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Fish and Wildlife Service-Fiscal Year Chargeable on Ratification of Contract

Number: B-208730

Date: 1983-01-06

Matter of: Fish and Wildlife Service-Fiscal Year Chargeable on Ratification of Contract File: B-208730 Date: January 6, 1983

Contract improperly made in Fiscal Year 1981 and ratified by authorized official in Fiscal Year 1982 should be charged to Fiscal Year 1981 appropriation. Ratification relates back to the time of the initial agreement, which is when the services were needed and the work was performed.

The Chief of the Finance Division, U.S. Fish and Wildlife Service, Department of the Interior, has requested our decision on which fiscal year appropriation to charge for a contract improperly made in fiscal year (FY) 1981 and ratified in FY 1982. Based on the reasons herein, we conclude that the payment should be charged to the FY 1981 appropriation.

FACTS

During fiscal year 1981, the Fish and Wildlife Service (the Service) identified a need to develop a habitat suitability index model and life history narrative for striped bass. As a result, a contract was made between Dr. Henry Booke, the Service's leader of the Massachusetts Cooperative Fisheries Research Unit, and Mark B. and Jane L. Bain of the University of Massachusetts for a series of reports on the subject, to be completed in September, 1981, at a total cost of 64,000. The agreement was made in April, 1981.

In his position as Leader, Dr. Booke had procurement authority limited to $2,500. He was a newly appointed Leader, and not fully aware of the procurement regulations. He issued a Purchase Order on August 11, 1981 (the order was delayed due to an oversight) in the amount of S2,400, in- tending to split the cost of the contract between the 1981 and 1982 fiscal years. However, the Service's Finance Center discovered the unauthorized split procurement. On November 30, 1981, the contract between Dr. Booke and the Bains was ratified by the Acting Director of the Service in the amount of 54,000. Dr. Booke subsequently was instructed on proper procurement methods.

The legal issue involves which fiscal year appropriation should be charged, i.e., whether the date of ratification of the contract determines the fiscal year funds to be charged with the obligation, or whether the date of the original procurement should govern. The Chief of the Division of Finance states his belief that the ratification relates back to the time of the original procurement in April 1981. The Authorized Certifying Officer, on the other hand, asserts that under 31 U.S.C. Para 1501 Para (formerly 200(a)) [1], Dr. Booke's absence of authority to contract for amounts above $2,500 renders the agreement not binding and unenforceable until duly ratified. His view is that fiscal year

1982 funds should be used.

ANALYSIS

The general rule is that payments due under a Government contract are to be charged to the fiscal year appropriation current at the time the legal obligation arose; that is, the fiscal year in which a bona fide need for the goods or services arose and in which a valid contract or agreement was entered into. 59 Comp.Gen. 386 (1980) and cases cited.

In this case, a ratification in accordance with 41 Code of Federal Regulations Sec. 1-1.405 took place. The written document, signed by the Acting Director of the Service and dated November 30, 1981, states that he intends to ratify the "split procurement" issued by Dr. Booke. The ratification operates upon the act ratified as though the authority of the agent to do the act existed originally. 22 Comp.Gen. 1083, 1086 (1943). Accordingly, we have held that the ratification relates back to the time of the original procurement because the need arose and the work was ordered and performed in that year. 58 Comp.Gen. 789, 790 (1979).

We note that the Authorized Certifying Officer is concerned with 31 U.S.C. Sec. 1501. Section 1501 is intended to prevent the over obligation of funds (including contract authority) or other violations of 31 U.S.C. Sec.1341, (beer OFF known as the Antideficiency Act, 31 U.S.C. Sec. 665), to assure that the proper fiscal year is charged with expenditures, and to advise the President and the Congress as to the Government's outstanding commitments for which appropriations will in all likelihood be needed. He is correct that under that section, this contract was not ratified and thus did not become valid until the next fiscal year. It also could not be recorded as an obligation on the Government's books until ratified, but when recorded, it is properly recorded as an obligation of the fiscal year to which the contract would have been charged had it been valid from its inception. Thus, part of the ratification procedure requires the ratifying official to assure that sufficient funds remain unobligated from that fiscal year to assume the cost of the contract.

Under this analysis, the only proper appropriation to charge for the work performed is the FY 1981 appropriation, as the need arose and the work was ordered and performed in that year. 58 Comp.Gen. 789, supra; B-197344, August 21, 1980.

1. Title 31 was remodified by Pub. L. 97-258, September 13, 1982.