



Decision

Matter of: Department of the Army, Aberdeen Proving Ground—Use of Appropriated Funds for Bottled Water

File: B-324781

Date: December 17, 2013

DIGEST

Department of the Army appropriations are available to purchase bottled water to be made available to the occupants of a number of buildings located on the Aberdeen Proving Ground. The agency has determined that the buildings fail to comply with occupational safety and health standards concerning the provision of potable water in places of employment. The agency may similarly use appropriated funds to purchase bottled water for use in response to legitimately anticipated dangers and exigencies.

DECISION

A certifying officer of the Department of the Army has requested our decision under 31 U.S.C. § 3529 regarding the use of appropriated funds to purchase bottled water, water coolers, and cups to be made available at a number of buildings located on U.S. Army Aberdeen Proving Ground (APG). The certifying officer has also asked if appropriations may be used to purchase bottled water to be stored for emergency use. Memorandum from Chief, Resource Management Office, APG, to the General Counsel, GAO, *Request for Legal Decision Regarding US Army Garrison (USAG) APG Contract to Purchase Bottled Water* (May 1, 2013) (Request Letter), at 3. As we explain below, we conclude that APG may use appropriated funds to purchase bottled water, water coolers, and cups for use at the specified locations, and to purchase bottled water for use in response to legitimately anticipated dangers and exigencies.¹

¹ Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and 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

(continued...)

BACKGROUND

APG has been supplying bottled water to the occupants of certain buildings. The buildings that are the subject of the APG's request include gate buildings, an airfield building, and a police academy building. APG has concluded that certain of these buildings fail to comply with the occupational safety and health standards set forth at 29 C.F.R. § 1910.141, concerning the availability of potable water at places of employment. APG has also been supplying bottled water to the occupants of a building where "[t]esting identified water within the facility exceeded allowable maximum contamination levels;" and a building that is currently undergoing testing because a "[s]ite inspection determined particulates at the potable water source within the facility."² E-mail from Supervisory Budget Analyst, APG, to Senior Attorney, GAO, *Subject: RE: Army Garrison APG—Contract to Purchase Bottled Water (UNCLASSIFIED)* (June 19, 2013), Attachment from Acting Environmental Division Chief, Directorate of Public Works, APG, *Facilities Receiving Bottled Water—Course of Action and Recommendations* (DPW COA).

APG has also been purchasing bottled water for emergency use. APG explains here that the "bottled water provides the initial capacity to comply with the Garrison's Emergency Response Plans to include disaster relief associated with manmade or natural disasters," and "is used for outages and/or potential contaminations of the public drinking water supply systems in [certain] areas of Aberdeen Proving Ground." E-mail from Program Manager, APG, to Supervisory Budget Analyst, APG, *Subject: RE: Info, please (UNCLASSIFIED)* (July 17, 2013) (July E-mail). APG further explains that when a building is affected by a water supply outage or contamination, the bottled water is provided until the potable water supply is restored. *Id.* APG points out by way of example that the bottled water has provided

(...continued)

www.gao.gov/legal/resources.html. Our Office received a number of documents from APG relevant to its request here, including a memorandum from the certifying official, as well as emails and certain analyses prepared by APG's Office of the Chief Counsel and APG's Acting Environmental Division Chief, Directorate of Public Works.

² Under the Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590 (Dec. 29, 1970), agencies, as employers, must provide "safe and healthful places and conditions of employment" for their employees and establish and maintain an effective and comprehensive occupational safety and health program for their employees. 29 U.S.C. § 668(a); Exec. Order No. 12196, *Occupational Safety and Health Programs for Federal Employees*, 45 Fed. Reg. 12,769 (Feb. 26, 1980). Section 1910.141 of Title 29 of the Code of Federal Regulations, cited above, concerns, among other things, the provision of potable water in places of employment.

potable water at 12 different buildings when the water service to these buildings was interrupted by an explosion, and at two other buildings when a water main break resulted in interruptions to the water service. *Id.* APG adds that one of the water systems serving APG is “prone to brown water occurrences which requires the allocation of bottled water to the impacted areas,” and that the by-products from the disinfection of that water system result in levels close to, and at times exceeding by a significant amount, the maximum contamination levels permitted.³ *Id.*

DISCUSSION

As a general rule, without specific statutory authority, appropriations are not available for personal expenses. B-302548, Aug. 20, 2004. Bottled water is ordinarily considered a personal expense of the government employee. B-310502; B-303920, Mar. 21, 2006. However, when water otherwise available to agency employees is unwholesome, or otherwise unpotable, the purchase of bottled drinking water may be viewed as a necessity from the standpoint of the government. B-247871, Apr. 10, 1992. In this regard, we have not objected to agencies using appropriated funds to purchase bottled water upon a showing of necessity, either because the available water posed a health risk if consumed or because water was not available. B-310502; B-247871; B-236330, Aug. 14, 1989; *accord Navy v. Fed. Labor Relations Auth.*, 665 F.3d 1339, 1350 (D.C. Cir. 2012). For example, in B-236330, we held that the Army could reimburse a colonel for the amount of his purchase of bottled water for troops in a remote area of Saudi Arabia because the water sent through regular channels was contaminated. Similarly, in B-247871, we decided that the Office of Inspector General (OIG) for the U.S. Agency for International Development could use appropriated funds to purchase bottled water, because the water available in the building occupied by the OIG contained unhealthy levels of lead. More recently, we did not object to the Army Corps of Engineers using appropriated funds to provide bottled water to its employees working in remote work sites without access to potable water. B-310502.

Here, APG’s Directorate of Public Works, in conjunction with APG’s Office of the Chief Counsel, have concluded that certain buildings fail to comply with the occupational safety and health standards set forth at 29 C.F.R. § 1910.14, concerning the provision of potable water in places of employment. E-mail from Supervisory Budget Analyst, APG, to Senior Attorney, GAO, *Subject: RE: Army Garrison APG – Contract to Purchase Bottled Water (UNCLASSIFIED)*

³ APG adds that the bottled water here “is rotated . . . so that the shelf life is never approached,” and that the water, if not used in response to an emergency, is used by Army police units “training in remote range areas.” July E-mail. See, e.g., B-310502, Feb. 4, 2008 (agency may use appropriated funds to provide bottled water to employees working at remote sites provided that the agency has administratively determined that bottled water is the best way to provide those employees with access to potable water).

(June 19, 2013), Attachment from Directorate of Public Works, APG, *Technical Exhibit Bottled Water*, E-mail from APG's Acting Environmental Division Chief, Directorate of Public Works to numerous recipients, *Subject: Revised GC Bottled Water Memorandum for Concurrence (UNCLASSIFIED)* (Mar. 14, 2013), E-mail from APG's Office of the Chief Counsel to APG Supervisory Budget Analyst, *Subject: RE: Supply Bottled Water (UNCLASSIFIED)* (Apr. 11, 2013). APG has also determined that, under the circumstances, the provision of bottled water is the best way to provide the occupants of these buildings with access to potable water. APG's actions here are consistent with relevant caselaw providing that an agency may use appropriated funds to provide a work site with potable drinking water, as well as clean air, sufficient light, and certain facilities, such as restrooms. B-310502; B-302993, June 25, 2004; B-301152, May 28, 2003. In this regard, our Office has previously noted that it is an agency's responsibility to provide access to potable water for employee consumption at all places of employment, regardless of whether that work site is an office building or in the field. B-310502. As such, APG may use its appropriated funds to purchase bottled drinking water, water coolers, and cups for buildings that APG has determined are not in compliance with applicable occupational safety and health standards concerning the provision of potable water at places of employment, and at the buildings where the water is contaminated, until the problems with the buildings' water supplies are resolved.

We similarly have no objection to the APG's use of appropriated funds to purchase bottled water for emergency use. An agency, in addition to being able to use appropriated funds to provide a work site that satisfies such basic fundamental needs as potable drinking water, clean air, and sufficient light, may also use appropriated funds to provide for these basic fundamental needs in response to legitimately anticipated dangers and exigencies. B-301152. APG has had numerous problems with its potable water supply as the result of water main breaks, a building explosion, and repeated instances of contaminated water. July E-mail. Under these circumstances, APG's acquisition of bottled water for emergency use is consistent with our previous determination that an agency's appropriations may be used to provide appropriate equipment and services in response to legitimately anticipated dangers and exigencies. B-301152.



Susan A. Poling
General Counsel