



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-246773

May 5, 1993

Mr. John J. Kominski
General Counsel
Library of Congress

Dear Mr. Kominski:

This responds to your letter concerning a request for research assistance that the Federal Research Division (FRD) of the Library of Congress received in September 1991 from the Personnel Security Research and Education Center of the Department of Defense (DOD). You ask if the FRD, a government agency, can be considered a government-owned establishment (usually referred to as a GOGO) under the Project Orders Statute, 41 U.S.C. § 23 (1988), and retain funds transferred by DOD as payment for the research project even though the FRD would not complete the project until after the expiration of the fiscal year for which the funds were appropriated. As explained below, we conclude that the FRD is not a GOGO for the purposes of the Project Orders Statute.

According to your letter, your question arose when DOD proposed to pay for the research by transferring \$20,000 of fiscal year 1991 funds to the FRD. While the FRD was willing to perform the research, it did not expect to incur any obligations before the end of fiscal year 1991. It also did not intend to contract out the work, and could not perform the work in-house by the close of fiscal year 1991. You doubted that the FRD could legally accept DOD's fiscal year 1991 funds in payment for this project, because the Economy Act would require the FRD to have obligated those funds by the end of fiscal year 1991.¹

¹The Economy Act, 31 U.S.C. § 1535(d) (1988), provides in relevant part: "An order placed or agreement made under this [Act] obligates an appropriation of the ordering agency The amount obligated is de-obligated to the extent that the agency . . . filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in (1) providing goods or services; or (2) making an authorized contract with another person to provide the requested goods or services."

In response to your concerns, DOD advised that 41 U.S.C. § 23 (1988), also known as the Project Orders Statute, provided adequate authority for the transaction. The Project Orders Statute provides that when a military department places an order or contract for work or material or for the manufacture of material pertaining to a military project with a government-owned establishment (GOGO), the order or contract obligates the department's appropriation, and that appropriation remains available as necessary for liquidation of the obligation.

The Project Orders Statute provides DOD with authority separate and distinct from the Economy Act. The Project Orders Statute applies to transactions between military departments and DOD government-owned establishments for work related to military projects, while the Economy Act applies to transactions between and within federal agencies. The origins of both laws can be traced to the Fortification Appropriation Act of May 21, 1920, Pub. L. No. 66-214, 41 Stat. 607, 613. Section 6, from which the current Project Orders Statute is derived, provided that obligations arising from orders or contracts for the manufacture of material placed with government arsenals would be treated the same as similar orders and contracts placed with commercial manufacturers. Section 7, the original Economy Act, authorized reimbursable interagency orders for goods and services throughout the government. Both their terms and their origins as separate sections in one act support the conclusion that Congress intended to create two separate grants of authority, a conclusion underscored by amendments made to section 7 over a decade later.

As originally enacted, section 7 provided that funds advanced to pay for Economy Act orders would remain available for that purpose for no more than two years. 41 Stat. at 613. In 1932, section 7 was amended to allow advanced funds to be treated the same as orders placed with commercial manufacturers. Act of June 20, 1932, Pub. L. No. 72-212, § 601, 47 Stat. 382, 417-18. In 1936, section 7 was amended to limit the period of availability for advanced funds to the period of availability of the appropriation from which the funds were advanced. Act of June 22, 1936, Pub. L. No. 74-739, § 8, 49 Stat. 1597, 1648.

Initially, this Office concluded that the 1936 amendment applied to project orders as well as Economy Act transactions. 16 Comp. Gen. 575 (1936). The Army and Navy took exception to our decision, and appealed the matter to both the Comptroller General and the Congress. Not long after our initial decision, we did, in fact, reverse our position. 16 Comp. Gen. 752 (1937). Nevertheless, the military departments insisted on legislative clarification

(without objection from this Office), and the Congress, in 1937, enacted such clarification, ensuring the extended period of availability of funds for project orders. Pub. L. No. 75-135, 50 Stat. 245-46 (1937). The unmistakable result was that the Project Orders Statute and the Economy Act survived as separate and distinct grants of authority. E.g., B-208863(1), May 23, 1983; B-95760, June 27, 1950.

A DOD Instruction, which "prescribe[s] regulations governing the use of project orders," states that

"A 'Government-owned and operated establishment' . . . is any shipyard, arsenal, ordinance plant, or other manufacturing or processing plant or shop, equipment overhaul or maintenance shop, research-and-development laboratory or testing facility or proving ground which is owned and operated by the Government, without respect to the manner in which the establishment is financed. It includes such establishments of other Government agencies, as well as of the Military Departments and Defense Agencies. All Government-owned and Government-operated establishments are referred to in this Instruction as 'GOGO' establishments."

Paragraph III(C), DOD Instruction No. 7220.1. For the most part, DOD's Instruction offers a generally reasonable construction of the Project Orders Statute. However, to the extent that DOD's Instruction can be read as interpreting the Project Orders Statute to authorize the treatment of establishments outside of DOD as GOGOs, we disagree. Such a construction would fail to give adequate meaning and effect to the fact that Congress has consistently maintained the Economy Act as a separate and distinct source of statutory authority and limitations. It would also be inconsistent with the purposes which the Project Orders Statute was intended to serve.

Neither the language of the Project Orders Statute nor its legislative history define the term "government-owned establishments." In a 1920 decision, however, the Comptroller of the Treasury explained that the need for the Statute arose when the Congress, in 1919, began providing appropriations for the armament of fortifications on an annual basis rather than on a no-year basis as it had done previously. 26 Comp. Dec. 1022, 1023 (1920). Prior to 1919, when military departments, using no-year appropriations, placed contracts or orders with commercial manufacturers, the departments obligated the fortifications appropriation. However, with respect to department-owned arsenals, the departments did not obligate the appropriation for work done until the work was completed, on the theory

that the government could not contract with itself. The Project Orders Statute was enacted to minimize the combined impact on military operations of the change to fiscal year appropriations and obligation-recording practices. It authorized the military departments to treat orders placed with their own arsenals the same as orders placed with commercial manufacturers. Although we have not attempted to define the term generally, our decisions interpreting the Project Orders Statute have found arsenals, factories, and shipyards owned by the military to be GOGOs.²

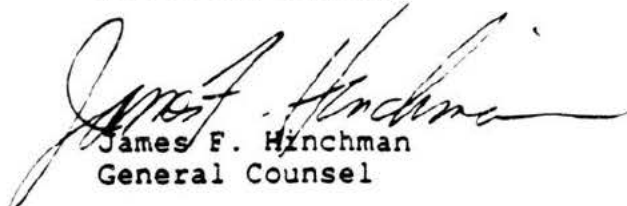
We believe that in creating and maintaining the Project Orders Statute and the Economy Act simultaneously, Congress was attempting to preserve DOD's ability to deal with DOD arsenals and other such facilities much as it did at the time just before these two laws were enacted. A different set of rules (i.e., the Economy Act) was created, however, for interagency transactions involving non-military departments. Cf. 26 Comp. Dec., supra.

Consequently, we believe that the Economy Act, not the Project Orders Statute, governs DOD transactions with other government agencies and their divisions. Accordingly, the FRD and Library of Congress may not accept or process orders placed by DOD in a manner inconsistent with the Economy Act and its limitations.

²E.g., A-44019-O.M., May 25, 1933 ("government factories"); A-50358, A-47717, Aug. 22, 1933 ("Arsenals"). See also B-135037, June 19, 1958 (Interpreting 14 U.S.C. § 151, a provision similar to the Project Orders Statute, but applying to the Coast Guard, we said "Coast Guard industrial bases and depots are designed to perform industrial activities and, therefore, . . . may properly be regarded as 'Government-owned establishments.'"). In a 1950 decision, we also stated that "orders or contracts could be placed with the National Bureau of Standards under the authority of 41 U.S.C. § 23." B-95760, June 27, 1950. That decision, however, addressed the authority to make advance payments under the Project Orders Statute, not whether the National Bureau of Standards (NBS) could be considered a GOGO for purposes of that statute. We are not inclined, therefore, to view it as precedent.

Should you or your staff have any further questions on this matter, please feel free to contact Mr. of my staff.

Sincerely yours,



James F. Hinchman
General Counsel