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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter Of: Federal Aviation Administration - Permanent
Improvements to a Leasehold

File: B-239520

Date: August 16, 1990

DIGEST

The Federal Aviation Administration may award a contract for permanent improvements to a leasehold because Congress has specifically appropriated money for the alterations. The appropriation is thus available despite the policy prohibition against government improvements to privately-owned property.

DECISION

The Assistant Chief Counsel, Procurement Legal Division, Federal Aviation Administration (FAA), Washington, D.C., asks whether FAA may award a contract for permanent improvements to a leasehold. For the reasons indicated below, FAA may award the contract.

BACKGROUND

The Federal Aviation Administration's Mike Monroney Aeronautical Center (the Center), located at Oklahoma City, consists of several FAA facilities including the FAA Academy, the FAA Depot, the Civil Aeromedical Institute, and the Aviation Standards National Field Office. These facilities have been leased by FAA from the Oklahoma City Airport Trust, a public body, until the year 2009 with options to further lease existing as well as additional space. FAA states that "[t]here is every expectation that the lease(s) will be renewed" and that "it is the Government's present plan to remain at the Aeronautical Center well into the 21st Century."^{1/}

In carrying out its activities, the Center generates a variety of sanitary and industrial wastes. For example, hazardous wastes are generated by the FAA Depot in fabricating, modifying, or repairing ground facility

^{1/} The Administrator of General Services delegated authority under 40 U.S.C. § 486 to the Department of Transportation for the operation of the Center.

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for permanent improvements to property not owned by the Government.3/

We have, however, recognized exceptions to the general prohibition based on the facts and circumstances of particular cases. Our decisions have identified the following factors that should be present before appropriated funds may be expended for permanent alterations to private property, including leased property. First, the proposed alterations are incidental to and essential for the accomplishment of the purpose of the appropriation. Second, the cost of the alterations is in reasonable proportion to the overall cost of the lease. Third, the improvements will be used for the principal benefit of the government. Fourth, the interests of the government in the improvements are protected. 53 Comp. Gen. 351, 352 (1973). Such circumstances as the amount of time remaining on the lease, as well as possible alternatives to the improvements, may also be relevant to the inquiry.

It appears that the above factors will be satisfied in the present case. Even if they are not, however, our policy rule is not applicable here because, in our view, the Congress provided funding for the proposed improvements in the 1989 Department of Transportation and Related Agencies Appropriations Act. That act contains an appropriation for FAA's "Facilities and Equipment," which, according to the accompanying House and Conference reports, includes funds for environmental cleanup at the Center. The House report included \$6,000,000 for the "Mike Monroney Aeronautical Center environmental cleanup". H.R. Rep. No. 691, 100th Cong., 2d Sess. 48 (1988). The Conference report recommended \$5,777,000 for the same purpose. H.R. Conf. Rep. No. 957, 100th Cong., 2d Sess. 16 (1988). This appropriation is to remain available until September 30, 1993. 102 Stat. 2129 (1988).4/

3/ For a brief historical overview of the prohibition on the use of appropriated funds for permanent improvements to property not owned by the government, see 65 Comp. Gen. 722, 723-725 (1986).

4/ Because Congress intended appropriated funds to be expended on environmental cleanup at the Center, we need not address whether prospectus approval was needed under 40 U.S.C. § 606(a) (1988). See B-95136, Sept. 27, 1978 and B-95136, Oct. 11, 1979.

equipment items, and by the Aviation Standards National Field Office in servicing aircraft. FAA proposes to award a contract for the construction of a collection system linked to a pretreatment plant so that waste generated by the Center's operations may be disposed of safely.

According to a 1988 GAO study^{2/}, state and local environmental regulatory agencies cited the Center for noncompliance with industrial wastewater discharge and hazardous waste regulations several times between November 1984 and August 1987. We reported that by the end of 1987, the Center had taken interim actions to address the causes of its pollution, including an interim pretreatment system and spill controls to prevent hazardous wastes from entering local sewers. As part of a 5-year, \$9.5 million environmental protection and clean-up plan prepared by the Center during 1987, the Center is constructing and installing \$3.9 million of permanent pollution controls. Referred to as "Phase II" in the GAO study, this part of the plan entails installing an industrial wastewater pretreatment facility, replumbing all drains into the pretreatment facility, and replacing underground fuel storage tanks. This phase includes \$865,000 for waste water pretreatment improvements at various locations at the Center, which is the subject of this inquiry from FAA.


In its submission the Center stressed the urgency of making the proposed alterations in order to comply with environmental laws. Continued violations by the Center could result in the revocation of waste water discharge permits and sewer service by local authorities, which would seriously hamper operations, or cause certain operations at the Center to cease altogether. The Center is presently operating on a "temporary agreement basis" with local authorities that allows it to continue operations while it provides an acceptable solution that complies with environmental laws.

OPINION

FAA is concerned about making the improvements to the Center in light of the general policy against the expenditure of appropriated funds, absent specific authority, for permanent alterations to private property. It has been our long-standing position that appropriated funds are not available

^{2/} GAO, Hazardous Waste: Problems and Cleanup Efforts at an FAA Facility in Oklahoma City (GAO/RCED-88-113FS, March 1988).

Because Congress has appropriated funds to be used for environmental cleanup at the Mike Monroney Aeronautical Center, FAA may award a contract for construction of waste water pretreatment facilities notwithstanding the policy against expending appropriated funds for permanent improvements to leaseholds.

for 
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