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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Engineer Research and Development Center, USACE—Use of Plant Replacement and Improvement Program Account to Replace Headquarters Building

File: B-318897

Date: March 18, 2010

DIGEST

Funds in the U.S. Army Corps of Engineers' (USACE) Plant Replacement and Improvement Program account in the USACE Revolving Fund are not available to pay for the cost of replacing the existing Engineer Research and Development Center headquarters building without specific congressional authorization.

DECISION

The Director of Resource Management for the Engineer Research and Development Center (ERDC), U.S. Army Corps of Engineers (USACE), in Vicksburg, Mississippi, in his capacity as certifying officer, has requested a decision under 31 U.S.C. § 3529 on whether ERDC may use funds available in USACE's Plant Replacement and Improvement Program (PRIP) account to replace its existing headquarters building without seeking specific congressional approval. Letter from Director, Resource Management, ERDC, to Acting General Counsel, GAO, Oct. 23, 2009 (Request Letter). As explained below, we conclude that PRIP account funds are not available for the construction of a new ERDC headquarters without specific congressional authorization.

Our practice when issuing decisions is to obtain the views of the relevant office to establish a factual record and the office's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. In this regard, we requested the legal views of

the USACE Chief Counsel. Letter from Assistant General Counsel for Appropriations Law, GAO, to Chief Counsel, USACE, Nov. 5, 2009. The Chief Counsel provided a memorandum and accompanying documents in response. Memorandum from Chief Counsel, USACE, to Associate General Counsel, GAO, *Subject: Engineer Research and Development Center -- Use of Plant Replacement and Improvement Program Account to Replace Existing Headquarters (B-318897)*, Jan. 8, 2010 (Chief Counsel Memo).

BACKGROUND

Section 576 of title 33, United States Code, establishes the Corps of Engineers Civil Works Revolving Fund (Revolving Fund). The Revolving Fund is—

“available without fiscal year limitation, for expenses necessary for the maintenance and operation of the plant and equipment of the Corps of Engineers used in civil works functions, including acquisition of plant and equipment, maintenance, repair, and purchase, operation and maintenance of not to exceed four aircraft at any one time, temporary furnishing of services finally chargeable to appropriations for civil works functions, and the furnishing of facilities and services for military functions of the Department of the Army and other Government agencies and private persons, *as authorized by law.*”

33 U.S.C. § 576 (emphasis added). The Revolving Fund provides the plant or equipment for work on a particular civil works project and receives reimbursements for its use “at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment, and accrued leave . . .” *Id.* The Plant Replacement and Improvement Program (PRIP), through which the Corps manages the purchase of plant and equipment, is funded by the Revolving Fund. Chief Counsel Memo, at 2.

The Director asserts that the funding for construction of a new ERDC headquarters building could come from the PRIP account in the Revolving Fund, and offers the following reasons for seeking a new headquarters:

“Over time the mission of the Corps research mission has grown considerably, last year topping over \$1B in project work. It would be unrealistic to expect it to effectively operate and perform its assigned function without facilities that can accommodate the additional

personnel and tasks since it was first constructed. We are not asking to build anything for a function or purpose that has not already been created, just simply asking to upgrade obsolete facilities.”

Request Letter, at 1--2.

While noting that new construction generally requires congressional approval, the Director contends that the ERDC’s headquarters building, by the fact of its existence, is implicitly authorized and thus its replacement does not require additional congressional language.

DISCUSSION

Building a new ERDC headquarters is a military construction project which must be accomplished in accordance with title 10 of the United States Code. *See* 10 U.S.C. §§ 2801 *et seq.* “Military construction” includes “any construction, development, conversion, or extension of any kind carried out with respect to a military installation” that may result in a new facility or “a complete and usable improvement to an existing facility.” 10 U.S.C. § 2801. *See, e.g.*, B-303145, Dec. 7, 2005; B-234326.15, Dec. 24, 1991. Under the provisions of title 10, military departments may only carry out such construction projects “as are authorized by law.” 10 U.S.C. § 2801(a). Therefore, construction of a new ERDC headquarters requires a specific authorization, and it is irrelevant that the ERDC headquarters building already exists.

The question, then, is whether the Revolving Fund provision in 33 U.S.C. § 576 provides the necessary authority to construct the new headquarters using the PRIP account funds. Although section 576 provides for the “furnishing of facilities” for the Department of the Army and other government agencies, that provision is specifically limited by use of the term “as authorized by law.” In interpreting a provision of a statute, we follow the settled canon of statutory construction that “a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section as to produce a harmonious whole.” 2A Sutherland, *Statutes & Statutory Construction*, § 46:05 at 154 (6th ed. 2000). *See, e.g.*, B-317636, Apr. 21, 2009. Likewise, statutory phrases and individual words cannot be viewed in isolation; rather, effect must be given to “every word, clause and sentence of a statute.” 2A Sutherland, § 46:06 at 181, *quoting United States v. Menasche*, 348 U.S. 528 (1955). *See also* 70 Comp. Gen. 351, 354 (1991). In interpreting section 576, then, the words “furnishing of facilities” must be read together with “as authorized by law.” *See, e.g.*, B-287158, Oct. 10, 2002. Thus, by itself section 576 does not provide authorization either to construct a new ERDC headquarters or to use the PRIP account of the Revolving Fund to pay for it.

The legislative history of section 576 does not provide any support for use of the account funds for ERDC headquarters construction. The congressional reports did not contain any explanatory information for the provision relevant to this issue. However, the hearings on the creation of the Revolving Fund contained some information about what types of transactions USACE would and would not finance with the fund, and there was a statement that the fund would not be used for the “[a]cquisition, operation, and maintenance of construction and operating facilities exclusively for military activities.” *Civil Functions, Department of the Army Appropriations, 1954: Hearings on H.R. 5376 before the Subcommittee of the Senate Committee on Appropriations*, 83rd Cong., 1st Sess. 1201 (1953) (statement of Mr. Oksner, Comptroller’s Office, Corps of Engineers). The stated purpose of that limitation was “to show specially that the revolving fund is for the civil-works functions” of USACE and would only “incidentally furnish services to military activities.” *Id.* at 1202.

In addition, USACE regulations implementing the PRIP specifically address the issue of using the funds to build headquarters buildings:

“Revolving Fund. PRIP supports multiple civil works projects and/or appropriations at Corps Districts. . . . Thus, the Revolving Fund, PRIP is not an appropriate funding source for headquarters and . . . operational and facility requirements. Exceptions to this policy will be on a case-by-case basis and will require Congressional notification and authorization.”

USACE ER 37-1-29, § 4-1(c) (Nov. 30, 2002).

The USACE Chief Counsel is in agreement with this analysis. Use of the PRIP account in the Revolving Fund for construction of a new ERDC headquarters building requires congressional authorization. Chief Counsel Memo, at 2. USACE has consistently interpreted and applied the phrase “as authorized by law” to mean that the Revolving Fund itself does not authorize the acquisition or construction of USACE facilities, such as a new ERDC headquarters. *Id.*, and Enclosures E, F, G. Rather, the Revolving Fund may be used to finance such facilities but only when specifically authorized by Congress. *Id.*

The Chief Counsel’s memorandum also contained examples of specific statutory authorizations USACE has successfully obtained to use the Revolving Fund for other construction projects. *See, e.g.*, Energy and Water Development and Related Agencies Appropriations Act, 2008, Pub. L. No. 110-161, div. C, title I, § 107, 121 Stat. 1844, 1943 (Dec. 26, 2007) (authorization to construct a new Environmental Laboratory and improvements to the Information Technology Laboratory at ERDC); Water Resources Development Act of 1966, Pub. L. No. 104-303, § 520, 110 Stat. 3658, 3765 (Oct. 12, 1996) (authorization to construct new headquarters for the New England Division and the Jacksonville District).

Based on the above, we agree with the Chief Counsel's position that congressional authorization should be sought before using the PRIP account of the USACE Revolving Fund for construction of a new ERDC headquarters building.

A handwritten signature in black ink, reading "Lynn H. Gibson". The signature is written in a cursive style with a large initial "L" and a distinct "H" and "G".

Lynn H. Gibson
Acting General Counsel