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B-35670, Jul 19, 1943

Number: B-35670

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B-35670, JUL 19, 1943

PRECIS UNAVAILABLE

THE HONORABLE,

THE SECRETARY OF AGRICULTURE.

MY DEAR MR. SECRETARY:

I HAVE YOUR LETTER OF JULY 12, 1943, REQUESTING DECISION UPON A QUESTION ARISING UNDER THE APPROPRIATION ITEM "FOREST FIRE COOPERATION" CONTAINED IN THE DEPARTMENT OF AGRICULTURE APPROPRIATION ACT, 1944, APPROVED JULY 12, 1943, 57 STAT. 413 (PUBLIC LAW 129, 78TH CONGRESS), WHICH PROVIDES:

"FOR COOPERATION WITH THE VARIOUS STATES OR OTHER APPROPRIATE AGENCIES IN FOREST-FIRE PREVENTION AND SUPPRESSION AND THE PROTECTION OF TIMBERED AND CUT-OVER LANDS IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 1, 2, AND 3 OF THE ACT ENTITLED 'AN ACT TO PROVIDE FOR THE PROTECTION OF FOREST LANDS, FOR THE REFORESTATION OF DENUDED AREAS, FOR THE EXTENSION OF NATIONAL FORESTS, AND FOR OTHER PURPOSES, IN ORDER TO PROMOTE THE CONTINUOUS PRODUCTION OF TIMBER ON LANDS CHIEFLY SUITABLE THEREFOR', APPROVED JUNE 7, 1924, AS AMENDED (16 U.S.C. 564-570), INCLUDING ALSO THE STUDY OF THE EFFECT OF TAX LAWS AND THE INVESTIGATION OF TIMBER INSURANCE AS PROVIDED IN SECTION 3 OF SAID ACT, $6,300,000, OF WHICH NOT TO EXCEED $87,418 AND $5,000 SHALL BE AVAILABLE FOR PERSONAL SERVICES AND FOR THE PURCHASE OF SUPPLIES AND EQUIPMENT, RESPECTIVELY, IN THE DISTRICT OF COLUMBIA: PROVIDED, THAT THE SECRETARY OF AGRICULTURE MAY AUTHORIZE EXPENDITURES NOT TO EXCEED $2,800,000 FROM THIS APPROPRIATION FOR PREVENTING AND SUPPRESSING FOREST FIRES ON CRITICAL AREAS OF NATIONAL IMPORTANCE WITHOUT REQUIRING AN EQUAL EXPENDITURE BY THE STATE AND PRIVATE OWNERS."

YOU STATE THAT THE LOCATION OF MOST OF THE WORK TO BE UNDERTAKEN PURSUANT TO THE AUTHORITY CONTAINED IN THE PROVISO TO THE APPROPRIATION ABOVE QUOTED IS SUCH THAT IT CAN BE HANDLED MORE EXPEDITIOUSLY BY STATE ORGANIZATIONS WITH WHICH THE FOREST SERVICE COOPERATES IN FIRE PROTECTION UNDER THE ACT OF JUNE 7, 1924, 43 STAT. 653, AND YOU FURTHER STATE:

"IT IS PLANNED TO MAKE CONTRACTUAL ARRANGEMENTS WITH THE STATES UNDER WHICH THEIR FIRE PROTECTION ORGANIZATIONS WILL HANDLE FIRE PREVENTION AND SUPPRESSION ON SUCH CRITICAL AREAS AS CAN BE HANDLED MOST ECONOMICALLY THROUGH SUCH AN ARRANGEMENT. THIS CONTEMPLATES ADVANCE APPROVAL BY THE FOREST SERVICE OF THE PLAN OF OPERATION IN DETAIL, PERIODIC INSPECTIONS BY FOREST SERVICE PERSONNEL TO INSURE THAT THE REQUIRED MEASURES ARE PUT INTO EFFECT AND MAINTAINED IN

ACCORDANCE WITH SPECIFICATIONS AND THAT EXPENDITURES ARE MADE ONLY FOR PURPOSES NECESSARY TO ACCOMPLISHMENT OF THE TASK.

"THE FOREST SERVICE IS FAMILIAR WITH THE OPERATION OF THE STATE PROTECTION AGENCIES THROUGH COOPERATION UNDER THE 1924 ACT OVER A PERIOD OF YEARS AND HAS COOPERATIVE AGREEMENTS NOW IN EFFECT; IT IS KNOWN THAT THESE ORGANIZATIONS ARE FULLY QUALIFIED AND PROPERLY LOCATED FOR THE EFFICIENT HANDLING OF PROTECTION WORK ON CRITICAL AREAS. WHILE THE STATES ARE WILLING TO UNDERTAKE THE TASK, SEVERAL OF THEM DO NOT HAVE FUNDS WITH WHICH TO FINANCE THE OPERATION INITIALLY UNDER AN ARRANGEMENT WHEREBY LATER REIMBURSEMENT WOULD BE MADE BY THE FEDERAL GOVERNMENT. DECISION IS DESIRED WHETHER IT IS PERMISSIBLE TO ADVANCE TO THE STATES FROM THIS APPROPRIATION THE AMOUNT OF THE ESTIMATED COST OF PREVENTING AND CONTROLLING FIRE ON SUCH CRITICAL AREAS WITH THE UNDERSTANDING THAT ANY UNOBLIGATED BALANCE WILL BE REFUNDED TO THE FEDERAL GOVERNMENT."

WHILE YOUR SUBMISSION DOES NOT SO STATE, IT IS UNDERSTOOD FROM INFORMAL INQUIRY OF YOUR DEPARTMENT THAT THE AMOUNTS TO BE EXPENDED UNDER THE PROPOSED AGREEMENTS OR CONTRACTS WILL REPRESENT REIMBURSEMENT TO THE STATES - BUT WITHOUT PROFIT - OF THE COST AND EXPENSE OF MAINTAINING LOOKOUTS IN THE AREAS INVOLVED, THE DRILLING AND TRAINING OF FIRE CREWS, THE PURCHASE AND AND MAINTENANCE OF EQUIPMENT (TITLE TO WHICH WILL BE IN THE UNITED STATES), THE PAYMENT OF WAGES TO PERSONNEL, ETC., IN ADDITION TO THE COST OF ACTUAL FIRE SUPPRESSION.

SECTION 3648, REVISED STATUTES, PROHIBITS THE DISBURSEMENT OF PUBLIC FUNDS IN ADVANCE OF THE RENDERING OF SERVICES OR DELIVERY OF MATERIALS FOR WHICH PAYMENT IS MADE, THE PRIMARY PURPOSE OF SAID STATUTE, OF COURSE, IS OBVIOUS. THE DANGER INHERENT IN AN ADVANCE OF MONEYS PRIOR TO THE RENDERING OF SERVICE OR DELIVERY OF MATERIALS UNDER A CONTRACT IS THE POSSIBILITY OF FAILURE OF PERFORMANCE ON THE PART OF THE CONTRACTOR AND HIS REFUSAL OR INABILITY TO REFUND THE MONEYS SO ADVANCED. HOWEVER, HAVING REGARD FOR THE ESTABLISHED RESPONSIBILITY OF A STATE, THAT DANGER WOULD SEEM TO BE LESS REAL WHERE A STATE IS THE CONTRACTOR UNDERTAKING TO RENDER SERVICES UNDER AN AGREEMENT WITH THE UNITED STATES, PARTICULARLY WHERE, AS HERE, THE ENDS TO BE ACHIEVED BY THE PERFORMANCE OF THE SERVICE - THE PREVENTION AND SUPPRESSION OF FOREST FIRES WITHIN ITS CONFINES - WILL BENEFIT THE STATE AS WELL AS THE FEDERAL GOVERNMENT. THEREFORE, AND IN VIEW OF THE EMERGENT NATURE OF THE WORK TO BE PERFORMED AND THE UNDOUBTED RELATIONSHIP OF THAT WORK TO THE WAR EFFORT (COMPARE 22 COMP.GEN. 386), I HAVE TO ADVISE THAT THE PROPOSED ARRANGEMENT FOR ADVANCES MAY BE REGARDED AS WITHIN YOUR ADMINISTRATIVE DISCRETION IN THE USE OF THE APPROPRIATION INVOLVED, WHICH IS SPECIFICALLY MADE AVAILABLE FOR COOPERATION WITH THE VARIOUS STATES. HOWEVER, IN ORDER TO REDUCE TO A MINIMUM THE POSSIBILITY OF LOSS TO THE UNITED STATES, IT IS SUGGESTED THAT THE ENTIRE AMOUNT OF SUCH ESTIMATED COST SHOULD NOT BE ADVANCED TO THE STATE AT ONE TIME, BUT THAT ADVANCES BE MADE PERIODICALLY, SUCH AS IN MONTHLY OR QUARTERLY INSTALLMENTS.