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B-24341 March 12, 1942

Number: B-24341

Date: 1942-03-12

B-24341 March 12, 1942

The Honorable Mr. Wayne Coy, Office of Emergency Management Executive Office of the President,

My dear Mr. Coy:

I have your letter of March 4, 1942, as follows:

"Your attention is invited to that portion of the First Deficiency Appropriation Act, 1942, (Public Law 463), approved February 21, 1942, providing under Title I, for the Executive Office of the President, for Civilian Defense, $100,000,000 to carry out the provisions of the act approved January 27, 1942 (Public Law 415), entitled: 'An Act to Provide Protection of Persons and Property from Bombing Attacks in the United States and for Other Purposes'. Particular attention is directed to that porttion which provides that 'not to exceed $3,000,000 shall be available for all administrative expenses.'

"Your attention is invited further to the Executive Order which is awaiting signature of the President, prescribing regulations pursuant to thte Act of January 27, 1942 concerning Civilian Defense, and to the attached copy of a memorandum dated September 18, 1941 from the Adjutant General's Office to the Chiefs of Arms, Services, and Bureaus and the Divisions of the General Staff, stating the policy of the War Department in connection with its assistance to the Office of Civilian Defense in providing equipment for the protection of the covilian population. This memorandum has been approved by the Secretary of War and is to govern the action of the War Department in this matter.

"A statement of property to be procured pursuant to the above laws is also attached.

"The Office of Civilian Defense will make available to the War Department from time to time by working fund arrangement sufficient funds to cover all proper costs in pursuance of this program.

"It is requested that a determination be made by you a to what contitutes 'administrative expenses' within the purview of this law. As an aid in making your determination there are set forth below data pertinant to the activities of the Office of Civilian Defense and the various services of the War Department concerned with carrying out the provisions of the lws referred to above.

"The various functions in carrying out the program authorized by Congress are as follows:

"Planning and Research

"Public Law 415 specifically states that the appropriation may be used for 'research and development'. This appears to preclude planning and research from being considered 'administrative expenses'.

"Would those persons now employed or to be employed on the OCD staff for planning and research in connection with the development of protective equipment be paid from the fund set aside for administrative purposes or would they be paid from the general fund? From which fund would part time consultants be paid? It is assumed that research performed for OCD by the Bureau of Standards or other similar agencies would not be charged to the administrative funds.

"Priorities and Allocation

"The cities which are to receive equipment and the quantities which they are to receive will b determined by the Office of Civilian Defense. A small staff will be employed for this purpose. This constitutes a planning function. Is this chargeable to administrative funds?

"Procurement

"The appropriate branches of the War Department will act as procurement agents of the OCD in purchasing equipment and supplies. It is anticipated that this over-all procurement service will involve research, development, standardization of specifications, construction of manufacturing facilities, manufacturing, purchasing, inspection and acceptance.

"Emergency fire fighting equipment will be procured by the Corps of Engineers; protective clothing, steel helmets and arm bands by the Quartermaster Corps; and medical supplies by the Medical Corps. The creation of facilities for quantity production of gas masks and the manufacture of such masks as funds permit will be handled by the Chemical Warfare Service. The functions described in this section seem to be clearly outside the field of administration. A confirmation of this would be appreciated.

"It may be necessary for the branches of the War Department, in order to perform these procurement functionss for the OCD, to add to their present clerical staffs. Would the salaries of these additional clerks be chargeable to the administrative fund? In this connection we refer you to 18 Comptroller General 866. This decision appears to answer the question in the negative.

"Transportation

"There are three types of transportation with which OCD is concerned. They are: first, the movement of equipment form point of production direct to designated recipient localities or to OCD depots for assembly or storage; second, transportation from OCD depots to the possession of localities within the states; and, third, transfer of equipment from one locality to another at the direction and expense of OCD in emergencies. This latter should be distinguished from intra-state movements made on the authority of state officials at state expense.

"Which of these transportation costs, if any, should be charged to administrative expenses?

"Warehousing

"Practically all equipment must be sent from point of manufacture direct to warehouses to be established and operated by the OCD. The equipment and supplies will be received and assembled into appropriate units or sets of equipment and then shipped to localities in the quantity and order of priority determined by the OCD.

"While the Act makes no specific provision for storage of this equipment, it is readily apparent that the storage cost is an expense reasonably and necessarily incident to the accomplishment of the purposes for which the appropriation therewith as to whether the cost of maintaining these assembly and storage depots is chargeable to administrative expense? Your attention is directed to 17 Comptroller General 636 in connection therewith.

"Property Records

"A central property records office is to be established in the OCD in Washington to maintain property and accountability records for all equipment and supplies procured. This office will likewise be charged with the administration of property accounting methods used in the field, and supervision of the depots.

"It is felt that the costs of maintaining this office are properly chargeable to administrative expenses. Is this interpretation correct?

"A prompt decision on the above questions would be appreciated. The war emergency makes imperative immediate action on the part of the Office of Civilian Defense in starting the procurement processes."

The act of January 27, 1942, Public Law 415, entitled "AN ACT To provide protection of persons and property from bombing attacks in the United States, and for other purposes," authorized an appropriation to enable the Director of Civilian Defense "to provide, under such regulations as the President may prescribe, facilities, supplies, and services to include research and development for the adequate protection of persons and property from bombing attacks, sabotage, or other war hazards." An appropriation to carry out the provisions of the said act was made by the act of February 21, 1942, Public Law 463, under the de4ading "Executive Office of the President, Office for Emergency Management", which provides, in pertinent part, as follows:

"Civilian Defense: To enable the Director of Civilian Defense, under such regulations as the President may prescribe (which regulations may provide exemption from the requirements of section 3709 of the Revised Statutes), to carry out the provisions of the Act entitled 'An Act to provide pprotection of persons and property from bombing attacks in the United States, and fo other purposes', approved January 27, 1942 (Public Law 415), fiscal year 1942, $100,000,000 to remain available until June 30, 1943, of which not to exceed $3,000,000 shall be available for all administrative expenses, including printing and binding and personal services in the District of Columbia: ***" (Underscoring supplied.)

The term "administrative expenses" would appear to relate, generally, to those expenses necessarily insurred in administering, executing, or carrying out the primary purposes of legislative enactments. Whether a particular expense should be classified as an "administrative expense" would appear to be governed by the

particular program involved, the provisions of the act in which the term appears or to which it relates, and the intention of the legislative body in using the expression, and what might be regarded as an item of "administrative expense" within the meaning of one statute might not be so regfarded under another statute enacted for entirely different purposes.

It appears from The Adjutant General's memorandum of September 18, 1941, referred to in your letter, and from the order of the President which now has been issued (Executive Order No. 9086, March 6, 1942), that the War Department is to procure necessary equipment on behalf of the Office of Civilian Defense and, in connection therewith, is to be responsible for necessary research, development, standardization, procurement, inspection, acceptance, and delivery of such equipment. It now is proposed, and it was contemplated at the time Public Law 463 was enacted, that the expenses incurred by the War Department in performing such functions would be paid out of the appropriation of $100,000,000. That many of the expenses which would be incurred by the War Department in performing such services are generally regarded as "administrative expenses" can hafdly be doubted and it appears from the hearings before the Committee of Congress at the time they considered the bill which became Public Law 463 that both the former and present Director of Civilian Defense and the Congressional Committee intended that all the expenses incurred by the War Department in performing the contemplated services should be calssified as, and chargeable to, the funds appropriated for administrative expenses. See the Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives. The provisions of The Adjutant General's memorandum were called to the attention of the Subcommittee (page 262) and the services which it was contemlated would be furnished by the War Department were clearly pointed out. With respect to the limitation on administrative expenses the following appears (page 268):

"The Chairman. Mr. Mayor, there is a limitation in the appropriation item under which 'not to exceed $3,000,000 shall ve available for all administrative expenses.' You have indicated that you want to hold your staff to a minimum. As a matter of fact, what is the extent of your staff at this time?

"Mayor LaGuardia. That would be to cover War Department expenses.

"General Gasser. And our own, for administration and supplies."

Subsequently, when the matter was pending before the Subcommittee of the Committee on Appropriations, United States Senate, a similar explanation was made by the present Director of Civilian Defense. The following appears in the Hearings before the said Subcommittee (pages 58, 59):

"Senator O'Mahoney. Does the report in the House hearing cover a break- down of the expenditure of the $3,000,000 which is set aside in the bill for administrative expenses?

"General Gasser. No, sir.

"Senator O'Mahoney. It doesn't?

"General Gasser. No, sir. We haven't that money. That will be an additional expense in Washington and in the field, that $3,000,000 for the administration of the 97,000,000.

"Senator O'Mahoney. On page 4 of the bill it is provided that of the $100,000,000, 'not to exceed $3,000,000 shall be available for all administrative expenses, including printing and binding and personal services in the District of Columbia."

"Now, I want to inquire about the significance of the phrase 'all administrative expenses.' Is it intended that this $3,000,000 shall be the exclusive source of funds for the payment of persons on your staff, or will there be additional funds mad available, by Executive order or otherwise, form other appropriations?

"Mr. Landis. As I understand that, Senator, that $3,000,000 is to be available only for that personnel which will be necessary for the distribution of this equipment. And, as I understand it, about $2,000,000 of that $3,000,000 will be paid over to the Army for services that the Army will render us in that connection.

"Senator O'Mahoney. Then that would leave only $1,000,000 of this fund for the Office of Civilian Defense, exclusively?

"Mr. Landis. Exclusively, only about that. Is that correct, General?

"General Gasser. I am not prepared to give you the exact break-down, because we can't figure that until we get into the minutia of detail of the manufacture and shipment, and the number of manufatrues and the number of inspectors that have to be in on that manufacturing, as well as the minutia of detail of the distribution of the property itself and the accounting for it.

"Senator O'Mahoney. That will be under this?

"General Gasser. That will be under this, and be under the towns that get the property, and the cost of it, and so on.

"Senator O'mahoney. And that will be administered through you, General Gasser, as I understand it?

"General Gasser. Yes, it will be, except tht the money I turn over to the Army will be administered by the Army.

"Senator O'Mahoney. That is this $2,000,000?

"General Gasser. The $2,000,000, if that is what it will be.

"Senator O'Mahoney. In other words, there will be no employee on civilian defenses paid out of that $2,000,000 turned over to the Army? That will take care of people now employeed by the War Department?

"General Gasser. I don't know whether it will be used to take care of people now employed by the War Department, but it will be used by the War Department in procuring the $97,000,000 worth of property."

Also, see page 55 of the said Hearings where it was explained that purchasing of equipment was an "administrative service" to be performed by the War Department.

This explanation of the provision in the act for "administrative expenses" is supported by the breakdown of the items, and the amounts thereor, for which it

was contemplated the $100,000,000 would be used. See page 259 of the House Hearings, supra.

It is clear from the legislative history of the act that the term "administrative expenses" was inteded to be considered broadly and to cover priactically all expenses not representing a direct cost of the facilities, supplies and equipment to be procured and distributed. This intention is emphasized by the use of the word "all" in referring to administrative expenses, and the specific inclusion as administrative expenses of "personal services in the District of Columbia."

It appears from the legislative history of the act that the "research and development" contemplated consists primarily in the standardization of the equipment and the drafting of specifications. Irrespective thereof, the research and development will be carried on as a necessary incident to the primary object, the procurement of supplies, facilities and equipment for civilian defense purposes and consequently appears to be no more than an administrative expense incident to execution of the program. Th fact that the term "research and development" is specifically mentioned in Public Law 415 does not preclude its being an "administrative expense" within the meaning of Public Law 463. That such research and development consists essentially of personal services is obvious and Public Law 463 specifically includes personal services in the District of Columbia as an administrative expense and no exception is mad as to the nature of the personal services to be performed. Certainly, by reason thereof, all personal services in the District of Columbia involving research and development must be charged to administrative expense. It would be absurd to attribute to the Congress an intention that research and development in the District of Columbia should be charged to administrative expenses but that like research and development outside the District of Columbia should not be so charged. The only reasonable assumption is thath the use of the phrase "in the District of Columbia" was not to indicate an intent that only personal services in the District of Columbia were to be included as a part of the administrative expenses but was because without the use of such phrase no part of the appropriation could be used for personal services in the District of Columbia. See 5 U.S.C. 46. And, insofar as the natrue of the expense is concerned, it would appear to make no difference whether the research and development be performed by the Office of Civilian Defense, the War Department, the Bureau of Standards, or any other Government agency.

The cost of transportation of supplies and equipment procured to the points to which they are to be delivered for civilian defense purposes represents a direct and essential part of the cost of the supplies and equipment at the destinations to which such supplies and equipment are to be sent for civilian defense purposes and consequently is not properly for classification as an administrative expense. It would seem to be immaterial that the supplies and equipment first are shipped to Office of Civilian Defense depots for assembly and stroage and then later transported to ultimate destinations. However, any transfer of equipment from one locality to another, after distribution of the equipment, would be an incident to the maintenance and administration of the program and, as such, the incidental transportation costs should be charged as an administrative expense.

There would appear to be no objection to the warehousing of equipment, as proposed, since, as you state, "the storage cost is an expense reasonably and necessarily incident to the accomplishment of the purposes for which the

appropriation was made." But the cost of maintaining the storage depot is, as implied, a maintainance cost incident to distribution of the equipment and I find no basis for excluding it from classification s an "administrative expense. " However, costs directly incurred in the assembly of the equipment may be considered as a part of the direct cost of the equipment and need not be charged as an administrative expense.

Also, it appears that direct costs which may be incurred by the War Department, or otherwise, in the "creation of facilities for quantity production of gas masks and the manufacture of such masks" represent direct costs of the equipment to be destributed and are not to be charged as administrative expenses.

To summarize, it would appear, inview of the provisions of the acts of January 27 and February 21, 1942, the legislative history thereof, and the objects sought to be accomplished, that the only items discussed in your letter, supra, which should not be charged as "administrative expenses" are the direct costs incurred in the creation of facilities and the manufacture of gas masks; transportation costs of equipment from point of production to ultimate destination, either direct or through Office of Civilian Defense depots; and direct costs incurred in assembling equipment, at Office of Civilian Defense depots, for distribution.

Respectfully,

Lindsay C. Warren Comptroller General of the United States