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AGRICULTURAL MARKETING ACT OF 1946 - MULTIPLE YEAR CONTRACTS DECISION THAT TRUST FUNDS HELD BY THE DEPARTMENT OF AGRICULTURE MAY BE USED FOR MULTIPLE YEAR CONTRACTS IN CARRYING OUT THE PURPOSE OF THE AGRICULTURAL MARKETING ACT OF 1946. WHILE THE PROVISIONS OF 41 U.S.C. 11 AND 31 U.S.C. 665(A) AND 712(A) MAKE CLEAR THAT CONTRACTS AWARDED FOR TESTING SERVICES MUST BE RESTRICTED TO THE AMOUNTS AVAILABLE IN THE TRUST FUND, SINCE THE TRUST FUND IS AVAILABLE UNTIL EXPENDED, THE COMP. GEN. IS NOT AWARE OF ANY STATUTORY PROHIBITION AGAINST MULTIPLE-YEAR CONTRACTS PROVIDED THAT SUFFICIENT FUNDS ARE AVAILABLE TO COVER ALL OBLIGATIONS UNDER THE CONTRACT. THE SUFFICIENCY OF FUNDS IS A MATTER FOR DETERMINATION BY THE SECRETARY OF AGRICULTURE.

TO MR. SECRETARY:

REFERENCE IS MADE TO LETTER OF NOVEMBER 10, 1970, FROM ASSISTANT SECRETARY RICHARD E. LYNG, CONCERNING A QUESTION THAT HAS ARISEN IN THE ADMINISTRATION OF THE AGRICULTURAL MARKETING ACT OF 1946, APPROVED AUGUST 14, 1946, 60 STAT. 1087, 7 U.S.C. 1621-1630.

SECTION 202 SETS FORTH THE PURPOSE OF THE ACT AND DECLARES IT TO BE THE POLICY OF THE CONGRESS TO PROMOTE THROUGH RESEARCH, STUDY, EXPERIMENTATION, AND THROUGH COOPERATION AMONG FEDERAL AND STATE AGENCIES, FARM ORGANIZATIONS, AND PRIVATE INDUSTRY A SCIENTIFIC APPROACH TO THE PROBLEMS OF MARKETING, TRANSPORTATION, AND DISTRIBUTION OF AGRICULTURAL PRODUCTS.

TO FURTHER THE PURPOSES THEREOF THE SECRETARY OF AGRICULTURE IS DIRECTED BY SECTION 203(H) (7 U.S.C. 1622H):

"TO INSPECT, CERTIFY, AND IDENTIFY THE CLASS, QUALITY, QUANTITY, AND CONDITION OF AGRICULTURAL PRODUCTS WHEN SHIPPED OR RECEIVED IN INTERSTATE COMMERCE, UNDER SUCH RULES AND REGULATIONS AS THE SECRETARY OF AGRICULTURE MAY PRESCRIBE, INCLUDING ASSESSMENT AND COLLECTION OF SUCH FEES AS WILL BE REASONABLE AND AS NEARLY AS MAY BE TO COVER THE COST OF THE SERVICE RENDERED, TO THE END THAT AGRICULTURAL PRODUCTS MAY BE MARKETED TO THE BEST ADVANTAGE, THAT TRADING MAY BE FACILITATED, AND THAT CONSUMERS MAY BE ABLE TO OBTAIN THE QUALITY PRODUCT WHICH THEY DESIRE, EXCEPT THAT NO PERSON SHALL BE REQUIRED TO USE THE SERVICE AUTHORIZED BY THIS SUBSECTION. *** "

IT IS STATED THAT IN CARRYING OUT THE ABOVE RESPONSIBILITY, THE DEPARTMENT OBTAINS TESTING SERVICES THROUGH CONTRACTS WITH COMMERCIAL TESTING LABORATORIES. SUCH CONTRACTS ARE AWARDED ON AN AREAWIDE FISCAL YEAR BASIS TO THE LOWEST RESPONSIBLE BIDDERS. THE FEES COLLECTED PURSUANT TO THE ABOVE AUTHORITY ARE

DEPOSITED IN THE TREASURY TO A TRUST FUND FROM WHICH DISBURSEMENTS ARE MADE TO COVER THE COSTS OF THE TESTING AND OTHER SERVICES.

QUESTION HAS NOW ARISEN AS TO WHETHER THESE TESTING CONTRACTS MAY BE AWARDED ON A MULTIPLE-YEAR BASIS. THERE THUS IS FOR CONSIDERATION THE PROVISIONS OF 41 U.S.C. 11, 31 U.S.C. 665(A), AND 31 U.S.C. 712(A), RESPECTIVELY, WHICH READ IN PERTINENT PART AS FOLLOWS:

"NO CONTRACT OR PURCHASE ON BEHALF OF THE UNITED STATES SHALL BE MADE, UNLESS THE SAME IS AUTHORIZED BY LAW OR IS UNDER AN APPROPRIATION ADEQUATE TO ITS FULFILLMENT *** .

"NO OFFICER OR EMPLOYEE OF THE UNITED STATES SHALL MAKE OR AUTHORIZE AN EXPENDITURE FROM OR CREATE OR AUTHORIZE AN OBLIGATION UNDER ANY APPROPRIATION OR FUND IN EXCESS OF THE AMOUNT AVAILABLE THEREIN; NOR SHALL ANY SUCH OFFICER OR EMPLOYEE INVOLVE THE GOVERNMENT IN ANY CONTRACT OR OTHER OBLIGATION, FOR THE PAYMENT OF MONEY FOR ANY PURPOSE, IN ADVANCE OF APPROPRIATIONS MADE FOR SUCH PURPOSE, UNLESS SUCH CONTRACT OR OBLIGATION IS AUTHORIZED BY LAW.

"EXCEPT AS OTHERWISE PROVIDED BY LAW, ALL BALANCES OF APPROPRIATIONS CONTAINED IN THE ANNUAL APPROPRIATION BILLS AND MADE SPECIFICALLY FOR THE SERVICE OF ANY FISCAL YEAR SHALL ONLY BE APPLIED TO THE PAYMENT OF EXPENSES PROPERLY INCURRED DURING THAT YEAR, OR TO THE FULFILLMENT OF CONTRACTS PROPERLY MADE WITHIN THAT YEAR."

RELATIVE TO THE PROVISIONS OF LAW QUOTED ABOVE IT IS STATED IN 42 COMP. GEN. 272, 275 (1962) THAT

"THESE STATUTES EVIDENCE A PLAIN INTENT ON THE PART OF THE CONGRESS TO PROHIBIT EXECUTIVE OFFICERS, UNLESS OTHERWISE AUTHORIZED BY LAW, FROM MAKING CONTRACTS INVOLVING THE GOVERNMENT IN OBLIGATIONS FOR EXPENDITURES OR LIABILITIES BEYOND THOSE CONTEMPLATED AND AUTHORIZED FOR THE PERIOD OF AVAILABILITY OF AND WITHIN THE AMOUNT OF THE APPROPRIATION UNDER WHICH THEY ARE MADE; TO KEEP ALL THE DEPARTMENTS OF THE GOVERNMENT, IN THE MATTER OF INCURRING OBLIGATIONS FOR EXPENDITURES, WITHIN THE LIMITS AND PURPOSES OF APPROPRIATIONS ANNUALLY PROVIDED FOR CONDUCTING THEIR LAWFUL FUNCTIONS, AND TO PROHIBIT ANY OFFICER OR EMPLOYEE OF THE GOVERNMENT FROM INVOLVING THE GOVERNMENT IN ANY CONTRACT OR OTHER OBLIGATION FOR THE PAYMENT OF MONEY FOR ANY PURPOSE, IN ADVANCE OF APPROPRIATIONS MADE FOR SUCH PURPOSE; AND TO RESTRICT THE USE OF ANNUAL APPROPRIATIONS TO EXPENDITURES REQUIRED FOR THE SERVICE OF THE PARTICULAR FISCAL YEAR FOR WHICH THEY ARE MADE."

IT THUS IS CLEAR THAT THE CONTRACTS AWARDED FOR TESTING SERVICES MUST BE RESTRICTED TO THE AMOUNTS AVAILABLE IN THE TRUST FUND. SINCE THE TRUST FUND IS AVAILABLE UNTIL EXPENDED, HOWEVER, WE ARE NOT AWARE OF ANY STATUTORY PROVISION PROHIBITING THE USE OF MULTIPLE-YEAR CONTRACTS THEREUNDER PROVIDED THAT SUFFICIENT FUNDS ARE AVAILABLE TO COVER ALL OBLIGATIONS UNDER THE CONTRACT.

WHETHER THERE ARE SUFFICIENT FUNDS IN THE TRUST FUND TO PERMIT THE USE OF ANY MULTIPLE-YEAR CONTRACTS IN CARRYING OUT THE PURPOSES OF THE AGRICULTURAL MARKETING ACT OF 1946 IS A MATTER FOR ..END :