



19052

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-203074

August 6, 1981

The Honorable James J. Florio,
Chairman, Subcommittee on Commerce,
Transportation and Tourism
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

By letter of May 12, 1981, you asked whether money appropriated to carry out Northeast Corridor improvements authorized by title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. §851 et seq., could be used to terminate contracts designed to meet certain goals of title VII, i.e., used to satisfy the Government's obligations to the contractors as a result of contract terminations. My response follows discussions between my staff and yours on June 5, 1981.

We are informed that certain electrification and signaling contracts were terminated, in whole or in part, for the convenience of the Government under contract clauses which provide for such action. These clauses also provide for the settlement and payment of termination claims submitted by the contractors in accordance with the specified procedures and criteria.

As a general rule, the appropriation under which a Government contract is obligated constitutes the proper source for funding all costs incurred by the Government under that contract. This includes costs resulting from a termination for convenience. See 55 Comp. Gen. 768 (1976). The right to terminate (with a resulting obligation to pay termination costs) exists under the contracts in question. Consequently, it appears the funds are for use in liquidating valid obligations of the Northeast Corridor improvement program, and therefore are payable, if otherwise correct, from that program's appropriations.

The application of this rule, however, must be consistent with the proposition that money authorized and appropriated for specified purposes may not be used for other purposes. See

[Use of Appropriated Funds For Contract Terminations]
017811

31 U.S.C. §628 and 53 Comp. Gen. 328. Thus appropriated funds generally cannot be used to implement a proposed project so substantially curtailed that it no longer would be consistent with the major elements of the undertaking explicitly dictated by the controlling statute. See B-115398, June 23, 1977.

In this regard, we recognize that the exercise of the contract termination authority may have potentially adverse effects on achieving the 1985 trip-time goal specified in section 703 of the 4R Act. */ However, the undertakings contemplated by the 4R Act are expressed in terms of goals, rather than language typically associated with explicit mandates, and the 1985 trip-time goal is only one of the project's several statutory goals. Section 703(7) of the 4R Act, "Priorities for improvements," exhorts that the trip-time goal referenced at subsection (D) thereof "must be achieved;" but the section also provides that the scheduling of specific undertakings, presumably including the contracts now to be terminated, is accorded at subsection (D) a priority of fourth among seven, and then only to the extent compatible with certain higher ranked priorities. These factors, balanced against the potentially adverse effects of the contract terminations, may bear on whether the general rule set forth above is applicable to the circumstances of the Northeast Corridor Improvement Project. However, we do not reach the issues suggested by these considerations because we cannot address adequately and precisely the likelihood of the 1985 trip-time goals being achieved, with and particularly without benefit of the contracts that are being terminated. This, as well as other aspects of the improvement project, would appear to depend on future budgetary decisions of the Congress and the Executive branch, and on future decisions of FRA regarding its possible implementation of the statutory goals.

Therefore, our conclusion is limited to the general rule regarding the legality of funding termination costs duly incurred.

*/ Section 703(1) of the Act, 45 U.S.C. §853(1), contemplates that not later than September 30, 1985, regularly scheduled and dependable intercity rail service will operate on at most a 3-hour-and-40-minute schedule between Boston and New York, and at most a 2-hour-and-40-minute schedule between New York and Washington, D.C.

B-203074

We express no view as to the wisdom or desirability of the underlying contract terminations.

Sincerely yours,



For

Harry R. Van Cleve
Acting General Counsel

DIGEST

Money appropriated to meet statutory goals may be used to pay contract termination costs if program still in tact remains consistent with major elements of undertaking explicitly dictated by controlling statute. Whether program remains sufficiently consistent with those elements depends on future budgetary and other decisions.