act on the Act of May 21, 1920 as amended

by the Act of June 30, 1932. However, as it may be several days before the text of the Act is available to us, and as it may, in any event, be susceptible of various interpretations, we are taking the liberty of requesting your interpretation of the Act as it may affect the matters above outlined at this time, since these matters are of an immediately pressing nature.

"As the Act was originally introduced it would appear that its purpose was to enlarge the power of interdepartmental procurement by permitting the requisitioned agency to supply services or materials by contract, in addition to the power originally granted to transfer materials and supplies already on hand, and to render services by force account. The intent of the House amendments apparently was to restrict the additional power of requisitioning other Federal agencies for materials or services to be procured by contract to the War Department, Navy Department, Treasury Department, and Civil Aeronautics Administration, without, however, restricting the power already enjoyed by all other governmental agencies to '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 ...'

"Your decision or advice is therefore respectfully requested on the following questions:

"(1) With respect to the interdepartmental agreement concerning the construction by this Commission of a building for the Immigration and Naturalization Service and the Bureau of Customs at the site of the new Islaeta-Zaragoza bridge:

"(a) May this Commission construct the building by force account, using therefor funds transferred to it by the Departments of Justice and the Treasury?

"(b) May this Commission construct the building, or do any part of the work, by contract with private contractors, using therefor funds so transferred?

"(c) Would the answer to either or both of the above questions depend upon whether the interdepartmental agreement was signed before or after the date of approval of the Act referred to?

"(2) May this Commission transfer to the Defense Plant Corporation any equipment, and be reimbursed therefor, under the provisions of the Act in reference?

"Your early attention to this matter would be deeply appreciated."

Section 7 (a) of the act of May 21, 1920, 41 Stat. 613, as amended by section 601 of the Economy Act, 47 Stat. 417, and as now amended by the act of July 20, 1942, ⁶⁶¹ Public Law 670, provides as follows:

"Sec. 7. (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, 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, That the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration, 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: Provided further, 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."

The only change made by the act of July 20, 1942, in the prior statute consists of the language inserted as the first proviso, which is entirely new. Prior to this last amendment it was not permissible for one government department or agency to contract with a private contractor for the performance of work or the furnishing of supplies for another Government department or agency.

19 Comp. Gen. 544. When S. 2032 was first introduced in the Congress, it was so worded that it would have permitted any Government agency to supply the services or supplies otherwise within the purview of the act by contract with a private contractor, but it was amended before its passage to limit the right to so contract to the Government agencies furnishing services or supplies to the Government departments or agencies named in the proviso.

Accordingly, question 1 (a) is answered in the affirmative, and question 1 (b) in the negative, except that since the proviso is made applicable to the Treasury Department, funds of that Department made available to your Commission under the above-quoted law may be used to pay for services and supplies procured by contract. As to question (c) it may be said that the answers to questions (a) and (b) are not dependent upon the date of the interdepartmental agreement. Any provision in such an agreement entered into before the passage of the amendatory act for furnishing supplies or services through contracts with a third party would be considered validated by the statute to the extent that funds of the Treasury Department are concerned.

With respect to question (2) it appears that the Defense Plant Corporation was created by the Reconstruction Finance Corporation on August 22, 1940, pursuant to authority of section 5 (d) of the Reconstruction Finance Corporation Act, as amended, 52 Stat. 212, for the purpose, stated briefly, of expediting production, etc.,

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of strategic and critical materials needed in war activities. It is managed by a board of directors appointed by the Reconstruction Finance Corporation. Accordingly, notwithstanding its corporate form, it appears to be an executive agency of the Federal Government and as such may be furnished such equipment, etc., necessary to perform its functions as can be spared by your Commission, subject to reimbursement in accordance with and subject to the procedure authorized by section 601 of the Economy Act, 47 Stat. 417, as amended.

Respectfully,

[Faint signature]

Comptroller General
of the United States.