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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Expired Funds and Interagency Agreements between GovWorks and the Department of Defense

**File:** B-308944

**Date:** July 17, 2007

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### DIGEST

GovWorks, a Department of the Interior franchise fund, entered into four contracts on behalf of the Department of Defense (DOD). With one exception, the Military Interdepartmental Purchase Requests (MIPRs) used to finance these contracts did not identify the specific items or services that DOD wanted GovWorks to acquire on its behalf. Lacking the necessary specificity as to the items or services ordered, these MIPRs did not properly obligate DOD's appropriation. Accordingly, in fiscal year 2005, when GovWorks used these funds for three of the four contracts, GovWorks improperly used prior year funds.

One MIPR, for laser printers, described the goods DOD sought with enough specificity to create a valid interagency agreement and to properly obligate DOD's appropriation. Although the laser printers ordered are a readily available commercial item, GovWorks did not use the funds to execute a contract on DOD's behalf until 17 months after the date of the MIPR, and 11 months after the funds expired. Because GovWorks did not use the funds within a reasonable time of their receipt, the contract did not fulfill a *bona fide* need arising during the funds' period of availability.

DOD and GovWorks share responsibility for ensuring the proper use of DOD funds transferred to and "parked" at GovWorks. DOD must adjust its appropriations accounts to record obligations for these four contracts against fiscal year 2005 appropriations. If DOD has insufficient unobligated balances in these appropriations, DOD must report violations of the Antideficiency Act.

To prevent future occurrences of the problems associated with the four contracts, GovWorks should examine its accounts to identify interagency agreements that lack the requisite specificity under the recording statute. For those agreements that do not meet the requirements, GovWorks should return the funds advanced by the

ordering agency. GovWorks also should develop internal controls to ensure that it does not accept nonspecific, indefinite orders nor use expired funds to enter into contracts on behalf of the ordering agency.

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## DECISION

The Inspector General for the Department of the Interior (Interior) requests our decision under 31 U.S.C. § 3529 regarding issues raised by four contracts that GovWorks, an Interior franchise fund, entered into with private vendors in fiscal year 2005 using Department of Defense (DOD) funds.<sup>1</sup> The Inspector General (IG) is concerned that certain Military Interdepartmental Purchase Requests (MIPRs), used to document DOD's interagency agreements with GovWorks, may not have identified DOD's needs with the specificity required to create an obligation under 31 U.S.C. § 1501(a). Devaney Letter. The IG expressed concern that most of the DOD funds that GovWorks used to finance the four contracts were no longer available to incur obligations when GovWorks executed the contracts in fiscal year 2005. *Id.* The IG believes that DOD improperly "parked" funds with GovWorks. *Id.* This decision examines the four contracts to determine whether they fulfilled a *bona fide* need arising during the period of availability of the funds that GovWorks used to finance the contracts.<sup>2</sup>

For the reasons discussed below, we conclude that, with one exception, the MIPRs between DOD and GovWorks did not identify the specific items or services that GovWorks was to acquire. As a result, the MIPRs did not properly obligate DOD's funds. It was not until fiscal year 2005 that DOD perfected its orders and established valid interagency agreements by asking GovWorks to acquire specific goods or

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<sup>1</sup> Letter from Earl E. Devaney, Inspector General, Office of the Inspector General, Department of the Interior, to David M. Walker, Comptroller General of the United States, Jan. 22, 2007 (Devaney Letter). This request arose out of the Inspector General's report on an audit of transactions between DOD and Interior. U.S. Department of the Interior Office of Inspector General, *FY 2005 Department of the Interior Purchases Made on Behalf of the Department of Defense*, Report No. X-IN-MOA-0018-2005 (Jan. 9, 2007), available at [www.doioig.gov/upload/2007-G-0002.txt](http://www.doioig.gov/upload/2007-G-0002.txt) (last visited July 2, 2007) (Interior IG Report). The Inspector General for the Department of Defense also audited many of these transactions and reported results in U.S. Department of Defense Office of Inspector General, *FY 2005 DOD Purchases Made Through the Department of the Interior*, Report No. D-2007-044 (Jan. 16, 2007), available at [www.dodig.osd.mil/Audit/reports/07report.htm](http://www.dodig.osd.mil/Audit/reports/07report.htm) (last visited July 2, 2007) (DOD IG Report).

<sup>2</sup> In response to the IG's request, we issued a decision related to obligation of funds under an indefinite delivery, indefinite quantity contract. B-308969, May 31, 2007. A third decision in response to the IG's request, B-309181, relating to authority to enter into a lease, will be issued in the near future.

services. Consequently, GovWorks improperly used expired funds, transferred by DOD's MIPRs, to finance these three contracts. DOD may not extend the availability of its appropriated funds by "parking" funds at GovWorks. DOD and GovWorks should adjust their appropriations accounts, charging the obligations for these three contracts to fiscal year 2005 DOD funds. If there is an insufficient unobligated balance remaining in DOD's fiscal year 2005 expired appropriation, DOD should report a violation of the Antideficiency Act consistent with Office of Management and Budget Circular A-11.

One MIPR, for laser printers, funding one of the four contracts had the requisite specificity to properly obligate DOD's funds. Because laser printers are a readily available commercial item, GovWorks's use of the transferred funds to acquire laser printers almost 17 months after DOD and GovWorks entered into the interagency agreement and transferred the funds to GovWorks, and 11 months after the funds expired, did not fulfill a *bona fide* need arising during the funds' period of availability. Rather, the contract satisfied a *bona fide* need of the following fiscal year. DOD and GovWorks should adjust their accounts, deobligating the funds from fiscal year 2004 and obligating instead funds from fiscal year 2005.

Our practice when rendering decisions is to obtain the views of the relevant federal agencies. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/legal.htm](http://www.gao.gov/legal.htm). In this regard, Interior and DOD responded to questions from our office about the four contracts. Letter from David L. Bernhardt, Solicitor, Department of the Interior, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Apr. 20, 2007 (Bernhardt Letter); Letter from Roger F. Pitkin, Acting Deputy General Counsel (Fiscal), DOD, to Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, June 6, 2007 (Pitkin Letter). Interior provided requested information but declined to provide its legal views in response to the questions we asked. Bernhardt Letter.

## BACKGROUND

GovWorks is a franchise fund originally established as a pilot program in 1996. Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 104-208, div. A, title I, § 113, 110 Stat. 3009, 3009-200 (Sept. 30, 1996). Congress has reauthorized GovWorks through fiscal year 2007. Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110-5, § 2, 121 Stat. 8, 57 (Feb. 15, 2007).

As a franchise fund, GovWorks is a revolving fund designed to provide common administrative services to Interior and other agencies on a competitive basis. Government Management Reform Act of 1994, Pub. L. No. 103-356, title IV, § 403, 108 Stat. 3410, 3413 (Oct. 13, 1994) (authorizing franchise fund pilot programs). GovWorks is "a full service acquisition center" that procures goods and services from vendors on behalf of federal agencies. GovWorks, *Frequently Asked Questions, General Questions*, ¶ 1, available at [www.govworks.gov/home/faqs.asp](http://www.govworks.gov/home/faqs.asp) (last visited July 2, 2007).

An agency wishing to acquire products or services through GovWorks tells GovWorks the goods or services the agency would like GovWorks to acquire on its behalf. GovWorks, *Getting Started Details*, available at [www.govworks.gov/home/getting\\_started\\_details.asp](http://www.govworks.gov/home/getting_started_details.asp) (last visited July 2, 2007) (*Getting Started Details*). The ordering agency then transfers funds from its appropriation to GovWorks for acquisition of the goods or services sought. *Id.* DOD uses MIPRs both to identify its needs and to transfer funds to GovWorks. Pitkin Letter; Robert McNamara, Acting Deputy Chief Financial Officer, Office of the Under Secretary of Defense, Comptroller, Memorandum for the Secretaries of the Military Departments, *et al.*, *Non-Economy Act Orders*, Oct. 16, 2006. If GovWorks believes it can procure the goods or services sought by DOD as specified in the MIPR, GovWorks replies to DOD with an “Acceptance of MIPR.” Bernhardt Letter at tab 1A. Upon GovWorks’s acceptance of the MIPR, GovWorks and DOD have cemented an interagency agreement, and DOD records an obligation in the amount it transferred to GovWorks. Pitkin Letter. GovWorks then locates a vendor who can provide the goods or services DOD seeks and enters into a contract with the vendor for the goods or services using the funds transferred by DOD. *See Getting Started Details*. GovWorks charges ordering agencies a service fee of 4 percent of the contract award. *Id.* These fees, once earned, are available to GovWorks without fiscal year limitation to cover GovWorks’s administrative costs. Pub. L. No. 104-208, § 113.

In January 2007, the Interior IG reported its audit of the GovWorks transactions made using DOD funds in fiscal year 2005, including contracts made with vendors on behalf of DOD. Interior IG Report. The Interior IG determined that in many cases GovWorks had accepted MIPRs from DOD that did not indicate the goods or services sought with the level of specificity necessary to incur an obligation against DOD’s funds. *Id.* at 4. In addition, GovWorks had entered into contracts with vendors using DOD funds whose period of availability for obligations had expired.<sup>3</sup> *Id.*

The Interior IG is concerned that these practices may have violated fiscal law and may indicate that DOD “parked” funds at GovWorks. *See Devaney Letter* at 1–2. To address these concerns, the Interior IG asked that we examine four contracts that GovWorks entered into in fiscal year 2005 using DOD funds. *Id.*

#### Contract 44435 for Laser Printers

On April 9, 2004, DOD transferred \$40,283.46 of fiscal year 2004 Operation and Maintenance Army funds to GovWorks for the purchase of “XEROX 3400 Printers.” MIPR 4GINTMM054, Apr. 9, 2004. Sixteen months later, DOD sent an e-mail to GovWorks requesting that GovWorks use these funds to acquire 20 HP 1300 laser printers and 20 HP 4350n network printers, or printers of equal specifications and

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<sup>3</sup> The DOD Inspector General reached conclusions similar to those of the Interior IG. DOD IG Report.

value, to be delivered to the Pentagon within 30 days of contract award. E-mail from Georgette Sumpter, DOD, to Donald Clifton, GovWorks, *Subject: Project Number 5229-0002 Printers*, Aug. 17, 2005. Using these funds, GovWorks entered into Contract 44435 with CounterTrade Products, Inc. on August 29, 2005, for 40 HP laserjet printers at a cost of \$37,643.10. Contract 44435, Aug. 29, 2005. The funds GovWorks used to finance this contract expired 11 months before GovWorks entered into the contract and were only available to liquidate obligations properly incurred during fiscal year 2004.

#### Contract 43270 for Body Armor

On March 24, 2004, DOD transferred \$1.1 million of 3-year Other Procurement Navy funds, which were available for fiscal years 2002–2004, to GovWorks for “the procurement and fielding of AT/FP shipboard equipment utilized for the protection of Navy afloat assets.” MIPR N6553804MP00018, Mar. 24, 2004. Almost 14 months later, DOD sent an e-mail to GovWorks requesting that GovWorks place an order with Point Blank Body Armor, Inc., for 50 sets of T1 Special Body Armor and 100 Gamma Plates.<sup>4</sup> E-mail from Eugene M. DuCom, John J. McMullen Associates (JJMA), to Donald Clifton, GovWorks, *Subject: HSV-X1 Body Armor PKG Point Blank Justification*, May 16, 2005 (DuCom E-mail 1).<sup>5</sup> On May 18, 2005, DOD e-mailed GovWorks with instructions to use the funds transferred by the March 24, 2004, MIPR for this purchase. E-mail from Eugene M. DuCom, JJMA, to Donald Clifton, GovWorks, *Subject: Re: FW: Quote with shipping*, May 18, 2005 (DuCom E-mail 2). Using these funds, GovWorks entered into Contract 43270 with Point Blank Body Armor, Inc., on May 20, 2005, in the amount of \$61,112 to purchase body armor and gamma plates. Contract 43270, May 20, 2005. The funds GovWorks used to finance this contract expired over 6 months before GovWorks entered into the contract and were only available to liquidate obligations properly incurred during fiscal years 2002–2004.

#### Contract 41181 for Computer Hardware

DOD made the following funds transfers to GovWorks:

- \$50,000 of 2001 Operation and Maintenance Army funds, “for the acquisition of toner cartridges.” MIPR 1JDIT0N046, July 10, 2001.
- \$70,000 of 2001 Operation and Maintenance Army funds, “for the acquisition of [automated data processing] and supply.” MIPR 1KINTWS058, July 24,

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<sup>4</sup> We understand that body armor is used to protect personnel on board ships. Each set of body armor is fitted, front and back, with gamma plates, ceramic plates manufactured to protect personnel from projectiles.

<sup>5</sup> These instructions did not come from DOD directly, but from John J. McMullen Associates, a private contractor working on DOD’s behalf.

2001.

- \$40,783 of 2001 Operation and Maintenance Army funds, “for the acquisition of [automated data processing] and supplies.” MIPR 1MINTPR070, Sept. 14, 2001.
- \$1.8 million of 2004 Operation and Maintenance Army funds, “for equipment through the Pentagon IT Store.” MIPR 4MINTMM125, Sept. 17, 2004.

On November 9, 2004, DOD sent GovWorks an e-mail requesting that GovWorks acquire 160 items of various computer hardware using the funds transferred via the September 17, 2004 MIPR. E-mail from Michael Bucceroni, DOD, to Andrew Carrington, GovWorks, *Subject: FW: Project Number 4303-0002 Decision Agent Network Equipment*, Nov. 9, 2004 (Bucceroni E-mail). On December 21, 2004, GovWorks entered into Contract 41181 with Norseman, Inc. for “Decision Agent Network Equipment”<sup>6</sup> in the amount of \$108,196. Contract 41181, Dec. 21, 2004. To finance this contract, GovWorks, at DOD’s direction, used a portion of the funds DOD transferred on September 17, 2004. *See* Bucceroni E-mail. GovWorks also used, apparently on its own initiative, funds from the three other MIPRs listed above. Contract 41181.

On January 18, 2005, GovWorks modified Contract 41181 to remove the fiscal year 2001 funds<sup>7</sup> that DOD had transferred on July 10, 2001, and replaced them with the following:

- \$3,600 of 2000 Operation and Maintenance Army funds, “for the acquisition of [automated data processing] and services.” MIPR 0MGSAIT092, Sept. 29, 2000.
- \$94,351 of 2001 Operation and Maintenance Army funds, “for the acquisition of [automated data processing] and supplies.” MIPR 1MITST0074, Sept. 24, 2001.
- \$158,273.50 of 2004 Operation and Maintenance Army funds, “for equipment through the Pentagon IT Store.” MIPR 4LINTMM111, Aug. 18, 2004.
- \$1.4 million of 2004 Operation and Maintenance Army funds, for “[defense messaging system] equipment.” MIPR 4MINTMM130, Sept. 24, 2004.

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<sup>6</sup> The Decision Agent is a suite of software applications that automatically identifies, filters, and distributes electronic messages. Interior IG Report at 4 n. 3.

<sup>7</sup> The July 10, 2001, MIPR sought “toner cartridges” and the GovWorks contracting officer servicing Contract 41181 believed that Contract 41181, for Decision Agent Network Equipment, did not fill this need. Bernhardt Letter at tab 1H.

The funds GovWorks used to finance this contract expired over 50 months, 38 months, and 2 months, respectively, before GovWorks entered into the contract and were only available to liquidate obligations properly incurred during fiscal years 2000, 2001, and 2004.

#### Contract 43387 for Telecommunications Support

GovWorks entered into Contract 43387 with Northrop Grumman in the amount of \$3,908,420 for “technical and functional support to the Pentagon Telecommunications Center” consisting of systems and security management, maintenance, and operation of hardware and software. Contract 43387, June 30, 2005. This was a sole source contract, intended as a bridge contract pending award of a final contract. Letter from Paul Martin, Contracting Officer, GovWorks, to Allen Sauck, Northrop Grumman, *Subject: Request for Proposal 43387, Pentagon Telecommunications Center, Decision Agent and Enhanced Communication Gateway System*, June 8, 2005. The duration of the contract was 6 months, from July 1, 2005, to December 31, 2005. Contract 43387, Statement of Work at ¶ 5.0. To fund this contract, GovWorks used Operation and Maintenance Army funds that DOD had transferred to GovWorks via 17 separate MIPRs. *Id.* Of these 17 MIPRs, 1 transferred fiscal year 2003 funds in fiscal year 2003, 13 transferred fiscal year 2004 funds in fiscal year 2004, and 3 transferred fiscal year 2005 funds in fiscal year 2005. *Id.*

The 17 MIPRs used to fund this contract also had four different descriptions of the services DOD wished GovWorks to procure on its behalf:

- “[Decision Agent/Defense Messaging System] Core Product,” 13 MIPRs. *E.g.*, MIPR 4GINTMM058, Apr. 26, 2004.
- “[S]upport of the Decision Agent,” 2 MIPRs. *E.g.*, MIPR 5CINTMM013, Dec. 15, 2004.
- “Secondary site [Defense Messaging System] requirements,” MIPR 3LINTMM101, Aug. 29, 2003.
- “Support [for] the [network] Printers,” MIPR 4HINTMM069, May 26, 2004.

GovWorks executed this contract on June 30, 2005, pursuant to a Statement of Work from DOD dated June 15, 2005,<sup>8</sup> and GovWorks, at DOD’s direction, funded this contract with funds transferred to GovWorks through the 17 MIPRs listed

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<sup>8</sup> DOD originally submitted a Statement of Work to GovWorks on April 14, 2005. E-mail from Kimberly Elmore, Interior Office of Inspector General, to Wesley Dunn, Senior Staff Attorney, GAO, *Subject: Fw: GAO Request #2*, May 7, 2007. This Statement of Work was revised on June 15, 2005. *Id.*

above. E-mail from Georgette Sumpter, DOD, to Michael Bucceroni, DOD, *Subject: Project Number 5095-0001 DA*, May 31, 2005 (Sumpter E-mail 2).<sup>9</sup> The fiscal year 2003 and fiscal year 2004 funds GovWorks used to finance this contract expired 19 months and 7 months, respectively, before GovWorks entered into the contract.

## DISCUSSION

The overarching issue presented by the Interior IG is whether DOD and GovWorks used the correct appropriation to finance the four contracts. The IG raises the issue because GovWorks, on behalf of DOD, entered into the four contracts in fiscal year 2005 but used expired DOD funds, not fiscal year 2005 funds,<sup>10</sup> to finance the contracts. Expired funds are only available to liquidate obligations properly incurred during their period of availability. To answer the question, we must first determine when DOD incurred obligations against its appropriations: either when it transferred the funds to GovWorks with the MIPRs or at some later time. Second, having established when DOD incurred an obligation, we must determine whether DOD incurred an obligation within the funds' period of availability and, if so, whether GovWorks promptly used the funds to execute a contract on DOD's behalf. We also respond to the IG's concern that DOD and GovWorks may have improperly parked funds with GovWorks.

### Incurring Obligations

An interagency transaction like that authorized by Interior's franchise fund authority is, in some ways, not unlike a contractual transaction.<sup>11</sup> *See, e.g.*, B-286929, Apr. 25, 2001. Similar to a contractual transaction, at the time the agencies involved in the transaction enter into an interagency agreement, the ordering agency incurs an obligation for the costs of the work to be performed. *See* B-302760, May 17, 2004. However, to incur an obligation, an ordering agency must have documentary evidence of a binding agreement between the two agencies for specific goods or services.

The specificity requirement is a long-standing principle of appropriations law, supported by decisions of the Comptroller General and by the recording statute, 31 U.S.C. § 1501(a). For example, in 44 Comp. Gen. 695 (1965), we considered fiscal year 1964 purchase orders placed by the United States Travel Service (USTS) with the Government Printing Office (GPO) for the printing of sale and promotion

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<sup>9</sup> We have no documents showing GovWorks's acceptance of the funding instructions in this e-mail. However, we may infer acceptance of these terms, as GovWorks followed them. Contract 43387.

<sup>10</sup> GovWorks used fiscal year 2005 funds to partially fund Contract 43387.

<sup>11</sup> Both DOD and GovWorks consider MIPRs to be obligating documents. Bernhardt Letter; Pitkin Letter.



materials. 44 Comp. Gen. at 696. The purchase orders stated that manuscripts of the materials to be printed and specifications of the work to be performed by GPO would follow. *Id.* at 698. USTS provided these materials to GPO several months later in fiscal year 1965. *Id.* We concluded that a USTS purchase order for printing services for manuscript material to be provided later did not constitute a firm and complete order needed to create a binding obligation. *Id.* Instead, USTS incurred an obligation in fiscal year 1965 when it provided the manuscripts to GPO. *Id.* An order that lacks a specific, definite description of the goods or services to be provided is not firm and complete.<sup>12</sup> B-196109, Oct. 23, 1979 (National Park Service did not incur an obligation against fiscal year 1978 appropriations with purchase order lacking specificity; the Service incurred an obligation when it provided specifications to vendor in fiscal year 1979).

The recording statute provides additional support for this proposition. As pertinent here, it requires that an interagency agreement be evidenced by a written document, executed during the period of availability of the appropriation used, for “*specific goods to be delivered . . . or work . . . to be provided.*” 31 U.S.C. § 1501(a) (emphasis added). The statute’s obvious purpose is to ensure that the parties understand and accept their rights and duties under the agreement and that Congress, as part of its oversight role, knows how agencies are obligating their funds. *See* 71 Comp. Gen. 109, 110 (1991). *See generally* Senate Committee on Government Operations, *Financial Management in the Federal Government*, S. Doc. No. 87-11, at 85 (1961). In other words, Congress did not want agencies to record obligations against current appropriations based on inchoate agreements—whether with vendors or other agencies. *See* 31 U.S.C. § 1501(a)(1).

Here, only one MIPR was sufficiently specific to establish an obligation against DOD’s appropriation—the April 2004 MIPR for “XEROX 3400 Printers” that GovWorks used to finance contract 44435. MIPR 4GINTMM054, Apr. 9, 2004. The remaining MIPRs, used to finance contracts 41181, 43387, and 43270, were too vague in their descriptions to establish DOD’s and GovWorks’s rights and duties. For example, several MIPRs sought “equipment through the Pentagon IT Store.” *E.g.*, MIPR 4MINTMM125, Sept. 17, 2004. Without further advice from DOD, GovWorks would not know whether any particular equipment purchase at the Pentagon IT Store satisfied DOD’s needs. Several other MIPRs sought “secondary site [defense

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<sup>12</sup> The specificity required of interagency agreements under the recording statute is similar, even if not necessarily identical, to the specificity required of solicitations under the Federal Acquisition Regulation (FAR). For example, the FAR requires that solicitations, even for indefinite-quantity contracts, describe the “scope, nature, complexity, and purpose of the supplies or services the Government will acquire.” 48 C.F.R. § 16.504(a)(4). *See also* B-277979, Jan. 26, 1998 (agency’s solicitation was invalid because it did not “reasonably describ[e] the general scope, nature, complexity, and purpose of the services or property to be procured under the contract”).

messaging system] requirements,” without specifying the details needed for GovWorks to address DOD’s needs. *E.g.*, MIPR 3LINTMM101, Aug. 29, 2003.

Not until DOD e-mailed GovWorks identifying specific items did DOD perfect its orders and incur obligations. 44 Comp. Gen. 695. For Contract 41181, DOD incurred an obligation against its appropriation on November 9, 2004, when it e-mailed GovWorks descriptions of specific goods it sought. Bucceroni E-mail. For Contract 43387, DOD incurred an obligation against its appropriation when it transmitted its Statement of Work to GovWorks.<sup>13</sup> For Contract 43270, DOD incurred an obligation in May 2005, when it perfected its order for body armor and gamma plates.<sup>14</sup> DuCom E-mail 1; DuCom E-mail 2. DOD and GovWorks, therefore, must use fiscal year 2005 funds for Contracts 41181, 43387, and 43270. *See* B-302760, May 17, 2004. To the extent that DOD has recorded obligations against its prior fiscal year funds, DOD should adjust its accounts, deobligating those fiscal year funds and obligating fiscal year 2005 funds. Should DOD lack sufficient fiscal year 2005 funds, it must report Antideficiency Act violations to the President and Congress, with a copy of the report to the Comptroller General. 31 U.S.C. § 1351.

### *Bona Fide Needs Rule*

An appropriation is available for obligation only to fulfill a genuine need of the period of availability for which it was made. B-308010, Apr. 20, 2007. This maxim, the *bona fide* needs rule, applies to all uses of federal funds, including contracts and interagency transactions. B-286929, Apr. 25, 2001. The *bona fide* needs rule is rooted in 31 U.S.C. § 1502(a). This statute provides that a fixed-term appropriation is available only for payment of expenses “properly incurred” during the appropriation’s period of availability and to complete contracts “properly made” during that period.

In other words, if an agency with an identified *bona fide* need does not act to fill that need before the end of an appropriation’s period of availability, that appropriation is no longer available to fill that need. B-286929, Apr. 25, 2001. If the agency acts in a subsequent fiscal year to meet its continuing need, it must obligate the subsequent fiscal year’s appropriation, notwithstanding that the *bona fide* need was first identified, but not satisfied, in a prior fiscal year. *Id.*

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<sup>13</sup> Neither DOD nor GovWorks provided us with documentation of when DOD transmitted the Statement of Work to GovWorks. It is clear, however, that DOD did this sometime between April 15, 2005 (the date of the original Statement of Work) and June 30, 2005 (the date GovWorks signed the contract).

<sup>14</sup> Neither DOD nor Interior provided us with documentation of an exact date that DOD perfected the order that resulted in Contract 43270. Nevertheless, the circumstances surrounding Contract 43270 show that DOD perfected its order sometime between May 11 and May 20, 2005.

As discussed above, for Contracts 43270, 41181, and 43387, DOD incurred obligations in fiscal year 2005, but DOD and GovWorks used expired funds to cover these obligations. As previously discussed, although DOD transferred these funds to GovWorks during their period of availability, the MIPRs did not obligate these funds and they were no longer available for obligation at the time they were used. Consequently, GovWorks improperly used the expired funds to enter into these three contracts in violation of the *bona fide* needs rule.

For Contract 44435, although DOD and GovWorks had entered into a valid interagency agreement obligating funds, DOD and GovWorks improperly used the fiscal year 2004 funds to finance a fiscal year 2005 contract. Like a contract with a private vendor, funds obligated for an interagency agreement with a franchise fund are used to pay for the supplies or services ordered.<sup>15</sup> However, the fact that GovWorks did not execute Contract 44435 until almost 17 months after executing the interagency agreement, and 11 months after the end of fiscal year 2004, indicates that Contract 44435 did not satisfy a *bona fide* need of fiscal year 2004.

Of course, a performing agency should have a reasonable period of time to use transferred funds, depending on the nature of the order.<sup>16</sup> Here, DOD incurred an obligation against its fiscal year 2004 appropriation on April 9, 2004, when it transferred fiscal year 2004 funds to GovWorks with a MIPR seeking “XEROX 3400 Printers.” GovWorks did not execute Contract 44435 to acquire printers for DOD until almost 17 months later and 11 months after the end of fiscal year 2004. Contract 44435. We have been provided no information suggesting that the printers GovWorks purchased on DOD’s behalf are anything but readily available commercial items that GovWorks could have purchased on DOD’s behalf with little lead time. As such, we find it unreasonable that GovWorks took 17 months to execute Contract 44435. Rather than fulfilling a *bona fide* need of fiscal year 2004, Contract 44435 at best filled a need of fiscal year 2005. GovWorks improperly used fiscal year 2004 funds to purchase the printers.

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<sup>15</sup> Under the Economy Act, 31 U.S.C. § 1535, an ordering agency must deobligate any fixed year funds at the end of their period of availability to the extent that the performing agency has not performed or incurred valid obligations under the agreement. 31 U.S.C. § 1535(d); B-289380, July 31, 2002. When an agency validly obligates its funds through an interagency agreement not governed by the Economy Act, the ordering agency does not have to deobligate its funds at the end of their period of availability. B-302760, May 17, 2004; B-286929, Apr. 25, 2001.

<sup>16</sup> In 1984, we concluded that because Army regulations required use of transferred funds within 90 days from receipt of an order, DOD industrial funds had not begun work ordered by other DOD components within a reasonable period of time when work began more than 90 days after receipt. GAO, *Improper Use of Industrial Funds by Defense Extended the Life of Appropriations Which Otherwise Would Have Expired*, GAO/AFMD-84-34 (Washington, D.C.: June 5, 1984).

As with the other three contracts, GovWorks and DOD should adjust their accounts to deobligate DOD's fiscal year 2004 appropriations and record the obligation for Contract 44435 against fiscal year 2005 appropriations. *See* B-307137, July 12, 2006. Should DOD lack sufficient fiscal year 2005 funds, it must report Antideficiency Act violations to the President and Congress, with a copy of the report to the Comptroller General. 31 U.S.C. § 1351. GovWorks should return to DOD any expired DOD funds that GovWorks retains that are not properly obligated. *See* B-288142, Sept. 6, 2001.

### Parking

For almost 4 years, DOD's Comptroller has expressed concern about the possibility of DOD components "banking," or "parking," DOD funds with other agencies in the course of interagency agreements. In a 2003 memorandum issued departmentwide, the Comptroller alerted DOD to media attention focusing "on the impropriety of using interagency agreements to 'bank' funds that would otherwise expire at the end of the fiscal year." Dov S. Zakheim, Office of the Under Secretary of Defense, Comptroller, Memorandum for the Chairman of the Joint Chiefs of Staff, *et al.*, *Fiscal Principles and Interagency Agreements*, Sept. 25, 2003.

Distinguishing Economy Act orders from non-Economy Act orders, the Comptroller explained that with some federal agencies, such as GovWorks, who have legal authority separate from the Economy Act, DOD need not retrieve DOD funds advanced to the servicing agency but not yet used by the servicing agency.<sup>17</sup> *Id.* The Comptroller noted, however, that "an interagency agreement must be based upon a legitimate, specific and adequately documented requirement representing a *bona fide* need of the year in which the order is made." *Id.* The Comptroller advised, "If these basic conditions are met, these servicing agencies may retain . . . the funds in the *following* fiscal year." *Id.* (emphasis in original). The Comptroller admonished DOD officials to "resist the misguided desire to bank government funds through improper use of interagency agreements," and warned that "[m]isuse of interagency agreements may result in disciplinary action, adverse media attention and additional congressional limitations and oversight Department-wide." *Id.*

The Comptroller's Office reiterated its concern in 2005 and provided additional guidance. Teresa McKay, Deputy Chief Financial Officer, Office of the Under Secretary of Defense, Comptroller, Memorandum for the Assistant Secretary of the Army (Financial Management and Comptroller), *et al.*, *Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act*, Mar. 24, 2005 ("[I]t appears that some interagency agreements continue to be used in an attempt to keep funds available for new work after the period of availability for those funds expired.").

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<sup>17</sup> *See* footnote 15.

In October 2006, the Comptroller's Office issued detailed policy and procedures, amending the DOD Financial Management Regulation, for non-Economy Act interagency agreements. Robert McNamara, Acting Deputy Chief Financial Officer, Office of the Under Secretary of Defense, Comptroller, Memorandum for the Secretaries of the Military Departments, *et al.*, *Non-Economy Act Orders*, Oct. 16, 2006. The Comptroller required that DOD components execute such interagency agreements using MIPRs, accepted by the servicing agency, including, among other things, "a firm, clear, specific, and complete description of the goods or services ordered," "[a] statement of work that is specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself," and "[s]pecific performance or delivery requirements." *Id.* ¶¶ C.2, C.4. The Comptroller specified that the interagency agreement "must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations." *Id.* ¶ C.7. The Comptroller provided instructions for components to retrieve from a servicing agency expired DOD funds to ensure that they are not used for new obligations.<sup>18</sup> *Id.* ¶ D.2.d.

Unfortunately, the Comptroller's fears, in this case at least, were realized. Clearly, DOD parked funds at GovWorks. An agency may not extend the availability of its appropriated funds by transferring them to another agency. B-288142, Sept. 6, 2001. DOD transferred funds to GovWorks using indefinite, nonspecific MIPRs, and GovWorks held these funds, in some cases for as long as 50 months. DOD improperly directed GovWorks to use expired DOD funds for these contracts. GovWorks, for one contract, improperly substituted expired funds from previous fiscal years. DOD and GovWorks officials share responsibility for the transactions at issue here and should be accountable. Because DOD funds were used to finance the agreements and subsequent contracts, DOD's responsibility is obvious. GovWorks, acting as DOD's contracting agent, also is responsible for ensuring proper use of the funds entrusted to it. In this case, officials of both agencies acted in disregard of the recording statute and the *bona fide* needs rule, parking DOD funds at GovWorks and possibly violating the Antideficiency Act.

DOD has already advised GovWorks "that any funds in excess of \$100,000 provided . . . to GovWorks before [May 31, 2007] that have not already been placed on contract by GovWorks must be returned to [DOD] immediately." Letter from Shay D. Assad, Director, Defense Procurement and Acquisition Policy, Office of the Undersecretary of Defense, Acquisition, Technology and Logistics, to Nina Rose Hatfield, Deputy Assistant for Business Management and Wildland Fire, Department of the Interior, May 31, 2007. DOD also has stopped the practice of advancing funds to GovWorks, with any future payments to be based on billings for completed

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<sup>18</sup> See also 1 TFM Bulletin No. 2007-03, Attachment I, ¶ III.B.2, Oct. 1, 2006 (ordering agencies should monitor the activity and age of an order and where there has been no activity for more than 180 days, the ordering agency "shall determine the reason for the lack of activity on the order").

services or delivered goods. Letter from Robert P. McNamara, Office of the Undersecretary of Defense, Comptroller, to Nina R. Hatfield, Deputy Assistant for Business Management and Wildland Fire, Department of the Interior, Feb. 7, 2007. In addition, as we noted earlier, DOD must adjust its appropriations accounts to record obligations for these four contracts against its fiscal year 2005 appropriations. If DOD has insufficient unobligated balances in these appropriations, DOD must report violations of the Antideficiency Act. 31 U.S.C. § 1351.

## CONCLUSION

For the reasons discussed above, DOD and GovWorks should review and adjust their accounts for the four contracts reviewed here. We further suggest that GovWorks examine its accounts to identify interagency agreements that lack the requisite specificity. For those agreements that do not constitute firm and complete orders, GovWorks should so inform the ordering agency and return any funds advanced. GovWorks should also develop adequate internal controls to ensure that it does not accept orders lacking the requisite specificity to constitute firm and complete orders nor use expired funds to enter into contracts on behalf of the ordering agency.

A handwritten signature in black ink, appearing to read "Gary L. Kepplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Kepplinger  
General Counsel