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FEDERAL GRANT - LEAA - APPROPRIATION AVAILABILITY FOR PROJECT COMPLETION DECISION CONCERNING AVAILABILITY OF FISCAL YEAR 1970 FUNDS TO MAKE A GRANT TO NORTHWESTERN UNIVERSITY TO COMPLETE WORK AFTER DEFAULT UNDER A GRANT TO UNIVERSITY OF WISCONSIN BY NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE. WHERE, AFTER A GRANT TO THE UNIVERSITY OF WISCONSIN FOR A RESEARCH PROJECT THE PRINCIPAL DIRECTOR TRANSFERRED TO NORTHWESTERN AND IT WOULD BE IN INTEREST OF GOVERNMENT TO HAVE NORTHWESTERN UNIVERSITY COMPLETE THE WORK, FUNDS UNOBLIGATED REMAINING UNDER THE ORIGINAL GRANT MAY BE USED IN FUNDING A GRANT TO NORTHWESTERN TO COMPLETE THE UNFINISHED PROJECT. ACCEPTANCE OF A GRANT FOR A PARTICULAR PROJECT CREATES A CONTRACTUAL RELATIONSHIP SO THAT WHEN A GRANTEE DEFAULTS FUNDS OBLIGATED UNDER ORIGINAL CONTRACT MAY BE USED TO COMPLETE WORK.

TO MR. ATTORNEY GENERAL:

REFERENCE IS MADE TO LETTER OF SEPTEMBER 4, 1970, FROM ASSOCIATE ADMINISTRATORS OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, RICHARD W. VELDE AND CLARENCE M. COSTER, REQUESTING OUR DECISION AS TO WHETHER, UNDER THE CIRCUMSTANCES DESCRIBED THEREIN, THE UNEXPENDED BALANCE OF GRANT FUNDS, AVAILABLE FOR OBLIGATION IN FISCAL YEAR 1970 AND ORIGINALLY OBLIGATED PURSUANT TO A GRANT WHICH IS NOW IN DEFAULT, IS AVAILABLE IN THE CURRENT FISCAL YEAR TO ENGAGE A NEW GRANTEE TO COMPLETE THE UNFINISHED PROJECT.

IT IS EXPLAINED THAT THE GRANT WAS AWARDED TO THE UNIVERSITY OF WISCONSIN BY THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION IN ACCORDANCE WITH PROVISIONS OF PART D OF TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, 82 STAT. 197, 42 U.S.C. SEC. 3701 ET SEQ. SUBSEQUENTLY, THE FACULTY MEMBER DESIGNATED IN THE GRANT AS PROJECT DIRECTOR AND PRINCIPAL INVESTIGATOR TRANSFERRED TO THE FACULTY OF NORTHWESTERN UNIVERSITY. WITHOUT HIM, THE UNIVERSITY OF WISCONSIN IS UNABLE TO COMPLETE THE PROJECT AND HAS ADVISED THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE (INSTITUTE) THAT THE GRANT WILL BE RELINQUISHED EFFECTIVE AUGUST 31, 1970.

ALSO, IT IS STATED THAT THE NEED FOR COMPLETING THE PROJECT CONTINUES TO EXIST SINCE IT IS PART OF THE OVERALL RESEARCH PROGRAM ON HUMAN RESOURCES IN LAW ENFORCEMENT UNDERTAKEN BY THE INSTITUTE. MOREOVER, THE ORIGINAL PROJECT DIRECTOR IS THE ONLY PERSON PRESENTLY AVAILABLE TO COMPLETE THE WORK INASMUCH AS HE WAS INSTRUMENTAL IN ITS CREATION, HAS CARRIED IT TO ITS PRESENT STATUS AND KNOWS ITS ENTIRE BACKGROUND. CONSEQUENTLY, FROM THE STANDPOINT OF BOTH TIME AND EXPENSE, IT IS BELIEVED THAT IT WOULD BE FAR BETTER TO HAVE HIM CONTINUE THE PROJECT THAN TO BEGIN ANEW WITH ANOTHER PRINCIPAL INVESTIGATOR. ACCORDINGLY, THE INSTITUTE

NOW WISHES TO GRANT THE REMAINING FUNDS TO NORTHWESTERN UNIVERSITY SO THAT HE MAY COMPLETE THE PROJECT.

THE PURPOSE OF PART D OF TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 IS SET OUT IN SECTION 401 THEREOF AS BEING TO PROVIDE FOR AND ENCOURAGE TRAINING, EDUCATION, RESEARCH, AND DEVELOPMENT FOR THE PURPOSE OF IMPROVING LAW ENFORCEMENT AND DEVELOPING NEW METHODS FOR THE PREVENTION AND REDUCTION OF CRIME, AND THE DETECTION AND APPREHENSION OF CRIMINALS.

SECTION 402 ESTABLISHED THE INSTITUTE AND AUTHORIZED IT TO MAKE GRANTS TO, OR ENTER INTO CONTRACTS WITH, PUBLIC AGENCIES, INSTITUTIONS OF HIGHER EDUCATION, OR PRIVATE ORGANIZATIONS TO CONDUCT RESEARCH, DEMONSTRATIONS, OR SPECIAL PROJECTS PERTAINING TO THE PURPOSES DESCRIBED IN TITLE D, INCLUDING THE DEVELOPMENT OF NEW OR IMPROVED APPROACHES, TECHNIQUES, SYSTEMS, EQUIPMENT, AND DEVICES TO IMPROVE AND STRENGTHEN LAW ENFORCEMENT.

WHILE THE PROVISIONS OF PART D GIVE THE INSTITUTE BROAD AUTHORITY TO CARRY OUT THE LAW ENFORCEMENT PROGRAM, INCLUDING AUTHORITY TO FINANCE RESEARCH, ETC., EITHER IN THE FORM OF GRANTS OR BY CONTRACTS, IT SEEMS CLEAR THE CONGRESS INTENDED THAT THE FUNDS APPROPRIATED THEREUNDER ARE TO BE USED FOR SPECIFIC PURPOSES RATHER THAN FOR UNCONDITIONAL GRANTS OR GIFTS. THIS FACT APPARENTLY IS RECOGNIZED IN THE GRANT AGREEMENT WHEREIN IT IS PROVIDED IN PART THAT THE APPLICANT AGREES THAT FUNDS AWARDED SHALL BE EXPENDED ONLY FOR THE PURPOSES AND ACTIVITIES COVERED BY AN APPROVED PLAN AND THAT THE GRANT MAY BE TERMINATED IN WHOLE OR IN PART BY THE INSTITUTE FOR FAILURE TO COMPLY WITH THE GRANT CONDITIONS. CONSEQUENTLY, AND IN ACCORDANCE WITH OUR DECISION IN 42 COMP. GEN. 289 (1962), WE AGREE THAT THE ELECTION BY THE INSTITUTE TO PROVIDE FINANCIAL ASSISTANCE IN THE FORM OF A GRANT RATHER THAN A CONTRACT DOES NOT CHANGE THE ESSENTIAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE GRANTEE IN RESPECT TO THE PURPOSES AND CONDITIONS OF THE FUNDS GRANTED, AND THAT ACCEPTANCE OF THE GRANT CREATES, IN EFFECT, A CONTRACTUAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE GRANTEE. SEE, ALSO, 41 COMP. GEN. 134, 137 (1961).

IN VIEW OF SUCH RELATIONSHIP CREATED BY THE GRANT AGREEMENT IT IS STATED TO BE THE BELIEF OF THE INSTITUTE THAT IT NOW MAY AWARD A NEW GRANT TO COMPLETE THE UNFINISHED WORK AND TO CHARGE THE GRANT AGAINST THE BALANCE OF THE 1970 FISCAL YEAR APPROPRIATION IN ACCORDANCE WITH OUR DECISION SET OUT IN 34 COMP. GEN. 239 (1954).

THE DECISION REFERRED TO ABOVE CONCERNED A CONTRACT FOR EXPLORATORY DRILLING THAT ORIGINALLY WAS TERMINATED BECAUSE OF THE CONTRACTOR'S DEFAULT. CONCERNING THE FISCAL YEAR CHARGEABLE WITH A REPLACEMENT CONTRACT UNDER THOSE CIRCUMSTANCES WE STATED THAT--

"IN CASES WHERE A CONTRACT PERFORMANCE PERIOD HAS EXTENDED BEYOND THE EXPIRATION OF THE PEIOD OF AVAILABILITY FOR OBLIGATION OF A FISCAL YEAR APPROPRIATION, AND WHERE IT HAS BECOME NECESSARY TO TERMINATE THE CONTRACT BECAUSE OF THE CONTRACTOR'S DEFAULT, THIS OFFICE HAS TAKEN THE POSITION THAT THE FUNDS OBLIGATED UNDER THE ORIGINAL CONTRACT WOULD BE AVAILABLE FOR THE PURPOSE OF ENGAGING ANOTHER CONTRACTOR TO COMPLETE THE UNFINISHED WORK, PROVIDED A NEED FOR THE WORK, SUPPLIES, OR SERVICES EXISTED AT THE TIME OF EXECUTION OF THE ORIGINAL CONTRACT AND THAT IT CONTINUED TO EXIST UP TO THE TIME OF EXECUTION OF THE REPLACEMENT CONTRACT. *** "

IT IS REPORTED THAT THE ORIGINAL GRANT TO THE UNIVERSITY OF WISCONSIN WAS MADE

IN RESPONSE TO A BONA FIDE NEED THEN EXISTING AND WAS EXECUTED PRIOR TO THE EXPIRATION OF THE PERIOD OF AVAILABILITY FOR OBLIGATION OF 1970 FISCAL YEAR FUNDS AND, AS PREVIOUSLY STATED, THE NEED FOR COMPLETING THE PROJECT CONTINUES TO EXIST.

IN VIEW OF THESE FACTS IT IS CLEAR THAT IF FINANCIAL ASSISTANCE FOR THIS PROJECT HAD BEEN PROVIDED UNDER A CONTRACT OUR DECISION SET OUT IN 34 COMP. GEN. 239 (1954) WOULD BE FOR APPLICATION IN THIS CASE. HOWEVER, SINCE AS STATED ABOVE, IT IS OUR VIEW THAT THE GRANT AGREEMENT CREATED A CONTRACTUAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE GRANTEE, WE SEE NO VALID BASIS TO HOLD THAT SUCH DECISION SHOULD NOT BE EQUALLY APPLICABLE TO THE GRANT AGREEMENT HERE INVOLVED.

ACCORDINGLY, THE BALANCE OF THE FUNDS REMAINING FROM THE AMOUNT ORIGINALLY GRANTED TO THE UNIVERSITY OF WISCONSIN MAY BE USED IN FUNDING A GRANT TO NORTHWESTERN UNIVERSITY TO COMPLETE THE UNFINISHED PROJECT WORK.