



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Incremental Funding of U.S. Fish and Wildlife Service Research Work Orders

**File:** B-240264

**Date:** February 7, 1994

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### DIGEST

The Fish and Wildlife Service may not incrementally fund research work orders performed across fiscal years because the research work orders are considered entire for purposes of the bona fide need rule, and thus chargeable to the appropriation available at execution rather than funds current at the time the research is performed. The Service should charge subsequent modifications increasing the amount allotted to the original appropriation because the Service anticipated increasing the funding available for the research when the research work order was issued.

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### DECISION

The Chief, Division of Contracting and General Services, Fish and Wildlife Service, U.S. Department of the Interior, asks whether research work orders issued under cooperative assistance agreements may be funded incrementally or whether funds must be fully obligated at the inception of each work order. For the reasons discussed below, we conclude that the Service may not incrementally fund research work orders of multiple year duration that are nonseverable.

### BACKGROUND

Under Public Law 86-686, 74 Stat. 733 (1960), as amended, 16 U.S.C. §§ 753a and 753b (1988), the Secretary of the Interior is authorized to enter into cooperative agreements for fish and wildlife research with colleges and universities, state agencies, and nonprofit organizations. The statute limits federal participation in this joint research effort to the assignment of scientific personnel; to the provision of assistance (including reasonable financial assistance) for the work of researchers on fish and wildlife ecology and resource management projects; to the supply of equipment; and to the payment of incidental expenses of federal personnel and employees of cooperating agencies assigned to the cooperative units. Most of the funding contributed by the federal government for the actual research comes from various programs under the Service's annual resource management appropriation. The Service currently operates 41 cooperative units at 40 state university campuses in 38 states.

To help accomplish the objectives of the legislation, the Service issues research work orders that are project-specific extensions of unit cooperative agreements. The research work orders describe the research intended to be conducted through the auspices of the university cooperator and provide for the transfer of federal funds to the university for the performance of the research described. The orders frequently contemplate research extending over several years to be performed by the cooperator on a cost-reimbursement basis.

It has been the practice of the Service to fund many orders incrementally out of the annual resource management appropriation. By incrementally funding a research work order, the Fish and Wildlife Service establishes the total work effort to be performed by the cooperator over a multiple year period but allots funds only to cover the first discernible phase or increment of the total work effort. When the Service issues the research work order, it does not obligate funds for the total estimated cost of the project. Rather, the Service obligates only the funds allotted for each phase or increment of work.

In its submission, the Service gives an example of a typical research project, an anticipated 4-year study on the effects of harvesting frogs, culminating in a publishable report. The project's estimated total cost is \$119,500 although the Service obligated only \$60,000 of its annual 1989 appropriation for the first 16 months of the project. This \$60,000 is to cover the cost of 16 months of work under the project and is not identified with any specific task to be performed. The research work order specifically stipulates that "[t]he university shall not incur costs in excess of the funds actually obligated" and provides that "[a]dditional funding is anticipated to be provided from appropriations of subsequent fiscal years."

Following an audit of the Service's activities, the Inspector General of the Department of the Interior concluded that the Service's unliquidated obligations were understated because the total dollar amount of research work orders exceeded amounts actually obligated. The Inspector General considers the research services obtained pursuant to the research work orders to be nonseverable under our bona fide need rule. Consequently, the Inspector General recommended that the Service "[o]bligate the entire amount of each research work order and cooperative agreement against the appropriation that is current at the time the document is executed." The Service disagrees with the Inspector General's recommendation and asks for our opinion on this matter.

## ANALYSIS

In 71 Comp. Gen. 428 (1992), we held that contracts that cannot be separated for performance by fiscal year may not be funded on an incremental basis without statutory authority. Although procurement contracts were at issue in that case, the bona fide need rule, upon which the holding of that decision was based, applies to all federal government funding activities carried out with appropriated funds, regardless of whether the funding mechanism is a contract, grant or cooperative agreement,<sup>1</sup> B-229873, Nov. 29, 1988, cited in E-235678, July 30, 1990. Thus, the same principles outlined in 71 Comp. Gen. 428 apply to the research work orders and cooperative agreements at issue here.

The bona fide need rule was developed by the accounting officers of the United States to implement one of the oldest funding statutes, now codified at 31 U.S.C. § 1502(a) (1988), which provides that:

"an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability."

As this statute has been interpreted and applied by the accounting officers of the United States, an appropriation is available only to fulfill a genuine or bona fide need of the period of availability for which it was made.

Whether an agency should charge the full cost of contract services to the appropriation available on the date a contract for services is made or to the appropriation current at the time services are rendered depends upon whether the services are severable or entire. A task is severable if it can be separated into components that independently meet a separate need of the government. B-235678, above. Thus, to the extent a need for a specific portion of continuing or recurring services arises in a subsequent fiscal year, that portion is severable and

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<sup>1</sup>31 U.S.C. § 6305 (1988) requires an executive agency to use a cooperative agreement when the principal purpose of the relationship with the recipient is to transfer a thing of value to carry out a public purpose of support or stimulation authorized by law instead of acquiring property or services for the direct benefit or use of the United States Government. Substantial involvement is expected between the executive agency and the recipient.

chargeable to appropriations available in the subsequent year. 60 Comp. Gen. 219, 220-221 (1981).

On the other hand, where the services provided constitute a specific, entire job with a defined end-product that cannot feasibly be subdivided for separate performance in each fiscal year, the task should be financed entirely out of the appropriation current at the time of award, notwithstanding that performance may extend into future fiscal years. See 71 Comp. Gen. 428. The bona fide need rule allows time-limited funds to be used for work performed in the next fiscal period in connection with a nonseverable task since the latter effort is viewed as an inseparable continuation of work to fulfill a need that arose during the appropriation's period of availability. B-235678, above.

In our opinion, the sample research work order described above appears entire in nature. Upon execution of the research work order, the university cooperator is committed to the completion of the stated research project. The study is to culminate in a publishable report which the research work order refers to as a "final product." The cooperator agrees to perform all work set forth in the research work order during the specified period of performance, the objectives of which are described with specificity, and the total cost estimated with reasonable accuracy. The work product envisioned in the research work order is the completed study, nothing less. Since it represents a single bona fide need, the sample research work order is entire, and, consequently, the appropriation current at the time the research work order was executed should have been charged rather than funds current at the time services are rendered. See 65 Comp. Gen. 741 (1986). Thus, the Service should have obligated the full estimated cost of the sample research work order at the time it was issued.

The Service argues that including a limitation of funds clause alleviates any responsibility on the government's part relative to providing full funding. Including a limitation of funds clause does limit the government's obligation to that initially incurred, and in that limited sense can alleviate Antideficiency Act concerns, see 71 Comp. Gen. 428, 431 (1992).<sup>2</sup> An Antideficiency Act violation would not be avoided, however, if an agency must adjust the obligation recorded for an incrementally funded

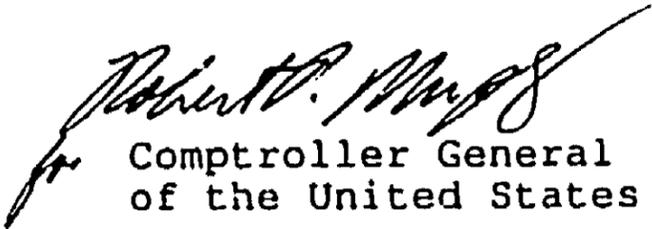
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<sup>2</sup>The "Antideficiency Act", 31 U.S.C. § 1341(a) (Supp. IV, 1992) prohibits an officer or employee of the government from incurring an obligation in excess of amounts available or in advance of the available appropriation unless authorized by law

contract to fully reflect the bona fide need contracted for, and sufficient funds do not exist in the appropriation available when the contract was entered into to support the adjustment.

Using a limitation of funds clause does not remedy the bona fide need problem described above when a contract calls for nonseverable services. The terms of the sample research work order clearly indicate that the anticipated future modifications to increase the amounts allotted are modifications for which there is already a bona fide need at the time the research work order is executed, and are essential to the fulfillment of the original research work order. Consequently, the Service should have obligated the full amount estimated to be needed for the fulfillment of the work called for in the research work order at the time the order was issued.

The Fish and Wildlife Service indicated that a large percentage of the research work orders have been funded incrementally for many years. Requiring the Service to adjust its accounts now by obligating the full estimated cost of each research work order, as suggested by the Inspector General, would have serious programmatic repercussions. Thus, our holding will only apply to research work orders executed after the date of this decision.



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