



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Institute of Food and Agriculture—Biotechnology Risk Assessment Grant Payment

File: B-322898

Date: May 24, 2012

DIGEST

So long as there is no question about the legality of a grant award or payment under the award, a certifying officer may certify payment without incurring liability. A certifying officer's statutory liability does not extend to the exercise of discretion and judgment, which resides with agency program officials.

DECISION

A certifying officer at the U.S. Department of Agriculture's (USDA) National Institute of Food and Agriculture (NIFA) has requested an advance decision pursuant to 31 U.S.C. § 3529 on whether she may certify, without liability, an initial payment on a properly awarded grant where the agency official responsible for making the grant award has identified issues with respect to and imposed special conditions to address the grantee's financial condition.¹ Letter from Certifying Officer, NIFA/USDA, to General Counsel, GAO (Dec. 20, 2011) (Request Letter). As we explain below, as long as there is no question about the legality of the grant award or the initial payment under that award, the certifying officer may certify the payment.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and to elicit the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and*

¹ Section 3529 entitles a certifying officer to a decision from the Comptroller General on a question involving a voucher presented to the certifying officer for certification. 31 U.S.C. §§ 3529(a)(2), (b)(1). A decision of the Comptroller General under section 3529 is conclusive on the Comptroller General when settling the account containing the payment. 31 U.S.C. §§ 3526(a), (b).

Opinions, [GAO-06-1064SP](#) (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. In addition to the Request Letter, the record in this case includes USDA counsel's response to questions posed by our office, dated March 6, 2012 (Response Letter).

BACKGROUND

The Secretary of Agriculture has statutory authority to make grants to private research organizations to analyze the environmental effects of biotechnology. 7 U.S.C. § 5921. The Biotechnology Risk Assessment Grants (BRAG) program is jointly administered by the Director of NIFA and the Administrator of USDA's Agricultural Research Service. Response Letter, at 2. On September 2, 2011, NIFA awarded a three-year grant in the amount of \$494,162. Request Letter.

In November 2011, after a review of the grantee's audited financial statements, NIFA authorized the release of only \$100,000 of the \$494,162 grant award. Response Letter, Attachment 2 (Letter from Authorized Departmental Officer (ADO), NIFA, to Director, Grantee, Nov. 23, 2011). NIFA advised the grantee that release of the remaining funds would be subject to NIFA's approval as the grantee submitted invoices for payment. *Id.* Based on its review of the grantee's financial statements, NIFA told the grantee, "we are unsure if your company will have the resources to carry out the objectives of this award over the approved three year duration without either new revenue streams or a restructuring of your business." *Id.* The certifying officer does not question that the grant award and the initial payment of \$100,000 are legal and proper, but is concerned about whether she may certify the initial payment without liability given NIFA's knowledge of the grantee's financial circumstances. Request Letter.

DISCUSSION

At issue in this decision is the certifying officer's liability, if any, for certifying an initial payment on a properly awarded grant where the agency official responsible for making the grant award has identified issues with respect to and imposed special conditions to address the grantee's financial condition.

A certifying officer is pecuniarily liable for the legality of a proposed payment.² 31 U.S.C. § 3528(a); see also B-291001, Dec. 23, 2002. The certifying officer is responsible for (1) the existence and correctness of the facts stated in the certificate, voucher, and supporting documentation; (2) the correctness of computations on the voucher; and (3) the legality of a proposed payment under the appropriation or fund

² For a detailed discussion of the liability and relief of accountable officers, see GAO, *Principles of Federal Appropriations Law*, Vol. 2, 3rd ed., ch. 9, [GAO-06-382SP](#) (Washington, D.C.: Feb. 2006).

involved. *Id.* A certifying officer's liability is strict and arises automatically at the time of the illegal or improper payment. 54 Comp. Gen. 112, 114 (1974). Certification involves an element of verification, the extent of which depends on the circumstances. B-257334, June 20, 1995, at 2. Included in the certifying officer's burden is questioning items on the face of vouchers or supporting documents that simply do not look right. *Id.*

In this case, the certifying officer does not question the legality of the grant award or the \$100,000 payment. Request Letter. Instead, she questions the ADO's discretion in authorizing the \$100,000 payment in light of the grantee's financial condition. *Id.* According to USDA counsel, NIFA regulations generally provide that awards be made only to responsible applicants. Response Letter, at 2 (citing 7 C.F.R. § 3430.16(c)). NIFA officials may exercise discretion in choosing to withhold an award as a result of an adverse responsibility determination. *Id.* (citing 7 C.F.R. § 3430.42(a)). In addition, NIFA may impose special conditions on the grant award. *Id.* USDA counsel advises that with respect to the grant at issue, the imposition of the special conditions is "a business decision of the agency" and that "the ADO, with properly delegated authority to issue the award, has determined that award is appropriate in light of the safeguards being implemented."³ *Id.*

We commend the certifying officer's fiscal stewardship in expressing concern about the prudence of making the payment in light of the grantee's current financial condition.⁴ However, a certifying officer's statutory liability does not extend to the exercise of discretion and judgment, which resides with agency program officials. See, e.g., B-257334. The management of BRAG program grants, including the discretion of whether to make this payment, rests with the judgment of the ADO. Here, the ADO decided to proceed with a partial payment of the grant award and the imposition of additional restrictions on the award.⁵ As we have been presented no evidence to question the legality of the award or payment, we conclude, therefore, that the certifying officer may certify payment without incurring liability.

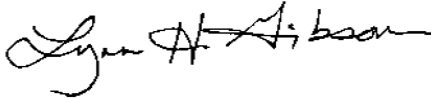
³ An "Authorized Departmental Officer" is defined as the Secretary of Agriculture or any employee of USDA with delegated authority to issue or modify grant award instruments on behalf of the Secretary. 7 C.F.R. § 3430.2 (2011).

⁴ In this regard, we note that the ADO's determination to make a payment of \$100,000 from the grant award was made on November 23, 2011. There is no indication in the record that the ADO has considered changed circumstances, if any, since that time.

⁵ USDA counsel has advised that if, upon further investigation, NIFA determines that the grantee will not be able to carry out the project as proposed, NIFA may terminate the award. Response Letter, at 3 (citing 7 C.F.R. §§ 3430.60, 3430.62, 3015.124(a)).

CONCLUSION

The certifying officer may certify the payment without incurring liability. A certifying officer's statutory liability does not extend to the exercise of discretion and judgment, which resides with agency program officials. Where a determination to make a grant award and impose special conditions is made by the agency official responsible for managing the grant award and for assuring that it is in accordance with the applicable administrative procedures, a certifying officer may rely on such a determination in certifying payment of the grant award.

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being more prominent.

Lynn H. Gibson
General Counsel