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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-202222

DATE: December 31, 1981

MATTER OF: Department of the Interior — Fiscal Year
Appropriation Chargeable for Contract Modifications

- DIGEST: 1. Department of Interior entered into contract for necessary facilities and staff to operate non-residential project camps for youth. In last month of fiscal year 1980, Interior executed modifications to this contract extending period of performance of contract from October 1, 1980, to May 31, 1981, and providing for a new service to be performed by contractor during extension period. As Interior did not have a bona fide need for services provided by modifications until they were performed in fiscal 1981, they are chargeable to Interior's 1981 appropriation. 31 U.S.C. § 712a permits use of annual appropriations only for expenses serving the needs of the year for which the appropriation was made. Fact that supplemental agreements modified basic contract which itself was properly charged to 1980 appropriation does not change this result. Only modifications within scope of original contract may be charged to same appropriation as original contract.
2. Antideficiency Act, 31 U.S.C. 665(a) forbids incurring of obligations in advance of appropriations. A renewal option which extends performance of services for an additional fiscal year, may only be exercised when funds for the new fiscal year have been made available.

The Assistant Secretary of Interior for Policy, Budget and Administration, requests our decision on the fiscal year appropriation, 1980 or 1981, to be charged for the costs of modifications to a contract with the Chico Unified School District, Chico, California (Chico). Essentially, these modifications, entered into in the last month of fiscal year 1980, were for services to be performed by Chico during fiscal year 1981. We conclude that only Interior's 1981 appropriation may be charged for the costs of these supplemental agreements, and that the supplemental agreements themselves were not properly made until the 1981 appropriation was enacted.

As stated in the submission, the contract and the modifications provided for the necessary facilities and staff to operate non-residential project camps, each of which were to be eight weeks in duration, for youth under the Youth Conservation Corps Act of 1970,

as amended, 16 U.S.C. § 1701 et. seq. Under the terms of the original contract, Chico was to provide the necessary facilities and staff for the program's camps from January 1, 1980, to September 30, 1980. In a modification entered into on September 26, 1980, the contract was extended until May 31, 1981. Additionally, on September 29, 1980, the parties entered into another modification which provided that Chico would perform the payroll services, previously performed by the Water and Power Resources Service's Administrative Services Center, for the duration of the contract. Interior contends that these modifications should be charged to its 1980 appropriation.

Before determining whether Interior's 1980 appropriation can be charged for these modifications, we must determine the availability period of this appropriation. Section 1706 of title 16 of the United States Code states that funds appropriated for carrying out the purposes of the Youth Conservation Corps Act are to remain available for obligation for two fiscal years. However, the Department of the Interior and Related Agencies Appropriation Act, fiscal year 1980, Pub. L. No. 96-126, 93 Stat. 954, provides:

"That the following sums are appropriated * * * for
the fiscal year ending September 30, 1980 * * *:

* * * * *

"For expenses necessary to carry out the provisions of the Act of August 13, 1970, as amended by Public Law 93-408, \$54,000,000 * * *." (emphasis added).

The appropriation act further provides, in section 306: "No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." 93 Stat. 980 (emphasis added). Since these provisions are the latest expression of Congressional intent on the availability of this appropriation, they override the language in 16 U.S.C. § 1706. See 58 Comp. Gen. 321, 323 (1979).

Section 712a of title 31 United States Code permits use of annual appropriations only for expenses serving the needs of the year in which the appropriation was made. Therefore, Interior can only use funds from its 1980 appropriation for obligations incurred during fiscal year 1980 which will fulfil a bona fide need arising within this period of availability. See 44 Comp. Gen. 399, 401 (1965); 33 Comp. Gen. 57, 61 (1953). While the modifications in question were executed during fiscal year 1980, they may be properly charged to Interior's 1980 appropriation only if Interior had a bona fide need for them in fiscal year 1980.

Determination of what constitutes a bona fide need of a particular fiscal year depends primarily upon the facts and circumstances of a particular case. 44 Comp. Gen. supra. Generally, contracts for services may only be made for the duration of the appropriation period because a bona fide need for a particular service usually only arises at the time the services are to be performed. See B-187881, October 3, 1977; B-174226, March 13, 1972. The period of performance of service contracts can extend beyond the duration of an appropriation period only where the portion of the contract to be performed after the expiration of the appropriation period is not severable from the portion performed during this period. See B-198574, February 2, 1981.

The modification entered into between Interior and Chico which provided that Chico perform payroll services in the subsequent fiscal year is clearly not such a non-severable service contract. Interior had no need for the payroll services to be provided by Chico on September 29, 1980, the date this modification was executed. Interior's need for these services only arose when these services had to be performed, i.e., between October 1, 1980 and May 31, 1981, when the employees of these camps had to be paid.

Furthermore, insofar as the modification executed on September 26, 1980, provided that Chico continue to supply staff for the operation of the camps during fiscal year 1981, this modification also may be characterized as a service contract. Interior's need for staff to operate the camps did not arise on September 26, 1980. Only at the beginning of each eight week camp period did Interior have any need for staff to operate the camps. The performance of this modification was thus severable from the performance of the underlying contract.

Consequently, although Interior executed both these modifications at the end of fiscal year 1980, it did not have a bona fide need for these services until fiscal year 1981, the fiscal year in which Chico was to perform these services. Therefore, as Interior's 1980 appropriation was only available during fiscal year 1980, Interior could not charge this appropriation for the costs of these services. Instead, Interior's 1981 appropriation should be used to fund these services both of which commenced on October 1, 1980, under the terms of the modifications. See 44 Comp. Gen. supra, at 401-402; B-187881, supra.

Even if the modification of September 26, 1980, is not considered a service contract but rather one to provide facilities from October 1, 1980, to May 31, 1981, for the operations of the camps, with the provision to provide staff merely incidental to the one providing

facilities, this modification still may not be charged to the fiscal year 1980 appropriation. Interior did not have a bona fide need for these facilities until the beginning of each eight week camp period. Since the time for performance of the modification did not begin until fiscal year 1981, Interior clearly did not have a need for these facilities when it executed the contract at the end of fiscal year 1980. Therefore, the cost of this modification can only be charged to Interior's 1981 appropriation.

It must be emphasized that these modifications are not chargeable to Interior's 1980 appropriation merely because they modify a contract properly chargeable to this appropriation. Only modifications which provide for additional work within the scope of the original contract may be charged to the same appropriation as the original contract. See 44 Comp. Gen. supra, at 401-402. These modifications executed in September 1980, are not additional work within the scope of the original contract. Rather, they are more properly classified as separate, albeit related, contracts and as such they must be charged to Interior's fiscal year 1981 appropriation according to the rules discussed above.

Finally, we note that the Antideficiency Act, 31 U.S.C. § 665(a), forbids the incurring of obligations in advance of available appropriations to pay for them. B-198574, February 2, 1981. By attempting to extend performance of a contract into a subsequent fiscal year before appropriations for that year had become available, Interior violated the Act. To provide for continued performance in a subsequent fiscal year, Interior may include in its service contracts renewal options which would enable it, solely at its discretion, to extend the period of performance of these contracts through the following fiscal year. However, Interior may only exercise these options when the appropriation for the subsequent fiscal year becomes available for obligation.

Harvey R. Carr
For Comptroller General
of the United States