Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Use of Agencies' Appropriations to Purchase Computer Hardware for Department of Labor's Executive Computer Network

File: B-238024

Date: June 28, 1991

DIGEST

The Office of the Assistant Secretary for Administration and Management violated 31 U.S.C. §§ 1301 and 1532 when it used appropriated funds of nine agencies within the Department of Labor (Department) to purchase computer equipment for a communications system in amounts in excess of actual costs of equipment provided eight of the agencies. Although the Economy Act and 31 U.S.C. § 1534 authorize transfers between agencies to fund certain shared activities or needs, the Department's cost allocation methodology exceeded the authority granted by these statutes because it required several agencies to subsidize costs allocable to Departmental Management and the Pension Benefit Guaranty Corporation appropriations.

DECISION

This decision responds to the request of the Department of Labor's (Department) Office of Inspector General and Assistant Secretary for Administration and Management concerning the Department's use of various agency appropriations to purchase computer equipment for a communications system linking Executive Staff throughout the Department. They asked, specifically, whether the Department complied with applicable appropriations laws in using the funds of the various agencies within the Department to purchase the equipment. For the reasons stated below, we conclude that the Office of the Assistant Secretary for Administration and Management violated 31 U.S.C. §§ 1301 and 1532

BACKGROUND

By memorandum of July 22, 1987, the Deputy Secretary of Labor announced that the Secretary would "reprogram" $1.6 million before the end of the fiscal year in order to finance the purchase of equipment for an Executive Computer Network (Network). The Network would facilitate communication between the Secretary and the Department's Executive Staff (for

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example, the Deputy Secretary, Assistant Secretaries, Executive Assistants). The Deputy Secretary stated that the Department would pay for the system by drawing on the unexpended balances remaining in the appropriation accounts of the Department's various agencies.

Subsequently, the Office of the Assistant Secretary for Administration and Management (OASAM), acting as the agent of the Secretary, funded the purchase of the Network by initiating obligations against the appropriation accounts of other agencies.1/ A memorandum from OASAM referred to this process of allocating other agencies' funds to finance the purchase as "centralized management." The first step under centralized management was for OASAM to modify contracts already existing between agencies and contractors, and to negotiate new contracts for the supply of Network components. Then, without consulting the affected agencies, OASAM used agency accounting codes to commit agency funds to the various contracts.

OASAM based the amount that each agency would contribute to the purchase of the Network equipment on the Full-Time Equivalent (FTE) staff ceiling of each agency. OASAM deemed the assessments, based on the FTE ceilings, as the best way to finance the project since the Network provided a benefit to the entire Department. OASAM reasoned that the value received from the Network would be directly proportional to the size of the agency's staff, thus, a fee structure based on FTE ceilings would require the agencies to provide funds in a manner commensurate with how the Department as a whole would receive benefits.

Several agencies objected to this method of allocating costs, arguing that the allocations should have been directly related to the amount of computer equipment assigned to the agency. In a memorandum dated April 8, 1988, the Assistant Inspector General argued that the amount charged against his agency's appropriation did not reflect the goods or services that the Office of Inspector General (OIG) received. For example, part of the OIG appropriation was used to purchase two videodisc players, more than 20 computer modems, and 50 copies of Crosstalk software, even though the items were never delivered to OIG. The Assistant Inspector General also pointed out that OASAM officials requisitioned the equipment using OIG appropriations even though the officials never received OIG authorization to commit the funds.

1/The Office of the Secretary and OASAM both operate under the Departmental Management appropriation.

The OASAM officials made all of the purchases of Network components. In making the procurements, the officials did not limit the use of an agency's funds to the purchase of equipment directly benefitting that agency; instead, they used the funds to purchase equipment for all departmental units and needs without regard to the source of the funding. According to OASAM, it conducted the procurements in this manner to get the best price, expedite the acquisition process and reduce paperwork. OASAM considered this an acceptable method of procurement since it did not cause any agency to be charged more than its assessed share.

Subsequent to the installation of the Network, OIG investigated the procurement of the computer equipment and determined that the centrally managed purchases based on FTE ceilings resulted in a substantially disproportionate allocation of Network costs to most of the agencies. For example, the Bureau of Labor Statistics (BLS) paid $220,736 in Network costs even though the total costs for supplying and installing computer equipment in BLS offices was only $58,312. The OIG investigation concluded that the allocations should have been based on the cost of computer equipment received by each agency since those costs represented the actual costs which the agency incurred.

DISCUSSION

We agree with the OIG conclusion. As a result of the Department's method for financing the purchase of the Network equipment, eight of the agencies participating in the Network were overcharged. By using these agencies' accounting codes to tap their appropriations, OASAM effectively transferred the amounts of the overcharges to the benefit of other agencies in violation of 31 U.S.C. §§ 1532 and 1301.

We have previously considered joint financing arrangements similar to this, that is, tapping the respective appropriations of the department or agency components to support projects benefitting a department or agency as a whole. 60 Comp. Gen. 686 (1981); B-195775, Sept. 10, 1979. Those decisions recognize that such "pooling" arrangements, as they were referred to, require statutory authority to overcome the purpose limitations of 31 U.S.C. § 1301, and its corollary, 31 U.S.C. § 1532 the limitation on transfers between appropriation accounts. In the two cases cited, we inferred the necessary authority to "pool" agency appropriations to administer department-wide personnel programs from the overall purpose and department-wide focus of the Civil Service Reform Act (CSRA). Id. In those cases, we viewed the consolidation of appropriations under the authority of the CSRA as permissible transfers, and because of the general nature of the transfer authority and the programs involved, we did not have to consider issues of relative allocation of benefits or costs realized or incurred by or for the various appropriations financing the program.

Here, there are ten separate appropriations which fund the agencies participating in the Network. Though the Deputy Secretary in his memorandum to the Executive Staff described the use of the appropriations as "reprogrammings", the use of the appropriated funds constituted, in effect, transfers between the appropriation accounts of the nine agencies and OASAM. (A reprogramming is the movement of funds between different budget items within a single appropriation that does not typically require statutory authority; a transfer is the movement of funds between separate appropriations that does require statutory authority. See B-206668, Mar. 15, 1982.)

In general, unless otherwise authorized by law, transfers of funds between agency appropriation accounts are prohibited by section 1532. Most transfers are made pursuant to specific statutory authority, although some are made under the general transfer authority that the Congress has established to promote economy and efficiency. See 31 U.S.C. §§ 1535 and 1534. With regard to the personnel programs discussed above, the CSRA provided the transfer authority. Here, however, the Department does not cite any specific statutory authority for the transfers, and upon review of the Department's fiscal year 1987 appropriations act and the relevant provisions of the U.S. Code, we were not able to find any such authority either.

The Department also fails to offer any general statutory transfer authority in support of the Network acquisition. However, reconstructing events in the light most favorable to the Department, we note that the Economy Act, 31 U.S.C. § 1535, provides that if amounts are available and it is in the best interest of the government, an agency may place an order with another agency for goods or services that the other agency can provide, or can procure by contract, more conveniently or cheaply than through direct commercial acquisition by the ordering agency. 31 U.S.C. § 1535(a). Hence, the Economy Act would appear to authorize payments from the Department's agencies to OASAM.

Section 1535(b) of the Act, however, contemplates that the amounts paid will not exceed the actual cost of the goods or services provided to an ordering agency. The OIG investigation disclosed that under the FTE method of allocation, eight of the agencies, in the aggregate, paid $880,464 more for their computer equipment than they would have paid if the method of allocation had been based on the actual cost of the equipment that each of the eight agencies received.2/ The beneficiaries of this method of cost allocation were the agency components funded under the Departmental Management appropriation which received $1,049,978 worth of computer equipment while only paying $180,056, and the Pension Benefit Guaranty Corporation which received $10,542 worth of equipment while paying nothing. To the extent that the eight agencies made payments in excess of the actual cost of computer equipment received, the transfers were outside of the Economy Act and violated section 1532.

Like the Economy Act, 31 U.S.C. § 1534 confers authority, under certain conditions, to effect payments between agency appropriations. The provision allows an agency to use its appropriation to make purchases for the benefit of another agency, as long as the agency that benefits from the purchase 1) has sufficient funds to pay for the items purchased and 2) reimburses the purchasing agency before the end of the fiscal year in which the purchase was made. The provision is "primarily a bookkeeping convenience" and is not intended to "authorize the augmentation of funds to any bureau or agency beyond that contained in its respective appropriation. . . ." S. Rep. No. 1284, 89th Cong., 2d Sess. 4 (1966).

Although section 1534 authorizes an agency to make payments out of its own appropriation account for the benefit of another agency, the statute contemplates that each agency, ultimately, will only pay for its own goods. Here, OASAM committed funds directly from the accounts of other agencies through the use of the agencies' accounting codes. Since the resultant transfers exceeded the actual costs of the computer equipment received by the eight agencies, the charges were more than adjustments to appropriation accounts for the purpose of reconciling expenditures and, in fact, constituted improper augmentations of the Departmental Management and Pension Benefit Guaranty Corporation appropriations. As such, they constituted transfers, outside the scope of section 1534, and, thus, violated section 1532.

The expenditures, made pursuant to the FTE cost allocation method, also violate section 1301. Section 1301 provides that an agency, absent statutory authority, may not expend appropriated funds for purposes and objects other than those

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2/ The following is a list of the excess amounts that each agency paid: 1) Office of Labor, $2,694; 2) Bureau of Labor Statistics, $162,424; 3) Employment Standards Administration, $277,293; 4) Employment and Training Administration, $90,891; 5) Mine Safety and Health Administration, $197,579; 6) Office of Inspector General, $8,076; 7) Occupational Safety and Health Administration, $140,046; and, 8) Veterans' Employment and Training Service, $1,461.

for which the appropriations were made. The appropriations for each of the Department's agencies were available for the specific benefit of the agency to which the money was appropriated. See, e.g., the Bureau of Labor Statistics appropriation, which read, "For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered. . . ." Pub. L. No. 99-591, § 101(i), 100 Stat. 3341-287 (1986), incorporating by reference H.R. 5233, 99th Cong., 2d Sess. (1986), as modified by the conference report. OASAM, acting as the Secretary's agent, used the eight agencies' appropriations for purposes other than as appropriated when it transferred the funds to contribute to the purchase of computer equipment for the benefit of the Departmental Management and Pension Benefit Guaranty Corporation appropriations.

Accordingly, the Department of Labor should adjust its fiscal year 1987 appropriation accounts consistent with this decision. This would include returning from the appropriations for Departmental Management and the Pension Benefit Guaranty Corporation the amounts that each of the eight agencies contributed to the purchase of the computer equipment over and above the actual costs of equipment received. To the extent unobligated funds for fiscal year 1987 do not remain in such accounts adequate to make the adjustments envisioned by this decision, a violation of the Anti-Deficiency Act has occurred and appropriate reporting pursuant to 31 U.S.C. § 1351 and OMB Circular No. A-34 should be made.

for Milton J. Socolar
Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability
Amount availability
Antideficiency prohibition
Violation

APPROPRIATIONS/FINANCIAL MANAGEMENT
Budget Process
Funds transfer
Authority