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TO THE POSTMASTER GENERAL:

REFERENCE IS MADE TO YOUR LETTER OF FEBRUARY 6, 1967, ASKING WHETHER PRIOR YEAR FUNDS PREVIOUSLY OBLIGATED FOR THE PURCHASE OF 3-WHEEL MAILSTERS MAY BE USED TO PROCURE REPLACEMENT 4-WHEEL VEHICLES; THE ORIGINAL CONTRACTOR'S RIGHT TO PROCEED HAVING BEEN TERMINATED BECAUSE OF FAILURE TO MEET SCHEDULED DELIVERIES.

IT IS EXPLAINED THAT THE CARRIER MECHANIZATION PROGRAM BEGUN IN 1957 IS DIRECTED TO REDUCING FOOT DELIVERIES BY PROVIDING LETTER CARRIERS WITH MOTORIZED VEHICLES. AS PART OF THIS PROGRAM, A PURCHASE ORDER WAS ISSUED TO THE FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION, IN APRIL 1964, FOR 8,918 3-WHEEL MAILSTERS AND ANOTHER PURCHASE ORDER WAS ISSUED TO GSA IN JULY 1964, FOR AN ADDITIONAL 3,796 VEHICLES. THESE PURCHASE ORDERS CALLING FOR A TOTAL OF 12,714 VEHICLES WERE COMBINED BY GSA IN ONE INVITATION FOR BIDS. FOLLOWING NUMEROUS DELAYS ALSO EXPERIENCED WITH PRIOR REQUIREMENTS FOR FISCAL YEAR 1963, DUE TO SMALL BUSINESS SET-ASIDE DETERMINATIONS, A CONTRACT WAS AWARDED BY GSA ON JANUARY 27, 1965, TO THE UNIVERSAL FIBERGLASS CORPORATION FOR THE ENTIRE 12,714 UNITS AT $1,046 EACH TOTALING $13.3 MILLION.

BASED UPON REPEATED DIFFICULTIES EXPERIENCED BY THE CONTRACTOR IN MEETING SCHEDULE PERFORMANCE, GSA, AFTER EXHAUSTING ALTERNATIVES, TERMINATED THE RIGHT OF UNIVERSAL FIBERGLASS TO PROCEED ON DECEMBER 2, 1966.

IN THE INTERIM, IN ORDER TO MEET ADDITIONAL REQUIREMENTS FOR CARRIER VEHICLES, IT IS STATED THAT THE POST OFFICE DEPARTMENT PLACED AN ORDER WITH GSA FOR 2,500 UNITS ON MAY 17, 1965. FISCAL YEAR 1966 REQUIREMENTS FOR 4,941 UNITS WERE FORWARDED TO GSA ON JULY 9, 1965. THESE TWO QUANTITIES WERE ALSO COMBINED IN ONE INVITATION FOR BIDS AND THE CONTRACT WAS AWARDED BY GSA TO TUBULAR AIRCRAFT PRODUCTS COMPANY, INC., ON DECEMBER 10, 1965, THUS UTILIZING A SECOND SOURCE OF PRODUCTION FOR THE 7,441 UNITS.

ON DECEMBER 20, 1965, DUE TO CONTINUED SLOW DELIVERIES OF NEW UNITS AND THE ACCELERATED DISPOSAL OF OLDER VEHICLES FOR SAFETY REASONS, THE POST OFFICE DEPARTMENT REQUESTED GSA TO PROCURE AN ADDITIONAL 4,000 UNITS, FOR WHICH A CONTRACT WAS AWARDED DECEMBER 30, 1965, TO WEST COAST MACHINERY, INC., AND THIS AWARD IS SAID TO HAVE DEPLETED REASONABLE (COST-WISE) SOURCES OF SUPPLY.

AT THE TIME OF THE TERMINATION OF THE UNIVERSAL FIBERGLASS CONTRACT ON DECEMBER 2, 1966, THE CONTRACTOR HAD DELIVERED ONLY 4,224 OF THE 12,714 CONTRACTED UNITS. IN THIS CONNECTION, IT IS POINTED OUT THAT UNIVERSAL WAS NOT DEFAULTED AT AN EARLIER DATE BECAUSE OF THE LIMITED SOURCE OF SUPPLY FOR 3-WHEEL MAILSTERS AND

THAT IT HAD NOT YET BEEN DETERMINED THAT A 4-WHEEL VEHICLE COULD SERVE THE SAME PURPOSES. GSA REPORTED THAT AS OF DECEMBER 8, 1966, PAYMENTS TO UNIVERSAL FIBERGLASS TOTALED $6.4 MILLION AND THE $8.1 MILLION DIFFERENCE BETWEEN THIS AMOUNT AND THE $14.5 MILLION OBLIGATED UNDER THE TWO PURCHASE ORDERS (WITH AMENDMENTS FOR SAFETY MODIFICATIONS OF THE VEHICLE) REMAINED UNEXPENDED.

IT IS FURTHER EXPLAINED THAT THE CONTINUING DELAYS IN VEHICLE PRODUCTION AND DELIVERY; THE IMPACT OF FEDERAL STANDARD 515, STANDARD SAFETY DEVICES FOR AUTOMOTIVE VEHICLE, EFFECTIVE SEPTEMBER 26, 1966; THE FINDINGS AND RECOMMENDATIONS OF A STUDY OF THE VEHICLE PROGRAM BY THE FIRM OF ARTHUR D. LITTLE, INC.; THE PRESSING REQUIREMENTS FOR MOTORIZED DELIVERY; AND THE DEMONSTRATED BENEFIT OF THE CARRIER MECHANIZATION PROGRAM PROMPTED THE POST OFFICE DEPARTMENT TO CONSIDER UTILIZING ALSO A COMMERCIALLY AVAILABLE 4-WHEEL VEHICLE. IT IS NOW REPORTED THAT REVISED SPECIFICATION FOR A 4X2 VEHICLE BASED ON FEDERAL SPECIFICATION KKK-T-00645, TRUCK, GASOLINE, 4X4 TYPE I, UTILITY PICKUP, IN LIEU OF POST OFFICE DEPARTMENT SPECIFICATION POD-T-190, REVISED APRIL 20, 1964, COVERING 3-WHEEL VEHICLES, WOULD PROVIDE VEHICLES MEETING POSTAL SERVICE CARRIER MECHANIZATION REQUIREMENTS. THE POST OFFICE DEPARTMENT, THEREFORE, PROPOSES TO APPLY THE BALANCE OF FISCAL YEAR 1964 AND FISCAL YEAR 1965 FUNDS REMAINING UNEXPENDED UNDER THE TERMINATED UNIVERSAL FIBERGLASS CONTRACT TO THE PROCUREMENT OF THESE 4 WHEEL VEHICLES TO MEET REMAINING REQUIREMENTS. IS ESTIMATED THAT THE 4-WHEEL VEHICLES WILL COST APPROXIMATELY $1,950 EACH COMPARED WITH THE TERMINATED CONTRACT UNIT PRICE OF NOT TO EXCEED $1,156. HOWEVER, AS INDICATED ABOVE, IT IS STATED THAT THE 4-WHEEL VEHICLE WILL SERVE THE SAME PURPOSE AS THE VEHICLE TO HAVE BEEN FURNISHED BY THE UNIVERSAL FIBERGLASS CORPORATION AND MEET THE STILL UNFILLED REQUIREMENTS OF FISCAL YEAR 1964 AND FISCAL YEAR 1965.

IN VIEW OF THE FOREGOING, YOU REFER TO OUR DECISION IN 32 COMP. GEN. 565 AND ASK WHETHER UNDER THE CIRCUMSTANCES SET OUT ABOVE, YOUR DEPARTMENT IS PRECLUDED BY SUCH DECISION FROM APPLYING THE 1964 AND 1965 FUNDS REMAINING UNEXPENDED UNDER THE CONTRACT WITH UNIVERSAL FIBERGLASS CORPORATION TO THE PROPOSED PURCHASE OF 4-WHEEL VEHICLES.

IN CASES WHERE A CONTRACT PERFORMANCE PERIOD HAS EXTENDED BEYOND THE EXPIRATION OF THE PERIOD 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. 34 COMP. GEN. 239.

THE DECISION TO WHICH YOU REFER, 32 COMP. GEN. 565, INVOLVED A CONTRACT WHICH WAS ENTERED INTO IN DECEMBER 1948 AND THE CONTRACTOR'S RIGHT TO PROCEED WAS TERMINATED IN JUNE 1952. IN VIEW OF THE UNEXPLAINED LONG DELAY IN TERMINATING THE CONTRACT THERE AROSE THE QUESTION WHETHER THE ORIGINAL CONTRACT WAS ENTERED INTO TO FILL A BONA FIDE NEED FOR THE FISCAL YEAR 1949 AND, MORE PARTICULARLY, WHETHER A REPLACEMENT CONTRACT PROPOSED TO BE ENTERED INTO MORE THAN 4 YEARS LATER REASONABLY COULD BE ASSUMED TO BE IN FULFILLMENT OF A NEED EXISTING IN FISCAL YEAR 1949.

IN THE INSTANT CASE PRESENTED IN YOUR LETTER, THE DELAY IN TERMINATING THE CONTRACT WITH UNIVERSAL FIBERGLASS CORPORATION APPEARS NOT TO BE UNREASONABLE IN

THE CIRCUMSTANCES AND THERE APPEARS NO QUESTION BUT THAT THERE EXISTED A NEED FOR THE VEHICLES AT THE TIME THE CONTRACT WAS EXECUTED AND THAT SUCH NEED HAS NOT YET BEEN SATISFIED. ACCORDINGLY,THE HOLDING IN THAT DECISION WOULD NOT PRECLUDE THE ACTION NOW PROPOSED BY YOUR DEPARTMENT.

NEVERTHELESS, THE PROPOSAL MAY BE QUESTIONABLE ON OTHER GROUNDS. WHERE, AS IN THE CASE CONSIDERED IN 34 COMP. GEN. 239, WE HAVE HELD THAT APPROPRIATIONS ORIGINALLY OBLIGATED WITH THE COST OF A DEFAULTED CONTRACT ARE AVAILABLE FOR A REPLACEMENT CONTRACT, THE REPLACEMENT CONTRACT COVERED THE WORK UNFINISHED BY THE ORIGINAL CONTRACTOR OR THE IDENTICAL SUPPLIES OR MATERIALS WHICH THE DEFAULTING CONTRACTOR FAILED TO FURNISH. CF. 24 COMP. GEN. 555.

AS PREVIOUSLY STATED, THE ORIGINAL CONTRACT CALLED FOR 3-WHEEL TRUCKS WHILE THE PROPOSED REPLACEMENT CONTRACT CALLS FOR 4-WHEEL TRUCKS. HOWEVER, FOLLOWING RECEIPT OF YOUR LETTER, YOUR REPRESENTATIVES MET WITH REPRESENTATIVES OF OUR OFFICE OF GENERAL COUNSEL TO DISCUSS THE MATTER. DURING THE DISCUSSION IT WAS STATED BY YOUR REPRESENTATIVES THAT THERE WERE NO MANUFACTURERS NOW IN A POSITION TO FURNISH THE NEEDED 3-WHEEL VEHICLES. IN SUPPORT THEREOF, WE WERE FURNISHED A COPY OF A LETTER DATED MARCH 17, 1967, ADDRESSED TO YOUR GENERAL COUNSEL BY THE GENERAL COUNSEL OF GSA IN WHICH HE STATES THAT SINCE THE TUBULAR AIRCRAFT PRODUCTS COMPANY HAS LIKEWISE DEFAULTED ON ITS CONTRACT AND THE UNIVERSAL FIBERGLASS CORPORATION IS NO LONGER IN BUSINESS, ONLY ONE FIRM, WEST COAST MACHINERY, INC., CAN BE CONSIDERED AS CAPABLE OF PRODUCING 3-WHEEL MAIL DELIVERY VEHICLES AND, AS PREVIOUSLY STATED, IT NOW HAS SUCH A CONTRACT WITH YOUR DEPARTMENT WITH FINAL DELIVERY THEREUNDER TO BE MADE BY JUNE 21, 1967. ASSUMING SUCCESSFUL COMPLETION OF THAT CONTRACT IT IS STATED THAT DELIVERY OF THE ADDITIONAL VEHICLES NEEDED NO LATER THAN SEPTEMBER 1, 1967, COULD NOT BE EXPECTED AT THAT COMPANY'S CURRENT PRODUCTION RATE, PRIOR TO NOVEMBER 1968. WE HAVE BEEN INFORMED BY YOUR DEPARTMENT THAT THE REMAINING FUNDS UNDER THE UNIVERSAL FIBERGLASS CONTRACT WILL FINANCE FROM 5,000 TO 6,000 4-WHEEL VEHICLES WHICH GSA ESTIMATES CAN BE OBTAINED BY NOVEMBER 8, 1967, IF AWARDS ARE MADE TO THREE CONTRACTORS. MULTIPLE AWARDS ARE CONTEMPLATED.

SINCE THE NEED FOR THE VEHICLES STILL EXISTS AND AS 3-WHEEL VEHICLES ARE NOT PRESENTLY AVAILABLE, IT APPEARS THAT YOUR DEPARTMENT HAS NO CHOICE BUT TO PROCURE AVAILABLE SUBSTITUTE VEHICLES WHICH, ALTHOUGH NOT IDENTICAL WITH THE ONES PREVIOUSLY CONTRACTED FOR, ARE SIMILAR THERETO AND WILL ACTUALLY BE SUPERIOR TO THE 3-WHEEL VEHICLES IN MEETING THE NEEDS OF THE POSTAL SERVICE. CONSEQUENTLY, AND SINCE THE PROCUREMENT OF THE 4-WHEEL VEHICLES IS MADE NECESSARY BECAUSE OF THE FAILURE OF THE DEFAULTING CONTRACTOR TO FURNISH 3-WHEEL VEHICLES, IT IS OUR OPINION THAT UNDER THE CIRCUMSTANCES INVOLVED IN THIS PARTICULAR CASE THE PRIOR YEAR FUNDS IN QUESTION PROPERLY MAY BE USED TO PROCURE THE REPLACEMENT VEHICLES IF THE DELIVERY SCHEDULES THEREFOR WILL MEET YOUR IMMEDIATE NEEDS.