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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: United States Capitol Police—Advances to Volpe Center Working Capital Fund

File: B-319349

Date: June 4, 2010

DIGEST

Amounts advanced in fiscal year 2007 by the United States Capitol Police (USCP) from its fiscal year 2003 appropriation were available to cover obligations incurred by the Department of Transportation's Volpe Center until September 30, 2008. At that point, USCP's fiscal year 2003 appropriation (both obligated and unobligated balances) was canceled by operation of law. 2 U.S.C. § 1907(d). The funds were not available to cover Volpe's November 2008 obligation for its interagency agreement with the Naval Air Systems Command (NAVAIR). USCP should adjust its accounts accordingly. To the extent USCP is unable to transfer fiscal year 2009 or no-year funds to Volpe to cover the obligation, it will have violated the Antideficiency Act by obligating in excess of available appropriations. If insufficient balances are available, USCP may wish to seek legislative ratification of its use of the fiscal year 2003 appropriation.

DECISION

The Chairman of the United States Capitol Police Board (Board) has requested our decision on whether the United States Capitol Police (USCP) may apply fiscal year 2003 appropriations, obligated in fiscal year 2003 pursuant to three purchase orders issued to the Department of Transportation's Volpe Center (Volpe) and advanced to the Volpe Center in fiscal year 2007, to Volpe's costs of performance incurred in fiscal year 2009. Letter from Chairman, United States Capitol Police Board to Acting Comptroller General, GAO, Feb. 16, 2010 (Request Letter). The purchase orders were for Volpe's engineering and other support of USCP's Truck Interdiction Monitoring Program (TIMP). After obligating its fiscal year 2003 appropriation in fiscal year 2003, and prior to the end of fiscal year 2008, USCP advanced funds to the Volpe working capital fund. In fiscal year 2009, Volpe, executing the purchase orders, entered into an interagency agreement with another federal agency, the Naval Air Systems Command (NAVAIR), to provide support to USCP's TIMP project. *Volpe*

National Transportation Systems Center Interagency Agreement With NAVAIR, Interagency Agreement No. DTRT57-09-X-70004, Nov. 14, 2008. The Board asks whether the fiscal year 2003 funds advanced to the Volpe Center may be used to cover the obligation Volpe incurred with its fiscal year 2009 interagency agreement with NAVAIR.

For the reasons stated below, we conclude that the fiscal year 2003 advanced funds were canceled on September 30, 2008, and were not available at the time of Volpe's fiscal year 2009 agreement with NAVAIR. USCP should adjust its accounts accordingly.

Our practice when issuing decisions or opinions is to obtain the views of the relevant agency to establish a factual record and to establish the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. The record in this case consists of the Board's request letter, including a memorandum it received from counsel, as well as a letter from the USCP General Counsel in response to questions posed by our office. The General Counsel's letter included 20 exhibits containing supporting or other relevant factual information and documentation.

BACKGROUND

In fiscal year 2003, USCP issued three purchase orders to Volpe related to USCP's Truck Interdiction Monitoring Program. USCP asked Volpe to complete the "design and build out of the monitoring system which deploys sensors, electronic signage, and traffic signal controls" Letter from General Counsel, USCP to Associate General Counsel, GAO, Apr. 16, 2010 (General Counsel Letter), Exhibits 3, 4, and 5. In support of these orders, USCP obligated \$13,500,000 against its fiscal year 2003 General Expenses appropriation¹ and \$4,650,000 against a "no-year" appropriation. General Counsel Letter, at 2.

The Board states that by the early part of calendar year 2005, Volpe had expended \$9 million and had made "significant headway" on the project's objectives. Request Letter, at 2. By early calendar year 2005, USCP had advanced about \$7.5 million to cover Volpe's costs. See General Counsel Letter, at 4. In November 2004 and February 2005, USCP advanced a total of \$4.5 million from its fiscal year 2003 expired

¹ Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, div. H, title I, 117 Stat. 11, 357 (Feb. 20, 2003).

appropriation;² between April 2004 and February 2005, USCP advanced a total of almost \$3 million from its no-year appropriation.³ *Id.*

In February 2005, Volpe expressed concerns that technological limitations prevented it from progressing further on the project. As a result, in March 2005, USCP issued a stop-work order to Volpe. After extensive meetings with Volpe, USCP developed a four-phase approach to the project and entered into contracts with vendors for portions of the work. Between April and September 2005, USCP transferred an additional amount of over \$2 million from its fiscal year 2003 expired appropriations to cover the remaining costs Volpe had incurred by the time of the stop-work order. *See* General Counsel Letter, at 4.

In March 2007, USCP rescinded the stop-work order (Request Letter, at 2), and on March 30, 2007, USCP advanced \$6,792,216 (hereafter, \$6.8 million) from its fiscal year 2003 expired appropriation to cover Volpe's future costs. General Counsel Letter, at 6. It is this advance that is at issue in this decision. Because Volpe's work was contingent on the completion of other work by USCP vendors, Volpe did not resume work on the project until March 2008. General Counsel Letter, at 7. In fiscal year 2009, on November 14, 2008, Volpe entered into an interagency agreement with NAVAIR in the amount of \$5,512,456 (*id.*, Exhibit 15), which it obligated against the fiscal year 2003 amounts that USCP had advanced to the fund in March 2007.

ANALYSIS

The matter before us concerns the Volpe Center's obligation in fiscal year 2009 of the \$6.8 million advanced to it in March 2007 from USCP's fiscal year 2003 General Expenses Appropriation. At issue is whether the amounts that USCP advanced to cover Volpe's future costs took on the "no-year" character of Volpe's working capital fund in March 2007 at the time of the advance. For the purposes of this decision, we accept as proper USCP's obligation in fiscal year 2003 when it issued its three purchase orders to Volpe. The question goes to the continued availability in fiscal year 2009 of amounts that otherwise would have been canceled by operation of law on September 30, 2008. The unexpended balances (both obligated and unobligated) of USCP's appropriations for fiscal year 2003 and succeeding fiscal years are withdrawn by operation of law on September 30 of the fifth fiscal year following the fiscal year for which they were provided. 2 U.S.C. § 1907(d). At that point in time,

² Generally, after an appropriation expires at the end of its fiscal year of availability and before the account closes 5 years after the end of the fiscal year, the expired appropriation remains available for recording, adjusting, and liquidating obligations properly chargeable to that appropriation. 31 U.S.C. § 1553(a).

³ It is not clear from the record whether these amounts were intended, at the time of transfer, to reimburse Volpe for costs already incurred at that time or advanced to cover future costs to be incurred. It is clear from the record, however, that all amounts transferred by February were used to cover costs incurred by February.

“[u]npaid obligations chargeable to any of the balances so withdrawn . . . shall be liquidated from any appropriations for the same general purpose, which, at the time of payment, are available for disbursement.” *Id.*⁴ If the amounts advanced in March 2007 took on the no-year character of the working capital fund, this law would have no consequence in this situation. If the March 2007 advance retained its fiscal year 2003 character, USCP would have to use fiscal year 2009 or no-year appropriations to cover Volpe’s fiscal year 2009 agreement with NAVAIR or no-year funds to avoid an Antideficiency Act violation.

Generally, when an agency withdraws funds from its appropriation and makes them available for credit to another appropriation, that amount is available for obligation only for the same time period as the appropriation from which the funds were withdrawn:

“An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. . . .”

31 U.S.C. § 1532.

Because they are subject to the same limitations as the appropriation from which they were withdrawn, the withdrawn amounts retain their time character and do not assume the time character of the appropriation to which they are credited. B-288142, Sept. 6, 2001. Consequently, unless otherwise specifically provided by law, amounts withdrawn from a fiscal year appropriation and credited to a no-year fund are available for obligation only during the fiscal year of availability from which the amount was drawn and maintain their fiscal year identity until earned by the revolving fund. *Id. Accord*, B-308944, July 17, 2007.

Section 1532 is a significant control feature protecting Congress’s constitutional prerogatives of the purse. Appropriations enacted by Congress constitute legal authority to incur obligations and make disbursements for the purposes, up to the amount, and during the time periods specified by Congress in the appropriations act. Placing time limits on the availability of appropriations is a fundamental means of congressional control because it permits Congress to periodically review a given agency’s programs or activities.

⁴ The account closing law, 31 U.S.C. §§ 1551–1553, is not materially different from the statute governing the closing of USCP accounts. When a USCP account is canceled by operation of 2 U.S.C. § 1907(d), USCP has the option of using any current appropriation available for the same general purpose without regard to the limit found at 31 U.S.C. § 1553(b).

Of course, Congress can provide for the modification or elimination of previously enacted time limitations, including the conversion of fiscal (or fixed) year funds to no-year funds. Indeed, section 1532 recognizes that possibility with the proviso “except as specifically provided by law.” Given the significance of time restrictions in preserving the congressional power of the purse, such restrictions may only be overcome by legislation that clearly expresses congressional intent to overcome the restriction.⁵

USCP argues that the language of 49 U.S.C. § 328 overrides the time restriction Congress imposed on the fiscal year 2003 appropriation that it advanced to Volpe’s working capital fund. Section 328 established Volpe’s working capital fund and provides that “[a]mounts in the fund are available without regard to fiscal year limitation.” 49 U.S.C. § 328(b). It provides also that the fund “shall be reimbursed or credited with advance payments from applicable funds or appropriations of the Department [of Transportation] and other agencies.” 49 U.S.C. § 328(d).

In 2001, we addressed a situation similar to the one before us now. *See* B-288142, Sept. 6, 2001. That decision involved the Library of Congress Federal Library and Information Network (FEDLINK) revolving fund and the availability of advances to the fund from the Library’s customer agencies. Like Volpe’s working capital fund, amounts in the FEDLINK revolving fund are available “without fiscal year limitation,” 2 U.S.C. § 182c(e), and the Library, like Volpe, deposits customer advances into the revolving fund, 2 U.S.C. § 182c(c). In that case, the Library, similar to USCP, had argued that this language removed time restrictions of any amounts advanced by customer agencies and credited to the fund. We disagreed, noting that the statutory language did not clearly indicate that Congress intended that agency advances be available without fiscal year limitation. We stated that until the amounts advanced are “earned” by the revolving fund, they are not part of the *corpus* of the fund that is available without fiscal year limitation. *Id.*

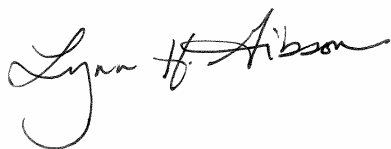
In this regard, we distinguished between amounts transferred to cover costs that the Library had already incurred and amounts advanced to cover costs that the Library had yet to incur. The Library could consider as earned that amount intended to reimburse the Library’s administrative costs of running the FEDLINK program, because the Library had already incurred those costs. Amounts advanced to cover a customer’s order for goods or services were not earned until the Library incurred obligations for costs of performance; the FEDLINK statute, we concluded, “does not clearly indicate that Congress intended unobligated balances of agency advances to

⁵ For example, in the fiscal year 2009 appropriation for the Rural Community Facilities Program Account, Congress provided that “any prior balances in the Rural Development, Rural Community Advancement Program account . . . be transferred and *merged with* this account . . .” Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, div. A, title III, 123 Stat. 524, 543–44 (Mar. 11, 2009) (emphasis added).

be available without fiscal year limitation regardless of the time restrictions imposed on the appropriation from which the advances were withdrawn.” *Id.*, at 6. We reach the same conclusion here.

In fiscal year 2005, USCP advanced a total of \$6.5 million from its fiscal year 2003 expired appropriation.⁶ Volpe had earned this amount by March 2005 when USCP issued its stop-work order; this amount was used to cover costs Volpe had incurred by that time. In fiscal year 2007, on March 30, 2007, USCP advanced an additional \$6.8 million from its fiscal year 2003 expired appropriation. This advance was not intended to cover obligations or costs Volpe had already incurred. Indeed, after USCP rescinded its stop-work order in March 2007, Volpe did not resume work until March 2008. The \$6.8 million of fiscal year 2003 funds that USCP advanced in March 2007 was available to Volpe when it resumed work in March 2008 and through September 2008 for obligations and costs Volpe would incur during that time in satisfying USCP’s purchase orders. The March 2007 advance of funds from USCP to Volpe, in and of itself, did not extend the life of the funds.

Accordingly, the \$6.8 million advanced in March 2007 was no longer available after September 30, 2008, when USCP’s fiscal year 2003 General Expenses appropriation was canceled by operation of law, and may not be obligated to cover the November 2008 interagency agreement between Volpe and NAVAIR. USCP should retrieve any fiscal year 2003 funds advanced to Volpe that Volpe did not obligate or use to cover costs incurred by the end of September 2008. USCP should adjust its accounts and use fiscal year 2009 or no-year funds to cover Volpe’s obligation for the November 2008 agreement with NAVAIR. *See* 2 U.S.C. § 1907(d). To the extent USCP is unable to transfer fiscal year 2009 or no-year funds to cover the obligation, USCP will have violated the Antideficiency Act by obligating in excess of available appropriations. If insufficient balances are available, USCP may wish to seek legislative ratification approving its use of the fiscal year 2003 General Expenses appropriation for Volpe’s interagency agreement with NAVAIR.



Lynn H. Gibson
Acting General Counsel

⁶ As explained above, USCP advanced \$4.5 million in November 2004 and February 2005, and \$2 million between April and September 2005.