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B-242974.6 November 26, 1991

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Attorneys

1. The requirements for recording obligations of appropriations in 31 U.S.C. Sec. 1501 apply whenever an agency enters into a properly authorized written contract to purchase goods. We are aware of no reason why equipment purchase contracts awarded by the Corps of Engineers Civil Works Revolving Find are not fully subject to this requirement to record obligations.

2. Corps of Engineers Civil Works Revolving Fund contracts which were never recorded as obligations do not result in the Corps violating the Anti-Deficiency Act. The Corps is authorized by 33 U.S.C. Sec. 621 to enter into contracts which would otherwise violate 31 U.S.C. Sec. 1341(a)(1) (limiting obligations to amounts available in an appropriation, unless otherwise authorized by law). Also, OMB has exempted the Fund from apportionment, thereby making it not subject to the limitations of 31 U.S.C. Sec. 1517 (limiting obligations to amounts apportioned or allowed in agency regulations).

Memorandum

Date: November 26, 1991

To: Assistant Director, AFMD/Defense Audits - Ron Tobias

Thru: Assistant General Counsel, OGC/AFMD - Jeffrey A. Jacobson

From: Attorney-adviser, OGC/AFMD - Douglas H. Hilton

Subject: Failure of U.S. Army Corps of Engineers to Record Obligation for Certain Civil Works Revolving Fund Contracts (Job Code 917222; B-Number 242974.6)

This responds to your informal request for our opinion on whether the U.S. Army Corps of Engineers violates any law or regulation when it does not record the obligations incurred when certain contracts are awarded. The contracts are . awarded to acquire Plant Replacement and Improvement Program equipment for the Corps' Civil Works Revolving Fund. For the reasons discussed below, we conclude that the failure to record the obligations violates 31 U.S.C. Sec. 1501, Title 2, and the Department of Defense (DoD) regulation which implements that section. However, we also conclude that the Corps' award of the contracts does not result in a violation of the Anti-Deficiency Act.

BACKGROUND

Section 576 of title 33, United States Code, establishes the Corps of Engineers Civil Works Revolving Fund. The Fund is available,

"without fiscal year limitation, for expenses necessary for the maintenance and operation of the plant and equipment of the Corps of Engineers used in Civil Works functions, including acquisition of plant and equipment . . . ."

The Fund acquires equipment which will be used on two or more different civil works projects. This equipment is made projects. This equipment is made available for work on particular civil works projects, and the fund is reimbursed for the use of the equipment "at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment, and accrued leave . . . ." Id.

The Corps manages the purchase of plant and equipment for the Fund through its Plant Replacement and Improvement Program (PRIP). Under this program, each of the Corps' district offices annually submit requests for authorization to purchase PRIP equipment. The Corps' headquarters then reviews the requests and sends each district office an authorization to purchase an approved level of equipment. The district offices then award contracts to acquire the equipment as approved.

Your staff's audit work in various district offices has shown that the Corps' districts are not recording obligations when these contracts are awarded. /1/ Corps' Headquarters staff has stated that obligations for these contracts are not being recorded centrally either. Furthermore, Corps regulations and officials confirm that it is the Corps' policy not to record obligations when these contracts are awarded. For example, the regulation which sets the Corps' accounting policy states that, for the revolving fund, "it is not necessary to establish the budgetary and allotment accounts normally required for appropriated funds." ER 37-1-10, Para. 2-23b.

In meetings and discussions on the issues concerning recording obligations for PRIP equipment contracts, Corps officials have continually asserted that Congress never intended the revolving fund to record obligations. However, the Corps has not provided us with statutory or legislative history references which directly support its position.

DISCUSSION

Requirement to Record Obligations

Section 1501 of title 31, United States Code, establishes the documentary requirements for recording obligations of appropriations. These requirements apply whenever an agency enters into a properly authorized written contract to purchase goods. 31 U.S.C. Sec. 1501(a)(1). We are aware of no reason why the PRIP equipment purchase contracts are not fully subject to this requirement to record obligations against the Fund.

We have long held that an agency meeting the documentation requirements of section 1501 must record the obligation incurred. 65 Comp.Gen. 4, 7 (1985); 39 Comp.Gen. 422, 425 (1959); B-226801, Mar. 2, 1988. Title 2 of GAO's Policy and Procedures Manual for Guidance of Federal Agencies also requires agencies to

promptly record obligations. Title 2, App. I, at 60 - 61. Moreover, applicable Department of Defense regulations also provide that "[o]nce incurred, all obligations shall be recorded accurately and promptly . . . ." DoD Directive 7200.1, Administrative Control of Appropriations, May 7, 1984 at Encl. 5, Para. N.3. Therefore, the failure of the Corps to record obligations when its PRIP equipment contracts are awarded violates 31 U.S.C. Sec. 1501, Title 2, and DoD Directive 7200.1. In this regard, you should recommend that the Corps amend its policy guidance to include the requirement to record obligations within the revolving fund.

Possible Anti-Deficiency Act Violations

Corps of Engineers officials have stated that recording obligations for the outstanding PRIP equipment contracts would soon exhaust the revolving fund's appropriation or cash balances available for obligation. This admission raises the issue of whether the PRIP equipment contracts have caused the Corps to incur obligations which violate the Anti-Deficiency Act.

The Anti-Deficiency Act generally prohibits an agency from incurring obligations which exceed the amount available in an appropriation unless otherwise authorized by law. 31 U.S.C. Sec. 1341(a)(1). However, 33 U.S.C. Sec. 621 provides that

"[a]ny public work on canals, rivers, and harbors adopted by the Congress may be prosecuted by direct appropriations, by continuing contracts, or by both direct appropriations and continuing contracts."

We have held that section 621 authorizes the Corps to enter into contracts which would otherwise violate the limitation of section 1341. 56 Comp. Gen. 437 (1977). In the cited decision, we concluded that section 621 allows the Corps to award contracts for public works /2/ which obligate the Government to make future payments in excess of the amounts currently appropriated. Id.

In 56 Comp.Gen. 437 we did not expressly consider whether the authority of section 621 applies to contracts financed by the revolving fund. However, the language of section 621 is not limited to contracts financed by any specific appropriation. To the extent that the revolving fund finances contracts awarded to "prosecute public works adopted by the Congress," section 621 provides the necessary authority to remove those contracts from the limitation contained in 31 U.S.C. Sec. 1341. The PRIP equipment contracts at issue are clearly awarded to prosecute public works projects and, pursuant to the authority contained in section 621, are not subject to the limitation of section 1341.

The Anti-Deficiency Act also prohibits an agency from incurring obligations which exceed the amount apportioned by the Office of Management and Budget (OMB), or permitted by an agency's regulations on the administrative control of appropriations. 31 U.S.C. Sec. 1517(a). However, the revolving fund has been specifically exempted from apportionment by OMB. See, Letter from Paul H. O'Neill, Deputy Director, OMB to Victor V. Veysey, Assistant Secretary of the Army (CW), dated July, 7, 1975. In addition, the Department of Defense's regulations provide that

"[o]vercommitments and overobligations of administrative subdivisions of appropriations or other funds exempted from apportionment are not violations of 31 U.S.C. 1517(a)."

DoD 7220.9-M, Department of Defense Accounting Manual Oct. 1983, incorporated by reference in DoD Directive 7200.1. Therefore, we conclude that the PRIP equipment contracts awarded by the Corps do not result in violations of 31 U.S.C. Sec. 1517.

Budgetary Treatment of the Fund's Continuing Contracts

As pointed out in 56 Comp.Gen. 437, using the continuing contract authority of 33 U.S.C. Sec. 621 raises a number of issues about the budgetary treatment of those contracts. In that decision we pointed out that the authority to enter into continuing contracts under section 621 was a form of budget authority given to the Corps. We noted that the use of section 621 to obligate the full amount of continuing contracts in excess of amounts appropriated would require the Corps to change its presentation of its budget authority. 56 Comp.Gen. at 448. Since it has been the policy of the Corps not to record any obligations for its PRIP equipment contracts, it appears that the Corps has not included those contracts in its presentations of its budget authority. Accordingly, it would be appropriate to recommend that the Corps include its PRIP equipment contracts in the budget authority presentations which the Corps developed in response to our recommendations in 56 Comp.Gen. 437.

Finally, we note that OMB may have granted the revolving fund an exemption from apportionment without the knowledge that section 621 would allow the fund to incur obligations in excess of its appropriation or cash balances. The Corps of Engineers request that OMB exempt the revolving fund from apportionment does not disclose that the fund possessed or would be using the budget authority granted by 33 U.S.C. Sec. 621. Rather, the Corps' request only discusses the fact that the fund's outlays are financed by reimbursements from appropriated funds which are themselves subject to apportionment. The fact that, under section 621, the fund's obligations are not limited by the amounts available to finance future outlays would, we suspect, be of material interest to the OMB in assessing whether the revolving fund should continue to be exempt from apportionment. Therefore, you may want to recommend that the Corps and OMB revisit whether the Civil Works Revolving Fund should be apportioned in whole or in part.

cc: Mr. Hinchman, OGC Mr. Chapin, AFMD Mr. Crowley, AFMD Mr. Dodaro, AFMD Mr. Connor, AFMD Mr. Carnahan, AFMD Ms. Ferrell, AFMD Mr. Kepplinger, OGC/AFMD

1. We understand that the scope of the audit work covering the revolving fund has been limited to examining transactions related to PRIP assets. Accordingly, the only unrecorded revolving fund obligations discovered in the audit relate to contracts to purchase PRIP equipment.

2. Although the language of section 621 is limited to public works on canals, rivers, and harbors, the authority to award "continuing contracts" extends to the Corps' other civil works projects. Other statutes provide that the provisions of laws applicable to the Corps' river and harbor improvements also apply to the Corps' shore protection and flood control projects. 33 U.S.C. Sec.(s) 426b and 701.