



Decision

Matter of: General Services Administration—Availability of No-Year Appropriations for a Modification of an Interagency Order

File: B-326945

Date: September 28, 2015

DIGEST

The General Services Administration may accept no-year appropriations from a customer agency to fund the increased cost resulting from a modification to an interagency order, even where those funds were appropriated in a fiscal year after the customer agency incurred the initial liability. Because the *bona fide* needs rule does not apply to no-year appropriations, no-year funds are available for any need, whether past, present, or future, provided that the use of such funds is consistent with any other limitations upon the appropriation's availability.

DECISION

The Chief Financial Officer and the General Counsel for the General Services Administration (GSA) request a decision regarding whether GSA may accept no-year appropriations from a customer agency to fund the increased cost resulting from a modification to an interagency order, even though the no-year funds were appropriated in a fiscal year subsequent to the fiscal year in which the original liability was incurred. Consistent with our prior decisions addressing time limitations for no-year appropriations, we conclude that no-year funds are available for interagency orders, for any need, whether past, present, or future, provided that the use of such funds is consistent with any other limitations upon the appropriation's availability.

Our practice when issuing decisions is to obtain the views of the relevant agency in order to develop a factual record and to establish the agency's legal position on the subject 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/products/GAO-06-1064SP. GSA provided factual information and its legal views when it requested our decision. Letter from Chief Financial Officer and General Counsel, GSA, to Comptroller General (May 6, 2015) (Request Letter).

BACKGROUND

Through interagency orders, GSA provides real estate and construction services to federal agencies. 40 U.S.C. § 592(b)(2). In fiscal year (FY) 2011, a customer agency placed an order with GSA for an office renovation project. Request Letter, at 1. To finance the project, the customer agency advanced to GSA \$3.43 million from available no-year appropriations. *Id.* During construction, a change in the scope of the project was needed, thereby increasing the total cost. *Id.* GSA concluded that the modification was within the scope of the original contract. The customer agency provided funds available from no-year amounts that Congress appropriated in FY 2015 to cover the increased cost. *Id.*

GSA asks whether it properly accepted no-year amounts to fund the increased cost resulting from the modification to the interagency order, even though Congress appropriated the no-year amounts four fiscal years after the customer agency incurred the initial liability. *Id.*

DISCUSSION

Congress's constitutional power of the purse carries with it the authority to place time limitations on the availability of appropriations. U.S. Const. art. I, § 9, cl. 7; see *also* 13 Op. Atty. Gen. 288, 292 (1870) ("Congress has the right to limit its appropriations to particular times as well as particular objects, and when it has clearly done so, its will expressed in the law should be implicitly followed."); B-319349, June 4, 2010. A key pillar in the edifice of statutes relating to the time availability of appropriations is 31 U.S.C. § 1502(a), which provides:

"The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period."

An important word in this statute is "properly": expenses "properly incurred" or contracts "properly made." This statute gives rise to the principle that a time-limited appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the time period for which the appropriation was made. This bedrock principle of appropriations law is known as the *bona fide* needs rule. See, e.g., B-289801, Dec. 30, 2002; B-282601, Sept. 27, 1999; B-235678, July 30, 1990; 8 Comp. Dec. 346, 348 (1901).

By its terms, 31 U.S.C. § 1502(a) applies only to appropriations limited for obligation to a fixed period. However, not all appropriations are available only for fixed time periods. Congress sometimes enacts a no-year appropriation—that is, an appropriation that is available for an unlimited period of time. By law, an appropriation is considered to be no-year only if the appropriating language

expressly so provides. 31 U.S.C. § 1301(c)(2). Previously, we have concluded that the *bona fide* needs rule applies to all activities carried out with appropriated funds that are available for a *fixed* period of time. See, e.g., B-317636, Apr. 21, 2009; see also 31 U.S.C. § 1502(a) ("an appropriation . . . limited for obligation to a *definite period* is available only for payment of expenses properly incurred during the period of availability) (emphasis added). The rule's broad applicability ensures that agencies obligate time-limited funds only to satisfy *bona fide* needs arising during an appropriation's period of availability. However, no-year funds are available for periods that are not fixed but, instead, are unlimited. As we stated in 40 Comp. Gen. 694 (1961), "When the Congress expressly provides in an appropriation . . . that it shall 'remain available until expended' all statutory time limits as to when the funds may be obligated and expended are removed." Because the appropriation's temporal availability is unlimited, the temporality of the needs that the appropriation may satisfy is also unlimited. Therefore, the *bona fide* needs rule does not apply to no-year funds. *Id.* GSA may accept no-year funds for any need, whether past, present, or future, though of course any such use must also be consistent with any other restrictions (such as to purpose or amount) upon the appropriation's availability. Cf. B-272191, Nov. 4, 1997 (providing that an agency should "maximize its flexibility and take full advantage of the budget authority available to it").

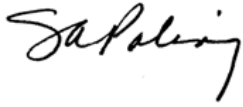
In this case, the customer agency entered into an interagency order in FY 2011; GSA raises no question that the customer properly obligated funds at that time. In a later fiscal year, the customer agency modified the interagency order, which increased the project cost. The customer agency ultimately decided to finance the increased cost using currently-available no-year funds.¹ Because no-year funds are not subject to the *bona fide* needs rule, GSA's acceptance of no-year funds was permissible, even though the no-year funds were appropriated after the customer agency incurred the original liability.

CONCLUSION

Consistent with our prior decisions addressing time limitations for no-year appropriations, we conclude that GSA may accept no-year funds from a customer agency to fund the increased cost resulting from a modification to an interagency

¹ GSA concluded that the increased cost resulting from the modification to the interagency order constituted an antecedent liability and, therefore, that the customer agency's then-current fixed-period appropriation was not available to fund the increased cost. Request Letter, at 1. See B-323940, Jan. 7, 2015 (interagency transactions resemble contractual transactions for appropriations law purposes).

order, even though those funds were appropriated in a fiscal year subsequent to the one in which the customer agency incurred the initial liability.

A handwritten signature in black ink, appearing to read "S. Poling". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Susan A. Poling
General Counsel