



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: U.S. Geological Survey--Proposed Procurement to  
Replace Stolen Microcomputer Equipment

File: B-226198

Date: July 21, 1987

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### DIGEST

1. The United States Geological Survey may not use fiscal year 1986 funds to contract to purchase microcomputer equipment in fiscal year 1987 to replace equipment purchased in 1986 that was stolen from its loading dock. The fiscal year 1986 purchase order was completed even though the equipment never reached the ordering office. Therefore, the purchase of additional equipment to replace the ill-fated fiscal year 1986 purchase order would constitute a new, rather than a replacement, contract.

2. The United States Geological Survey received an annual lump-sum appropriation for fiscal year 1986. This appropriation has expired and is no longer available for the procurement of additional microcomputer equipment in fiscal year 1987 since a valid obligation was not incurred prior to the appropriation's expiration.

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### DECISION

The Chief of the Geological Survey's Financial Management Branch, Department of the Interior, has requested a decision on whether fiscal year 1986 funds may be used for a proposed procurement in fiscal year 1987 to replace stolen microcomputer equipment. The original equipment, which was paid for out of fiscal year 1986 funds, was delivered and accepted in fiscal year 1987, but was stolen before it reached the ordering office. As explained more fully below, we find that fiscal year 1986 funds may not be used for the proposed 1987 purchase of microcomputer equipment.

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## Background

On September 14, 1986, a purchase order was awarded by the United States Geological Survey (USGS) to IBM Corporation for the acquisition of microcomputer equipment. The equipment was to be delivered during fiscal year 1987. The equipment was delivered and accepted at the USGS loading dock on November 14, 1986. Sometime between that date and November 18, 1986, the equipment was stolen from the loading dock. None of the equipment has been recovered nor have any suspects been identified by the police. The equipment was paid for out of fiscal year 1986 funds.

The office that placed the original order plans to replace the stolen equipment and has proposed that the acquisition be funded using fiscal year 1986 funds. The ordering office contends that since the need for the equipment arose during fiscal year 1986, fiscal year 1986 funds should be used to replace the equipment.

## Discussion

Basically, what the ordering office is proposing is that this situation be treated as if it involved a replacement contract. When an agency terminates a contract because of a contractor's default, it may enter into a replacement contract with another contractor and may, within limits, charge the cost to the appropriation which was originally obligated even though that appropriation has expired for purposes of new obligations. See generally, 60 Comp. Gen. 591 (1981). The cited decision points out that to not allow use of prior year funds would require deobligation of those funds and reobligation of funds available when the replacement contract is entered.

However, this concept has no application here. There was no default by IBM. Although the microcomputer equipment never reached the ordering office, the 1986 purchase order was completed. IBM delivered the equipment, it was accepted by the USGS, and subsequently payment was made. Therefore, the purchase of additional equipment, even to replace the ill-fated 1986 purchase order, would be under a new, rather than a replacement, contract. Further, there are no unexpended fiscal year 1986 funds originally obligated for this procurement because the contractor has been paid in full.

The fact that the ordering office's "bona fide" need for the microcomputer equipment initially arose in fiscal year 1986

does not justify the use of fiscal year 1986 funds for the proposed purchase. The essence of the "bona fide" needs rule is simply that an appropriation may be validly obligated only to meet a legitimate need existing during the period of availability. B-207433, September 16, 1983. Under this concept, payments are chargeable to the year in which the obligation took place, even though not actually disbursed until a later year, as long as the need existed when the funds were obligated. The original fiscal year 1986 purchase order appears to have met this rule--that is, the purchase order imposing the obligation was made within the fiscal year charged and was for a legitimate need of fiscal year 1986 even though delivery and payment were scheduled and concluded in the succeeding year.

However, the USGS received an annual lump-sum appropriation for fiscal year 1986, which was available for obligation only until the end of that fiscal year. Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1986, H.R. 3011 (contained in the Continuing Appropriation for Fiscal Year 1986, Pub. L. No. 99-190, 99 Stat. 1185, 1231-1232, December 19, 1985). Therefore, these funds are no longer available for the procurement of additional microcomputer equipment in fiscal year 1987 since a valid obligation was not incurred prior to the expiration of the appropriation. 31 U.S.C. § 1502(a). Accordingly, once the 1986 fiscal year obligational period expired, the procurement of additional equipment must be charged to a currently available appropriation. This result is not affected by the fact that the need for the increased quantity may result from a "continuing need" that arose during the prior period.

*for*   
Comptroller General  
of the United States