Mr. Combs OS GGM
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DECISION

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

FILE: B-196404 ~~Addressee~~ DATE: June 26, 1980

MATTER OF: Obligation of Funds Under Military Interdepartmental Procurement Requests

DIGEST:

1. It remains the opinion of this Office that a Military Interdepartmental Procurement Request, (MIPRs) is placed pursuant to section 601 of the Economy Act of 1932, as amended, 31 U.S.C § 686. Consequently, to the extent the Corps of Engineers (Corps) is otherwise authorized to recover supervision and administrative expenses incurred in performing MIPR for Air Force, the Corps should be reimbursed from appropriations current when the costs were incurred or when the Corps entered into a contract with a third party to execute the MIPR. See 31 U.S.C. § 686-1, 34 Comp. Gen. 418 (1955).

2. Even if Military Interdepartmental Procurement Request (MIPR) is deemed authorized by 10 U.S.C. §§ 2308 and 2309 (1976), rather than section 601 of the Economy Act of 1932, as amended, 31 U.S.C. § 686, the allotment of funds by Air Force to Corps of Engineers (Corps) for use in executing MIPR does not constitute an obligation until the Corps either enters into contract with a third party to execute the MIPR or incurs costs in administering the contract. See DAR 5-1108.2,.3.

3. In view of regulation providing that a procuring department should bear, without reimbursement therefor, the administrative costs incident to its procurement of supplies for another Department, the Air Force (AF) and the Corps of Engineers should consider whether any reimbursement is due the Corps for administrative and supervision expenses incurred in performing Military Interdepartmental Procurement Request placed by AF. See DAR 5-1113.

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[Propriety of Certification ~~for~~ Voucher for Payment]

This decision is in response to an inquiry from R.T. Geiger, Disbursing Officer for the Fort Worth District, Army Corps of Engineers (Corps) as to whether he may certify a voucher for payment. He asks in effect whether current supervision and administration (S&A) expenses, associated with a Military Interdepartmental Procurement Request (MIPR) from Tinker Air Force Base, should be reimbursed from appropriations current when the costs were incurred or from the appropriation obligated when the Corps entered into a contract with a third party to execute the MIPR. Mr. Geiger's letter states:

> "The Fort Worth District is in receipt of a MIPR from Tinker Air Force Base. Corps S&A costs are initially charged to the Corps Revolving Fund, 96X4902, and then sold to the customer on a Corps-wide predetermined standard rate. Other related labor costs and costs such as reproduction are also initially charged to 96X4902 and then sold to the customer on the basis of the actual expense. The customer identifies within the MIPR those funds which will be cited for his request and which will ultimately receive the S&A expense. The Air Force has directed that 5763080 funds be cited for FY 79 S&A expense, Inclosure 2. Air Force rationale is furnished within Inclosure 3.
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> "The 5763080 funds are available for obligation by the Air Force for three years and for obligational adjustments for an additional two years. The Air Force direction could prolong the use of such funds beyond normal periods of availability and result in MIPRs receiving treatment similar to project orders. However, 34 Comptroller General 418 states that MIPRs should be treated as Economy Act Orders. Obligation adjustments continue to be processed against original contract funds and these adjustments are not in question. What is in question is the S&A costs which represent inhouse charges which are properly charged against current appropriations."

We have been informally advised that when a MIPR is accepted by the Corps, the Corps enters into contracts with third parties to fulfill the requesting agency's needs. The role of the Corps is to supervise the particular procurement involved and the S&A costs are those associated with the Corps' supervision of the contract. In the present case, the MIPR from the Air Force was accepted on February 25, 1976, and the Corps entered into the contract for its execution on the same day.

As Mr. Geiger's letter points out, this Office has previously held that in the absence of any other controlling statute, MIPRs will be considered as being issued under authority of section 601 of the Economy Act of 1932, as amended, 31 U.S.C. § 686 (1976). 34 Comp. Gen. 418 (1955). When a transaction governed solely by the Economy Act is recorded as an obligation against appropriations whose period of availability expires at a fixed time, then 31 U.S.C. § 686-1 requires the deobligation of those appropriations when their period of availability for obligation expires, to the extent that the performing agency has not incurred valid obligations under the agreement (for example, where the performing agency is providing the work or service itself, to the extent it has not performed the work or rendered the service). 31 Comp. Gen. 83 (1951).

However, if the MIPR transaction is governed by some provision of law other than the Economy Act, then the requirement of 31 U.S.C. § 686-1 to deobligate would not apply. B-193005, October 2, 1978. The Air Force believes that the authority to issue MIPRs is not the Economy Act, but 10 U.S.C. §§ 2308 and 2309 (1976) (formerly section 10 of the Armed Services Procurement Act of 1947) and, therefore, that they are not subject to the deobligation requirement of 31 U.S.C. § 686-1.

In 34 Comp. Gen. 418 at 422-423 (1955) we stated:

> "Military interdepartmental procurement orders. It is further contended by representatives of your Department that military interdepartmental procurement orders (hereinafter referred to as MIPR's) are issued under provisions of law peculiar to the Department of Defense rather than under the

provisions of section 601 of the Economy Act. Reference is made to the National Security Act of 1947, as amended, section 10 of the Armed Services Procurement Act (41 U.S.C. § 159) and section 638 of the Department of Defense Appropriation Act, 1953 (41 U.S.C. § 162).

"While the term 'including government agencies' was inserted in the proposed section 1311(a)(1) [31 U.S.C. § 200(a)(1)(1976)] to permit MIPR's, among other interagency agreements, to be recorded as obligations, it was not intended thereby to permit such funds to remain available indefinitely to the procuring agency for the execution of procurement contracts. To the contrary, it was intended to remove any doubt that such orders, as other orders issued under section 601 of the Economy Act, could be recorded as obligations but the procuring agency was to have no longer period to execute the procurement contracts than the agency issuing the orders would have had if it had done the procuring. The provisions of law relied upon by your Department, which are cited above, are viewed as having been enacted merely to require the military departments to exercise authority they already had to consolidate procurement requirements. This could have been accomplished by the military departments under section 601 of the Economy Act prior to the enactment of those provisions of law. Such provisions of law extended the existing authority of the military departments to the Secretary of Defense and directed that procurement requirements be consolidated to the extent deemed feasible. We thus feel that we are constrained to hold that MIPR's are issued under section 601 of the Economy Act, as amended, and, therefore, are subject to the provisions of section 1210 of the General Appropriation Act, 1951 [31 U.S.C. § 686-1, supra]."

Thus we specifically rejected the argument now made by the Air Force that a MIPR is placed pursuant to 10 U.S.C. §§ 2308 and 2309.

In any event, even if this transaction were governed by sections 2308 and 2309, the allotment of funds under those sections from one agency to another is not alone a basis for obligating the funds and, in circumstances like these, prior year funds would not remain available for obligation under those statutes any more than they would under the Economy Act.

Section 10 of the Armed Services Procurement Act of 1947 (1947 Act)(approved February 19, 1948, ch. 65, 62 Stat. 25), the source of the provisions now codified as 10 U.S.C. §§ 2308 and 2309, provided that--

> "In order to facilitate the procurement of supplies and services by each agency for others and the joint procurement of supplies and services required by such agencies, subject to the limitations contained in section 7 of this Act, each agency head may make such assignments and delegations of procurement responsibilities within his agency as he may deem necessary or desirable, and the agency heads or any of them by mutual agreement may make such assignments and delegations of procurement responsibilities from one agency to any other or to officers or civilian employees of any such agency, and may create such joint or combined offices to exercise such procurement responsibilities, as they may deem necessary or desirable. Appropriations available to any such agency shall be available for obligation for procurement as provided for in such appropriations by any other agency through administrative allotments in such amount as may be authorized by the head of the allotting agency without transfer of funds on the books of the Treasury Department. Disbursing officers of the allotting agency may make disbursements chargeable to such allotments upon vouchers certified by officers or civilian employees of the procuring agency."

This provision originated as an amendment by the Senate Armed Services Committee to section 10 of H.R. 1366, 80th Congress. In explaining it, the Committee report states:

> "This paragraph insures in detail the facilitating of joint and cross procurement between the services. In order effectively to permit one agency to procure for another, or to permit both agencies to procure jointly, it permits the delegation of authority and assignment between agencies of procurement responsibilities. This paragraph accomplishes this objective and further permits a contracting officer in one department to make actual obligations against allotments of funds made administratively by other departments for whom purchases are being made. The decisions and determinations required by section 7 of the bill will normally be made by the head of the agency actually doing the buying. It is expected that joint procurement may require an agency head doing the buying to make such determinations and decisions, based on information submitted by the agency for which the materials are purchased." S. Rep. No. 571, 80th Cong. 1st Sess., 1948 U.S. Code Cong. Serv. 1069.

In discussing the effect of this amendment in the House, Representative Anderson, floor leader on H.R. 1366 explained:

> "Seventh. A very important change which should have far-reaching effects in facilitating the efficient procurement of supplies for all of the armed services is contained in section 10 of the bill. Originally this section, as it appeared in the bill when it passed the House, provided merely that the provisions of H.R. 1366 would apply to purchases made by an agency for its own use or otherwise. The intent of the language 'or otherwise' was to permit cross procurement and joint procurement. The Senate has expanded this section in such a manner as to spell out in detail effective means by which these objectives may be achieved in actual practice. Section

10 now permits agency heads to enter into mutual agreements whereby, to take a specific example, the Secretary of the Army can assign or delegate the procurement responsibility of his agency to a procurement officer of the Navy charged with the procurement of a particular item which the Army desires to obtain. In such a case the appropriations available to the Army for the purchase of that particular item can be made available for obligation by the Navy procurement officer. This may be accomplished under section 10 by means of administrative allotments between the agencies, in such amounts as may be authorized by the head of the alloting agency, without transfer of funds on the books of the Treasury Department. In actual practice, in the hypothetical example which we assumed a moment ago, the Army then will requisition of the Navy the item which they desire. The Army's bookkeepers then set up an administrative allotment to the Navy of the necessary funds to cover the purchases in question. There will be no necessity for a transfer of funds between the departments. Payment will be made by an Army disbursing officer who is authorized under this section to make disbursements chargeable to such administrative allotments upon vouchers certified by the Navy procuring officer." 95 Cong. Rec. 1155-1156 (1948).

When the Congress codified the laws relating to the Armed Services, section 10 of the 1947 Act was codified into 10 U.S.C. §§ 2308 and 2309 which provide:

"2308. Assignment and delegation of procurement functions and responsibilities

"Subject to section 2311 of this title, to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies--

"(1) the head of an agency may, within his agency, delegate functions

and assign responsibilities relating to procurement;

"(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

"(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

"2309. Allocation of appropriations

"(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

"(b) A disbursing officer of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency."

No substantive changes to section 10 of the 1947 Act were intended by this rewording. See section 49(a) of the Act of June 3, 1956, ch. 1041, 70A Stat. 640 and S. Rep. No. 2561, 84th Cong., 2d Sess., 19-21, 147 (1956).

Thus, by enactment of section 10 of the 1947 Act, the Congress authorized centralized procurement within an agency and joint procurement by agencies. To accomplish joint procurements, it authorized the allotment of funds by the requesting agency to the procuring agency for obligation by the procuring agency. The procuring agency acts only as a delegate, or agent, of the requesting agency so that, as between the two, there is no basis for the obligation of the funds when the agencies agree to this arrangement nor when the funds are allotted.

Under section 10, obligation of the requesting agency's appropriations should occur when the procuring agency takes some action causing the funds to become obligated. Specifically, obligation of the allotted funds does not take place until the procuring agency either enters into a contract with a third party for the supplies requested or incurs costs in administering the contract. (See, in this connection DAR 5-1108.2, .3, making it clear that acceptance of a MIPR by the procuring agency does not obligate the funds and that fiscal year funds cited in a MIPR will lapse if the procuring agency has not executed a contract or otherwise obligated them before the end of the fiscal year.) To the extent costs are not incurred by the procuring agency or contracts are not entered into during the period of availability for obligation of the allotted funds, the funds would revert to the appropriation's successor account. Beyond this, sections 2308 and 2309 of title 10 do not provide an independent basis for agencies to enter into reimbursable agreements.

In sum, we are aware of nothing that would cause us to overrule our decision in 34 Comp. Gen. 418 (1955) that MIPRs are placed pursuant to the Economy Act. Even if MIPRs were placed pursuant to 10 U.S.C. §§ 2308 and 2309 (and the requirements of these provisions complied with) the result in these circumstances would be the same as if they were placed pursuant to the Economy Act. Accordingly, the Corps S&A expenses should be paid from appropriations current at the time they arise.

Finally, the regulations governing MIPRs provide that "[t]he Procuring Department shall bear, without reimbursement therefor, the administrative costs incidental to its procurement of supplies for another Department." DAR 5-1113. In view of this, we question why the Air Force should be reimbursing the Corps at all in this case. While what we said above is true generally of MIPR obligations, the Air Force and the Corps should consider whether, under the regulations, any payment for S&A expenses is here due the Corps.

Milton J. Socolar

Acting Comptroller General
of the United States