

DECISION



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

FILE: B-220527

DATE: December 16, 1985

MATTER OF: Economic Development Administration-
Ratification of Grant Acceptance as
Obligating Prior Year Appropriation

DIGEST:

1. Economic Development Administration offer of a public works grant to Town of Franklin, Connecticut and State of Connecticut jointly, was conditioned on acceptance of the offer by both parties before September 30, 1983, the end of the fiscal year. An unauthorized agent for the applicant Town purported to accept the offer on the last day of the fiscal year and her action was, in effect, ratified 6 months later by the Town Council which would have been authorized to accept the grant offer. However, at the time of the attempted ratification, the grant offer was no longer available for acceptance, having expired on the same date that the appropriation to fund the grant lapsed.

2. Ratification of an unauthorized action taken in a prior fiscal year may serve to authorize a charge to the prior year's funds only if the Government received and accepted the benefit of property or services provided by a contractor, or if, in a grant situation like this, the agency had actually awarded the grant and the grantee had expended its own funds for grant purposes in reliance on the erroneous award.

The General Counsel of the Department of Commerce has asked for our decision concerning whether the Economic Development Administration (EDA) obligated fiscal year 1983 funds when it made an offer of a grant to the Town of Franklin, Connecticut, that was accepted within the fiscal year by an official of the town who lacked authority to accept the grant offer. For the reasons given below, we conclude that there was no valid obligation of fiscal year 1983 funds.

FACTS

In 1983, the Town of Franklin, Connecticut, together with the State, applied for an EDA grant to partially fund the development of an industrial park project under title I

034019

of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. §§ 3121-3246h. EDA made the Town an "Offer of Grant," dated September 29, 1983. The document provided:

"Acceptance of this Grant offer must be returned to the Economic Development Administration prior to September 30, 1983."

This offer was accepted by Grace B. Curran, First Select-woman of the Town, on September 30, 1983. Her authority to accept the offer was certified by the Assistant Town Clerk. Notwithstanding this certification, Ms. Curran's authority had been limited by the Town, which makes decisions affecting expenditures of public funds by citizen referenda. In this instance, acceptance of the grant required a non-Federal commitment of 50 percent of the estimated project costs. While the State of Connecticut committed funds for approximately half of the non-Federal share, the balance would have to come from the sale by the Town of a local bond issue.

According to the minutes of the town meeting, Ms. Curran was authorized to apply for the grant:

"Subject to the Town's acceptance, at a later town meeting, of the state and federal grants for the project."

Two unsuccessful referenda were held on November 1, 1983 and early in 1984, on whether the Town should accept the grant. In March of 1984, the EDA regional director wrote Ms. Curran asking whether the Town intended to go forward with the grant. The grant was finally approved at a Town meeting held April 10, 1984.

EDA may have had actual knowledge of the fact that the Town failed to approve the grant at the November 1, 1983 Town Meeting because, according to the Inspector General, the Assistant Secretary for Economic Development received a letter dated December 7, 1983, from the Chairman of a group called "Concerned Citizens of Franklin," so stating. Also, an attorney for the Town says that an EDA legal memorandum discussed the second referendum, and that EDA instructed the Town to request a formal grant extension if a favorable referendum was obtained. On the other hand, the General Counsel says that EDA did not learn until April 10, 1984, when the Town approved the grant, that Ms. Curran did not have actual authority to accept the grant on September 30, 1983.

Analysis

The appropriation for the grant was available for obligation only during fiscal year 1983. This means that EDA had to complete its grant award to the Town of Franklin by September 30, 1983, in order to prevent the funds in question from lapsing. EDA's usual grant practice is to make an offer of a grant which requires a formal acceptance by the grant recipient within a stated time period. Since the grant appropriation in this case could only be obligated during fiscal year 1983, EDA made it clear that the offer would expire after September 30, 1983, unless it received the Town's acceptance prior to that date.^{1/}

There is no doubt that the document that EDA received prior to September 30, 1983, was not an authorized acceptance by the Town of Franklin. Even if Federal grant funds had actually been disbursed, the Town would not be committed in any way to carry out the purposes of the grant (although of course it would have to return these funds.). Therefore, no grant relationship was formed prior to the expiration of the availability of the grant funds. Nevertheless, we have been asked by the granting agency and the grantee whether we agree with their theory under which the purported acceptance can be considered to be within the terms of the offer.

The General Counsel argues that an obligation of fiscal year 1983 funds did take place because the Town ratified the faulty earlier acceptance and that, under general rules of agency, such a ratification relates back to the time of the unauthorized acceptance.

We do not accept this argument. The EDA grant offer was clearly conditioned on acceptance within a limited period of time, coinciding with the limited time in which funds to make the grant award remained available. No theory of agency or relation-back can serve to extend the period of time in which obligations can be charged to a time-limited congressional appropriation. In other words, this was not a situation in which the offer could be considered to remain

^{1/} We note that the September 30 acceptance does not meet the literal requirement of the offer which would have required acceptance "prior" to that date. We do not think this is a problem because it is clear that EDA was seeking a commitment by the close of the fiscal year on September 30.

open until such time as one of the parties either withdrew or completed the agreement with a valid acceptance. See Restatement of Agency, Second, sec. 90.

The General Counsel's office told us that the EDA relied on two Comptroller General decisions in arriving at its position. He cites Matter of Rust Tractor Co., 58 Comp. Gen. 789 (1979), and Matter of Fish and Wildlife Service--Fiscal Year Chargeable on Ratification of Contract, 83-1 CPD 75, January 6, 1983. Both are procurement decisions, involving ratification by a contracting officer of services ordered by an unauthorized Government official in the prior fiscal year. In both cases, the Government had received the benefit of the services provided, and funds were available to pay for them during the fiscal year in which they were ordered. We held that the later ratification "related back" and served to make valid the unauthorized commitment. The General Counsel's office thought that these same principles should apply to the Town of Franklin case.

There is a very significant difference, in our view. In both the cited procurement cases, the Government had received the benefit of the services provided in good faith by a contractor. It would have been unconscionable to accept such a benefit and avoid payment by relying on a procedural irregularity. The principle of ratification, like its sister principles, payment under quantum meruit or quantum valebat, are based on considerations of unjust enrichment. If the contractors in those cases had never provided the unauthorized services ordered in the prior fiscal year, any subsequent "ratification" would not relate back but would be regarded as a new contract for services, chargeable to the current fiscal year.

The General Counsel also states that EDA did not know that the September 30 letter from the First Selectwoman was not a valid acceptance until it received notice of the action by the Town at an April 10, 1984 meeting where, for the first time, the Town accepted the grant offer. He appears to believe that because EDA had no reason to doubt the validity of the September 29 acceptance letter, the appropriation can be considered to have been validly obligated. Whether EDA did or did not have actual notice that the Town previously disapproved acceptance of the grant offer is not entirely clear. There appears to be some

differences of opinion on that point, according to information provided in the Inspector General's audit report and in a letter from the Attorney General of the State of Connecticut.

It is not necessary for us to resolve that issue of fact. Although 31 U.S.C. § 1501(a) requires an agency to file documentary evidence of a contract or other commitment executed during the period of availability of the funds it seeks to charge, the document must itself be valid in order to obligate the appropriation. If the contract or other agreement is substantively flawed, as it was here due to the absence of a valid acceptance, the procedural act of filing the document cannot serve to preserve the funds beyond their expiration date in order to give the parties more time to correct the flaw.

In the present case, the Government made a time-limited offer which was not accepted in the time required. By the time the Town Council acted, there was no offer left to accept. The offer had expired by its own terms. The result might have been different if the grant had actually been awarded to the town within FY 1983, and if the town had expended its own funds to carry out the grant purposes in reliance on the erroneous award. It is not disputed that this never happened. Our decision merely restores EDA and the Town to the status that existed prior to the grant offer and attempted acceptance.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States