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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

*[Air Force Request for Reimbursement for Expenditures Incurred 9952
Under Interagency Agreement]*

FILE: B-194400

DATE: April 27, 1979

MATTER OF: Bureau of Alcohol, Tobacco and Firearms--Payments
Under Interagency Agreement

- DIGEST:
1. Fiscal year 1978 funds obligated by Bureau of Alcohol, Tobacco and Firearms under Economy Act agreement with Air Force, must be deobligated at the end of fiscal year 1978 to extent that Air Force has not incurred valid obligations under agreement during fiscal year. Air Force has validly obligated funds only to extent that performance by contractor satisfies bona fide need of fiscal year 1978.
 2. Under Economy Act agreement providing that contractor of Air Force is to provide research and development work and technical support to Bureau of Alcohol, Tobacco and Firearms, with Air Force paying for work and then being reimbursed by Bureau, only work actually performed by contractor during fiscal year 1978 satisfies bona fide need of that year. Work done by contractor during fiscal year 1979 may not be paid for from fiscal year 1978 funds.

This decision is in response to an inquiry from an authorized certifying officer of the Bureau of Alcohol, Tobacco and Firearms (Bureau), Department of the Treasury, seeking our opinion on whether a voucher may be legally certified for payment. The voucher, submitted by the Space and Missile Systems Organization, United States Air Force (Air Force), seeks reimbursement, to be charged against fiscal year 1978 funds, for expenditures incurred through January 31, 1979, under an interagency agreement between the Bureau and the Air Force. For the reasons indicated below, it is our opinion that the voucher may not be certified for payment from fiscal year 1978 funds.

The interagency agreement (designated Tatf-78-B-117 and accepted by the Air Force on September 23, 1977) states that it was entered into under the authority of the Economy Act of 1932, as amended, 31 U.S.C. § 686 (1976). Under the agreement, Aerospace Corporation, pursuant to a cost-plus-a-fixed fee contract with the Air Force, was to perform research and development work and provide technical support to the Bureau in connection with the National Explosives Tagging Program. The Air Force was to pay Aerospace for this work, and was to be reimbursed by the Bureau.

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The agreement indicated that the estimated cost of the work to be done by Aerospace during fiscal year 1978 was \$2,025,000, and that the Bureau was obligating \$225,000 of fiscal year 1977 funds and \$1,800,000 of fiscal year 1978 funds to cover this estimated cost. The agreement specified that the period of performance by Aerospace was to be October 1, 1977, through September 30, 1978.

Another interagency agreement between the Bureau and the Air Force, designated Tatf-79-3, was accepted on October 2, 1978. Under this agreement Aerospace Corporation was to continue its work for the Bureau for the period October 1, 1978, through September 30, 1979. The Air Force was to pay Aerospace for this work and was to be reimbursed from the Bureau's fiscal year 1979 funds. The estimated cost of the work to be performed by Aerospace during fiscal year 1979 was stated to be \$1,500,000.

The voucher seeks reimbursement under the fiscal year 1978 interagency agreement for work done by Aerospace Corporation during fiscal year 1979. The certifying officer asks the following specific question:

"Since the performance period is fixed as 10/1/77 through 9/30/78 by the agreement is it permissible to use a one year appropriation obligated on 9/30/78 and prior to pay for research and development services received during January 1979 * * * or should the obligation balance on September 30, 1978 covering research and development work not yet performed as of that date be deobligated?"

Section 601 of the Economy Act of 1932, as amended, 31 U.S.C. § 686 (1976), provides that one Federal agency may place orders with another Federal agency for materials, supplies, equipment, work, or services, and may pay for such orders either in advance or by reimbursement upon performance. The statute permits the Department of the Treasury, and four other named agencies, to place such orders even though the requisitioned Federal agency can only fulfill the order by contracting with a nongovernmental source.

All orders placed under the authority of the Economy Act are subject to the limitation contained in section 1210 of the General Appropriations Act, 1951, 31 U.S.C. § 686-1 (1976), which provides:

"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."

Under this provision, fiscal year appropriations obligated by Economy Act agreements must be deobligated at the end of the fiscal year, to the extent that the performing agency has not completed performance or incurred valid obligations under the agreement during the fiscal year. See HUD-Corps of Engineers Flood Insurance Studies, B-167790, September 22, 1977; Interagency Agreement--Administrative Office of the U.S. Courts, 55 Comp. Gen. 1497, 1499 (1976); 39 Comp. Gen. 317, 318-19 (1959); 34 Comp. Gen. 418, 421-22 (1955). See generally, 31 Comp. Gen. 83 (1951). In the present case, the fiscal year 1978 funds, obligated by the Bureau in fulfillment of the 1978 interagency agreement, should have been deobligated at the end of fiscal year 1978 to the extent that the Air Force had not incurred valid obligations under the agreement.

The work done by Aerospace for the Bureau was performed as part of a contract between Aerospace and the Air Force. It is therefore necessary to determine whether, under this contract, the Air Force validly obligated fiscal year 1978 funds for work performed and to be paid for during fiscal year 1979.

Section 1 of the Surplus Fund-Certified Claims Act of 1949, 31 U.S.C. § 712a (1976), provides that one-year funds may be used only to pay for expenses incurred during the fiscal year or to fulfill contracts properly made within the fiscal year. In interpreting this statute, we have long held that in order to obligate a fiscal year appropriation for payments to be made in a succeeding year, the contract imposing the obligation must not only have been made within the fiscal year to be charged, but the contract must also have been made to meet a bona fide need of that fiscal year. E.g., 33 Comp. Gen. 57, 61 (1953). It follows that the Air Force has validly obligated funds under the 1978 interagency agreement only to the extent that performance by Aerospace Corporation meets a bona fide need of fiscal year 1978.

As we stated above, the fiscal year 1978 interagency agreement specifies that Aerospace Corporation is to perform over the period October 1, 1977, through September 30, 1978. Attached to the agreement is a Statement of Work, which, we assume, became part of the Aerospace contract with the Air Force. The Statement of Work sets forth the general objectives of the work Aerospace was to perform

and also the specific tasks for fiscal year 1978 "to be completed prior to September 30, 1978." These tasks are for the most part continuations of the work Aerospace had performed for the Bureau under a fiscal year 1977 agreement. As part of the work, Aerospace was to submit to the Bureau monthly progress reports and statements of costs incurred. In addition, it was to submit, by September 1, 1978, a draft final report which was to document and summarize the results of the work accomplished during the year.

The fiscal year 1979 interagency agreement stated that the period of performance was to be October 1, 1978, through September 30, 1979. It contained a Statement of Work which was nearly identical to that in the fiscal year 1978 agreement, except that it set forth specific tasks "to be completed prior to September 30, 1979." Under the 1979 agreement, Aerospace was to submit its draft final report to the Bureau by September 1, 1979.

As we view the interagency agreements, and the resulting contractual provisions between Aerospace and the Air Force, the 1978 agreement covered whatever work was actually performed by Aerospace during fiscal year 1978, and the 1979 agreement covers whatever work is actually performed during fiscal year 1979. Under the 1978 agreement, the Bureau obligated funds to pay the estimated cost of work to be performed by Aerospace during fiscal year 1978 only. Funds to pay for work to be performed during fiscal year 1979 were obligated by the 1979 agreement. Therefore, only the work performed by Aerospace during fiscal year 1978 was done under the 1978 agreement and satisfied a bona fide need of fiscal year 1978. Work performed during fiscal year 1979 was done under the 1979 agreement, and does not meet a bona fide need of fiscal year 1978.

The interagency agreements are akin to "level of effort" contracts, in which the contractor is paid for the work it is able to perform, or the work actually ordered by the Government, during the contract period. Under such a contract, the Government may obligate the full estimated cost when the contract is entered into. However, as we stated in Recording obligations under EPA cost-plus contract, B-183184, May 30, 1975:

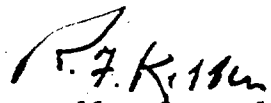
"* * * The actual level of effort furnished apparently represents full performance during a fiscal year and delimits the Government's liability therein. Consequently, any amount initially recorded as obligated in excess of the actual

level of effort called for by work orders could not remain as an obligation for that year. Since the contract and its funding operate on a single fiscal year basis, the carryover (upon exercising the option to renew) into a succeeding fiscal year of any 'surplus' level of effort as described would be precluded under the bona fide needs principle and related statutory restrictions.

* * *"

We conclude that only the work performed by Aerospace during fiscal year 1978 satisfies a bona fide need of that year. Under the interagency agreement, the Air Force has only validly obligated whatever funds are necessary to pay for the work performed by Aerospace during fiscal year 1978. Any fiscal year 1978 funds, obligated by the Bureau under the interagency agreement and by the Air Force under its contract with Aerospace, which were not needed to pay for work performed during fiscal year 1978 should have been deobligated as of October 1, 1979. The Air Force voucher, therefore, may not be certified for payment from fiscal year 1978 funds.

Although the question was not raised by the certifying officer, we note that fiscal year 1977 funds were obligated by the Bureau to reimburse the Air Force under the fiscal year 1978 interagency agreement. Under the bona fide need principles discussed above, fiscal year 1977 funds were not available to pay for work performed by Aerospace in fiscal year 1978. To the extent that these funds were not otherwise validly obligated during fiscal year 1977 they lapsed at the end of the year. The Bureau must adjust its accounts so that only fiscal year 1978 funds are used to pay for work performed during fiscal year 1978, and only fiscal year 1979 funds are used to pay for work performed during fiscal year 1979.


Deputy Comptroller General
of the United States