

B-171049-O.M., Feb. 17, 1972

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Effect of Provisions of DOD Directive 7220.6 Regarding
Recording of Obligations for Intra-Governmental Orders

We are currently performing work for the Senate Armed Services Committee on the Army's policies and procedures with regard to the use of project orders. As you recall, we previously did similar work in the Navy on the same subject for the same committee.

In our April 23, 1971, report to the Committee on Armed Services, United States Senate, on Problems in the Administration and Use of Project Orders by the Navy (B-171049), we devoted chapter 4 to a brief examination of the use of work requests. In that chapter we concluded that Section 601 of the Economy Act of 1932 (31 U.S.C. 686) is the statutory authority for the use of intradepartmental orders (work requests) and that the Department of the Navy is authorized thereunder to issue such orders for the purpose of outside contracting. We also noted that, since Procurement and Research, Development, Test and Evaluation appropriations are now going to be available for only definite time periods, the provisions of 31 U.S.C. 686-1 require that the performing activity either obligate the funds within the period of availability or return them to the sponsoring activity.

At the request of the Committee, we have recently initiated a similar review of the Army's policies and practices with regard to the use of project orders (Code 68604). In connection with this review, we have several questions regarding statutory provisions as implemented by DOD Directive 7220.6, Prerequisites for Recording and Reporting of Obligations. Appropriate sections of this Directive together with our questions are set forth below. A copy of the entire Directive is attached.

Excerpts from DOD Directive 7220.6

- "4.A.(2) Intra-Governmental Agreements. Orders for specific supplies, material, equipment, work, or services (such as orders placed under the approved Project Law; 41 U.S.C. 23; Section 601(a) of the Economy Act, 31 U.S.C. 686; Section 10 of the Armed Services

Procurement Act, and similar authority) shall be recorded as obligations against the appropriation of the ordering agency as follows:

* * * * *

- (b) Economy Act Orders. Orders on another government agency (including orders for work or services to be performed by a component of the Department of Defense) in the amount stated in the order when accepted in writing.

* * * * *

- (d) Reductions Required by Section 1210, General Appropriation Act, 1951 (31 U.S.C. 686-1). Obligations recorded under paragraph 4.A.(2)(b) against annual appropriations shall be decreased at the end of the fiscal year in which the order was issued to the extent that the agency ordered upon has not incurred obligations under such orders."

Questions

1. Can an Economy Act order be issued between any two government activities; i.e., both intra- and inter-departmental?
2. Orders for work or services to be performed by a component of the Department of Defense are specifically mentioned in paragraph 4.A.(2)(b). Is there any restriction on the use of such orders for the purpose of outside contracting?
3. The statement that Economy Act orders shall be recorded as obligations in the amount stated in the order when accepted in writing appears to exclude issuance of such orders on a citation of funds basis. Is there a legal requirement to that effect?
4. Does the requirement in section 4.A.(2)(d) include all appropriations with a limited, although not annual, period of availability for obligation?
5. Is the requirement in section 4.A.(2)(d) applicable in connection with Section 842(a) of the Department of Defense Appropriation Act, 1971, which limits the period of availability of appropriations which had originally been made available until expended?
6. Is there any exception to the requirement in section 4.A.(2)(d) if an order is issued to a working capital fund? In this regard, see attached decisions B-104354, B-123621, and General Regulation No. 125.

In addition to the above questions we would also appreciate your opinion as to the meaning of the term "approved projects" which we have underlined in the following excerpt from 41 U.S.C. 23.

"All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations ..."

We are committed to issuing a report to the Senate Armed Services Committee in February 1972. Therefore, we would appreciate if you would give this matter your early attention.

If you have any questions on the above, please contact either myself or Mr. David Lowe of my staff on OX5-7111.

Attachments

Indorsement

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Director, Defense Division

Returned. Section 686(a) of title 31, United States Code, provides in pertinent part as follows:

"(a) Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance

thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: Provided, That the Department of the Army, Navy Department, Treasury Department, Federal Aviation Agency, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract: * * *"

and, relative thereto, 31 U.S.C. 686-1 provides that--

"No funds withdrawn and credited pursuant to section 686 of this title, shall be available for any period beyond that provided by the Act appropriating such funds."

It will be noted that the above provisions of 31 U.S.C. 686 authorize the heads of any executive departments, establishments, bureaus or offices to place orders with any other departments, establishments, bureaus or offices. There is no requirement that the bureaus or offices referred to must be in different departments, consequently, and assuming that the activities referred to in your first question are equivalent to bureaus or offices, such as the technical services, such question is answered in the affirmative. See 25 Comp. Gen. 322 (1945).

With respect to your second question, we are not aware of any restriction on the use of orders on components of DOD for the purpose of outside contracting.

Concerning question 3, since the regulation is dealing only with the amount to be recorded as obligations, we do not agree that such requirement precludes the issuance of such orders on a citation of funds basis. In any event, we know of no legal requirement to that effect.

As to questions 4 and 5, it is not clear that section 4.A(2)(d) can be said to be applicable to other than an appropriation available for only one fiscal year. Nevertheless, appropriations available for more than one fiscal year would also be subject to 31 U.S.C. 686-1 and

must be obligated by the performing activity within the period of availability prescribed in the appropriation act or other law.

Question 6 is answered in the negative.

The legislative history of 41 U.S.C. 23 does not disclose that the term "approved projects" was intended to have a meaning other than that normally to be implied from the use of such term--that is, projects that have been approved by officials having legal authority to do so. See, generally, 9 Comp. Gen. 523 (1930). It may be noted also that a similar provision of law relating to the Coast Guard, 14 U.S. C. 141, employs the term "under authorization of law."

See also the definition of "project order" contained in paragraph III A of DOD Directive 7220.1, May 4, 1971.

PAUL G. DEMBLING

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Attachments