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

Office of the General Counsel

B-250377

January 28, 1993

David P. Holmes
Acting General Counsel
Central Intelligence Agency

Dear Mr. Holmes:

This responds to your letter dated August 27, 1992, to James F. Hinchman, General Counsel, General Accounting Office, seeking guidance on whether certain costs are appropriate for recovery as "actual costs" under the Economy Act. In the interest of national security, you have not identified specific transactions and the related details, e.g., the performing agency, the goods and services provided, the reason standard costs are used, and the method used to establish standard costs.

Accordingly, we have not directly answered your specific questions because the lack of details would require us to substantially qualify our response. Instead, we offer a general discussion of the issues raised by your letter, which we trust will assist the CIA in determining the propriety of charges for items or services under the Economy Act and in resolving any disagreements between the CIA and other agencies.

Economy Act Requirement to Reimburse Actual Costs

The Economy Act¹ authorizes one agency to place an order for goods or services with another agency under the circumstances specified in the Act. The ordering agency must reimburse the performing agency based on the "actual cost" of the goods or services provided. Specifically,

Payment [for interagency transfers of goods or services] may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. . . . Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies

¹31 U.S.C. §§ 1535, 1536 (1988).

or units on the basis of the actual cost of goods or services provided.²

"Actual cost" as that term is used in the Economy Act includes all direct costs attributable to providing the goods or services ordered, as well as indirect costs funded out of the performing agency's currently available appropriations that bear a significant relationship to providing the goods or services. 57 Comp. Gen. 674 X 682-683 (1978); B-211953, Dec. 7, 1984 X n. 6. The types of costs included would generally be the same as those categories of costs listed in GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 2, App. I, § A20 "Acquisition Cost of Assets" (TS 2-24, October 31, 1984); see also 2 GAO-PPM App. I, § T10 "Transfers of Assets and Liabilities Between Federal Agencies."³

Use of Standard Costs

Agencies possess some flexibility in applying the Economy Act's "actual cost" standard to specific situations.⁴ Agencies must apply the standard to reasonably ensure that the performing agency is reimbursed for its costs without either the ordering or the performing agency augmenting its appropriations.⁵ We do not believe that reimbursements based on reasonable standard cost determinations constitute

²31 U.S.C. § 1535(b) X

³This Office has concluded that, in the absence of legislative guidance, the term "cost" means "historical" or original acquisition cost for the purpose of allocating depreciation over the useful life of an asset used in providing reimbursable services to other agencies, and does not include cost elements relating to replacement or inflation. See, e.g., 58 Comp. Gen. 9 X 14 (1978). See also, 2 GAO-PPM App. I, § D20.05.

⁴"Certainly neither the language of the Economy Act nor its legislative history requires uniform costing beyond what is practicable under the circumstances." 57 Comp. Gen. at 683 X
Thus whether a charge is reasonable under the Economy Act may include consideration of factors such as the condition of the performing agency's accounting system and the volume of the performing agency's Economy Act transactions.

⁵The issue of augmenting appropriations takes on added significance as agencies confronted with increased budgetary constraints are motivated to search for means of enhancing agency resources.

unauthorized augmentations of appropriations or run afoul of the Economy Act.

In Iran Arms Sales, DoD's Transfer of Arms to the Central Intelligence Agency, at 8 (GAO/NSIAD 87-114, B-226832, March 1987), we determined that the Army was reasonable in making Economy Act transfers on the basis of "standard costs", which it defined⁶ as the contract price at the time of the last acquisition. The use of the last acquisition cost is a generally accepted method for valuing inventory sold.⁷ Our determination was based upon the fact that the use of standard costing mechanism to estimate "actual costs" is explicitly recognized in our accounting standards, at least with respect to accounting for inventory items. See 2 GAO-PPM App. I, § 130 "Inventory".⁸ However, we also recognized that the standard cost of the specific kind of item taken from inventory was only the starting point for determining the amount of reimbursement. In addition to the standard cost, the Army was authorized to be reimbursed for work performed upon the item taken from inventory in order to meet the requesting agency's requirements. GAO/NSIAD 87-114 at 10.⁹

Consistent with the foregoing, agency charges based on a standard cost for items provided from inventory may be made consistent with the minimum legal requirements of the Economy Act. Further, the standard cost may be based upon the last acquisition cost of the specific kind of item provided to the requesting agency, not the last acquisition cost of a similar item. Costing the item in this manner is not unreasonable and therefore, does not result in an

⁶Army Regulation 37-60, July 28, 1986, which was replaced by AR 37-60, April 2, 1989.

⁷This is commonly referred to as the last-in first-out inventory method (LIFO).

⁸While not expressly stated in our accounting standards, we recognize that the last acquisition cost of an inventory item may include an acquisition of an item where (1) the contract is entered into prior to the commencement of the period during which the standard cost is in effect and (2) the government will take title to, or will assume the risk of loss for, an item that will come into existence during the period for which the standard cost is in effect.

⁹Thus we approved charges intended to recover the standard cost of a technologically superior item taken from inventory plus the cost of downgrading the item in order to meet the requester's specifications and delivery date.

unauthorized augmentation of the performing agency's appropriation. However, when the performing agency seeks reimbursement for the replacement cost of a more technologically advanced item than that provided to the requesting agency, it is seeking reimbursement beyond the benefit conferred and, to that extent, augmenting its appropriations. The same is true of the recovery of the cost of spare parts or support equipment associated with bringing the technologically advanced item into the performing agency's inventory.

Transportation and Detailed Employees

The standard cost of an inventory item may include the transportation costs incurred in bringing the item to its location as part of the performing agency's inventory. 2 GAO-PPM App. I § 130.04. While the Economy Act clearly permits charging the actual cost of transporting an item from inventory to the destination point specified by the requesting agency, it is not necessarily unreasonable to charge instead a standard cost for the transportation. Some of the factors to be considered in determining the reasonableness of such charges include: whether the "actual cost" is known or reasonably determinable from the performing agency's accounting system; whether transportation and handling are provided by contractors or by performing agency personnel; whether the performing agency regularly or infrequently performs such function; and, the reasonableness of the method used to allocate transportation costs to requesters (e.g., adjustments for differences in delivery distances).

We assume that a detailed employee is an employee that is either (1) working temporarily under the direction and control of the requesting agency or (2) working in the performing agency either on a full time or part time basis in providing requested goods or services to the ordering agency. Normally, the cost of detailed personnel should be readily determinable by the performing agency since its pay, personnel, and other records should clearly disclose such information. While charging the actual determinable costs is reasonable under the Economy Act, charging a standard cost for detailed personnel is not in and of itself unreasonable. Some of the factors to be considered in determining the reasonableness of such charges under the circumstances include: the cost of operating the accounting system; whether it is based on actual cost data; whether all the items included in the computation of the standard cost yield a reasonable approximation of actual costs.

Other Considerations

Finally, for purposes of determining the reasonableness of Economy Act charges, it is important to recognize that Economy Act transactions do not normally involve the performing agency providing goods or services to requesters through operations that are analogous to commercial activities. Such activities are normally funded by stock, supply, working capital, revolving, or industrial, funds that are established by law. Generally, the law establishing the fund (1) specifies the agencies that are authorized or required (covered users) to request goods or services financed through the fund and (2) identifies the cost elements that may be recovered from covered users. Many such funds are intended to operate on a self-sustaining basis from fees charged to covered users.¹⁰

However, when goods or services are requested by an agency that is not a covered user, the performing agency normally will provide the goods or services under the authority of the Economy Act. In such cases, a question may arise concerning whether the Economy Act or the law establishing the fund controls for purposes of determining the authorized charge.¹¹ To harmonize the Economy Act's general authority and requirements with an individual fund's specific authority and requirements, we have held that competing

¹⁰The use of such funds was relatively rare at the time of the enactment of the Economy Act in 1932, which amended a prior provision of law enacted in 1920. When the Economy Act was enacted, the normal interagency transaction involved both the requesting and performing agency operating out of direct annual appropriations. Since the enactment of the Economy Act, the use of such funds has become widespread and involved significant transactional amounts.

¹¹For example, where the law establishing the fund authorizes charges to covered users to be based on standard rates or to include replacement costs, one must consider whether it is practical for the performing activity to formulate a different cost for Economy Act requesters, particularly where the Economy Act accounts for only a small or insignificant portion of the fund's overall transactions. Additionally, when a fund is intended to operate on a self-sustaining basis, one must consider the impact of recovering Economy Act charges from some users rather than the charges authorized to be imposed on covered users. For example, if Economy Act charges are less than charges normally made to the fund's covered users, the amount of the difference might ultimately be included in charges to covered users.

congressional goals, policies or interests embodied in other provisions of law may serve to authorize recoveries beyond that necessary to effectuate the purposes of the Economy Act.¹²

I trust the foregoing is of assistance to you.


Gary Kepplinger
Associate General Counsel

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Cost controls

Statutory restrictions

Inventories

¹²57 Comp. Gen. at 683-685. In this decision we held that the Federal Aviation Administration could recover full cost, including depreciation and interest, from Economy Act users of Washington National Airport and Dulles International Airport.