

B-247119

March 2, 1992

DIGESTS

1. An appropriations restriction contained in the Department of Defense Appropriations Act, 1992, Pub. L. No. 102-172, requiring the extension of the CHAMPUS Reform Initiative (CRI) contract, is in direct conflict with the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, which requires award of the CRI contract through standard procurement procedures. In response to a query from the Department, it is our view that the two statutes are irreconcilable and the Department should consider the most recent law, the Authorization Act, as controlling. The Department can proceed with its competition for the CRI contract.

2. Two conflicting statutes received final congressional action within one day of each other and were signed by the President in the opposite order received. We concluded that

bills, before they become law, have no legal effect on each other. It is only when they are approved by the President that they have legal force and effect, and therefore only then that one can be said to supersede the other.

3. Where there are two statutes on the same subject, the statutes should be construed harmoniously, if at all possible, to give maximum effect to both. However, if the statutes are irreconcilable, the general rule is that, to the extent of the conflict, the more recent statute controls.

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Comptroller General
of the United States
Washington, D.C. 20548

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March 2, 1992

The Honorable Dick Cheney
The Secretary of Defense

Dear Mr. Secretary:

This is in response to the December 20, 1991, letter from your General Counsel asking for our views concerning the impact of recently enacted legislation on the Department's CHAMPUS Reform Initiative (CRI) contract.

Under the CRI contract, a contractor has managed the delivery and financing of CHAMPUS services in California and Hawaii since 1988. The contract was originally awarded for 1 year with four 1-year renewal options, all of which have been exercised. The last regular option period is the current one, from February 1, 1992, to January 31, 1993. The Department has issued a notice of intent to extend the current contract for an additional 6 months under authority provided by the Federal Acquisition Regulation (52.217-8). With the extension, the contract will expire July 31, 1993.

It is our understanding that last year the Department began preparing a Request for Proposals (RFP) for a new contract to take effect upon expiration of the current one. The RFP had not been issued by the time of enactment of the Department of Defense Appropriations Act, 1992 (Pub. L. No. 102-172) (hereinafter "Appropriations Act"), and the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. No. 102-190) (hereinafter "Authorization Act"). Both acts contain provisions concerning the CHAMPUS Reform Initiative, and you have asked how those provisions affect the current CRI contract and the RFP for a new contract. In the meantime, the Department has issued an RFP that calls for the successor contract to begin delivery of services either on August 1, 1993, when the 6-month extension ends, or 6 months later on February 1, 1994. Representatives of the office responsible for managing the Department's health care system have told us that their office would prefer a competition for the CRI contract.

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The relevant provision of the Appropriations Act is section 8032, which provides:

"None of the funds in this Act may be used to execute a contract for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Reform Initiative that exceeds the total fiscal year 1987 costs for CHAMPUS care provided in California and Hawaii, plus normal and reasonable adjustments for price and program growth: Provided, That notwithstanding any other provision of law, the CHAMPUS Reform Initiative contract for California and Hawaii shall be extended until February 1, 1994, within the limits and rates specified in the contract. . . ."

The Authorization Act provides, in section 722:

"(a) AUTHORITY. -- Upon the termination (for any reason) of the contract of the Department of Defense in effect on the date of the enactment of this Act under the CHAMPUS reform initiative established under section 702 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 1073 note), the Secretary of Defense may enter into a replacement or successor contract with the same or a different contractor and for such amount as may be determined in accordance with applicable procurement laws and regulations and without regard to any limitation (enacted before, on, or after the date of the enactment of this Act) on the availability of funds for that purpose.

"(b) TREATMENT OF LIMITATION ON FUNDS FOR PROGRAM. -- No provision of law stated as a limitation on the availability of funds may be treated as constituting the extension of, or as requiring the extension of, any contract under the CHAMPUS reform initiative that would otherwise expire in accordance with its terms."

Final congressional action on the Authorization Act took place first, one day before final action on the Appropriations Act. The President acted in the opposite order, signing the Appropriations Act on November 26 and the Authorization Act 9 days later on December 5, 1991.

The two provisions should of course be construed harmoniously, if at all possible, to give maximum effect to

both. Posadas v. National City Bank, 296 U.S. 497, 503 (1939). However, the provisions are not easily reconciled. The Appropriations Act directs the Department to extend the existing contract through January 1994, while the Authorization Act would prohibit the Department from giving effect to that direction.

It has been suggested that one way to harmonize the two laws is to read the Appropriations Act proviso that directs extension of the contract as independent of the "limitation" language that immediately precedes it. Viewed in that way, the proviso would be unaffected by the Authorization Act language, which is directed at provisions of law stated as limitations on the availability of funds, and therefore would control.

The legislative history indicates that, in fact, reconciliation of the two provisions was not the intention of the drafters. The appropriations bill was an apparent effort to counteract the effect of the authorization bill, just as the authorization bill appears to have been directed at overcoming the original version of the appropriation.

The original version of the Appropriations Act provision was in the bill reported to the House on June 4, 1991. It was framed as a limitation on the use of funds for termination of the existing contract before February 1994. H.R. Rep. No. 102-95, 102d Cong., 1st Sess. 248 (1991).

Following House adoption of the appropriations bill, the bill that was to become the Authorization Act was amended on the Senate floor on July 31. 137 Cong. Rec. S11,508 (daily ed. July 31, 1991). The Senate amendment said that the Secretary could enter into a new CRI contract "without regard to any limitation . . . on the availability of funds for that purpose," and that no provision of law stated as a limitation on availability of funds could be treated as requiring the extension of the contract. Then, during the subsequent conference on the appropriations bill, the relevant provision in that legislation was amended to the version ultimately enacted.

Statements in the legislative history of the two bills make explicit what this sequence of events suggests, that the object of the provision in each bill was to counter the effect of the provision in the other bill. As one of the sponsors of the Authorization Act provision, speaking of the final versions of the provisions, said, "The two provisions are directly at odds. In essence, it is the intent of each provision to repeal the other and substitute its own direction to the Secretary. . . ." 137 Cong. Rec. S18,555 (daily ed. Nov. 26, 1991) (statement of Sen. McCain). See also 137 Cong. Rec. S17,635 (daily ed. Nov. 22, 1991)

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