



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Interagency Agreements—Use of an Interagency Agreement between the Counterintelligence Field Activity, Department of Defense, and GovWorks to Obtain Office Space

File: B-309181

Date: August 17, 2007

DIGEST

Without a delegation from the General Services Administration or independent statutory authority to enter into a lease, neither GovWorks (a Department of the Interior franchise fund) nor the Counterintelligence Field Activity (CIFA) of the Department of Defense (DOD) had authority to obtain office space through a third-party lease. Unless ratified by an appropriate government official, the agreement for office space is unenforceable against the government. GovWorks and CIFA cannot circumvent federal statutory and regulatory requirements on leasing by bundling the lease agreement in a contract for services. Without ratification, all payments made under this third-party lease are improper payments, and DOD and GovWorks should take appropriate action to resolve them.

There is no evidence to suggest that CIFA violated the Antideficiency Act. Although CIFA and GovWorks entered into an agreement to obtain office space through a third-party lease without requisite authority, CIFA does have an appropriation that is otherwise available for the purpose of leasing office space—the Operation and Maintenance, Defense-wide appropriation. CIFA recorded these costs as obligations of this appropriation and transferred funds to GovWorks to pay for them. There is no indication, however, that CIFA recorded or transferred amounts in excess of or in advance of the appropriation. The conclusion that neither CIFA nor GovWorks violated the Antideficiency Act does not diminish or excuse CIFA's and GovWorks's disregard of federal statutes and policy, involving the government in an unauthorized transaction and millions of dollars of improper payments.

DECISION

The Inspector General (IG) for the Department of the Interior requests our decision under 31 U.S.C. § 3529 regarding a transaction involving the Department of Defense's (DOD) Counterintelligence Field Activity (CIFA) and GovWorks, a Department of the

Interior (Interior) franchise fund, for acquisition of space to consolidate CIFA's activities.¹

The IG asked whether either CIFA or GovWorks had the authority to obtain office space to consolidate CIFA's activities, and, if not, whether CIFA and/or GovWorks violated the Antideficiency Act, 31 U.S.C. § 1341. For the reasons stated below, we conclude that neither CIFA nor GovWorks had independent authority to obtain office space.² CIFA desired additional office space, identified the desired space, negotiated terms for the space, and then directed GovWorks to sign a contract with the third party that included all the terms of the lease. GovWorks was acting as CIFA's agent in entering into the contract. Using an interagency agreement and a contract with a third party, CIFA and GovWorks circumvented federal laws and regulations with regard to obtaining office space through a lease. Neither had authority to enter into the multiyear lease that is at the heart of this transaction. Their actions resulted in a void contract, and payments made under it constitute improper payments. CIFA and GovWorks must take appropriate steps to resolve them.

Neither CIFA nor GovWorks violated the Antideficiency Act. Although CIFA and GovWorks entered into an agreement to obtain office space through a third-party lease without requisite authority, CIFA does have an appropriation that is otherwise available for the purpose of leasing office space—the Operation and Maintenance, Defense-wide appropriation. CIFA recorded these costs as obligations of this appropriation and transferred funds to GovWorks to pay for them. There is no indication, however, that CIFA recorded or transferred amounts in excess of or in

¹ 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 (last visited on July 16, 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 (last visited on July 16, 2007) (DOD IG Report).

² In response to the Interior IG request, we issued two other decisions—B-308969, May 31, 2007, relating to obligation of funds under an indefinite delivery, indefinite quantity contract, and B-308944, July 17, 2007, relating to GovWorks's use of expired DOD funds.

advance of the appropriation. The conclusion that neither CIFA nor GovWorks violated the Antideficiency Act does not diminish or excuse CIFA's and GovWorks's disregard of federal statutes and policy, involving the government in an unauthorized transaction and millions of dollars of improper payments.

Our practice when rendering decisions is to obtain the views of the relevant federal agency to establish a factual record and to elicit the agency's legal position in the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal.htm. In this regard, Interior and DOD responded to questions from our office. Letter from David L. Bernhardt, Solicitor of the Interior, to Thomas H. Armstrong, Assistant General Counsel, 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, May 29, 2007. Interior provided the requested information but declined to provide its legal views in response to the questions we asked. Bernhardt Letter.

BACKGROUND

Interior established GovWorks as a franchise fund pursuant to authority of Public Law 104-208, div. A, title I, § 113, 110 Stat. 3009, 3009-200-01 (Sept. 30, 1996), and the Government Management Reform Act of 1994 (GMRA), Public Law 103-356, title IV, § 403, 108 Stat. 3410, 3413 (Oct. 13, 1994). Congress authorized certain agencies to establish franchise funds, like GovWorks, to provide "common administrative support services" to federal agencies more efficiently than through other means. Pub. L. No. 103-356, § 403.

In 2003, CIFA began investigating its options to obtain larger office space to collocate many of its activities. Devaney Letter, exhibit 17. CIFA is a field activity and combat support agency within DOD. The Secretary of Defense established CIFA—

"to develop and manage DoD Counterintelligence (CI) programs and functions that support the protection of the Department, including CI support to protect DoD personnel, resources, critical information, research and development programs, technology, critical infrastructure, economic security, and U.S. interests, against foreign influence and manipulation, as well as to detect and neutralize espionage against the Department."

DOD Directive 5105.67 (Feb. 19, 2002). As of May 2003, contractor employees comprised almost 90 percent of the CIFA workforce and worked at various locations in the Washington metropolitan area. Bernhardt Letter, tab 3, B1. A presidential directive requiring CIFA and the Foreign Terrorist Tracking Task Force, a component of the Federal Bureau of Investigation, to share and exchange data to combat the Global War on Terrorism placed strain on CIFA operations and its ability

to consolidate its operations in the space capacity it had then. Devaney Letter, exhibit 19 at 2.

In February 2003, the Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, and GovWorks entered into an interagency agreement to address CIFA's need to consolidate its workforce and work space issues. Interagency Agreement, Feb. 7, 2003. The agreement stated that CIFA needed "to consolidate CIFA programs and to provide space for multiple activities that are operated, sustained and controlled by Contractor personnel for" CIFA. *Id.* To achieve the consolidation, the agreement directed GovWorks to contract for the services of a Section 8(a) small business³ in an indefinite delivery, indefinite quantity (IDIQ) contract for facility acquisition. *Id.* The agreement further stated that the contractor "shall oversee a traditional commercial lease for Consolidation activities that include the negotiation and execution of a lease to provide contractor operations." The Director of CIFA and a financial officer for the Washington Headquarters Service (WHS) signed the agreement for DOD.⁴ *Id.*

On April 30, 2003, CIFA executed a Military Interdepartmental Purchase Request (MIPR) for "funding provided to consolidate CIFA programs and to provide space for multiple activities." Devaney Letter, exhibit 7. This MIPR transferred to GovWorks \$4,070,311 of the Operation and Maintenance, Defense-wide appropriation for fiscal year 2003. *Id.* GovWorks accepted this MIPR on May 1, 2003. Pitkin Letter, addendum.

In a letter dated May 28, 2003, from CIFA Director to GovWorks, CIFA approved a proposal submitted to GovWorks by a contractor, TKC Communications, Inc. (TKC), "to provide CIFA with a variety of critical management support functions including, but not limited to, the provision of contractor collocation space." Devaney Letter, exhibit 17. The Director explained that CIFA was in urgent need of "management support services including, among other things, commercial space in close proximity to CIFA's GSA leased offices." *Id.* Such space was necessary to "collocate the personnel and equipment of multiple contractors already providing technical support to CIFA." *Id.* CIFA directed GovWorks to accept this proposal and enter into a contract with TKC on CIFA's behalf. *Id.*

³ Section 8(a) of the Small Business Act established a program that authorizes the Small Business Administration (SBA) to enter into contracts with other agencies and award contracts to eligible subcontractors on a noncompetitive basis. 15 U.S.C. § 637(a). Under this program, SBA grants a preference to small businesses "owned and controlled by socially and economically disadvantaged individuals." *Id.*

⁴ WHS is a DOD field activity established to provide operational support and administrative services to specified DOD components, including facilities management and space acquisition for all DOD-occupied administrative space in the National Capital Region. DOD Directive 5110.4, ¶ 5.3.7 (Oct. 19, 2001).

On June 12, 2003, GovWorks awarded contract number 1435-04-03-RC-70941⁵ (Contract 70941) to TKC.⁶ Devaney Letter, exhibit 4. The contract stated that TKC would provide services, including office space and facilities management services, not to exceed \$100 million. *Id.* On the same day, GovWorks executed Task Order 73001 for “Monthly Rent and Other Direct Costs for a Monthly Facilities Lease.” Bernhardt Letter, tab 1, C2.

Task Order 73001 incorporated by reference the lease that TKC signed for office space in Crystal City, Virginia, at Crystal Square 5 as well as the terms and conditions of the proposal that TKC had submitted to GovWorks and that CIFA had approved on May 28, 2003. *See* Bernhardt Letter, tab 1, C2; Devaney Letter, exhibit 3 at 2 (Lease). The lease is for a term of 10 years and 7 months with varying annual rents that exceed \$6 million. Lease at 2. The proposal and lease contain identical termination clauses, which require the government to provide 12 months’ notice to terminate the lease and, in the event of early termination, to pay termination fees consisting of unamortized costs on the improvements made to the leased space by the property owner. Devaney Letter, exhibit 2 at 28 (proposal of TKC); Lease at 20. These termination fees range from \$14 million to \$180,000 depending upon the date of termination. Devaney Letter, exhibit 2 at 11–13; Lease, exhibit E. TKC agreed to provide other facilities management services including facilities and asset management, modifying the existing CIFA facility database and various facilities-related matters including access control, accounting for building occupants, emergency evacuation and response procedures, and procedures for power failure. Devaney Letter, exhibit 2 at 6.

Attached to Task Order 73001 was a schedule for 10 years of rent on the facility lease and 10 years of operating expenses. *Id.* The annual rent listed on the schedule gradually increases over the 10-year period from \$6.6 million to over \$9 million per year. The total amount in the contract for rent is approximately \$90 million and for “operating expenses” is approximately \$9 million. *Id.*

⁵ GovWorks, on behalf of CIFA, entered into two contracts with TKC on June 12, 2003. The second contract, contract number 1435-04-03-RC-73024, appears to be for “transitional services” for the amount of \$1,615,439.01. This decision only addresses Contract 70941.

⁶ The award names SBA as the prime contractor and TKC as the Section 8(a) subcontractor. Bernhardt Letter, tab 1, C1. Although nominally a prime contractor, SBA serves essentially as a conduit between the contracting agency and the small disadvantaged business. *See* B-225175, Feb. 4, 1987 (SBA is not responsible for repurchase costs for defective goods delivered by a defaulting Section 8(a) small business contractor). The only sense in which SBA is expected to perform the contract is by subcontracting the work to eligible firms. *Id.*

From 2003 until the present, CIFA has executed various MIPRs transferring to GovWorks funds from the Operation and Maintenance, Defense-wide appropriation to pay for lease costs on the Crystal Square 5 office space and for GovWorks's administrative fee. Devaney Letter, exhibits 8–13; *see also* Bernhardt Letter, tab 5. DOD states that the space is currently occupied by both CIFA employees and contractor personnel. Pitkin Letter, addendum. As of 2006, 297 employees and 783 contractor personnel occupied the space at Crystal Square 5, and CIFA had paid more than \$26 million in lease costs.⁷ *Id.*

Both the Interior IG and the DOD IG audited the transactions between GovWorks and CIFA that resulted in the lease of property at Crystal Square 5. Interior IG Report at 6–7; DOD IG Report at 49–65. Both IGs concluded that neither CIFA nor GovWorks was authorized to enter into a lease agreement without a delegation of leasing authority from GSA, and they found that GSA has not provided a delegation for this lease arrangement. Interior IG Report at 6; DOD IG Report at 50–51. DOD IG contacted the Director of Leasing Policy and Performance Division of GSA to determine whether GSA would ratify the lease agreement. The Director declined to do so. DOD IG Report at 50. Both IGs also opined that, because both CIFA and GovWorks acted beyond the scope of their authorities, payments on the lease could result in an Antideficiency Act violation. Interior IG Report at 7; DOD IG Report at 52–53. The DOD IG noted that, in addition to acting beyond the scope of its authority, CIFA failed to comply with DOD policy requiring the WHS to coordinate with GSA for leases that exceed certain threshold amounts. *Id.* at 50.

DISCUSSION

Authority to Lease

According to the IG reports, both GovWorks and CIFA described the interagency agreement and Contract 70941 as agreements obligating the government to an IDIQ service contract and not to a lease. Interior IG Report at 6; DOD IG Report at 49. Although GovWorks and TKC may have styled their contract as an IDIQ contract, we look beyond the label of the contract to the actions of the parties and the terms of the contract to determine its legal effect. *See* B-302358, Dec. 27, 2004. It is clear from its terms that, through this contract, GovWorks obtained office space at Crystal Square 5 for CIFA. The costs of space are clearly outlined in the contract between GovWorks and TKC (Contract 70941) as well as TKC's proposal and TKC's lease for the Crystal Square 5 space, both of which were incorporated into the contract in Task Order 73001. Almost 90 percent of the costs of Contract 70941 are for office space at Crystal Square 5; the remaining costs are for facility management services. CIFA sought parties to enter into the lease and negotiated the terms of the lease. CIFA engaged GovWorks to obtain office space on its behalf. In our view,

⁷ Other agencies and DOD components presently occupy Crystal Square 5 space and pay CIFA for use of the space. This decision does not address the appropriateness of others' occupying and paying for the space in question.

Contract 70941 and Task Order 73001 clearly attempt to obligate the government to a long-term lease agreement for office space. Neither CIFA nor GovWorks can circumvent statutory and regulatory requirements on lease authority by bundling the lease with facility management services in an IDIQ contract. Either CIFA or GovWorks had to have some legal authority to enter into a 10-year lease for office space.

Accordingly, we turn to the Interior IG question regarding whether CIFA and/or GovWorks had the authority to lease office space. GSA holds general leasing authority for government agencies. Section 1 of the Reorganization Plan No. 18 of 1950, 5 U.S.C. app. 1, 40 U.S.C. § 301 note, transferred from federal agencies to the Administrator of GSA authority for “all functions with respect to acquiring space in buildings by lease” The Administrator has authority to enter into a lease on behalf of the government for a period not to exceed 20 years. 40 U.S.C. § 585. The Administrator may delegate this authority to an official in GSA or to the head of another federal agency. 40 U.S.C. § 121(d). Without specific statutory authority and absent GSA’s delegation of authority, a federal agency may not enter into a lease on its or the government’s behalf. B-202206, June 16, 1981.

Our research found no statutory authority that would allow GovWorks to obligate the United States to a lease nor has GovWorks or the Solicitor of Interior on behalf of GovWorks asserted such authority. Congress, however, has authorized DOD to lease real property in certain limited situations. For example, the military departments have authority to lease structures and real property in foreign countries that are needed for military purposes for terms of up to 10 years (15 years in Korea). 10 U.S.C. § 2675.

Also, the Secretary of Defense is authorized to lease facilities under 10 U.S.C. § 2661(b), and DOD has indicated that this authority could apply to acquiring space for contractor personnel required to be collocated with DOD employee personnel. Pitkin Letter at 1. Section 2661(b) provides, in relevant part: “The Secretary of Defense . . . may provide for . . . [t]he leasing of buildings and facilities.” Nevertheless, there is no need to dwell on this potential source of authority. CIFA in fact failed to follow agency policy and procedures in leasing under this statute. The Secretary of Defense has delegated his leasing authority to WHS. DOD Directive 5110.4, ¶ E2.1.1.20 (Oct. 19, 2001). In the event that an acquisition of space has a projected annual rent beyond a threshold amount determined annually by GSA, WHS is required to request GSA to coordinate congressional notification before the lease may be executed. DOD Instruction 5305.5 (June 14, 1999). The annual rent threshold amount for fiscal year 2003, the year this lease was executed, was \$2.21 million. *See* www.gsa.gov (last visited on July 16, 2007). The annual rent for Crystal Square 5 exceeded \$6 million. *See* Bernhardt Letter, tab 1, C2. There is no evidence that WHS sought GSA coordination of congressional notification before GovWorks entered into the contract for office space. Accordingly, even if the Secretary’s authority under section 2661(b) might otherwise apply, this authority was not properly exercised here.

Regardless, DOD could not have used section 2661(b) for this lease, because it was a lease for 10 years and 7 months and section 2661(b) does not provide the authority to enter into a multiyear agreement. A lease under authority of section 2661(b) would have had to have been structured differently; instead of a 10-year lease, a section 2661(b) lease would have had to have been structured as a 1-year lease with options to renew for future years. *See Leiter v. United States*, 271 U.S. 204 (1926).

For GovWorks or CIFA officials to have authority to enter into this 10-year lease, GSA would have had to delegate its leasing authority. As noted in both IG Reports, GSA has stated that it did not delegate authority to CIFA or GovWorks. Interior IG Report at 6; DOD IG Report at 50. GSA regulations set out various standing delegations that may give an agency authority to enter into a lease independent of GSA, including (1) categorical space delegations, (2) agency special purpose delegations, and (3) a delegation of authority under a program known as “Can’t Beat GSA Leasing.” 41 C.F.R. § 102-72.30. None of them apply to this transaction, however.

Categorical space delegation applies to specific types of space outlined in 41 C.F.R. § 102-73.155. None of these types apply to CIFA’s use of the Crystal Square 5 space. The agency special purpose delegations are standing delegations of authority from the Administrator to specific federal agencies to lease their own special purpose space. 41 C.F.R. § 102-73.160. Both DOD and Interior have special purpose delegations, 41 C.F.R. §§ 102-73.180,⁸ 102-73.200;⁹ however, none of the special purpose delegations would allow either CIFA or GovWorks to enter into a lease for office space to consolidate CIFA’s operations.

Under the third type of delegation, the “Can’t Beat GSA Leasing” program, GSA has delegated to the heads of all federal agencies the authority to enter into a lease for up to 20 years as long as the annual rent is below threshold amounts determined annually by GSA. 41 C.F.R. § 102-72.30(b). As noted above, the annual rent of the lease in question far exceeded the annual threshold amounts. Accordingly, neither CIFA nor GovWorks could have entered into this leasing arrangement pursuant to a standing delegation under the “Can’t Beat GSA Leasing” program.

⁸ GSA has delegated to DOD the authority to lease the following special purpose space: the Civil Air Patrol Liaison Offices, armories, a film library in the vicinity of Washington, D.C., mess halls, ports of embarkation and debarkation, post exchanges, the Postal Concentration Center in Long Island, N.Y., recreation centers, reserve training space, service clubs, and testing laboratories. 41 C.F.R. § 102-73.180.

⁹ GSA has delegated to Interior the authority to lease the following special purpose space: space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, the Bureau of Land Management, and the Geological Survey in areas where no other government agencies are quartered; and National Parks/Monuments Visitors Centers that are not general office or administrative space. 41 C.F.R. § 102-73.200.

Consequently, because neither CIFA nor GovWorks had authority to enter into the lease transaction, the government is not bound by the contract. *See* B-306353, Oct. 26, 2005, and cases cited therein. It is axiomatic that the United States cannot be bound beyond the actual authority conferred upon its officials by statute or regulation. *Id.* Where, as here, a government official with no authority purports to commit the government to a transaction, the contract is void *ab initio* and unenforceable. *See* B-204002, Mar. 31, 1982. It has long been recognized that an authorized government official possessing knowledge of the facts may give effect to an unauthorized act of another government official by subsequently ratifying the action. B-306353, Oct. 26, 2005. Only GSA has the requisite multiyear leasing authority to ratify the contract between GovWorks, on behalf of CIFA, with TKC for lease of office space. *See* 40 U.S.C. § 585. According to the DOD IG report, GSA's Director of Leasing Policy and Performance refused to ratify the contract in question, and we have no indication that GSA has changed its position in this regard.

Payments made by the government pursuant to void or otherwise unenforceable contracts are improper payments that should be recovered from the contractor. *See* 62 Comp. Gen. 337, 338–39 (1983) (the Department of Labor must recover payments made on contract provisions that were unenforceable because they violated a federal statute). *See also Sutton v. United States*, 256 U.S. 575, 579–80 (1921) (the War Department could recover payments to a contractor made on an unauthorized agreement). Thus, absent a ratification of the contract by GSA, GovWorks and CIFA should take appropriate action to resolve the improper payments made under this contract.¹⁰ Furthermore, all payments for rent due under the contract must cease to prevent future improper payment of government funds.

Application of the Antideficiency Act

The Interior IG also asked whether CIFA and/or GovWorks violated the Antideficiency Act by entering into a lease without proper authority. The Antideficiency Act prohibits a government official or employee from making an expenditure or an obligation that exceeds or is in advance of available appropriations. 31 U.S.C. § 1341(a). *See also* B-302710, May 19, 2004.

The appropriation used to make the lease payments, the Operations and Maintenance, Defense-wide appropriation, is available for lease payments. This

¹⁰ In resolving the issue of an improper payment, GovWorks may consider whether it may waive collection of some or all of the payments on the basis of the equitable theories of *quantum meruit* or *quantum valebant*. *See, e.g.*, 62 Comp. Gen. 337, 339 (1983). These theories require four findings. First, the contract would have been a permissible procurement had the proper procedures been followed. Second, the government must have received and accepted a benefit. Third, the claimant must have acted in good faith. Fourth, the amount to be paid must not exceed the reasonable value of the benefit received. *See* B-271163, May 22, 1996.

appropriation is available for “expenses . . . necessary for the operation and maintenance of activities and agencies of the Department of Defense . . . as authorized by law.” *See, e.g.*, Pub. L. No. 107-248, title II, 116 Stat. 1519, 1522–23 (Oct. 23, 2002). The DOD Financial Management Regulation directs DOD’s components to obligate an account within the Operation and Maintenance appropriation for leases of real property. DOD Federal Management Regulation 7000.14-R, vol. 2A, ch. 1, ¶ 0106, at 1-128–29.

While there is no authority for the underlying lease transaction, and, consequently, the lease is not enforceable against the government, CIFA and GovWorks did intend to commit the government to pay for the lease costs. An agency accounting records should reflect the agency’s actions. In that regard, CIFA recorded these costs as an obligation of the Operation and Maintenance, Defense-wide appropriation. Notwithstanding the fact that the obligation was not enforceable against the government, CIFA’s actions from an Antideficiency Act perspective, burdened the appropriation to the same extent. From the date that CIFA and GovWorks entered into the interagency transaction, CIFA has transferred to GovWorks funds from this appropriation to pay for lease costs. There is no evidence, however, that CIFA transferred or recorded amounts in excess of or in advance of the Operation and Maintenance, Defense-wide appropriation for any fiscal year since CIFA began occupying the space in 2003. Thus, neither CIFA nor GovWorks violated the Antideficiency Act.

This conclusion does not in any way diminish or excuse CIFA’s or GovWorks’s violation of law. The record in this case suggests that officials of both agencies acted in disregard of both statute and policy, effectively circumventing the statutory and regulatory framework for obtaining office space by lease, and DOD and Interior should take appropriate steps to address the accountability of those CIFA and GovWorks officials involved in this unauthorized transaction.

CONCLUSION

Regardless of how CIFA and GovWorks label the contract between GovWorks and TKC, the agreement, by its very terms, committed the government to a long-term lease for a period of approximately 10 years. GovWorks and CIFA cannot circumvent federal statutory and regulatory requirements on leasing by bundling the lease agreement in a contract for services. Because they did not have specific statutory authority to lease space or a delegation of leasing authority from GSA, neither CIFA nor GovWorks has authority to enter into an agreement or contract to lease the Crystal Square 5 office space. Thus, the contract for office space with TKC is not legally binding on the government unless ratified by an appropriate government official. Without ratification, all payments made under this lease are improper payments, and GovWorks should take appropriate action to resolve such improper payments.

There is no evidence to suggest that either CIFA or GovWorks violated the Antideficiency Act. Although CIFA and GovWorks entered into an agreement to

obtain office space through a third-party lease without requisite authority, CIFA does have an appropriation that is otherwise available for the purpose of leasing office space—the Operation and Maintenance, Defense-wide appropriation. CIFA recorded these costs as obligations of this appropriation and transferred funds to GovWorks to pay for them. There is no indication, however, that CIFA recorded or transferred amounts in excess of or in advance of the appropriation. The conclusion that neither CIFA nor GovWorks violated the Antideficiency Act does not diminish or excuse CIFA's and GovWorks's disregard of federal statutes and policy, involving the government in an unauthorized transaction and millions of dollars of improper payments.

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