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B-105555 September 26, 1951

Number: B-105555

Date: 1951-09-26

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The Honorable The Secretary of the Army

My dear Mr. Secretary:

Reference is made to letter of September 11, 1951, from the Assistant Secretary of the Army, requesting an opinion as to whether certain unexpended balances in the appropriation "Government and Relief in Occupied Areas, 1950," may be used to complete the work begun under a contract executed in fiscal year 1950 but which has now been terminated for default.

The contract in question covered the construction of a water system, bridges, and roads on the Island of Okinawa and was terminated on June 22, 1951, for failure on the part of the contractor to maintain progress on the work to be accomplished. It is stated that a subsequent contract has been negotiated with a Japanese firm to complete the water system portion of the contract and that there remains a balance of $1,366,391 in the 1950 appropriation which is available for the completion of the portion of work on roads and bridges under the original contract.

It is explained, however, that efforts to obtain contracts for the roads and bridges portion of the basic contract have resulted in the receipt of quotations three times the price of the original contract price and considerable above the Governments estimates based on present costs. Consequently, it has been administratively determined that the work can be performed at the lowest expense to the Government by permitting the District Engineer to proceed on a labor-account basis.

It is stated further that--

"In carrying to completion that portion of roads and bridges contracted for under the original contract, it is estimated that an additional $1,515,000 does not increase the scope of the work scheduled under the original contract, but is required because of changes in specifications, increased quantity of materials and higher prices. Changes in specifications are necessitated because recent experience has shown that climatic conditions in Okinawa require deeper sub-surface for roads than originally planned in order to develop good and permanent surfaces. This, in turn, requires a greater quantity of material throughout the construction with a corresponding increase in cost."

In view of the circumstances described above, the Assistant Secretary requests a decision on the following questions:

"(a) Can the Okinawa District Engineer proceed on a labor account basis to obligate the unexpended balance of FY1950 GARCIA funds in the amount of $1,366,391 for the roads and bridges portion of work remaining uncompleted under the original contract, and

"(b) Can an additional sum of $1,515,000 of FY 1950 GARCIA funds be obligated for the same purpose in accordance with the above mentioned reasons?"

The rule has long been established that the consummation of a Government contract obligates the applicable appropriation to the extent necessary to satisfy all charges contemplated by the contract. While default on the part of the original contractor might necessitate having the balance of the work performed by a replacing contractor or other wise at excess cost to the Government, under the usual type of Government construction contract such action is in accordance with the procedure prescribed and contemplated by the original agreement. Likewise, while it might be found necessary to increase the remaining part of the work to be performed by reason of extras or changes in the drawings or specifications affecting the scope of the work, the assumption is that such increased work would have been required and authorized under the terms of the original agreement. In this view, if the original contract here involved (which has not been obtained from this Office's local branch in St. Louis due to the stated urgency of the matter presented) contains provisions similar to the usual clauses relating to default, changes and extras, it properly may be concluded that the appropriation available at the time of executing the said agreement was obligated in an amount sufficient to cover the additional items of cost here in question and is available for that purpose irrespective of the manner in which the work is completed, provided, of course, the total of such items does not exceed the unexpended balance of that appropriation.

Sincerely yours,

(Signed) Lindsay C. Warren Comptroller General of the United States