



Decision

Matter of: Farmers Home Administration (FmHA) purchase
of office chairs

File: B-251706

Date: August 17, 1994

DIGEST

1. The Farmers Home Administration (FmHA) improperly reobligated and expended FY 1990 funds for a FY 1991 order of office chairs after the original order was canceled. Although FY 1990 funds were unavailable to support the FY 1991 order, FmHA need not report an Antideficiency Act violation, since sufficient funds remained in the proper appropriation chargeable for the FY 1991 order.

2. While FmHA did not request delivery of chairs ordered during FY 1991 until early in FY 1992, no violation of the bona fide need rule occurred because the agency demonstrated a continuing need for the chairs to furnish office space and to replace stock. Items ordered under a federal supply schedule are properly chargeable to the year in which ordered.

DECISION

The Deputy Administrator for Management, Farmers Home Administration (FmHA), U.S. Department of Agriculture, Washington, D.C. (the Department), asks whether certain obligations FmHA incurred for the purchase of office chairs violated the Antideficiency Act. For the reasons indicated below, we find no reportable Antideficiency Act violation.

BACKGROUND

In June 1990, FmHA management approved funding for moving and improving the agency's headquarters office space in Washington, D.C. This project included sizeable procurements of modular office furniture. As part of this overall acquisition, FmHA, on September 11, 1990, issued two delivery orders, each for 225 ergonomic office chairs from a vendor under a General Services Administration (GSA) federal supply schedule contract, with delivery on or before September 28, 1990. FmHA charged fiscal year 1990 funds for the orders. FmHA delayed the orders, however, because the office space was not ready, and in October 1990, the agency

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issued replacement orders, changing, among other things, the delivery date to April 30, 1991.

On January 25, 1991, the Inspector General, without specifically mentioning the chair orders, concluded that many of the orders issued for the modular furniture acquisition were improper because some orders were split to circumvent the maximum order limitations of the federal supply schedule contracts and other orders did not identify specific items to be purchased. The Department of Agriculture's Office of General Counsel found that since such orders were void ab initio, the 1990 funds were unavailable for replacement orders. The Office of General Counsel recommended that FmHA cancel the furniture orders, deobligate the fiscal year 1990 funds, and reissue the furniture orders with fiscal year 1991 funds.

On June 28, 1991, FmHA combined and reissued the office chair delivery orders into one delivery order for a total of 440 chairs. FmHA ordered the chairs from the same vendor on the federal supply schedule, and deliveries were scheduled to take place in four shipments during November and December 1991 (fiscal year 1992). However, FmHA officials continued to charge fiscal year 1990 funds for the new delivery order.

Upon learning of a proposed audit finding by the Inspector General citing the chair purchase as a possible Antideficiency Act violation, FmHA officials modified the delivery order on December 26, 1991, to change the funding code from fiscal year 1990 to fiscal year 1991. At this point, FmHA had already made two payments to the vendor out of fiscal year 1990 funds. FmHA intended that remaining payments to the vendor be made from fiscal year 1991 funds. According to the submission, "FmHA also submitted documentation to change the payments made in fiscal year 1990 to fiscal year 1991 and to deobligate any remaining fiscal year 1990 funds."

The Office of the Inspector General issued a memorandum on January 2, 1992, regarding the chair purchase and recommended that FmHA consult with the Office of the General Counsel to determine if any Antideficiency Act violations had occurred. The Office of the Inspector General questioned "whether this procurement was, in fact, a fiscal year 1991 (June 1991) requirement since FmHA requested delivery in fiscal year 1992."

Responding in an April 30, 1992 memorandum, the Department's Office of General Counsel found that FmHA had exceeded the maximum order limitation for the 1990 chair orders. Thus, like the orders for the other modular furniture, the orders for the chairs should have been canceled as void ab initio, and fiscal year 1990 funds were not available for

replacement orders. The Office of the General Counsel also cited FmHA for two violations of the Antideficiency Act. First, by issuing the delivery order on June 28, 1991 using fiscal year 1990 funds, unavailable for putative 1991 needs. Second, the Office of General Counsel concluded that FmHA's subsequent correction to establish an obligation for the chairs in fiscal year 1991, and to make the remaining payments with fiscal year 1991 funds, violated the Antideficiency Act because the June 1991 order did not reflect a bona fide need of fiscal year 1991, but of fiscal year 1992. While FmHA concedes that errors were made in purchasing the office chairs, the Deputy Administrator disagrees that FmHA violated the Antideficiency Act, and asks for our opinion.

ANALYSIS

We do not find a reportable violation of the Antideficiency Act. Accepting, for purposes of discussion, the Office of General Counsel's determination that FmHA should have canceled the 1990 chair orders, then FmHA's reobligation of the 1990 account for the 1991 order and payments to the contractor from the 1990 account were improper. At the time FmHA issued a delivery order in mid-1991, the 1990 funds were not available for reobligation. However, FmHA had sufficient funds in the proper appropriation to be charged, and has adjusted the accounts to correct the mistake. As corrected, FmHA has not made or authorized an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. 31 U.S.C. § 1341(a) (1) (Supp. IV 1992). Consequently, no violation of the Antideficiency Act need be reported with respect to the obligation of 1990 funds. See 63 Comp. Gen. 422, 424 (1984); 57 Comp. Gen. 459, 463-464 (1978); Acumenics Research and Technology, Inc. -- Contract Extension, B-224702, Aug. 5, 1987, at 13 - 14, 87-2 CPD ¶ 128.

The Department's Office of General Counsel also concluded that because the office chairs were delivered during fiscal year 1992, they were not a bona fide need of fiscal year 1991,¹ and consequently FmHA violated the Antideficiency Act when FmHA used fiscal year 1991 funds to pay for

¹One of the fundamental principles of appropriations law is the bona fide need rule. The rule permits use of annual appropriations only for expenses serving a legitimate need of the year(s) for which the appropriation was made. Determination of what constitutes a bona fide need of a particular fiscal year depends primarily upon the facts and circumstances of each case. 61 Comp. Gen. 184, 186 (1981).

expenses improperly incurred in fiscal year 1991. We disagree.

Given the scheduling uncertainties involved in the office relocations, we are not prepared to say that the delayed delivery of the chairs requested by FmHA was unreasonable. Indeed, as described above, FmHA has evidenced a continuing need since fiscal year 1990 for office chairs. An agency official informally advised us that because the relocation plans were constantly being revised, the June 1991 order may not have been issued for any particular office space, but rather to replenish the agency's stock of office chairs as offices were renovated or relocated.

An agency may issue orders to replace stock items used in the year in which the contract is made, even though the replacement items will not be used until the following fiscal year. See 44 Comp. Gen. 695 (1965); 32 Comp. Gen. 436 (1953). Furthermore, an agency is required to charge supply schedule purchase costs against the appropriation which is current at the time the agency issues the order:

"A MAS [Multiple Award Schedule] item represents a bona fide need of the fiscal year in which an agency orders it. . . . Since agencies will charge the appropriation which covers the fiscal year in which they place their order, they will be contracting against the appropriation which is current at the time they have a genuine need for the item. Clearly, this is in accord with the bona fide needs rule."

63 Comp. Gen. 129, 133 (1983). Thus, stock items ordered from a federal supply schedule contract, such as the office chairs at issue here, are chargeable to the appropriation available in the year ordered. The stock items need not be merely replacement items but could be additional stock for expanded office needs. Since we conclude that the delivery timeframe was reasonable under the facts and circumstances presented, FmHA did not violate the bona fide need rule when it issued the June 1991 delivery notice.

/s/ James F. Hinchman
Comptroller General
of the United States

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