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APPROPRIATIONS
LAW DECISIONS AND
OPINIONS

(January 1 to
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Matter of: United States Capitol Police

File: B-317252

Date: January 30, 2009

A deployment of United States Capitol Police staff to Texas in September 2008 to provide requested security and protection services in the aftermath of Hurricane Ike was covered under an emergency exception, and thus not subject to the general statutory requirement to provide notification of anticipated costs prior to a deployment outside of the areas established by law for the jurisdiction of the Capitol Police.

GAO was unable to assess whether other United States Capitol Police deployments conducted since 2005 complied with the statute because of a lack of data maintained by the Capitol Police.

Matter of: Relief of Accountable Officer—American Embassy, Managua

File: B-317390

Date: February 20, 2009

Under 31 U.S.C. § 3528(b)(1)(A), an embassy certifying officer who certified an erroneous duplicate separation retirement payment to a local employee is relieved of financial liability because the officer did not know, and after reasonable diligence and inquiry did not discover, the fact that the duplicate payment was being issued from another part of the agency. The officer certified the payment pursuant to the direction of an administrative official, who incorrectly communicated a change in payment processing procedures and advised that funds had been made available in the charged account.

Matter of: United States Postal Service Office of Inspector General—
Implementation of Postal Accountability and Enhancement
Act Section 603, Part 2

File: B-317878

Date: March 3, 2009

Amounts appropriated by transfer to the United States Postal Service (USPS) Office of Inspector General (OIG) from the Postal Service Fund remain available for OIG obligations without fiscal year limitation and will not revert to the Postal Service Fund. Amounts transferred between appropriations accounts do not lose their fiscal year character. 31 U.S.C. § 1532.

Governmentwide rescissions do not apply to USPS OIG appropriations. The Postal Service Fund is exempt from general statutory budget limitations by operation of 39 U.S.C. § 2009a(2). Because OIG is a component of USPS and is funded by amounts transferred from the Postal Service Fund, its appropriations are exempt from across-the-board rescissions.

Although the Economy Act does not apply to USPS and its components, including OIG, OIG may engage in interagency transactions with other federal entities under authority provided by 39 U.S.C. § 411. However, OIG may not enter into intra-agency transactions with other USPS components in the absence of other authority to permit such action.

Matter of: U.S. Army Garrison Ansbach—Use of Appropriated Funds to
Purchase Food for Participants in Antiterrorism Exercises

File: B-317423

Date: March 9, 2009

The U.S. Army Garrison Ansbach conducts yearly antiterrorism training exercises for federal civilian employees, military members, and nonfederal participants such as contractors and host nation first responders. In

general, appropriated funds are not available to purchase food for the participants, unless specific authority exists or unless the agency can demonstrate that such expenditures are an essential, constituent part of accomplishing an authorized agency function. Here, food may be a proper training expense for federal civilian employees and military members under 5 U.S.C. § 4109 and 10 U.S.C. § 3103 where the food is necessary for the civilian employees and military members to obtain the full benefit of the training exercise. Additionally, appropriated funds may be used to purchase food for nonfederal participants such as contractors and host nation first responders where their attendance is essential to the training of the civilian employees and military members and the provision of food is necessary to ensure the realism of a simulated emergency training exercise.

Matter of: Updated Rescission Statistics, Fiscal Years 1974–2008

File: B-310950.2

Date: March 12, 2009

This letter transmits GAO's update of statistical data concerning rescissions proposed and enacted since the passage of the Impoundment Control Act of 1974. The attached statistics contain proposed and enacted rescissions through fiscal year 2008.

Matter of: Department of Homeland Security Inspector General—Federal Emergency Management Agency Subgrantee's Claim under the Stafford Act

File: B-317098

Date: March 13, 2009

The Federal Emergency Management Agency (FEMA) reimbursed a subgrantee receiving Stafford Act funds \$3.8 million for rocks used for emergency repairs and improvements to facilities, notwithstanding that the

rocks had originally cost the subgrantee less than \$20,000. The Department of Homeland Security Inspector General subsequently questioned the reimbursement. Given the lack of documentation in the record regarding other pricing methods that may have been more appropriate to the circumstances, that would ensure the subgrantee did not obtain a windfall, and that would show whether the method chosen was consistently applied, we recommend that FEMA reassess its reimbursement. If FEMA finds that the reimbursement in question should be reduced or disallowed, but that recovery actions are barred under the Stafford Act, 42 U.S.C. § 5205(a), FEMA should be alert to opportunities that may be available under 31 U.S.C. § 3716 to offset or withhold funds.

Matter of: Request for Reconsideration of B-306666, June 5, 2006

File: B-306666.2

Date: March 20, 2009

This is a letter to the Senior Deputy Prosecuting Attorney of King County, Washington, who requested that GAO reconsider its decision in *Forest Service—Surface Water Management Fees*, B-306666, June 5, 2006. GAO's statutory authority permits GAO to issue legal decisions and opinions to federal accountable officers, heads of federal agencies and agency components, and Members of Congress. 31 U.S.C. §§ 717, 3529. Since GAO is not authorized to entertain requests from private citizens or nonfederal entities, GAO declined the request for reconsideration.

Matter of: Antideficiency Act—Applicability to Statutory Prohibitions on the Use of Appropriations

File: B-317450

Date: March 23, 2009

Agencies must consider the effect of all relevant statutory prohibitions, conditions, and limitations on the use of appropriations in determining

whether a particular appropriation is available for purposes of the Antideficiency Act. If there are no funds available in an appropriation because of a statutory prohibition or restriction—whether enacted as part of the appropriations act or in other law—any obligation or expenditure would be in excess of the amount available for the obligation or expenditure as provided for in the Antideficiency Act.

Matter of: Severable Services Contracts

File: B-317636

Date: April 21, 2009

The 1-year contract period limitations in 10 U.S.C. § 2410a and 41 U.S.C. § 253l do not apply to contracts funded by multiple year or no-year appropriations. Therefore, federal agencies may use multiple year or no-year funds to enter into a contract for severable services for a period of performance longer than 1 year and an agency using multiple year or no-year funds is free to contract for the full period of availability the statute appropriating those funds allows.

Matter of: National Science Foundation—Potential Antideficiency Act
Violation by the National Science Board Office

File: B-317413

Date: April 24, 2009

The National Science Board Office's (NSBO) fiscal year 2006 appropriation is not available to fund a settlement entered into in fiscal year 2007 for cost overruns incurred in fiscal year 2006 as a result of an unauthorized contract modification. This settlement represents a new obligation properly chargeable to fiscal year 2007. NSBO can correct this improper recording through an account adjustment by deobligating the amounts that were improperly charged to fiscal year 2006 appropriations and charging these amounts to the fiscal year 2007 appropriation. If after NSBO adjusts its

accounts it has insufficient funds in its fiscal year 2007 appropriation, it should report an Antideficiency Act violation in accordance with 31 U.S.C. § 1351.

Matter of: National Transportation Safety Board—Application of Section 1072 of the Federal Acquisition Streamlining Act (41 U.S.C. § 254c) to Real Property Leases

File: B-316860

Date: April 29, 2009

Statutory language authorizing the National Transportation Safety Board to “enter into such contracts, leases, cooperative agreements, and other transactions as may be necessary” to carry out its functions and duties permits the agency to enter into leases of real property. The 1994 recodification of that provision omitting the word “leases” did not change the provision’s meaning.

Under 41 U.S.C. § 254c, the phrase “acquisition of property” includes leases of real property. Accordingly, agencies with authority to lease real property may enter into contracts for up to 5 years for the lease of real property using fiscal year appropriations if the conditions of 41 U.S.C. § 254c are met.

Matter of: Natural Resources Conservation Service—Use of Appropriated Funds for Contest Entry Fees

File: B-317891

Date: May 26, 2009

The Natural Resources Conservation Service (NRCS) may use appropriated funds to reimburse an employee for fees paid by the employee to enter agency-produced public outreach products in a marketing and communications awards contest if NRCS makes an administrative

determination that participation in the contest benefits its mission and any award would be to NRCS.

Matter of: Financial Crimes Enforcement Network—Obligations under a Cost-Reimbursement, Nonseverable Services Contract

File: B-317139

Date: June 1, 2009

A nonseverable services contract that is not separated for performance by fiscal year may not be funded on an incremental basis without statutory authority. Failure to obligate the cost ceiling set out in a nonseverable cost-reimbursement contract at the time of award violated the *bona fide* needs rule.

Contract modifications to a cost-reimbursement contract increasing the original ceiling are chargeable to appropriations available when the modifications were approved by the contracting officer. The actual date the agency records the obligation in its books is irrelevant to the determination of when the obligation arises and what fiscal year appropriation to charge.

A provision in an annual appropriations act designating that a portion of a lump-sum amount “shall be available for” a specific project does not preclude the use of other available appropriations for the project.

Matter of: Denali Commission—Anti-Lobbying Restrictions

File: B-317821

Date: June 30, 2009

Anti-lobbying provisions prohibit Commissioners, when acting in their role as commissioners, and their personal staff, as well as agency officials from using appropriated funds to engage in grassroots lobbying by encouraging

interest groups to contact Members of Congress and their staff regarding Denali's reauthorization. The Byrd Amendment prohibits Commissioners and their personal staff, in their role as grantees, from using grant funds to lobby Members of Congress and their staff in connection with the making of a grant. Commissioners and their personal staff may be reimbursed for travel expenses incurred while conducting the official business of the agency.

Matter of: Natural Resources Conservation Service—Obligating Orders with GSA's AutoChoice Summer Program

File: B-317249

Date: July 1, 2009

An order of next year model motor vehicles submitted through the General Services Administration's AutoChoice Summer Program does not constitute an obligation of the Natural Resources Conservation Service appropriations until the order is finalized the next fiscal year when vendors first make available the requisite information on next year models. Until finalized, orders submitted through the Summer Program are tentative and incomplete.

Matter of: Library of Congress—Obligation of Guaranteed Minimums for Indefinite-Delivery, Indefinite-Quantity Contracts under the FEDLINK Program

File: B-318046

Date: July 7, 2009

The Library of Congress uses indefinite-delivery, indefinite-quantity (IDIQ) contracts, against which agencies place orders for library and information products and services, in support of its Federal Library and Information Network (FEDLINK). FEDLINK is a voluntary program, and the Library states that it cannot accurately anticipate use of an IDIQ contract. The

Library proposes using a standard amount of \$500 as the guaranteed minimum for these contracts regardless of the maximum ordering limitations or total contract value, which amount would be obligated at the time it awards the IDIQ contract. To provide adequate consideration for a binding IDIQ contract, an agency must establish a guaranteed minimum that is more than a nominal amount and reflects the amount the agency is fairly certain to order. In the absence of reliable historical data indicating that a \$500 guaranteed minimum for a particular IDIQ contract is too high or too low, we have no basis to object to the use of \$500 as a guaranteed minimum.

Matter of: Department of Defense—Retired Military Officers as Media Analysts

File: B-316443

Date: July 21, 2009

The National Defense Authorization Act for Fiscal Year 2009 directed that GAO provide its opinion to Congress on whether the Department of Defense (DOD) violated the appropriations prohibition on publicity or propaganda in its 2002 through 2008 outreach to retired military officers (RMOs) who served as media analysts. GAO concluded that the outreach program did not violate the publicity or propaganda prohibition. Although there is no doubt that DOD attempted to favorably influence public opinion with respect to DOD's war policies in Iraq and Afghanistan through RMOs with conference calls, meetings, travel, and access to senior DOD officials, GAO found no evidence that DOD attempted to conceal its outreach from the public nor was there evidence that DOD contracted with or paid RMOs for positive commentary or analysis.

The opinion does not address questions raised about the RMOs' commercial ties and potential competitive advantage or possible compromised DOD procurement processes because those questions, while legitimate, did not, in our view, implicate the publicity or propaganda prohibition and, thus, were outside the scope of the opinion. For similar reasons, this opinion does not examine whether the RMOs disclosed to the

viewing public or the networks whether they had commercial ties to DOD contractors or other possible conflicts of interests.

Matter of: National Indian Gaming Commission—Reimbursing Bicyclists
as Part of the Agency’s Transportation Fringe Benefit Program

File: B-318325

Date: August 12, 2009

Under the federal government’s transportation fringe benefit program, as established by 5 U.S.C. § 7905 and Executive Order No. 13150, the National Indian Gaming Commission (NIGC) provides monthly transit subsidies to employees who certify that they use mass transit to commute to and from work. If NIGC chooses to do so, NIGC may use its authority under 5 U.S.C. § 7905 to extend the program to provide a \$20 cash reimbursement to those employees who commute to and from work by bicycle. NIGC should consider the provisions of the Internal Revenue Code, 26 U.S.C. § 132(f)(5), and guidance provided by the Internal Revenue Service and the Office of Management and Budget.

Matter of: U.S. Fish and Wildlife Service —Steller’s and Spectacled Eiders
Conservation Plan

File: B-318386

Date: August 12, 2009

As a general rule, appropriations are not available for personal gifts without statutory authority; GAO rarely finds exceptions to the general rule. In this case, because the Fish and Wildlife Service (FWS) has a statutory responsibility to protect threatened species and because considerable conservation efforts over several years have not halted the decline of two threatened eider species, GAO will not object to the FWS proposed use of appropriated funds to purchase and distribute caps and other items to residents of Alaska North Slope communities in furtherance

of the agency's eider conservation plan. FWS will print images of the threatened eiders on these items and, for some items, include eider conservation messages. The items, which FWS will distribute as part of agency outreach events, will help residents identify the threatened species and serve as reminders of the agency's conservation message.

Matter of: Department of the Army, Military Surface Deployment and Distribution Command—Use of Appropriations for Bottled Water

File: B-318588

Date: September 29, 2009

Army may use its appropriations to pay for bottled water for Military Surface Deployment and Distribution Command personnel working at temporary work sites where potable water is not available. As a general proposition, bottled water is a personal expense and agencies may not use appropriations for personal expenses. However, where potable water is not available, we will not object to the use of appropriated funds to purchase bottled water if the command determines that given the circumstances, bottled water is the best way to provide its employees access to potable water. The command should make this determination consistent with pertinent Army regulations and policy.

Matter of: District of Columbia Courts—Authority to Pay Settlements and Judgments

File: B-318421

Date: November 2, 2009

The Attorney General for the District of Columbia asked whether the District of Columbia Courts may use amounts Congress appropriated to the Courts to pay settlements of claims and suits under \$10,000, consistent with the District of Columbia Risk Management for Settlements and

Judgments Amendment Act of 2000. The Courts may not pay settlements and judgments from the funds that Congress has appropriated for its operating expenses unless Congress specifically authorizes such payments. Congress appropriates money to the District specifically for the payment of settlements and judgments incurred by the District government, including D.C. Courts. The District must use this appropriation for such payments unless specifically allowed otherwise by law.

Matter of: Department of the Navy—Lunch for Volunteer Focus Group

File: B-318499

Date: November 19, 2009

As part of an assessment of readiness and quality of life concerns for Department of Navy activities in Japan, a Navy Inspector General (IG) team led a focus group in which volunteer ombudsmen, generally spouses of active duty command members, participated. A certifying officer asks whether his command could have used appropriated funds to pay for lunch for the ombudsmen in order to increase participation at the focus group. In general, an agency may not use appropriated funds for a personal expense, such as lunch. Consideration of whether to provide food as an incentive for focus group participation must be addressed on a case-by-case basis, taking into account all the factual circumstances and the particular statutory objective the agency is trying to achieve. In the present instance, the command has not identified a specific statutory objective, just a general responsibility to cooperate with an IG investigation, conducted under the IG's authorities. Accordingly, under the facts presented, we cannot conclude that the command could have used its appropriated funds in this manner.

Matter of: Chemical Safety and Hazard Investigation Board—Interagency Agreement with the General Services Administration

File: B-318425

Date: December 8, 2009

The Chemical Safety and Hazard Investigation Board's (CSB) fiscal year 2009 appropriation is not available to fund a proposed interagency agreement (IA) with the General Services Administration (GSA). Under the agreement, GSA would provide CSB with Personal Identity Verification cards, and related maintenance services, to implement Homeland Security Presidential Directive-12. The proposed IA, as currently drafted, does not specify a period of performance for the agreement or for the services and creates an open-ended obligation. CSB cannot obligate fiscal year appropriations to pay for card maintenance services to be performed in future fiscal years if those services are severable, or recurring, in nature.

Matter of: Department of Housing and Urban Development, Office of Inspector General—Reasonable Accommodation

File: B-318229

Date: December 22, 2009

Department of Housing and Urban Development, Office of Inspector General appropriations are not available to pay for local lodging as a reasonable accommodation under the Rehabilitation Act of 1973 for an employee who suffers from chronic back pain when sitting for long periods. Although, in some instances, agencies may use their appropriations to pay for reasonable accommodations under the Rehabilitation Act even though the agency's appropriations otherwise may not be used for that purpose, we do not find that to be the case here. There is a statutory limitation on local lodging. Also, this local travel is more akin to a commute, which is not covered by the Rehabilitation Act. The agency should consider other available accommodations.

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