



Decision

Matter of: U.S. Army Europe—Obligation of Funds for an Interagency Agreement for Severable Services

File: B-323940

Date: January 7, 2015

DIGEST

The U.S. Army Europe (USAREUR) may enter into a one-year contract for severable services that begins in one fiscal year and ends in the next fiscal year under the statutory authority found in 10 U.S.C. § 2410a. USAREUR may also rely on this authority to enter into interagency agreements with the General Services Administration (GSA). An interagency agreement is akin to a contract, and the obligational consequences of an interagency agreement entered into under GSA's revolving fund authority are the same as if it were a contract.

DECISION

A certifying officer of USAREUR requests a decision under 31 U.S.C. § 3529 regarding the obligation of fiscal year appropriations for training classes. Letter from Certifying Officer, USAREUR, to General Counsel, GAO (Aug. 23, 2012) (Request Letter), at 2–3. USAREUR entered into an interagency agreement with GSA for GSA to provide USAREUR a series of training classes over a three-month period beginning in one fiscal year and crossing into the next fiscal year. As explained below, USAREUR may rely on 10 U.S.C. § 2410a to obligate current appropriations for severable training services beginning in the current fiscal year and crossing into the next fiscal year whether USAREUR procures the training services through a contract or an interagency agreement.

Our practice when rendering decisions is to obtain facts and legal views from the relevant agency. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. The request letter included factual information

and supporting documentation. USAREUR counsel provided legal views on this matter during two telephone conversations in August 2013 and May 2014.

BACKGROUND

GSA and USAREUR entered into an interagency agreement for GSA to provide USAREUR a series of training classes from September 12, 2011, through December 16, 2011. Request Letter, Attachment 4B, MIPR No. MIPR1FGA00036, Sept. 2, 2011. The interagency agreement identified the particular programs of instruction, dates, locations, and the cost of each individual training class. *Id.* GSA is authorized to provide procurement and supply services to federal agencies.¹ GSA manages these services through GSA's Acquisition Services Fund, an intragovernmental revolving fund in the Treasury.²

USAREUR may enter into a contract for up to one year that begins in one fiscal year and ends in the next fiscal year for the procurement of severable services, and obligate the total amount of the contract using the appropriation current at the time USAREUR enters into the contract. 10 U.S.C. § 2410a. At issue here is whether USAREUR may also use 10 U.S.C. § 2410a to obligate current appropriations for an interagency agreement for severable services beginning in the current fiscal year and crossing into the next fiscal year.

DISCUSSION

An agency may obligate its fiscal year appropriation only to meet a legitimate or *bona fide* need continuing or arising in the fiscal year for which the appropriation was made. 31 U.S.C. § 1502(a); B-322455, Aug. 16, 2013, at 4. This bedrock of appropriations law is commonly referred to as the *bona fide* needs rule. B-322455, at 4. When contracting for services, in order to comply with the *bona fide* needs rule, an agency must first determine whether the services are nonseverable or severable. *Id.*

A nonseverable service is essentially a single, or nonrecurring, undertaking that cannot feasibly be subdivided. B-322455, at 4. The agency does not receive the value of the service until the service is fully performed. An agency must establish that a *bona fide* need for the nonseverable service exists at the time it enters into the contract or interagency agreement. Because the agency's *bona fide* need is attributable to the current year, the entire cost of the nonseverable service is properly charged to a current appropriation, despite the fact that performance may extend into future fiscal years. *Id.*

¹ 40 U.S.C. §§ 501–502.

² *Id.* § 321.

Severable services, on the other hand, can be separated into components that independently meet an ongoing need of the government. *Id.* Each component provides independent value to the government. Typically, these services are continuing and recurring in nature. *Id.* An agency receives the value of the service every time it is performed. Severable services are considered a *bona fide* need of the time period in which the services are rendered. *Id.* For that reason, without specific authority, an agency may only enter into a severable services contract for services to be performed during the time period of availability of the appropriation to be obligated. *Id.*

We have held that a series of training courses are continuing and recurring in nature and are severable, representing a *bona fide* need of the time period in which each individual training course is delivered. B-257977, Nov. 15, 1995. Therefore, we generally use the date that the training is delivered as the relevant date to ascertain whether training is a *bona fide* need of a particular fiscal year. B-321296, July 13, 2011, at 5. Under the interagency agreement here, USAREUR ordered different courses of instruction to be provided on different dates beginning September 12, 2011, through December 16, 2011. It is well established that severable services are considered a *bona fide* need of the time period in which the services are rendered and performance cannot cross fiscal years unless authorized by statute. B-321296, at 6. However, 10 U.S.C. § 2410a provides an exception to this general rule, in that it permits DOD to enter into a contract for the procurement of severable services for up to a one year period that begins in one fiscal year and ends in the next fiscal year.

We believe that the flexibility afforded by 10 U.S.C § 2410a is available to agencies in their use of certain interagency agreements. Interagency transactions encourage increased economy and efficiency in the administration of programs. We have noted previously that interagency transactions are not unlike contractual transactions. *See, e.g.*, B-302760, May 17, 2004, at 6–7 (similar to contractual transactions, the fiscal year appropriation obligated at the time of an interagency order authorized pursuant to 2 U.S.C. § 141(c) remains available to pay the costs notwithstanding that the work may not be completed during that fiscal year); B-286929, Apr. 25, 2001 (interagency obligations pursuant to Brooks Act are treated like other agency obligations, rather than like Economy Act obligations, and the existence of a defined requirement at the time the agreement is executed forms the basis for incurring and recording a financial obligation).

Indeed, Congress has recognized the contractual nature of interagency agreements. *See, e.g.*, 31 U.S.C. § 1501(a)(1) (“An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of— (1) a binding agreement between an agency and another person (*including an agency*)” (emphasis added)). Under section 1501(a)(1), the funds control consequences would be the same for an interagency agreement as a contract with a

private vendor.³ In our view, given the contractual nature of interagency agreements, an agency should not be disadvantaged when acquiring goods or services from another agency as compared to acquiring goods or services from a private vendor.

The position of USAREUR counsel is that 10 U.S.C. § 2410a would permit USAREUR to obligate fiscal year appropriations for an interagency agreement with GSA, such as the one at issue here, for a series of training classes to be held beginning in one fiscal year and continuing in the next fiscal year for a period up to 12 months. Telephone Conversation with Counsel, USAREUR (May 28, 2014). USAREUR counsel cautioned that USAREUR must identify specific requirements for certain training classes in order to establish a *bona fide* need for the services.⁴ The views of USAREUR counsel are consistent with our conclusion.

CONCLUSION

USAREUR may rely on 10 U.S.C. § 2410a to obligate fiscal year appropriations to place orders for severable training services to be provided beginning in the current fiscal year and crossing into the next fiscal year pursuant to an interagency agreement with GSA. An interagency agreement is akin to a contract, and the obligational consequences of an interagency agreement entered into under GSA's revolving fund authority are the same as if it were a contract.



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³ We note that this would not be the case for an interagency agreement entered into under the authority of the Economy Act. The Economy Act, like other interagency transaction authorities, requires the ordering agency to obligate its appropriation when it enters into a binding agreement with another federal agency. 31 U.S.C. § 1501(a)(1). However, if the appropriation charged is a fiscal year appropriation, the Economy Act requires the ordering agency to deobligate the appropriation at the end of the fiscal year to the extent that the performing agency has not performed. 31 U.S.C. § 1535(d); B-302760, at 8. That requirement is specific to Economy Act transactions and does not apply to transactions governed by statutory authority such as the GSA Acquisition Services Fund, which has no such deobligational requirement. *Id.*

⁴ As with a contract, USAREUR must establish a *bona fide* need for the services ordered. It is important therefore that an interagency agreement detail the training services required, including, for example, the particular programs of instruction and dates and locations at which the training is to take place, and the cost of the training.