



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-147196

April 5, 1965

Dear Mr. Secretary:

This is in reference to letter dated February 5, 1965, and enclosure, from the Deputy Under Secretary of State for Administration, replying to letters dated November 3 and 10, 1964, from the International Operations Division of our Office questioning the validity of obligations established against appropriations for the fiscal years 1963 and 1964 respecting four contracts entered into by the Department of State in connection with the United States Migration and Refugee Assistance Program. It is stated in the letter that it is the Department's opinion that the questioned obligations meet the criteria set forth in section 1311 of the Supplemental Appropriation Act of 1955, as amended, 31 U.S.C. 200, and a decision in the matter is requested.

Before considering the contracts in relation to obligations within the provisions of 31 U.S.C. 200 we believe it would be helpful to clarify the record as to the fiscal year availability of the funds appropriated to your Department for carrying out the program. Section 2(e) of the Migration and Refugee Assistance Act of 1962, approved June 28, 1962, Pub. L. 87-510, 76 Stat. 121, provided in part "Funds appropriated for the purposes of this section shall remain available until expended." Although this language was repealed by the Foreign Assistance and Related Agencies Appropriation Act, 1965, approved October 7, 1964, Pub. L. 88-634, 78 Stat. 1015, 1021, it was in effect during the period the contracts now questioned were executed. However, the language in the basic authorization act purporting to govern the availability of funds provided in an appropriation act on a fiscal year basis, standing alone, was not sufficient to accomplish such purpose for the reasons hereinafter outlined.

The contract amounts in question were charged against fiscal year 1963 and fiscal year 1964 appropriations provided by the Foreign Aid and Related Agencies Appropriation Act, 1963, approved October 23, 1962, Pub. L. 87-872, 76 Stat. 1163, 1167, and the Foreign Aid and Related Agencies Appropriation Act, 1964, approved January 6, 1964, Pub. L. 88-258, 77 Stat. 857, 862, respectively. In each appropriation act the enacting clause contained the usual language stating that the funds were appropriated for the particular fiscal year involved, and the language under the heading "Migration and Refugee Assistance" in each of the acts is in material part as follows:

"For expenses, not otherwise provided for, necessary to enable the Secretary of State to provide assistance to refugees, as authorized by law, including

contributions to the Intergovernmental Committee for European Migration and the United Nations High Commissioner for Refugees * * *."

It is clear that the language of the above appropriation acts does not provide specifically for any longer period of availability than the particular fiscal year involved. This being so the provisions of 31 U.S.C. 718, which provide in pertinent part that "No specific or indefinite appropriation * * * in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year * * * unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation Act in which it is contained makes provision * * *," effectively precludes a conclusion that the subject appropriations were available for obligation during any period beyond the fiscal year for which provided.

The four contracts and the items questioned in our letter of November 3 and 10, as set forth in the letter of your office are as follows:

(1) \$450,000 included in Contract SCC-30756, dated June 15, 1964, with the American National Red Cross, for the Far East Refugee Program and for the Tibetan Refugee Program.

This contract, covering the period June 15, 1964, to June 30, 1965, authorized the use of not to exceed \$450,000 for any costs incidental to the resettlement, care and maintenance, integration, transportation and allied services including education and vocational training of groups or categories of refugees or other persons similarly displaced as may be designated by the Department and further provided that: "All projects undertaken by the contractor must have the approval of the Department." The entire amount of the contract was questioned in Office letter of November 3 for the reason that no projects were approved by the Department within the fiscal year 1964.

(2) \$71,500 included in Contract S188-fa-569, dated June 1, 1964, with the International Rescue Committee, Inc.

The contract was in the total amount of \$79,200 for the period from June 1, 1964, through December 31, 1964. Paragraph A(3) of section 3 established a contingency fund as follows: "This is to provide funds for refugee assistance by any means, organization or other voluntary agency as determined by the Supervising Officer." The amount of this

fund was \$71,500 which is the amount in question. This amount was recorded as an obligation against the 1964 fiscal year appropriation notwithstanding the fact that no determination had been made within that fiscal year by the Supervising Officer in regard to assistance to be furnished.

(3) \$82,657 included in Contract S188-fa-505, dated April 1, 1963, with the International Rescue Committee, Inc.

This contract executed April 1, 1963, with the term originally designated to end December 31, 1963, and for an original amount of \$45,450, had a total of eight amendments, five of which were executed subsequent to the close of fiscal year 1963. The contract, as amended by the close of the fiscal year (June 30, 1963), had been increased in amount to total \$178,210. Amendments executed subsequent to the close of the fiscal year extended the contract period to December 31, 1964. Amendment No. 2, dated June 28, 1963, provided a contingency fund in the amount of \$82,657 "for refugee assistance by any means, organization or other voluntary agency as determined by the Supervising Officer." This contingency fund was used, as shown by amendments numbers 3, 4, 5, and 6, executed during the period December 31, 1963 to February 29, 1964, to augment fiscal year 1963 contracts between the Government and other contractors for the performance of refugee assistance.

(4) \$136,400 which remained as of June 30, 1963 in Contract S-188-fa-511, dated April 1, 1963, with the American Emergency Committee for Tibetan Refugees, Inc.

This contract as executed on April 1, 1963, was to cover the period ending December 31, 1963, but by amendments was extended to December 31, 1964. Amendment No. 3, executed June 24, 1963, provided a contingency fund in the amount of \$140,900 "To provide funds for future assistance and services to Tibetan refugees as determined and approved by the Supervising Officer." \$4,500 of this fund was applied to specific purposes by amendment No. 4 dated June 28, 1963. The balance of the contingency fund in the amount of \$136,400 was deleted by amendment dated December 31, 1963, and used to establish new projects as well as increase the amount available for projects previously established under the contract.

As hereinbefore stated, the appropriations may be viewed as available for obligations only during the fiscal year for which made. Therefore the sole question for consideration is whether the questioned items

constitute valid obligations against the particular appropriations involved within the provisions of 31 U.S.C. 200, which provide in pertinent part:

"(a) Requirement; character of evidence.

"After August 26, 1954 no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of--

"(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) Restriction on use of appropriations or funds.

"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; but no such appropriation or fund shall remain available for expenditure for any period beyond that otherwise authorized by law."

It was pointed out by our Office in the letters dated November 3 and 10, 1964, that appropriations for a particular fiscal year have always been construed to be available only for the liquidation of obligations firmly established during the fiscal year for which the appropriation was made. The law codified in 31 U.S.C. 200, clarifies the prerequisites to a valid obligation. The items in the contracts questioned by our Office did not meet the requirement of specificity and the matter was therefore brought to the attention of your Department in order that action would be taken looking toward deobligation of the questioned items under the fiscal year appropriation involved. In this connection we wish to point out that we are not questioning the propriety of charging the items against the appropriation for the fiscal year in which the specific projects were approved.

We have carefully reviewed the memorandum enclosed in the Deputy Under Secretary's letter setting forth your Department's reasons for concluding that all the amounts represent valid obligations of the appropriated funds under the applicable law. It extensively covers the nature and needs of the refugee assistance program, the administrative flexibility as provided in the Migration and Refugee Assistance Act of 1962, and operation of the program on a calendar year rather than a fiscal year basis. However, the memorandum contains nothing to show that the controlling facts were other than those reported in our letters of November 3 and 10, namely that (1) the appropriations were made for the particular fiscal year concerned and as such were available only for obligation within such period, (2) the contracts were not specific as to services to be rendered for the amounts in question as required by 31 U.S.C. 200, and (3) the fiscal year lapsed before definite commitments were made.

We cannot agree with the contention set forth in the memorandum that the funds were legally obligated within the period of availability of the appropriations or were available until expended. As pointed out by your Department, there are numerous references in testimony before congressional committees to the fact that the program was operated on a calendar year basis. Coupled with this showing that the financing of the program involved a departure from the usual fiscal year procedure, a situation that could possibly lead to a misunderstanding as to the period during which obligations could be timely incurred, is the doubt injected into the matter by reason of the provision in section 2(e) of the basic legislation that funds "appropriated for the purposes of this section shall remain available until expended." As pointed out in the memorandum, the legislative history of the repeal of section 2(e) shows that the repeal was deemed necessary in view of the misunderstanding regarding the effect of the provision with respect to the Cuban refugee program of the Department of Health, Education, and Welfare as explained at page 13 of Senate Report No. 1605, 88th Congress, 2d session, in the discussion of the Department of Health, Education, and Welfare Appropriation, as follows:

"There was a misunderstanding last year and again this year as to whether unobligated balances continue available under this program. To avoid this in the future, the committee has included language in the bill making it clear that appropriations for assistance to refugee programs are available only for the year for which appropriated, and do not remain available until expended."

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In view of these extenuating circumstances and since we understand that your Department is bringing this matter to the attention of the appropriation committees for corrective action, the adjustment of any portion of the obligations properly incurred in subsequent fiscal years may be held in abeyance pending enactment of the fiscal year 1966 appropriation for this program.

Sincerely yours,

Joseph Campbell

Comptroller General
of the United States

The Honorable
The Secretary of State