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B-116131 October 19, 1953

Number: B-116131

Date: 1953-10-19

B-116131 October 19, 1953

The Administrator of General Service General Services Administration

My dear Mr. Administration

Reference is made to your letter of October 14, 1953, concerning contract GS-03S-10118 awarded to the Fargo Motor Corporation on June 30, 1953, which contract was subject of decision by this Office, B-116131, September 16, 1953.

The contract covered the procurement of tractor-trucks and trailers for the Post Office Department and it was held in the decision of September 16, that the contract should be canceled by reason of the fact that the Fargo Motor Corporation offered complete delivery of the tractors within 180 days whereas the advertised specifications called for delivery within 120 days. It is now pointed out in your letter that, insofar as the trailers were concerned, the bid submitted by Fargo complied with the advertised specifications. Accordingly, the earlier decision may be considered as requiring only that the tractor portion of the contract be canceled, which you state has been done.

You also state that the Post Office Department has requested your Administration to procure by new contract the tractors covered by the canceled portion of the contract and, because no moneys are included in its 1954 budget for the purchase thereof, desires to use the 1953 fiscal year funds previously obligated for the original purchase.

The principle here involved is somewhat analogous to that applicable to a case where a contractor defaults and the items or services are procured under a replacement contract. In such cases the general rule is well established that the appropriation obligated for the defaulted contract is available for the replacement contract. Here, of course, the obligating instrument was legally defective in such a way as to render the contract voidable at the election of the Government. However, in view of the circumstances indicating that a bona fide need for the vehicles existed in the fiscal year 1953, and since the administrative agency undertook to fill that need by what it thought to be a valid and binding contract, your are advised that this Office will not object to the use of the proper 1953 appropriation to cover the amount of the replacement contract.

Sincerely yours,

Lindsay C. Warren Comptroller General of the United States