Text as published on gao.gov, https://www.gao.gov/products/b-158374, archived 2026-08-27. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-158374, Feb. 21, 1966

Number: B-158374

Date: 1966-02-21

B-158374, FEB. 21, 1966

TO THE SECRETARY OF AGRICULTURE:

BY LETTER OF JANUARY 19, 1966, JOSEPH M. ROBERTSON, ASSISTANT SECRETARY FOR ADMINISTRATION, DESCRIBED THE ACTION YOUR DEPARTMENT HAD TAKEN TO PROCURE NEW LABORATORY SPACE AND ASKED OUR DECISION ON TWO QUESTIONS AS TO WHETHER AND IN WHAT AMOUNT SUCH ACTION CREATED AN OBLIGATION OF 1965 FISCAL YEAR FUNDS.

IT IS EXPLAINED THAT THE AGRICULTURAL RESEARCH SERVICE, PESTICIDES REGULATION DIVISION LABORATORY HAS BEEN LOCATED IN A GOVERNMENT-OWNED BUILDING UNDER CONTROL OF THE GENERAL SERVICES ADMINISTRATION (GSA), AT641 WASHINGTON STREET, NEW YORK, NEW YORK, FOR MANY YEARS. BECAUSE OF RECENT INCREASED EMPHASIS ON PESTICIDES REGULATIONS THE AGRICULTURAL RESEARCH SERVICE (ARS) IN SEPTEMBER 1964, DETERMINED THAT THE LABORATORY SPACE SHOULD BE MODERNIZED AND OUTFITTED WITH NEW FURNISHINGS AND EQUIPMENT.

THE NEED FOR A MODERN LABORATORY FACILITY WAS THEN DISCUSSED WITH GSA. DURING THAT DISCUSSION ARS LEARNED THAT GSA INTENDS TO DISPOSE OF THE BUILDING AT 641 WASHINGTON STREET AT FIRST OPPORTUNITY; THAT OCCUPANCY THEREIN COULD NOT BE GUARANTEED BEYOND FIVE YEARS; AND THAT THE LABORATORY EVENTUALLY WOULD BE RELOCATED TO THE APPRAISERS STORES BUILDING AT 201 VARICK STREET. BASED ON SUCH INFORMATION ARS, ON NOVEMBER 25, 1964, FORMALLY REQUESTED LABORATORY SPACE IN THE APPRAISERS STORES BUILDING AND ON JANUARY 4, 1965, GSA FORMALIZED THE SPACE ASSIGNMENT.

DRAWINGS, DESIGN CRITERIA, AND OTHER DATA WERE FURNISHED TO GSA ON FEBRUARY 12, 1965, AND ON MARCH 4, 1965, PURCHASE ORDER E-4473-ARS-65 WAS ISSUED TO GSA FOR CONSTRUCTION AT AN ESTIMATED COST OF $100,000. ON MARCH 16, 1965, SUB 1 TO THIS PURCHASE ORDER WAS ISSUED INCREASING THE ESTIMATED COST TO $119,000. IN THE MEANTIME, HOWEVER, GSA BY LETTER DATED MARCH 9, 1965, ADVISED ARS THAT THE SPACE ASSIGNMENT HAD BEEN CANCELLED.

FOLLOWING THIS CANCELLATION, PURCHASE ORDER E-5532-ARS-65 WAS ISSUED ON APRIL 19, 1965, FOR AN ESTIMATED AMOUNT OF $75,000 PROVIDING FOR ALTERATION OF SPACE FOR THE LABORATORY IN THE WASHINGTON STREET BUILDING. THIS ESTIMATED AMOUNT WAS INCREASED TO $100,000 ON JUNE 23, 1965, BY THE ISSUANCE OF SUB 1 TO THE PURCHASE ORDER OF APRIL 19.

AFTER SEVERAL MONTHS HAD PASSED AND NO ACTION TOWARD COMPLETING THE ABOVE IMPROVEMENTS HAD BEEN TAKEN BY GSA, SEVERAL MEETINGS OR CONTACTS BETWEEN GSA AND ARS WERE HAD AND AS A RESULT, GSA ON SEPTEMBER 15, 1965, REASSIGNED THE SAME FLOOR SPACE TO ARS IN THE APPRAISERS STORES BUILDING THAT HAD BEEN PREVIOUSLY

ASSIGNED TO ARS IN JANUARY OF 1965 AND CANCELLED IN MARCH, THREE MONTHS LATER. PURCHASE ORDER E-5532 ARS-65, ISSUED APRIL 19, 1965, FOR ALTERATION OF SPACE IN THE WASHINGTON STREET BUILDING, WAS AMENDED ON SEPTEMBER 24, 1965, BY THE ISSUANCE OF SUB 2 TO DOCUMENT THIS CHANGE IN LOCATION OF THE LABORATORY. SUBSEQUENTLY, GSA TOOK ACTION TO INITIATE PLANS FOR CONSTRUCTION OF THE LABORATORY IN THE APPRAISERS STORES BUILDING AND BY LETTER OF OCTOBER 18, 1965, GSA PROVIDED AN ESTIMATE OF $195,000 FOR THE WORK.

IT IS UNDERSTOOD THAT THE ASSIGNMENT OF SPACE IN THE BUILDINGS AT BOTH VARICK STREET AND WASHINGTON STREET IS UNDER THE CONTROL OF GSA AND THAT ARS HAD NO AUTHORITY TO ACQUIRE SPACE FOR THE LABORATORY, OTHER THAN BY ASSIGNMENT OF SUCH SPACE BY GSA. ALSO, GSA REGULATIONS PROVIDE THAT REQUESTS FOR ADJUSTMENT OR ALTERATIONS OF SPACE FOR LABORATORIES WILL BE PERFORMED BY GSA ON A REIMBURSABLE BASIS. AGENCIES ASSIGNED SPACE BY GSA ARE PROHIBITED FROM NEGOTIATING FOR ALTERATIONS OR OTHER SERVICES OR CHANGES WITHOUT PRIOR APPROVAL BY GSA. IT IS REPORTED SUCH APPROVAL WAS NOT GIVEN IN THIS CASE.

IN REGARD TO THE ACTION DESCRIBED ABOVE, THE QUESTION IS ASKED WHETHER THE TOTAL AMOUNT OF THE WORK AT VARICK STREET MAY BE CHARGED TO THE 1965 APPROPRIATION AND, IF NOT, WHETHER ARS MAY USE ITS 1965 APPROPRIATION FOR THE WORK, AT LEAST TO THE AMOUNT OF $100,000 AS SPECIFIED IN THE PURCHASE ORDER OF APRIL 19, 1965, AND SUPPLEMENT 1 THERETO, DATED JUNE 23, 1965.

AS INDICATED BY THE ASSISTANT SECRETARY FOR ADMINISTRATION, WE HAVE HELD THAT ORDERS PLACED WITH GSA FOR SPECIFIC BUILDING MANAGEMENT OPERATIONS OR RELATED SERVICE, BUILDING ALTERATIONS, OR SPECIAL FACILITIES, WHICH ARE TO BE PERFORMED BY GSA SERVE TO OBLIGATE FUNDS OF THE ORDERING AGENCY IF THE AGENCY IS REQUIRED BY LAW OR STATUTORY REGULATION TO PLACE THE ORDER WITH GSA. SEE 34 COMP. GEN. 705. ALSO, WE HAVE HELD THAT SUCH ORDERS PLACED UNDER THOSE CONDITIONS WITH GSA IN ONE FISCAL YEAR OBLIGATED THAT FISCAL YEAR'S FUNDS EVEN THOUGH THE WORK WAS NOT PERFORMED BY GSA UNTIL DURING THE FOLLOWING FISCAL YEAR. 35 COMP. GEN. 3.

IN VIEW OF THESE DECISIONS AND THE FACTS REPORTED ABOVE, WE AGREE THAT THE ABOVE PURCHASE ORDERS CONSTITUTED OBLIGATIONS AGAINST FISCAL YEAR 1965 FUNDS. THE OBLIGATION CREATED BY THE PURCHASE ORDER ISSUED MARCH 4, 1965, HOWEVER, WAS CANCELLED ON MARCH 9, 1965, SO THAT CONSIDERATION OF THE QUESTIONS NOW RAISED CONCERNS ONLY THE EFFECT TO BE GIVEN TO THE PURCHASE ORDER OF APRIL 9, 1965, AS SUPPLEMENTED ON JUNE 23, 1965, WHICH INCREASED THE AMOUNT OBLIGATED TO $100,000 AND BY SUPPLEMENT 2 THERETO, ISSUED SEPTEMBER 24, 1965, WHICH DESIGNATED A DIFFERENT BUILDING FOR THE LABORATORY SPACE.

IN URGING THAT THE ACTION OF GSA IN ASSIGNING SPACE, FIRST IN ONE BUILDING AND THEN IN ANOTHER, AND THEN RETURNING TO ITS ORIGINAL ASSIGNMENT SHOULD NOT CAUSE ARS TO LOSE THE USE OF THE 1965 APPROPRIATION ORIGINALLY AND IN GOOD FAITH OBLIGATED FOR THE PROCUREMENT OF LABORATORY SPACE, IT IS STATED THAT THE EMPHASIS SHOULD BE ON THE NEED FOR THE ALTERATION OF SPACE FOR LABORATORY USE RATHER THAN ON THE EXACT LOCATION OF SUCH SPACE. STATED IN OTHER WORDS, ARS IS SAID TO VIEW ITS PURCHASE ORDERS AS ORDERS FOR THE ALTERATION OF SPACE FOR A LABORATORY AT WHATEVER LOCATION WAS AGREED TO BY GSA AND ARS, SO THAT, INSOFAR AS ARS IS CONCERNED, THE EMPHASIS IS ON OBTAINING LABORATORY SPACE RATHER THAN ON ALTERATION OF SPACE AT A PARTICULAR LOCATION.

IN VIEW OF THE HOLDING IN 35 COMP. GEN. 3, SUPRA, IT WOULD BE CLEAR THAT THE PURCHASE ORDER ISSUED ON APRIL 19, 1965, IN THE AMOUNT OF $75,000, BUT INCREASED TO $100,000 BY SUPPLEMENT THERETO DATED JUNE 23, 1965, EFFECTIVELY OBLIGATED

FISCAL YEAR 1965 FUNDS HAD THERE BEEN NO CHANGE IN LOCATION. IF IN PLACE OF CHANGING THE LOCATION FROM ONE BUILDING TO ANOTHER THE CHANGE MERELY HAD BEEN TO A DIFFERENT FLOOR OF THE SAME BUILDING THERE WOULD APPEAR NO CONVINCING REASON WHY SUCH ACTION SHOULD REQUIRE A DEOBLIGATION OF FUNDS THERETOFORE PROPERLY OBLIGATED. ACCORDINGLY, AND IN VIEW OF THE CHAIN OF CIRCUMSTANCES CONSIDERED HEREIN WE WILL NOT QUESTION THE USE OF 1965 FUNDS TO THE EXTENT OF $100,000 AS PART PAYMENT FOR THE COSTS INVOLVED. SUCH AMOUNT APPARENTLY WOULD HAVE BEEN THE APPROXIMATE COST OF THE ALTERATIONS CONTEMPLATED AT THE WASHINGTON STREET SITE SINCE THAT ESTIMATION APPEARS TO HAVE BEEN BASED ON COMPLETED PLANS AND SPECIFICATIONS. THE ADDITIONAL AMOUNT OF $95,000 NOW ESTIMATED AS THE COST OF PERFORMING THE REQUIRED WORK AT THE VARICK STREET ADDRESS APPEARS TO REPRESENT EITHER AN INCREASE IN THE SCOPE OF THE WORK OR ADDITIONAL COSTS INCURRED BY REASON OF THE CHANGE IN SPACE LOCATION OR BOTH. THIS CONCLUSION APPEARS TO BE SUPPORTED BY THE FACT THAT THE PURCHASE ORDER ISSUED MARCH 4, 1965, AS AMENDED A FEW DAYS LATER ON MARCH 16, PROVIDED ONLY FOR $119,000.

ACCORDINGLY, ON THE BASIS OF THE PRESENT RECORD, WE FEEL THAT THE 1965 APPROPRIATION MAY BE CONSIDERED TO HAVE BEEN OBLIGATED FOR THIS PROJECT IN THE SUM OF $100,000 AND THAT ANY COSTS IN EXCESS THEREOF MUST BE CHARGED TO FISCAL YEAR 1966 FUNDS.