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Matter of: Army—Availability of Army Procurement Appropriation for Logistical Support Contractors

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DIGEST

The Other Procurement, Army (Procurement) appropriation is not available to pay for logistical planning and plan implementation services related to medical equipment items acquired using the Procurement appropriation. Because the activities are not procurement activities, and consistent with its past practice and guidance, the Army should charge the Army's Operation and Maintenance appropriation for such services.

DECISION

The U.S. Medical Research and Materiel Command (Command) has requested our decision concerning the availability of the Other Procurement, Army (Procurement) appropriation to hire contractors to provide logistical support for medical equipment items acquired using the Procurement appropriation. Memorandum from Colonel Denise M. McCollum, Deputy, Resource Management, U. S. Army Medical Research and Materiel Command, to Anthony H. Gamboa, General Counsel, GAO, May 14, 2004. (McCollum Memorandum). As explained below, the Command should use the Army Operation and Maintenance (O&M) appropriation, and not the procurement appropriation, to fund the logistical support of the acquisitions at issue here.

BACKGROUND

The Command is responsible for, among other things, the acquisition and logistics management of medical equipment. A subordinate agency of the Command, the U.S. Army Medical Materiel Agency, is responsible for purchasing medical equipment; the agency uses the "Other Procurement, Army" appropriation for this purpose. When Congress enacted the Army's fiscal year 2004 Other Procurement, Army appropriation, the conference report identified three combat medical support

equipment items for acquisition that the Army had not listed in its budget request.[1] The Command has acquired these three items, and has hired two contractors to provide logistical support for the three items that it had not planned to purchase.

Under the terms of their logistical support contracts, the two contractors will develop Integrated Logistics Support Plans for this equipment, implement these plans, and assist Command project managers in day-to-day operation of the equipment. Statement of Work for Integrated Logistics Support of U.S. Army Medical Research and Materiel Command (April 28, 2004). An Integrated Logistics Support Plan explains the proper use of equipment, the required operating supplies, proper maintenance procedures, and training requirements for maintenance personnel, among other things. McCollum Memorandum. The two contractors also will assist the project manager and staff in writing, developing, revising, organizing, distributing, filing, and maintaining documentation; obtaining manufacturer literature from various sources; and developing and maintaining a product reference file and library.

To cover the costs of these logistical support contracts the Command obligated its O&M appropriation. The Command's use of its O&M appropriation is consistent with its use of this account to pay the civilian government employees who provide support services for its other medical equipment programs.

ANALYSIS

The Command asks whether the procurement appropriation is available for integrated logistics support contract services for the equipment acquired using the procurement appropriation.[2] The procurement appropriation at issue, entitled "Other Procurement, Army," was enacted as part of the Department of Defense Appropriations Act for fiscal year 2004. The appropriation provides $4,774,452,000 for procurement and a number of other purposes not relevant here. The provision reads, in part, as follows:

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[1] H.R. Conf. Rep. No. 108-283, at 165 (2003). *See also* H.R. Rep. No. 108-187, at 120, 123 (2003). The three items were Life Support for Trauma and Transport, portable low-power blood cooling and storage, and portable rapid intravenous infusion pump.

[2] The Command notes that the applicable Defense Finance and Accounting Service (DFAS) guidance provides that activities in direct support of procurement are payable with procurement appropriations—whether performed by civilian government employees or by contract employees. DFAS-IN Manual 37-100-04, Chapter A0-2035, Appendix A, paragraph 4.C.3.j. The guidance, the Command says, is silent as to whether procurement funds may be used to pay for support provided by contractors for the items, once procured.

"Other Procurement, Army

"For construction, procurement, production, and modification of vehicles, . . . communications and electronic equipment; other support equipment; . . . and other expenses necessary for the foregoing purposes, $4,774,452,000, to remain available for obligation until September 30, 2006."

Department of Defense Appropriations Act, 2004, Pub. L. No. 108-87, 117 Stat. 1054, 1063 (Sept. 30, 2003). Clearly, this appropriation, by its own terms, is available for the costs of acquiring the three items of medical support equipment.[3] The question the Command raises is whether the phrase "other expenses necessary for the foregoing purposes" includes the costs of operating and maintaining the equipment once procured.

The basic rule is that appropriated funds may be used only for purposes for which they were appropriated. 31 U.S.C. § 1301(a). As a corollary to this basic rule, charging authorized items to the wrong appropriation is prohibited. An appropriation available for a particular purpose is also available for any expenses that are reasonably necessary for the accomplishment of that purpose. 71 Comp. Gen. 527, 528 (1992).

We apply three tests to determine whether an expenditure is a "necessary expense" of a particular appropriation. First, the expenditure must be reasonably related to the purposes that Congress intended the appropriation to fulfill; second, the expenditure must not be prohibited by law; and third, the expenditure must not fall within the scope of another appropriation or funding source. 63 Comp. Gen. 422, 427-428 (1984); B-251887, July 22, 1993.

Here, the expenditure fails the first test since the activities at issue (operating and maintaining equipment) are not procurement activities. We read the appropriation's phrase "other expenses necessary for the foregoing purposes" to cover expenses incurred in acquiring, or procuring, equipment. The activities at issue have nothing to do with the acquisition of the equipment. Rather, they are operational in nature—activities necessary to render the equipment useful to the Army and to maximize the usefulness of the equipment for the life of the equipment. The activities enumerated in the Statement of Work consist of providing general assistance to project managers

[3] *See also* H.R. Rep. No. 108-187, at 120 (2003) ("This appropriation finances the acquisition of: (a) tactical and commercial vehicles, . . . to provide mobility and utility support to field forces and the worldwide logistical systems; . . . (c) other support equipment, generators and power units, material handling equipment, *medical support equipment*, special equipment for user testing, and non-system training devices.") (emphasis added.)

and other staff, as necessary, for day-to-day Command operations. Accordingly, we conclude that the first test under the necessary expense rule is not met.

Expenditures from the procurement appropriation to fund the activities enumerated in the Statement of Work also fail the third test because they fall within the scope of another appropriation, Operation and Maintenance, Army. For fiscal year 2005, it provides in pertinent part: "For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law . . . $25,764,634,000."[4]

The two contractors assist in day-to-day operations. In the development and implementation of Integrated Logistics Support Plans for the medical equipment, they assist project managers in day-to-day operations for achieving and maintaining efficient program operations. Activities of an operational nature, like these, should be funded from an O&M appropriation. *See also* H.R. Rep. No. 108-187, at 55, 57 (2003) (the Report identifies "Logistical Support Activities" as an item to be covered by the O&M appropriation).

Many agencies do not have to make the distinction between procurement activities and operational activities that the Army must make, because the appropriations structure for those agencies differs from that of the Army. Instead of receiving separate appropriations, one for procurement and one for operations, those agencies may receive only one appropriation to cover all of the agency's expenses; often, those appropriations are entitled "salaries and expenses." For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives receives only a "salaries and expenses" appropriation which funds the agency's acquisitions as well as its operations. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005, Pub. L. No. 108-447, div. B, title I, 118 Stat. 2809, 2853, 2859 (Dec. 8, 2004). In that case, the same appropriation that financed the acquisition of an item would finance the costs of operating and maintaining that item. The Army's appropriations structure compels it to make distinctions between procurement and operational activities, and the Army, as reflected in DOD Financial Management Regulation ¶ 010201, has developed, we think, a rational basis for distinguishing between procurement and operational activities.

In its Financial Management Regulation (FMR), for purposes of allocating costs between O&M and procurement appropriations, the Department of Defense classifies costs as either expenses or investments. FMR ¶ 010201. The Financial Management Regulation defines "expenses" as "the costs incurred to operate and maintain the organization, such as personal services, supplies, and utilities." FMR ¶ 010201 B.1. As an example, the Regulation provides "labor of civilian, military, or

[4] Pub. L. No. 108-287, 118 Stat. 951, 953 (Aug. 5, 2004).

contractor personnel." FMR ¶ 010201 D.1. "Expenses" are to be charged to O&M appropriations. FMR ¶ 010201 C.3. The Regulation defines "investments" as "the costs that result in the acquisition of . . . end items. These costs benefit future periods and generally are of a long-term character such as real property and personal property." FMR ¶ 010201 B.2. It provides as an example, "all items of equipment, including . . . spares and repair parts" and "support elements such as data, factory training, support equipment." FMR ¶ 010201 D.2. "Investments" are to be charged to procurement appropriations. Given the Army's appropriation structure, this distinction, focusing on the nature and character of the costs, is a reasonable one.

CONCLUSION

The Other Procurement, Army appropriation is not available to pay contractors for logistical planning and plan implementation services related to the medical equipment items acquired using that appropriation because such services are not procurement activities. The Army's Operation and Maintenance appropriation is available for such services. Accordingly, we conclude that it is the proper appropriation to charge for funding the contract personnel to perform the activities specified in the Statement of Work for Integrated Logistics Support.

/signed/

Anthony H. Gamboa
General Counsel