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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Continued Availability of Expired Appropriation for Additional Project Phases

File: B-286929

Date: April 25, 2001

DIGEST

The U.S. Total Army Personnel Command (PERSCOM) entered into an agreement with the General Services Administration's (GSA) Federal Systems Integration and Management Center (FEDSIM) to implement a declassification information management system pursuant to GSA's multiyear contract authority in 40 U.S.C. § 757. Although the agreement envisioned a three-phase project, PERSCOM obligated fiscal year 1997 funds to cover only the first phase. Because PERSCOM entered into an agreement for only the first phase of the declassification project and incurred an obligation during the period of availability of the appropriation only for the first phase, PERSCOM may not apply the expired balance of the amount originally obligated for the first phase of the project to complete the remaining project phases.

DECISION

The certifying officer for the U.S. Total Army Personnel Command (PERSCOM) requests a decision regarding the continued availability of a fiscal-year 1997 appropriation to cover additional phases of a project initiated through an interagency agreement with the General Services Administration (GSA), as authorized by 40 U.S.C. § 757. PERSCOM, in 1997, obligated its fiscal year 1997 appropriation in the amount of \$17.5 million for one phase of a three-phase project. To complete the first phase, PERSCOM needed only \$8.5 million of the total amount obligated. PERSCOM would now like to apply the remaining amount to the remaining two phases of the project. Because PERSCOM entered into an agreement incurring an obligation for only one phase of the project, it cannot now obligate and charge payments for additional phases to the expired fiscal year 1997 appropriation.

BACKGROUND

Executive Order (EO) 12958, Classified National Security Information, dated April 17, 1995, prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Pursuant to E.O. 12958, the U.S. Army is

required to develop and implement a classified information management system for review of classified records prior to declassification to prevent the release of classified information that may have a negative impact on national security.

Department of the Army Headquarters delegated the mission of developing and implementing a declassification information management system to PERSCOM. To accomplish this task, PERSCOM entered into an agreement on May 2, 1997 with the GSA's Federal Systems Integration and Management Center (FEDSIM). FEDSIM provides a wide range of technical and contracting services to federal agencies related to the acquisition, management and use of information systems and technology.

The agreement was authorized pursuant to the Brooks Act, § 111, Pub. L. No. 89-306, as amended, now codified at 40 U.S.C. § 757. Section 757 provides GSA statutory authority to enter into multiyear contracts for the provision of information technology hardware, software, or services for periods up to five years.

The agreement stated as follows:

“FEDSIM derives its financing from the Information Technology Fund, a revolving fund established under the authority of the Brooks Act (PL 89-306) as amended by the Paperwork Reduction Reauthorization Act of 1986, as included in PL 99-500 and PL 99-591. In accordance with a Comptroller General ruling (Memorandum of Decision, File B-186535, Matter of: Interagency Agreement – Administrative Office of the U.S. Courts), payments for FEDSIM services under this agreement are governed by the terms of the Brooks Act rather than the Economy Act. Under these terms, the existence of a defined requirement at the time this Basic Agreement is executed forms the basis for the incurring and recording of a financial obligation on the part of the client. This obligation remains in force across fiscal year boundaries until the specified services are delivered or the Agreement is rescinded by the signatories. The funds so obligated by the client do not have to be deobligated at the end of a fiscal year as they would have been if subject to the Economy Act. The client should ensure that any financial obligation incurred under this Agreement is properly recorded so that the funds are available to pay for FEDSIM services for the duration of this Agreement.”

The agreement articulated a three-phase project, but provided for only the first phase. The agreement stated that “This Basic Agreement addresses Phase I. Phase II and III will be addressed upon completion of Phase I.” Phase I, which the parties called a Proof of Principle, consisted of designing and testing. Phase II will consist of establishing the declassification program in accordance with the provisions of E.O. 12958. Phase III will consist of developing a long-term program to sustain the declassification effort.

The agreement was composed of separate project element plans, each of which contained specific requirements for each element of work to be completed. The agreement described the requirements, deliverables, and timeframes for Phase I and stated that the estimated cost for this project element was \$17.5 million. The agreement also provided that, pending approval of PERSCOM, this project element plan might be expanded to include Phases II and III. However, the agreement did not provide specific work requirements, time frames, or cost estimates for additional phases.

PERSCOM obligated \$17.5 million of fiscal year 1997 funds towards the agreed-upon work under Phase I. FEDSIM completed this work in May of 1998 at a cost of \$8.5 million. PERSCOM would now like to use the unexpended, but expired, balance of \$9 million to complete work at least on Phase II of the declassification project.

Discussion

Obligated budget authority is available only to liquidate liabilities (*i.e.*, obligations) legally incurred during the period for which the appropriation is available. B-129579, Dec. 7, 1956. Generally, if an agency has obligated more funds than needed for a project, it should deobligate the excess amount. B-207433, Sept. 16, 1983; B-183184, May 30, 1975. If an agency deobligates the unobligated balance within the period of availability of the appropriation, the funds are available to support new obligations. If an agency deobligates funds after the expiration of the period of availability, the funds are not available for new obligations. 64 Comp. Gen. 410 (1985); 52 Comp. Gen. 179 (1972). However, the unobligated funds remain available to the agency for up to five years to cover appropriate adjustments for obligations in an expired account. 31 U.S.C. § 1553(a).

Unless otherwise authorized by law, transfers of funds between government agencies and instrumentalities, such as between PERSCOM and FEDSIM, are prohibited by law.¹ Transfers must be authorized pursuant to statutory authority such as the Economy Act, 31 U.S.C. § 1535, which authorizes an agency to provide goods or services to another agency on a reimbursable advance payment basis. 70 Comp. Gen. 592, 595 (1991). The Economy Act requires that a fixed-year appropriation be deobligated at the end of the fiscal year charged to the extent that the performing agency has not performed or incurred valid obligations under the agreement. 31 U.S.C. § 1535(d); 39 Comp. Gen. 317 (1959); 34 Comp. Gen. 418, 421-22 (1955).

¹ There are several legal impediments to inter- and intra-agency transfers. These include 31 U.S.C. 1301(a), which requires that appropriations be applied only to the objects for which appropriated; 31 U.S.C. § 1532, which prohibits agencies from transferring amounts between accounts unless otherwise authorized by law; and the Rule Against Augmenting Appropriations, which proscribes unauthorized augmentations of agency appropriations. See 31 U.S.C. §§ 1301(a), 1532; B-217093, Jan. 9, 1985.

The PERSCOM agreement with FEDSIM was authorized by the Brooks Act, as amended, and not the Economy Act. As FEDSIM noted in its agreement with PERSCOM, the Brooks Act, as amended, does not require a fixed-year appropriation to be deobligated at the end of the period of availability; obligated budget authority remains obligated at the end of the fiscal year of availability as an expired appropriation to liquidate the obligation when FEDSIM completes the agreed upon work. 40 U.S.C. § 757(c)(1). In this regard, the Brooks Act, as amended, treats interagency obligations between FEDSIM and its customers like other agency obligations, rather than Economy Act obligations. However, as with other contractual obligations, once the agency liquidates the obligation, any remaining balances are not available to enter into a new obligation after the account has expired (i.e., if fiscal year funds, after the end of the fiscal year). 51 Comp. Gen. 766 (1972).

As noted earlier, PERSCOM entered into an agreement only for Phase I of the declassification project, with the understanding that other phases would follow. The fiscal year 1997 funds that PERSCOM obligated at the time of the agreement, therefore, were available only to liquidate obligations incurred for Phase I during the fiscal year. While PERSCOM obligated more funds than it needed to complete Phase I, it did not deobligate the fiscal year 1997 budget authority prior to the expiration of the fiscal year. Therefore, the funds are no longer available for new obligations, including Phases II and III.

PERSCOM argues that Phases II and III are bona fide needs of fiscal year 1997, and that the expired budget authority should remain available to fund these additional phases. The bona fide needs rule provides that the balance of a fixed-term appropriation “is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period...” 31 U.S.C. § 1502 (a) (emphasis added). What this means is that an agency may validly obligate an appropriation only to meet a legitimate need existing during the period of availability. 73 Comp. Gen. 77, 79 (1994); 65 Comp. Gen. 741, 743 (1986). Even conceding that PERSCOM could establish Phases II and III as a bona fide need of fiscal year 1997, PERSCOM did not take appropriate action to satisfy that need during the fiscal year by contracting (i.e., incurring valid obligations) for additional phases during the period of availability of the appropriation. Nothing in the bona fide needs rule suggests that expired appropriations may be used for a project for which a valid obligation was not incurred prior to expiration merely because there was a need for that project during that period. B-207433, Sept. 16, 1983. Once the obligational period has expired, new obligations must be charged to current funds even if a continuing need arose during the prior period.²

²Within scope modifications of the original contract are charged to the same appropriation as the original contract. 61 Comp. Gen. 184 (1981); B-202222, Aug. 2, 1983. The reason is that the obligation reflected by the within scope modification relates back to and stems from the original contractual liability.

Accordingly, PERSCOM cannot charge payments for additional phases of the project to the balance of the expired, unliquidated fiscal year 1997 appropriation. This does not mean, however, that PERSCOM cannot now satisfy these needs using current year funds. PERSCOM may enter into a new agreement for the remainder of the project using current year funds assuming, of course, sufficient budget authority is available currently for that purpose.

/signed/
Anthony H. Gamboa
General Counsel