

B-181176-O.M.

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released

Regional Manager, Kansas City - K. L. Weary

JUN 26

General Counsel - Paul G. Dembling

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Contract Funding - Equal Employment Opportunity Commission
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Your memorandum of April 26, 1974, transmitted a letter to you from the Kansas City Regional Director, Equal Employment Opportunity Commission (EEOC) requesting information concerning contracts wherein the performance period extends beyond the fiscal year for which the funds were appropriated.

According to the Director's letter, funds appropriated during FY 1973 are properly obligated in contracts with State agencies wherein the performance of the contract by the State agency and payments by EEOC are to cover calendar 1973. In view of this situation, he asks:

"If the state agency has not completed performance by December 31, 1973, what should be done?"

"May the contract be extended into calendar 1974? If so, for what purpose or purposes may such extension be granted?"

"May additional funds from FY 1974 properly be committed to the same contract? If so, under what circumstances and upon what conditions and/or limitation? If not, what action should be taken with respect to any (either FY 1973 or FY 1974) funds advanced to the state or local agency pursuant to such contract?"

"Is there any hazard of personal liability on the part of anyone (a) authorizing or disbursing funds pursuant to such contracts, (b) anyone monitoring performance by the state or local agency, (c) anyone certifying the propriety of payment pursuant to the terms of the contract?"

It is explained that these questions develop from past practices and actions taken prior to the Commission's receipt of the newly delegated responsibility for contracting with State and local FEP agencies and that the questions are raised by the situation which it inherited.

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Since there is no specific mention of the nature of the contract or contracts involved, our opinion will be limited to a general discussion.

With regard to the use of appropriated funds, 31 U.S.C. § 663a provides:

"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." (Emphasis supplied.)

and 31 U.S.C. § 712a provides:

"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 made within that year."

In view of these statutes, our Office has stated the general rule that, in order to obligate a fiscal year appropriation for payments to be made in a succeeding year, the contract imposing the obligation must have been made within the fiscal year sought to be charged and the contract must have been made to meet a bona fide need of the fiscal year to be charged. 33 Comp. Gen. 57, 61 (1953). If these requirements are met, where the State agency has not completed performance by December 31, 1973, performance may be extended into calendar 1974. Of course determination of what constitutes a bona fide need of a particular fiscal year depends in large measure upon the facts and circumstances of the particular case. See 37 Comp. Gen. 155 (1957); cf. 44 Comp. Gen. 399 (1965).

In response to the question, "May additional funds from FY 1974 properly be committed to the same contract?", the Director should be advised that if the purpose of the additional funds is to secure additional services not covered by the original contract, we would see no objection to amending the contract to so provide. See in this connection our decisions 37 Comp. Gen. 861 (1958) and 42 id. 733 (1963), copies enclosed.

Concerning the question with respect to personal liability, the Regional Director's attention should be invited to the provisions of 31 U.S.C. § 82c.

We are also enclosing a pamphlet entitled "Manual For General Government Matters--Federal Appropriations" which the Regional Director may find to be helpful.

Attachments

EXCISE TAXES	EXCISE TAXES
OFFICIALS	OFFICIALS
ADDITIONAL	ADDITIONAL
	EXCISE TAXES
	OFFICIALS
	ADDITIONAL