U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Decision

Matter of: General Services Administration—Application of Bona Fide Needs Rule to Severable Services Task Order

File: B-336079

Date: November 20, 2025

DIGEST

The General Services Administration (GSA), Office of Financial Management, within the Office of the Chief Financial Officer (OCFO) requested our decision regarding whether GSA may obligate excess fiscal year 2023 funds from one task order to fund a portion of a separate, severable services task order for which the period of performance begins in fiscal year 2023 and crosses into fiscal year 2024. Specifically, a GSA contracting officer questions whether GSA can retain expired fiscal year 2023 funds and use them to provide additional funding for a separate task order that had not been funded up to its overall potential award price.

In the context of both severable and nonseverable services, we have determined that a modification to increase the ceiling of a cost-reimbursement contract is chargeable to the appropriation current at the time that the modification is approved by the contracting officer. Because the task order contains contractual clauses limiting GSA's obligation, GSA is not required to add additional funds above the contractually stipulated ceilings, including to cover the difference between the potential award price and the actual funded/ceiling amount. If GSA, in its discretion, chooses to cover this difference in whole or in part, GSA must obligate appropriated funds current to the time of that decision. The expired fiscal year 2023 funds cannot now be obligated to fund any part of the separate task order and should be deobligated and returned to the requesting agency.

DECISION

The General Services Administration (GSA), Office of Financial Management, within the Office of the Chief Financial Officer (OCFO) requests a decision under 31 U.S.C. § 3529 regarding whether GSA may obligate excess fiscal year (FY) 2023 funds

from one task order to fund a portion of a separate, severable services task order for which the period of performance covers two fiscal years, FY 2023 and FY 2024.[1]

Our practice when rendering decisions is to contact the relevant agencies to seek factual information and their legal views.[2] We contacted GSA to seek additional factual information and its legal views on this matter.[3] GSA responded with its explanation of pertinent facts and legal analysis.[4]

BACKGROUND

GSA's Assisted Acquisition Service (AAS), located within GSA's Federal Acquisition Service, helps government agencies acquire services, including information and technology services, research and development, and professional services.[5] This work is carried out through interagency agreements using GSA's authority under 40 U.S.C. § 321 (Acquisition Services Fund) instead of the Economy Act (ch. 314, part II, 47 Stat. 399 (June 30, 1932), see 31 U.S.C. § 1535). Request Letter, at 1.

According to OCFO, as part of an effort to recompete a severable services contract for the Department of the Air Force's Adjunct Professor Program, AAS realized it would need to extend an existing task order by six months and advised the Air Force that it needed $2,271,518.99 in FY 2023 funding to cover both the cost of the extension and the base period of the new contract. Request Letter, at 1 and

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[1] Letter from Director, Office of Financial Management, General Services Administration, to General Counsel, GAO (Feb. 15, 2024) (Request Letter).

[2] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), *available at* https://www.gao.gov/products/gao-24-107329.

[3] Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, GSA (June 11, 2024); Email from Assistant General Counsel for Appropriations Law, GAO, to Deputy Associate General Counsel, GSA, *Subject: RE: Letter from GAO to GSA re: Adding Expired FY 23 Funds to Severable Services Contract* (Aug. 5, 2024).

[4] Letter from General Counsel, GSA, to Assistant General Counsel for Appropriations Law, GAO (July 9, 2024) (Response Letter); Email from Deputy Associate General Counsel, GSA, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Re: Letter from GAO to GSA re: Adding Expired FY 23 Funds to Severable Services Contract* (Aug. 6, 2024).

[5] Request Letter, at 1; GSA, Assisted Acquisition Services, *About Us*, *available at* https://www.gsa.gov/assisted-acquisition-services/about-us (last visited Nov. 19, 2025).

Attachments. The Air Force sent the required funding to AAS in two separate military interdepartmental purchase requests (MIPRs), one on March 14, 2023, and the other on June 22, 2023. Request Letter, at 1; Response Letter, at 2.

The March 14, 2023, MIPR provided $1,135,759.49 in FY 2023 funding to cover the six-month extension of the existing task order, with the extension having a period of performance of March 13, 2023, to September 30, 2023 (the extension). Response Letter at 1-2; Attachments. The June 22, 2023, MIPR provided $1,135,759.50 in FY 2023 funding to cover the base period of the new contract, with the new task order having a period of performance of September 24, 2023, to March 23, 2024 (the new task order). *Id*. Both the extension and the new task order are hybrid contracts, structuring Contract Line Item Number (CLIN) 1 for program management and administrative support as firm fixed price, CLIN 2 for adjunct professors, subject matter experts, and instructor trainers as labor hours, and CLIN 3 for travel costs as cost reimbursement. Response Letter, at 1 and Attachments. GSA used the funds from the March 14, 2023, MIPR to fund the extension. Request Letter, at 2.

OCFO stated that the initial plan was to use the funds from the June 22, 2023, MIPR to fund the new task order in full. Request Letter, at 2. Prior to award of the new task order, however, it was determined that the final price of the new task order was $1,381,624.31, which exceeded the available funding from the June 22, 2023, MIPR by $245,864.81. *Id.* GSA applied the June 22, 2023, MIPR funds to the new task order. *Id*. CLIN 1 of the new task order was fully funded at the time of award, but CLIN 2 and CLIN 3 were funded up to a ceiling amount at the time of award. Attachments. Specifically, CLIN 2 had a funded/ceiling amount of $778,049.37, and an overall potential award of $912,206.31. Attachments. CLIN 3 had a funded/ceiling amount of $100,000, and an overall potential award of $200,000. *Id*. Both CLIN 2's and CLIN 3's funded/ceiling amounts are subject to clauses that limit GSA's obligation to amounts actually allotted and set procedures for how GSA may add additional funds. In particular, CLIN 2 is subject to a Limitation of Government's Obligation clause, DFARS 252.232-7007, which states:

> (a) Contract line item(s) 0002 is incrementally funded. For this/these item(s), the [funded/ceiling amount] of the total price is presently available for payment and allotted to this contract. . . (b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s). Attachments.

CLIN 3 is subject to the FAR 52.232-22 Limitation of Funds clause, which states:

> The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract. *Id*.

When closing out the extension that was fully funded by the March 14, 2023, MIPR, GSA discovered that cost savings initiatives taken during the extension's period of performance resulted in a savings of $197,355.87. Request Letter, at 2. GSA discovered this after the FY 2023 funding from both MIPRs had expired. *Id*. GSA's policy when making awards and recording obligations of annual appropriations to contracts with periods of performance that cross FYs is to not permit expired funds to be used for new awards or to provide additional funding for severable services contracts that were awarded and initially incrementally funded during the time period in which the expired funds were available. *Id*., at 1. The AAS contracting officer, however, believes it is proper for GSA to retain the expired funds and use them to provide additional funding for the new task order. *Id*., at 2.

DISCUSSION

At issue in this decision is whether GSA may obligate the expired FY 2023 funds remaining from the March 14, 2023, MIPR to fund the unfunded portion of the new task order. As discussed further below, rather than obligating the expired FY 2023 savings from the extension to the new task order, GSA must obligate appropriations current at the time when a discretionary increase above the contractually stipulated ceiling is granted.

Under 31 U.S.C. § 1502, an appropriation or fund limited for obligation to a definite period is available for obligation only to fulfill a genuine or bona fide need of the period of availability for which it was made.[6] In other words, annual appropriations that are made for a specific fiscal year are only available to fulfill a genuine or bona fide need of the fiscal year the funds are appropriated. B-317139, June 1, 2009; 73

[6] Section 1502(a) of title 31 provides: "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law." 31 U.S.C. § 1502(a).

Comp. Gen. 77 (1994). This is known as the bona fide needs rule. We have recognized that, as a general matter, the relevant date to ascertain whether a severable service is a bona fide need of a particular fiscal year is the date that the service is delivered. This is because severable service contracts are typically viewed as chargeable to the appropriation current at the time the services are rendered. B-241415, June 8, 1992 (71 Comp. Gen. 428). As an exception to this rule, Congress has provided most federal agencies the authority to enter into one-year severable services contracts, beginning at any time during the fiscal year and extending into the next fiscal year, and to obligate the total amount of such contract to the appropriation current at the time of award. 41 U.S.C. § 3902; 10 U.S.C. § 3133.

In the context of both severable and nonseverable services, we have determined that a modification to increase the ceiling of a cost-reimbursement contract is chargeable to the appropriation current at the time that the modification is approved by the contracting officer. *See* B-219829, July 22, 1986; B-195732, Sept. 23, 1982. In B-219829, July 22, 1986, we concluded that a "contract modification is properly chargeable to the appropriation available when the modification was approved … [when] the amount involved exceeds the original contract ceiling price." There, we examined a cost reimbursement contract that contained a Limitation of Funds clause that established an estimated cost ceiling and provided that once the ceiling was reached, the contractor would be under no obligation to continue performance unless additional funds were allocated to the contract. *Id*. There, we held that the entire amount of the original contract was properly charged to the earlier fiscal year appropriation since that appropriation was available when the contract was executed, but that the modification occurring in the later fiscal year was properly charged to the appropriation available when the modification was approved by the contracting officer in the later fiscal year. *Id*. *See also* B-317139, June 1, 2009.

Similarly, in B-195732, September 23, 1982, we determined that in cost reimbursement contracts, discretionary cost increases (*i.e*., increases that are not enforceable by the contractor), which exceed funding ceilings established by the contract, may properly be charged to funds currently available when the discretionary increase is granted by the contracting officer. *See also* B-219829, July 22, 1986. In both B-219829 and B-195732, the relevant Limitation of Funds clause stated that once the ceiling was reached, the contractor was no longer under obligation to continue performance unless additional funds were allocated to the contract.

The extension funded by the March 14, 2023, MIPR was unquestionably a bona fide need of FY 2023 since the extension covered services performed entirely in FY 2023. Additionally, GSA relied on 41 U.S.C. § 3902 to obligate $1,135,759.50 in FY 2023 funds from the June 22, 2023, MIPR to fund the new task order, which had a period of performance of September 24, 2023, to March 23, 2024. Response Letter, at 3. It would have been permissible for GSA to obligate the total potential award price of the new task order to FY 2023 funds because the contract's period of

performance began in FY 2023 and did not exceed 12 months. However, GSA only funded $1,135,759.50 at the time of award since the June 22, 2023, MIPR did not completely cover the potential award price of the new task order.[7]

Importantly, the amounts actually obligated to CLIN 2 (a labor hour, severable service CLIN) and CLIN 3 (a cost-reimbursement CLIN for travel) from the June 22, 2023, MIPR were the funded/ceiling amounts for both CLINs, despite not reflecting the overall potential award price. The new task order contained Limitation of Funds clauses recognizing that the proposed work in the contract was being partially funded, that the contractor should not perform work in excess of the amount actually allotted by GSA to the contract, and that GSA was not required to reimburse costs in excess of what was allotted to the contract. The Limitation of Funds clauses applicable to CLIN 2 and to CLIN 3 made it clear that the contractor was not required to continue performance under the contract or otherwise incur costs in excess of the amount then allotted to the contract by GSA. The new task order shows that the funded/ceiling amount subject to the Limitation of Funds clause for CLIN 2 is $778,049.37, and for CLIN 3, $100,000. Because these ceilings were both made subject to their respective Limitation of Funds clauses, GSA is not contractually bound to obligate additional funds to the new task order above these ceilings.

Since GSA is not contractually required to fund the remainder of the new task order, GSA's decision to add funds to the labor hour CLIN and the cost-reimbursement CLIN would be seen as a discretionary cost increase, similar to that in B-195732, September 23, 1982. Therefore, as any funds added to CLIN 2 and CLIN 3 would exceed the ceilings established by contract, the obligations should be charged to funds available when the discretionary increase is granted. Accordingly, the savings from the March 14, 2023, MIPR, which are FY 2023 annual appropriations, are not available to add additional funds to the new task order. Rather, GSA must use funds current at the time when a discretionary increase above the ceiling is granted to fund any part of the new task order above the ceiling amounts.

This conclusion is consistent with GSA OCFO's views. GSA stated that the scope of the contract was limited to the amount and types of work that were actually funded since the contract contained clauses that specified that while GSA intended to obligate additional funds to CLINs, it was not legally bound to do so. Response Letter, at 3. GSA observed that had GSA and the Air Force elected to add FY 2023 funds to the contract prior to October 1, 2023, the Air Force could have met its FY 2023 bona fide need with FY 2023 funding but, failing to do so, the unfunded work in the new task order became a bona fide need of the next fiscal year requiring funding current to that year. *Id*.

[7] CLINs 2 and 3 did not involve nonseverable services for which the general rule is that agencies must obligate the entire amount at contract award. *Cf*. B-317139, June 1, 2009.

CONCLUSION

We conclude that the expired FY 2023 funds received under the March 14, 2023, MIPR cannot now be obligated to fund any part of the new task order. Because of the Limitation of Government's Obligation and the Limitation of Funds clauses in the new task order, GSA is not required to add additional funds above the contractually stipulated ceilings for CLIN 2 and CLIN 3, including to cover the difference in the new task order between the potential award price and the funded/ceiling amount. If GSA, in its discretion, chooses to cover this difference in whole or in part, GSA must obligate appropriated funds current to the time of that decision. The savings from the March 14, 2023, MIPR, being expired FY 2023 funds, should be deobligated and returned to the Air Force.



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