

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

TO : The Comptroller General

73-95136-o.m., Aug. 11, 1972

FROM : Director, FGMS Division - D. L. Scantlebury

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D. L. Scantlebury

SUBJECT: Request for Decision Concerning the Legality of an Outstanding Obligation of the Federal Power Commission (Code 33421)

During our review for the settlement of accounts of accountable officers of the Federal Power Commission (FPC), we noted an amount of \$41,013 was included as an outstanding obligation as of June 30, 1971.

The record shows that FPC entered into an agreement with the General Services Administration (GSA) on June 29, 1971, for construction and alterations of space to be occupied by FPC components to be relocated in the GAO Building, after certain other FPC components are moved to another building. The agreement was in the amount of \$45,000 which was recorded as an obligation against the fiscal year 1971 appropriation. Through June 30, 1971, four separate work orders estimated to total \$3,987 were issued by FPC to the Building Manager, GAO Building, who is a representative of GSA. Copies of these documents are attached.

The difference between the amount of the original agreement (\$45,000) and the estimated sum of the four work orders (\$3,987) amounts to \$41,013. This amount was not returned by the FPC to the Treasury even though no additional work orders had been issued before the end of the 1971 fiscal year.

We found that FPC's final order to vacate a certain amount of space in the GAO Building was issued by the Office of Management and Budget and was received by FPC on April 21, 1971. However, the order made no mention of FPC's being required or "ordered" to relocate some of its components within the GAO Building by June 30, 1971.

An FPC official stated it was known the space in question was not going to be made tenantable until after the end of the 1971 fiscal year, that final relocation of its personnel in the GAO Building would take place after the end of the 1971 fiscal year, and that it was under no "order" to relocate its components in the GAO Building by June 30, 1971.

We question whether the balance of \$41,013 represents a proper obligation because it appears there was no need for the services to be performed in fiscal year 1971.

We note that section 1311 of the Supplemental Appropriation Act, 1955, approved August 26, 1954, Pub. L. 663, 68 Stat. 830, 31 U.S.C. 200 provides, in part, that:

"*** no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of ***."

Section 1311 further provides that one such form of evidence is:

"(1) a binding agreement in writing between the parties thereto, including Government agencies, in a manner and form and for a purpose authorized by law, executed before the expiration of the period of availability for obligation of the appropriation or fund concerned for specific goods to be delivered, real property to be purchased or leased, or work or services to be performed; ***"

* * * * *

"(d) No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) hereof; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law."

We were informed by agency officials that they do not know whether the work agreement was a valid obligation either when written at June 29, 1971, or at the end of the fiscal year. They also informed us that they believe, if the obligation was valid at June 29, 1971, then at June 30 both FPC and GSA were obligated. In that event, no funds need be returned to the Treasury.

We are requesting your decision as to whether the balance of \$41,013 arising from the agreement between FPC and GSA was a valid obligation as of June 30, 1971. If you decide that the obligation is not valid, should the balance of \$41,013 be withdrawn from the fiscal year 1971 appropriation and refunded to the Treasury Department?

Attachments - 5

cc: Associate Director, FGMSD - H. C. Kensky
Associate Director, GGD - I. M. Crawford
Regional Manager, Washington Regional Office

B-95136-D.M.

Indorsement

AUG 11 1972

Director, FGMS Division

Returned. It is a fundamental principle that in order to obligate a fiscal year appropriation for payments to be made in a succeeding year, a contract imposing the obligation must have been executed within the fiscal year to be charged and must be designed to meet a bona fide need of that fiscal year. See, e.g., 33 Comp. Gen. 57, ✓/61 (1953); 32 id. 565, ✓/566 (1953), and decisions cited therein. Work agreements and orders between agencies and the General Services Administration clearly fall within the scope of this principle. See 35 Comp. Gen. 3, ✓/1955; 34 id. 705, ✓/1955; see also 44 Comp. Gen. 695, ✓/1965; 38 id. 628, ✓/1959; 28 id. 365, ✓/1948).

Determination of what constitutes a bona fide need for the fiscal year to be charged depends upon the particular circumstances presented. 37 Comp. Gen. 155, ✓/159 (1957). The only stated purpose for the agreement here involved, designated "Code 25-Construction and Alterations," is

"To cover necessary work, as needed, to be performed by the GSA Reimbursable Shop for FPC in the move of FPC employees in the GAO Building, into space vacated by * * * [other FPC components]."

The agreement itself is not accompanied by any additional instructions, specifications, or other documentation; nor, we are advised, have FPC officials provided any background information. The only elaboration concerning the scope and nature of the work agreed upon is provided by the specific instructions contained in and restricted to individual work orders issued subsequent to the agreement. While it is at least clear that the agreement is for work to be performed in the relocation of FPC employees, an FPC official stated that this relocation was not required to, and would not, take place by June 30, 1971; and that the space in question would not be made tenantable until the following fiscal year. Under these circumstances we must conclude that the subject agreement did not create a valid obligation of the FPC's fiscal year 1971 appropriations, and should not have been recorded as such. You have not questioned the four work orders issued under the agreement prior to the end of the 1971 fiscal year. We agree that these work orders, which do disclose specific tasks, may properly be considered and recorded as 1971 obligations. See B-158374, ✓/February 21, 1966; 35 Comp. Gen. 3, ✓/1955; 34 id. 705, ✓/1955; 31 U.S.C. 200(a)(3). ✓/

31 U.S.C. 200(d), ✓/provides, in part:

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APPROPRIATIONS

fiscal year

from funds needs for obligation

B-95136-O.M.

DEPARTMENT AND ESTABLISHMENT

services between

obligation appropriation

"No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for liquidation of amounts obligated in accord with subsection (a) of this section * * *."

31 U.S.C. 701(a) provides, in part:

"The account for each appropriation available for obligation for a definite period of time shall be closed as follows:

* * * * *

"(2) Upon the expiration of the period of availability for obligation, the unobligated balance shall be withdrawn and, if the appropriation was derived in whole or in part from the general fund, shall revert to such fund, but if the appropriation was derived solely from a special or trust fund, shall revert, unless otherwise provided by law, to the fund from which derived: Provided, That when it is determined necessary by the head of the agency concerned that a portion of the unobligated balance withdrawn is required to liquidate obligations and effect adjustments, such portion of the unobligated balance may be restored to the appropriate accounts."

Accordingly, the amount of \$41,013, should be withdrawn from the FPC's fiscal year 1971 appropriation and credited to the General Fund.

Paul G. Dembling

Paul G. Dembling
General Counsel

APPROPRIATIONS

obligations

from funds needs restrictions

Attachment