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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Bureau of Land Management: Payment of Printing Costs by the Milwaukee Field Office

File: B-290900

Date: March 18, 2003

DIGEST

In furtherance of its role in a statutory lighthouse preservation program, the Bureau of Land Management (BLM) participates in the Michigan Lighthouse Project (Project) under a cooperative arrangement with other federal, state, and nonprofit entities. One of the missions of the Project is to educate the public and other interested entities about the lighthouse program. Project members determined that one way to accomplish this goal was to publish a brochure detailing the program and containing photographs of the relevant Michigan lighthouse properties. BLM agreed to pay part of the cost of developing and printing the brochure. BLM may use its appropriated funds to pay its share of the cost of producing the brochure since disseminating the information, while benefiting all the Project members in furthering Project goals, also supports BLM in meeting its responsibilities regarding nineteen Michigan lighthouses in the lighthouse preservation program. Under the circumstances presented here, the general requirement of 44 U.S.C. § 501 that all government printing be done through the Government Printing Office does not apply because BLM did not procure the services and the printing was not done “for the government” under 44 U.S.C. § 501, but for the project.

DECISION

A certifying officer of the Bureau of Land Management (BLM), U.S. Department of the Interior, has requested an advance decision under 31 U.S.C. § 3529 regarding the payment of an invoice submitted by a printing company to BLM for part of the costs associated with the printing of a brochure about the Michigan Lighthouse Project (Project). For the following reasons, BLM may use appropriated funds to pay its share of the brochure production costs in the furtherance of its role in the lighthouse preservation program.

BACKGROUND

According to the record, the Michigan Lighthouse Project was established in 1998 to address the fate of lighthouses in the state of Michigan, including the seventy-seven lighthouses under federal ownership. A full-time Project Director, who answers to and is paid by both the Michigan State Historic Preservation Office and the Michigan Historic Preservation Network, a statewide nonprofit historic preservation advocate, oversees the Project. Letter from William S. Fulcer, Acting Assistant Manager, BLM Milwaukee Field Office, to Doug McArthur, Senior Attorney, GAO, August 14, 2002. In addition to various interested Michigan state agencies and non-profit organizations, such as the National Trust for Historic Preservation, current members of the Project include the General Service Administration (GSA), the Coast Guard, the National Park Service, the U.S. Army Corps of Engineers, and BLM. (For more information on the Michigan Lighthouse Project, see the website at www.sos.state.mi.us/history/preserve/lights/milight2.html.)

According to the submission, BLM agreed to cooperate in the Project under the authority granted in the Department of Interior and Related Agencies Appropriation Act, 1991, Pub. L. No. 101-512, title 1, 104 Stat. 1918, Nov. 5, 1990 (FY 1991 Appropriation Act), which provided that “notwithstanding the provisions of the Federal Grants and Cooperative Agreements Act of 1977 . . . the Bureau is authorized hereafter to negotiate and enter into cooperative arrangements with public and private agencies, organizations, institutions, and individuals, to implement challenge cost-share programs,” such as the Michigan Lighthouse Project. Letter from Stephen D. Douglas, Acting State Director, BLM Eastern States Office, to Thomas H. Armstrong, Assistant General Counsel, GAO, Sept. 11, 2002. BLM and other federal agencies formalized their participation in the Project in an Agreement Respecting the Preservation of Historic Lighthouses between the Governor of the State of Michigan, BLM, GSA, and the Coast Guard, numbered BLM-ES-030-05, August 16, 1999. The Agreement sets forth the Project’s objectives of developing a plan to permanently and expeditiously transfer historic Michigan lighthouses to the proper entities. The plan will include a strategy to ensure that Michigan’s historic lighthouses are afforded sufficient protection. The Agreement does not specify relative funding responsibilities. It was developed in conjunction with the Project Charter, which details the mission of the Project to, among other things, increase public awareness of lighthouse preservation issues through “print material which highlights the Project and the benefits which accrue to participants.” “Charter of the Michigan Lighthouse Project,” 1999, page 3.

The National Historic Lighthouse Preservation Act of 2000, Pub. L. No. 106-355, 114 Stat. 1385 (codified at 16 U.S.C. §§ 470w-7 and 470w-8) established a national lighthouse preservation program and provided a statutory mechanism for the

conveyance of lighthouse properties at no cost to federal agencies, state or local governments, nonprofit organizations, and community development organizations for park, recreation, cultural, historic, or educational uses, while retaining federal use of the lighthouses for navigational purposes. The Department of the Interior and the General Services Administration (GSA) were made responsible for administering the program, which includes collecting and disseminating information on historic lighthouses. 16 U.S.C. § 470w-7(a)(1). The U.S. Coast Guard determines which lighthouses should be in the program and then reports the lighthouse property to either GSA or BLM, which operates under the direction of the Department of Interior, for disposal in accordance with the Act's conveyance mechanism. The lighthouses referred to BLM are those that were erected on land that was part of the public domain.¹

According to BLM's submission, at a Project Planning Committee meeting in the fall of 2001, Project members determined that one avenue for fulfilling the mission of the Project was to develop a brochure which would provide details about the statutory lighthouse preservation program as well as pictures of the relevant Michigan lighthouses. Letter from Stephen D. Douglas, supra. The Milwaukee Field Office Assistant Field Manager who served as the BLM representative to the Project and the GSA Project representative agreed that their respective agencies would cover the composition, development, and printing costs incurred in the production of the brochure.² The Project Director worked with a local small business, CHM Graphics, to develop the graphics, layout, and text, which the project members reviewed. In January 2002, the BLM and GSA representatives advised the Project that funds were available to complete the development of the brochure, and the Project Director

¹ BLM, under the direction of the Secretary of the Interior, is authorized to perform all executive duties pertaining to the use and sale of public lands. 43 U.S.C. § 2. This includes accepting back into the public domain any lands that have been withdrawn for other federal purposes (such as the lighthouse properties) and determining their disposition. According to the record, BLM's Milwaukee Field Office has been processing withdrawal relinquishments for nineteen U.S. Coast Guard lighthouses around the Great Lakes. Memorandum from BLM Eastern States Deputy State Director–Support Services to the Director, Apr. 9, 2002.

² According to the record, BLM Manual 1510-1.602-1D, June 15, 2000, provides BLM officials with the authority to commit funds as a member in associations, and the Assistant Field Manager who agreed to fund the brochure in this case had authority to commit funds in his position as BLM representative to the Project under the provisions of BLM Manual 1203, Apr. 6, 1998 (Delegation of Authority). Letter from Stephen D. Douglas, supra.

advised the printer to go ahead with printing 5,000 copies of the 24-page double-sided brochure with color pictures and graphics. Memorandum from Assistant Field Manager, BLM Milwaukee Field Office, to BLM State Director, Eastern States, Mar. 15, 2002.³

The record includes a cost quote for the brochure that on March 4, 2002, CHM Graphics faxed to the Project director indicating that the director had placed the purchase order. The account on the invoice is identified as the Michigan Historic Preservation Network, but according to the record the Project director asked the company to send the bill to BLM and GSA directly for payment purposes to avoid having to transfer funding through the Project. Letter from Stephen D. Douglas, supra. The total price for 5,000 copies was \$5,260.20 for printing costs and \$2,840 for development costs for a total of \$8,100.20. On March 15, 2002, BLM was billed for \$6,000. GSA has paid the other portion in accordance with the oral agreement that occurred during the Project planning meeting. Id.

Since the bill was for printing services provided by a non-Government Printing Office (GPO) source, the purchase was submitted for ratification in accordance with BLM Manual 1510-1.603-2. Memorandum from Assistant Field Manager, supra. The regulations include requesting concurrence from the Interior Solicitor for amounts exceeding \$1,000 and the matter was referred to the Office of the Solicitor. Memorandum from BLM Eastern States Office Procurement Specialist to Assistance Solicitor-Procurement, Division of General Law, Office of the Solicitor, May 7, 2002. The record contains a copy of a note that was faxed on May 14, 2002, indicating that the Solicitor's office did not concur with payment of the invoice since "44 U.S.C. § 501 requires all government printing, including duplicating, in excess of \$1,000 to be provided through the Govt. Printing Office" so the ratifying official would not have the required authority to enter into the contractual commitment. BLM has stated that this faxed note is the only document indicating the Solicitors office's nonconcurrence in this action. Letter from Stephen D. Douglas, supra. On June 24, 2002, BLM's National Business Center in Denver, Colorado, submitted the matter to our Office for an advance decision.

DISCUSSION

BLM's fiscal year 2002 appropriation for, among other things, management of lands and resources and administration does not specifically identify payment of costs arising through participation in the Michigan Lighthouse Project as an object of that

³ The BLM Milwaukee Field Office lands and realty (1430) subactivity allocated \$7,000 in fiscal year 2002 for participation in the Michigan Lighthouse Project. Id.

appropriation.⁴ Nevertheless, we view BLM's involvement with the Project as within the range of agency discretion as it is applied to furthering its role under the National Historic Lighthouse Preservation Act. See, e.g., B-247563.2, May 12, 1993; B-223608, Dec. 19, 1988. As noted above, BLM has authority to enter into the cooperative agreement with the Project under the above-quoted provision in the FY 1991 Appropriation Act. One of the primary purposes of the Project, as stated in its Charter, is to disseminate information about the program and the available lighthouse properties to the public and other appropriate entities that might have an interest in acquiring the properties under the program. Distributing the brochure at issue in this case was in furtherance of that goal, and BLM's agreement to fund a portion of the cost of producing the brochure was reasonable in the context of its participation in the Project. Thus, considering that BLM is authorized to participate in the Project and agreed in its capacity as a cooperator to contribute to the production of the brochure in furtherance of the specific mission for which the lighthouse program was established, we conclude that BLM's payment of the billed portion of the cost of producing the brochure is proper.

In reaching this conclusion, we are mindful of the general rule that all printing and binding for the government "shall be done" through the GPO, absent a waiver from the Joint Committee on Printing. 44 U.S.C. § 501. See B-300192, Nov. 13, 2002. In fact, in a recent decision we held that photocopying services procured by another BLM field office from a commercial source in violation of 44 U.S.C. § 501 were not authorized and may not be paid with federal funds. B-290901, Dec. 16, 2002. See also B-251481.4, Sept. 30, 1994; B-178496, Oct. 9, 1973. However, this rule is not applicable to the present situation. The common denominator in the cited cases, and others in which we have considered the requirements of 44 U.S.C. § 501, was that in each case a government entity procured printing or duplicating services from a non-GPO commercial vendor without acquiring the necessary waivers for documents or materials that were solely for the benefit of the government.

Here, however, the printing of the brochure came about as a result of a cost-sharing cooperative arrangement and was for the benefit of all the Project participants, which included nonprofit, state, and federal entities. The actual procurement of the printing services from a non-GPO commercial entity was done by the Project Director, an employee of the Project, on behalf of the Project and not by BLM directly nor solely for BLM purposes. It cannot be said that the brochure represents printing done "for the government"; it was in fact done for the project. Hence, the requirements of 44 U.S.C. § 501 are not an impediment to the payment of the printing costs billed to BLM in this case.

⁴ Department of the Interior and Related Agencies Appropriations Act, 2002, title 1, Pub. L. No. 107-63, 115 Stat. 414, Jan. 3, 2001 (FY 2002 Appropriation Act).

We conclude, therefore, that the expenditure of appropriated funds for the costs related to the production of the Project brochure is authorized and as such BLM's share of the costs may be certified for payment.

/signed/

Anthony Gamboa
General Counsel