

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217925

DATE: July 29, 1985

MATTER OF: Department of Agriculture - Use of
Appropriation for Payments in Foreign
Currencies for SBIR Program

DIGEST:

Under the Small Business Innovation Development Act the Department of Agriculture must obligate a certain portion of its extramural research and research and development (R&D) budget to fund small business participation under the Small Business Innovation Research (SBIR) Program. The fiscal year 1985 appropriation for the Department of Agriculture includes \$5 million for external research for foreign market development to be paid for in foreign currencies. The Act, which does not require that every eligible research or R&D program participate in the SBIR program, provides no authority to pay for foreign market development research in U.S. currency or, absent specific authority, to use any appropriated funds other than in accord with the terms of the applicable appropriation.

The Secretary of Agriculture requests an advance decision as to whether funds appropriated for payments in foreign currencies, owed to or owned by the United States, for foreign market development research may be utilized in part to fund the Department's Small Business Innovation Research (SBIR) program. This program requires that fixed percentages of obligations for extramural research be awarded to small business concerns. The Secretary states that to fund the SBIR program all extramural research funds were assessed a pro rata share of 0.2 percent by the Department so as to avoid a significant impact on one or more of the research projects and that these funds are pooled to support the SBIR program.

We are told that the decision to assess all program funds identified as making up the extramural budget followed from the conclusion that the Small Business Innovation Development Act authorizes the Department in its discretion to reallocate the necessary funds to operate the SBIR program from any or all of the various extramural research appropriations that make up the total extramural research budget. The only limitation in the Department's view would

be the percentage limitation on the use of extramural basic research funds (as opposed to research and development funds) established by the Act for the Department as a whole. Based on this, the Secretary is of the opinion that the Act authorizes the Department in its discretion to reallocate funds from the Foreign Currency Program appropriation to the SBIR pool in dollars as opposed to equivalent amounts of foreign currencies.

For the reasons indicated below, we conclude that no allocation under the Small Business Innovation Development Act may cause funds to be used for purposes or in a manner that differs from the underlying appropriation. Therefore, the converting of foreign currencies to dollars would not be permitted because it is not authorized by the Foreign Currency Program appropriation.

The Small Business Innovation Development Act of 1982, Pub. L. No. 97-219, 96 Stat. 217, amended section 9 of the Small Business Act. 15 U.S.C. § 638 (1982). The Act mandates an SBIR program modeled after one established by the National Science Foundation. Under § 9(f)(1) of the Act, an agency with an extramural research or research and development (R&D) budget of over \$100,000,000 in fiscal year 1982 or thereafter, must obligate not less than a stated percentage of funds for the purpose of making awards to qualified small business concerns. The term "extramural budget" is defined in section 9(e)(1) as:

"* * * the sum of the total obligations
minus amounts obligated for such activities
by employees of the agency in or through
Government-owned, Government-operated
facilities * * *."

The continuing resolution that provided the Department of Agriculture with appropriations for fiscal year 1985 funded programs to the extent and in the manner provided in the conference report and joint explanatory statement of the Conference Committee for the Agriculture, Rural Development and Related Agencies Appropriation Act, 1985 (H.R. 5743). Section 101(a), Pub. L. No. 98-473, 98 Stat. 1837, October 12, 1984. The report (H.R. Rep. 1071, 98th Cong., 2nd Sess. 7 (1984)) by its terms adopted the following provision in H.R. 5743 which appeared in the bill as approved in both Houses of the Congress:

"SCIENTIFIC ACTIVITIES OVERSEAS (FOREIGN CURRENCY PROGRAM)

"For payments in foreign currencies owed to or owned by the United States for market development research * * * \$5,000,000: Provided, That this appropriation shall be available, in addition to other appropriations for these purposes, for payments in the foregoing currencies: Provided further, That funds appropriated herein shall be used for payments in such foreign currencies as the Department determines are needed and can be used most effectively to carry out the purposes of this paragraph * * *"

ANALYSIS

The Small Business Innovation Development Act, while requiring a stated percentage of external research and R&D to be dedicated to the SBIR program, does not mandate that each research or R&D program would necessarily participate in SBIR. For example, Chairman LaFalce, of the Subcommittee on General Oversight, Committee on Small Business, in explaining the proposed SBIR legislation to the House of Representatives, stated that:

"The committee believes that a statutory allocation is essential if Federal SBIR programs are to succeed. The committee feels that there is ample flexibility in each agency's R. & D. budget to target the required percentage of their funds to implement the SBIR programs. It is left to the agencies' discretion to decide which funds to use for this purpose." 128 Cong. Rec. H3593 (daily ed. June 17, 1982).

A similar point of view was expressed by Representative Smith of Iowa, a member of the Small Business Committee, in commenting on the lack of need for a proposed amendment to exempt research performed in State governmental facilities from being regarded as extramural research for SBIR purposes. (The amendment was defeated.)

"They [the Department of Agriculture] are not required to take a certain percentage out of each and every program; it is only a certain percentage out of the whole Department of Agriculture.

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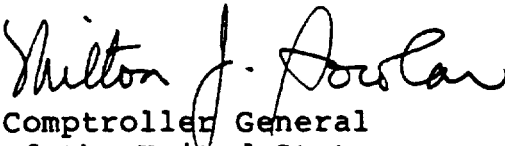
"There is no necessity to take it out of those individual programs the gentleman is talking about." 128 Cong. Rec. H3774 (daily ed. June 22, 1982)."

The \$5 million appropriation in question is for foreign market development research that is to be paid for in foreign currencies. The appropriation is stated to be in addition to other appropriations for this type of research. While the Secretary is given the specific authority to determine which foreign currencies are to be utilized for this purpose, the use of U.S. dollars is not included as an option.

When an appropriation is by its terms subject to authorizing statutes we have given effect to such provisions. See 61 Comp. Gen. 532 (1982). However, in the case at hand the appropriation Act clearly states that the \$5 million appropriated is to be spent in foreign currency, and this limitation is not inconsistent with the Small Business Innovation Development Act. Neither does the latter Act otherwise provide authority to use funds for purposes other than those for which they were appropriated. The Secretary's discretion under this Act does not extend to using funds for purposes other than for which appropriated on the basis that a percentage of each appropriation is to be put into a SBIR pool. Each appropriation retains its identity and is subject to conditions or limitations applicable to that appropriation. Accordingly, absent specific authority the establishment of a pool to pay for research by small business concerns that is not subject to the limitations applicable to the appropriations assessed to fund the pool would be impermissible, whether or not foreign market research funds are included in the pool. See 36 Comp. Gen. 386 (1956).

It is clear the Act does not mandate that any particular program participate in the set-aside. The foreign market development research program either may be omitted from participation in the SBIR program or included with payment in foreign currency for market development research in foreign countries as required by the appropriation. Of course, the dollar value of this appropriation should be used for the purpose of determining the agency's total extramural research budget.

Accordingly, we conclude that the Small Business Innovation Development Act of 1982 does not excuse the Department of Agriculture from the 1985 fiscal year appropriation requirement that the market development research involved be paid for in foreign currencies.

for 
Comptroller General
of the United States