Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Economy Act Payments After Obligated Account is Closed

File: B-260993

Date: June 26, 1996

DIGEST

After an Economy Act agreement is completed and the ordering agency's appropriation obligated by the agreement is closed, i.e., canceled, an audit of the performing agency's contractor (engaged to provide the ordered services under the agreement) discloses that the performing agency owed the contractor additional amounts. Using no year funds, the performing agency pays the contractor and seeks reimbursement from the ordering agency. Since the Economy Act requires the ordering agency to reimburse the performing agency its actual costs, the ordering agency should reimburse the performing agency for payments made to the contractor using current appropriations available for the same general purpose. 31 U.S.C. § 1551 note.

DECISION

The Chief Financial Officer, Department of Energy (DOE), has requested a decision on the liability of the Office of Surface Mining (OSM), Department of the Interior (an ordering agency under the Economy Act) to reimburse the DOE (a performing agency under the Economy Act) additional amounts owed for work performed roughly 10 years earlier and after the appropriation OSM obligated to perform the agreement has closed. As explained below, OSM should reimburse DOE for costs properly incurred to perform an Economy Act agreement even though the appropriation obligated by the agreement has closed.

BACKGROUND

The Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, 91 Stat. 447 (1977) (30 U.S.C. §§ 1201 et seq. (1994)), established the OSM with responsibility to identify and reclaim abandoned coal mines and land or waters affected by the mining process. In March 1979, under the Economy Act, the DOE and OSM entered into a Memorandum of Understanding pursuant to which the Oak Ridge National Laboratory (ORNL) was to implement a national inventory capability and provide an analysis and maintenance function for the abandoned mines program. OSM agreed to reimburse DOE for actual costs under the agreement.

The work was to be performed in four phases (with each phase involving a number of separate tasks) from March 1979 through September 1982. OSM modified the agreement to authorize various tasks and accordingly raised the total estimated cost for the agreement by the amount of the estimated costs of each modification. The fifth and final modification dated December 20, 1982, raised the total amount of funds obligated for the agreement to $5,867,500.

The DOE contractor operating and managing ORNL[1] executed a cost-plus-fixed-fee contract with Lockheed Missiles and Space Company, Inc., to perform the OSM Economy Act agreement. The DOE and OSM considered the work complete in 1983 and closed the project. Approximately 10 years later, the Defense Contract Audit Agency (DCAA) audited the subcontract and issued a Contract Audit Closing Statement dated March 1, 1993. As a result of DCAA audit, DOE determined that it owed Lockheed an additional payment of $27,763, and paid this amount to Lockheed. According to DOE, OSM has questioned its obligation to pay since the agreement was completed in 1983 and the appropriation used to fund the interagency agreement has been closed and is no longer available for payment. We have been informally advised by a DOE official that DOE made the contract/subcontract payments to implement the interagency agreement (and for which it seeks reimbursement) using no-year appropriations.

THE ECONOMY ACT

The Economy Act, 31 U.S.C. §§ 1535, 1536 (1994), authorizes one agency to perform services or provide items to another government agency either directly or by contract with a private party. An Economy Act agreement represents a valid obligation against the ordering agency's appropriations under 31 U.S.C. § 1501(a)(1) (1994), in an amount (1) equal to the value of services performed for, or items provided to, the ordering agency during the fiscal year, or (2) equal to the cost of a contract entered into by the performing agency to provide the ordered service or item. 31 U.S.C. § 1535(d). Payments under the Economy Act may be made in advance of, or following, performance. The Economy Act requires the ordering agency to pay the performing agency its actual cost of performance.

When an agreement is funded by advances, the advances are usually deposited to a special fund against which the performing agency charges costs and makes

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[1]The information submitted with the request indicates that at the time DOE and OSM entered into the Economy Act agreement, the Union Carbide Corporation, Nuclear Division (UC), operated and managed ORNL for DOE under a cost type contract. However, Martin Marietta Energy Systems, Inc., had replaced UC in operating and managing ORNL at the time that DOE paid Lockheed the additional amount that OSM has refused to reimburse.

payments to carry out the agreement. Any advances remaining after the performing agency reconciles its actual costs must be returned to the ordering agency. When the performing agency chooses to finance the Economy Act agreement from its own appropriations and recovers its actual costs by way of reimbursements from the ordering agency, the performing agency may deposit the reimbursements to the appropriation that funded the work. 31 U.S.C. §§ 1535(b), 1536. Thus where a no-year account or a current appropriation has funded the work, the reimbursements would be available for incurring new obligations. Where an expired or a closed account has funded the work, the reimbursement would be deposited to the credit of the expired account or the appropriate miscellaneous receipt account in the General Fund of the Treasury, respectively. 31 U.S.C. § 1552(b) (1994).

THE ACCOUNT CLOSING LAW

Under the account closing law in effect until 1990, once a fixed period appropriation was properly obligated, it remained available indefinitely to pay the underlying obligation. 31 U.S.C. §§ 1551 et seq. (1988). The obligation was initially recorded against the currently available appropriation. If the obligation had not been entirely performed by the time the appropriation expired, the agency continued to carry the obligation in the expired account for 2 years. After 2 years, the expired account was closed and the balance of any remaining unperformed obligations were transferred to the merged ("M") account which remained available indefinitely until the obligation was completed and paid. When the appropriation account expired, the unobligated balance was withdrawn to the Treasury as surplus authority. The surplus authority could be restored to make upward adjustments to the amount of a recorded obligation in the expired account. When the appropriation account closed, the surplus authority merged with the surplus authority that had been withdrawn for all closed appropriation accounts for a similar purpose for prior fiscal years. The merged surplus authority was available for restoration indefinitely to make upward adjustments to obligations in the "M" account. (See B-245856.4, Apr. 16, 1992 for a detailed discussion of the procedure under the account closing law in effect prior to 1990.) Thus, until 1990, a contract entered into by the performing agency pursuant to an Economy Act agreement served to obligate the appropriation of the ordering agency indefinitely until the contract was performed and the actual cost was reimbursed.

In 1990, Pub. L. No. 101-510, § 1405(a), 104 Stat. 1675-1681 (1990), amended the account closing law to close fixed period appropriations 5 years after they expire, by cancellation of their obligated and unobligated balances. 31 U.S.C. § 1552 (1994). Section 1405(a) also amended the law to provide that appropriation accounts that are available for an indefinite period of time (commonly referred to as no-year appropriation accounts) shall be closed, and any remaining balances canceled, if the head of the agency or the President determines that the appropriation's purpose has been carried out and no disbursements have been made from the appropriation for

2 consecutive years. 31 U.S.C. § 1555 (1994). Thereafter, payments, obligations or adjustments to obligations that would have been properly chargeable to a closed account both as to purpose and amount may be charged to a current account available for the same purpose, subject to certain limitations not relevant here. 31 U.S.C. § 1553(b) (1994).

To complete the transition to the new account closing procedure, section 1405(b)(4) of the 1990 amendments (31 U.S.C. § 1551 note (1994)) phased out the "M" accounts over a 3-year period, canceling all remaining balances as of midnight September 30, 1993. Section 1405(b)(3) of the 1990 amendments (31 U.S.C. § 1551 note (1994)) canceled the merged surplus authority at midnight December 4, 1990. Section 1405(b)(7) of the 1990 Amendments (31 U.S.C. § 1551 note (1994)) provides that any obligation or adjustment to obligations that would have been chargeable to canceled "M" account balances or canceled merged surplus authority may be charged to current appropriations subject to certain limitations. (See B-245856.4, Apr. 16, 1992, for a detailed discussion of the procedures enacted by the 1990 amendments to the account closing law). Thus, regardless of whether an obligation was chargeable to an "M" account or an expired account on the date the account was canceled, the 1990 amendments authorize the payment of the obligation from current appropriations.

We assume for purposes of this discussion that the OSM charged the obligation in question to a fixed period appropriation that had moved to the "M" account and that subsequently had been canceled. However, our holding is the same even if the question involved an obligation charged against a no-year account that was closed either before or after the 1990 amendments to the account closing law.[2] This is relevant because the annual Department of the Interior and Related Agencies Appropriations Acts for fiscal years 1979 through 1983 appropriated for the "Office of Surface Mining Reclamation and Enforcement" annual funds under the heading "Regulation and Technology" to carry out Pub. L. No. 95-87 and no-year funds under the heading "Abandoned Mine Reclamation Fund" to carry out Title IV of Pub. L. No. 95-87. It is unclear from the record before us whether annual or no-year funds were used to fund the Economy Act agreement.[3]

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[2]See 31 U.S.C. § 1555(b) (1988) concerning payment of obligations chargeable to no-year accounts closed prior to the 1990 amendments and 31 U.S.C. § 1553(b)(1) (1994) concerning payment of obligations chargeable to no-year accounts properly closed after the 1990 amendments. See also, B-242666, August 31, 1993, concerning payment of obligations chargeable to no-year accounts improperly closed after the 1990 amendments.

[3]See, e.g., Pub. L. No. 95-465, 92 Stat. 1279, 1286 (1978); Pub. L. No. 97-394, 96 Stat. 1966, 1974 (1982).

DISCUSSION

The Economy Act requires the ordering agency to reimburse the performing agency the actual cost of providing the item or service to avoid an unauthorized augmentation of the ordering agency's appropriation. 65 Comp. Gen. 635 (1986); 64 Comp. Gen. 370 (1985). This is true even when the performing agency incurs costs in excess of the amounts set forth in the Economy Act agreement and the requesting agency has received the benefits of the expenditures. B-250941.2, Feb. 19, 1993. Also, the performing agency must refund overpayments to the ordering agency (amounts advanced in excess of the actual cost incurred) made from a no-year account under an Economy Act agreement even though 12 years had elapsed since the completion of the Economy Act agreement. 72 Comp. Gen. 120 (1993). We concluded in that decision that "[t]he performing agency may only recover the actual cost of goods and services provided and, when advance payment is made, must return to the ordering agency amounts in excess of actual costs." Id. at 122.

Similarly, an ordering agency should reimburse the performing agency for actual costs incurred in performing an Economy Act agreement (that in this case it has charged to no-year accounts) even though roughly 10 years have passed since the completion of the contract. This is true even though the account or accounts originally obligated to fund individual tasks under the Economy Act agreement have been closed. To hold otherwise would result in an unauthorized augmentation of the ordering agency's current appropriations at the expense of the performing agency's no-year account. The fact that the DCAA audit did not take place until some 10 years after the work was completed does not serve to abrogate the reimbursement requirement.

/s/Robert Murphy
for Comptroller General
of the United States