R. Parsons
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DECISION

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

FILE: B-190847 DATE: May 12, 1978

MATTER OF: Substitute Grant Projects - South Carolina State College

DIGEST: A research grant was made to South Carolina State College, an 1890 institution (as defined in 7 U.S.C. § 323), under the authority of 7 U.S.C. § 450i using fiscal year 1975 appropriated funds. In fiscal year 1976, although it retained some aspects of the original proposal, the research objective of the grant was changed. The substitute proposal changed the scope of the original grant and thereby created a new obligation chargeable to the appropriation of the year (fiscal year 1976) in which the substitution was made.

The Acting Deputy Assistant Secretary of Agriculture requested our decision about the authority of the Department of Agriculture, under Pub. L. No. 89-106, section 2, 79 Stat. 431, 7 U.S.C. § 450i (1976) to substitute one research grant project for another although awarded to the same grantee, after the expiration of the original appropriation.

The Department has provided us with the following facts:

"Grant No. 516-15-163 was made by the Cooperative State Research Service (CSRS) to South Carolina State College (SCSC) on June 27, 1975, to fund a research project proposal entitled 'A Method of Determining Trace Metal Concentrations Utilizing Luminescence Spectroscopy.'

"The grant was part of the program administered by CSRS to make research grants to the colleges eligible to receive funds under the Act of August 30, 1890 (25 Stat. 417-419, amended; 7 U.S.C. 321-326 and 328), including Tuskegee Institute. The grant was funded in the amount of $146,583 out of the annual appropriation made to CSRS in FY 1975 for scientific research pursuant to section 2 of Public Law 89-106 (7 U.S.C. 450i). This Act, prior to its recent amendment by section 1414 of the Food and Agriculture Act of 1977, Public Law 95-113, authorized

the Secretary of Agriculture to make grants for periods not to exceed five years' duration for research to further the programs of this Department.

"The program of funding research projects at the Land-Grant Colleges of 1890 and Tuskegee Institute began in 1967, when a determination was made that $283,000 of the funds appropriated for research grants under section 2 of Public Law 89-106 would be awarded only to those institutions. A formula was devised by which the sum would be awarded. Each school was permitted to submit research proposals for funding in amounts equal to its share of the total as derived from the formula. * * *

"In FY 1972, the Congress appropriated a substantially increased amount for this purpose. The principal justification for doing so appears to have been a recognition on the part of Congress that these institutions had received little in the way of research funds in the past since they did not share in the distribution of Hatch Act funds and McIntire-Stennis Cooperative Forestry Act funds. * * *

"Accordingly, while section 2 of Public Law 89-106 authorized research grants to further programs of this Department, funds were appropriated by the Congress pursuant to that section with the underlying purpose of providing the 1890 institutions with funding for agricultural research so that these institutions could develop their research capabilities and assume a partnership role in the conduct of agricultural research with the land-grant colleges established under the provisions of the Morrill Act of July 2, 1962, and the acts supplementary thereto.

"It should be noted that beginning in FY 1978, the program of funding agricultural research at these institutions will be administered under the provisions of section 1445 of Public Law 95-113.

"In its letter approving Grant No. 516-15-163, CSRS expressed concern that the need for the proposed research project had not been clearly established.

> For that reason, a limitation was placed on the expenditure of funds under the grant, permitting grant funds to be expended through December 15, 1975, only for the purpose of conducting a more thorough problem analysis and a reappraisal of the need for the research.
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> "By letter dated January 16, 1976, CSRS extended the period authorized for expenditures for a more thorough problem analysis through April 9, 1976.
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> "By letter dated April 13, 1976, the grant agreement was amended. A project proposal entitled 'Incorporation of Waste Materials into Soil to Reduce Soil Compaction' was substituted for the original project. The original obligation of FY 1975 funds in the amount of $146,583 was not deobligated, but was carried forward to fund the substitute project.
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> "This Department's auditors have concluded that upon the termination of the reappraisal period and the decision to drop the original project the grant should have been terminated, and the unexpended funds deobligated and returned to the Treasury. It is understood that this position is based on the rationale that the substitute project was not within the scope of the original grant and should have been funded as a new grant chargeable to FY 1976 appropriations. * * * [O]ur Office of the General Counsel has concurred in the conclusion that the amendment substituting a new project created a new obligation, chargeable to FY 1976 * * *."

It is well established that agencies have no authority to amend grants so as to change their scope after the appropriations under which they have been made have ceased to be available for obligation. See, for example, 39 Comp. Gen. 296 (1959). The substitution of one grant for another extinguishes the old obligation and creates a new one. The new obligation is chargeable to the appropriation available at the time the new obligation is created. See 41 Comp. Gen. 134 (1961); 39 id. 296 (1959); 37 id. 861 (1958); and B-164031(5), June 25, 1976.

In this case the Acting Deputy Assistant Secretary provides two arguments suggested by the CSRS to show that the fiscal year

1976 grant amendment in question did not change the scope of the original grant. First, it is urged that the research proposal approved in fiscal year 1976 retained enough similarities with the research proposal approved in fiscal year 1975 to remain within its scope. Second, in the nature of an alternative argument, CSRS suggests that since an underlying congressional purpose in appropriating funds for the 7 U.S.C. § 450i program was to provide for the development of research capabilities at the Colleges of 1890 and Tuskegee Institute, the scope of the grants to these schools should be expanded to accommodate this purpose. CSRS feels that substitutions of specific research projects should not be considered to change the scope of the grants, since they have such a broad purpose.

With regard to the first argument, CSRS contends that the substitute project did not amount to a change in the scope of the original grant since "some aspects of the work are common to both." An Office of General Counsel, Department of Agriculture, memorandum that accompanied the submission quotes the following statement from the original proposal:

> "In particular, we will develop a new procedure for quantitatively analyzing drinking water for the presence of trace metals."

The memorandum also quotes the following statement from the substitute proposal:

> "This work is designed to gain fundamental information concerning application of waste to agricultural land, but more importantly is designed to determine if additions can be made in such a way as to reduce the problem of soil compaction."

The Office of General Counsel memorandum concludes that "it is obvious that the two projects involved entirely different objectives." A similar statement was made by the Assistant Regional Director in an October 3, 1977, memorandum, also included in the submission. He said:

> "The substitute proposal had no real relationship to the original project as approved. It was coincidental that each of the two projects involved tests for metal content * * *."

We agree with these administrative findings. We do not believe that the fact that certain aspects of the two grants are related can form a basis for concluding that the scope of the original grant has not been changed in this case.

CSRS contends that the grant purpose must be read in the context of a larger program purpose to develop the research capability of 1890 institutions, including Tuskegee Institute. This objective was mentioned in S. Rep. No. 93-1014 at page 13: "A portion of these funds are earmarked for the 1890 land grant colleges." However, this purpose originated as and has remained an administratively designed program.

Section 450i provides in pertinent part as follows:

> "The Secretary of Agriculture is authorized to make grants, for periods not to exceed five years' duration, to State agricultural experiment stations, colleges, universities, and other research institutions and organizations and to Federal and private organizations and individuals for research to further the programs of the Department of Agriculture."

The legislative history on 7 U.S.C. § 450i describes the grant-making authority as "broader authority" for "applied as well as basic research" to a wide variety of grantees. E.g., H. Rep. No. 206 (89th Cong., 1st Sess.) page 4; S. Rep. No. 503 (89th Cong., 1st Sess.) at page 5. In his testimony before the House Committee on Agriculture (Hearings on H.R. 5508, March 10, 1965, 89th Cong., 1st Sess., p. 5) the Deputy Administrator, Management, Agriculture Research Service, distinguished the authority of formula grants under the Hatch Act (7 U.S.C. § 361a et seq. (1976)) from the then proposed 7 U.S.C. § 450i. In reference to section 450i he said "This refers, rather, to grants for specific pieces of research which are needed to accomplish the Department's purposes." (Emphasis supplied.)

In testimony before the House and Senate Committees concerning the need for separate authority for funding research at the 1890 institutions, both the administration and a spokesman for the 1890 institutions recognized the difficulties of administering such a program under the authority of 7 U.S.C. § 450i. In Hearings before the House Subcommittee on Department Investigations, Oversight, and Research on H.R. 4394, 95th Cong., 1st Sess., March 21-22, 1977, Richard David Morrison, President of Alabama Agricultural and Mechanical University, said in a prepared statement at page 158:

> "These funding arrangements, Mr. Chairman, are less than desirable in terms of providing continuous resources for viable definitive programs of research and Cooperative Extension. Therefore, it is not only desirable, but essential that research and extension efforts at our institutions be

> funded on a more solid basis than is now the case--funded in the same manner as the 1862 land-grant institutions."

In the same hearings at page 197, the Secretary of Agriculture, Bob Bergland, also in his prepared statement said:

> "In this respect, we believe that legislation is needed to provide conticuous funding in agricultural research and extension for the 1890 Land Grant Colleges and Tuskegee Institute. Currently, these institutions are eligible for support only under the special grants authority of the Department. It is important that their eligibility be made comparable to the continuing support available to State Agricultural Experiment Stations and Cooperative Extension in order that they can participate in long-range planning at the State level and utilize the funds for tenured personnel. These institutions play a unique and important role in research and extension in this country, and they should take their place as full partners in the agricultural research and extension system."

While a formula allocation system was adopted for part of the 7 U.S.C. § 450i appropriation, this appears to have merely reserved the money for specifically approved research grants for these institutions. According to Department of Agriculture testimony before the House Committee on Appropriations, Subcommittee on Agriculture, Environmental and Consumer Protection Appropriations (92d Cong., 1st Sess.) at page 577, in response to a question on how funding determinations are made under 7 U.S.C. § 450i, it was stated:

> "On a competitive basis. We announce shortly after the Appropriation Act is approved that this $2 million is available. We identify the earmarking such as the $1 million for cotton and the $400,000 for soy beans. We provide the information in a letter to the State agricultural experiment station directors, forestry schools and to the colleges of 1890. They submit their research proposals in March. We ask each institution, although we do not rigidly enforce this, to submit no more than two proposals in order to minimize the paperwork which would be generated and which we would have to evaluate. Once the proposals are assembled, we separate them by fields of research, that is, cotton, soybean,

> et cetera. The proposals from the 1890 colleges are handled in the same way. They are essentially automatic. All of them are reviewed by a panel of experts in each field, and rated as to their merit."

We conclude from this setting that both the CSRS and the 1890 institutions were well aware that the grants under section 450i authority are narrowly limited in scope to the purposes and objectives described in the grant documents. We find no basis for going beyond the specific purpose or objective in defining the scope of the obligation of each grant. Accordingly, we must agree with the Department of Agriculture's Office of General Counsel that the grant amendment accepting the substitute proposal created a new obligation chargeable to the appropriation for the year (fiscal year 1976) in which it was made and terminated the old grant which was made with fiscal year 1975 funds. 41 Comp. Gen. 134 (1961); 39 Comp. Gen. 296 (1959); 37 Comp. Gen. 861 (1958); B-164031(5) (June 25, 1976).

We are also asked to decide whether the funds involved must be recovered from the grantee. Under our decision in this case, the original grant project terminated with an unexpended balance from fiscal year 1975. Any unexpended funds in the hands of the grantee or unallowable costs attributable to the original project should normally be returned by the grantee. However, the substitute grant created a new obligation in fiscal year 1976 that should have been charged against fiscal year 1976 appropriations. The grantee has used at least some of those funds on its new (fiscal year 1976) grant. In these circumstances, it would appear that no funds should be recovered from the grantee as a result of the replacement of the original grant with the substitute or new grant. Rather, the Department of Agriculture should appropriately adjust its 1975 and 1976 appropriations accounts. If the Department's unobligated fiscal year 1976 appropriations are not sufficient to make the adjustment then a reportable Anti-Deficiency Act violation occurred.

Finally, the Acting Deputy Assistant Secretary notes the existence of similar grant substitutions as presented in this case. We trust that this decision provides adequate guidance for an appropriate resolution in these cases.

R.F. Keller

Acting Comptroller General
of the United States