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United States General Accounting Office
Washington, DC 20548

B-301561

June 14, 2004

Major Jeff Wood
Chief, Financial Management Division
Air Force Office of Scientific Research
4015 Wilson Boulevard
Arlington, VA 22203

Subject: Interagency Agreement with the Department of Energy for Online Research
and Education Information Service

Dear Major Wood:

This is in reply to your June 11, 2003, request for an opinion on whether the Air Force Office of Scientific Research (AFOSR) may use fiscal year 1999 funds to pay \$131,000 due under an agreement with the Department of Energy (DOE) to implement a governmentwide online research, education, and information service. Our review of this matter raised a number of factual questions about the circumstances of this transaction between AFOSR and DOE that were not addressed in your letter. It is not clear, for example, under what legal authority AFOSR and DOE engaged in this transaction, nor is it clear when DOE provided AFOSR the services requested. We contacted both your staff and DOE staff in an attempt to obtain necessary factual information, but none of the parties were able to supply the additional information needed to definitively address this situation. Accordingly, we are not issuing a formal decision because the lack of details would require us to substantially qualify our response. Instead, we offer a general discussion of the circumstances and issues raised by your letter, which we trust will assist AFOSR in resolving this matter.

BACKGROUND

According to documents you provided with your request, AFOSR signed an interagency agreement with DOE on September 25, 1998, to implement a governmentwide online research and education information service for colleges, universities, and other grantee organizations. According to the agreement, DOE, through a separate cooperative agreement with Federal Information Exchange, Inc. (FIE), had taken a leadership role in the development and implementation of an online information service known as FEDIX to make information about the government's research, development, and education programs readily available at no

cost to such entities. The AFOSR-DOE agreement states: “Based on the success of the FEDIX program, the Air Force Office of Scientific Research is continuing its participation for FY 1999.” This implies that there was an ongoing relationship between AFOSR, DOE, and FIE, although there were no prior agreements contained or specifically referenced in your submission. The agreement details the services that FIE would provide, states that DOE has taken a “leadership role” in implementing online information and retrieval systems and is responsible for ensuring that FIE performs the work as “outlined in their application and subsequent award notice,” and provides that AFOSR “agrees to transfer a total of \$131,000 to participate in the FEDIX services for one year, beginning September 1, 1998 and ending August 31, 1999.” Neither the DOE-FIE agreement, FIE’s application, nor the award notice referred to in the AFOSR-DOE interagency agreement were included in your submission or subsequently provided to us by any of the parties.

According to your submission, the responsible DOE unit moved its office after the agreement was signed, and there is no paperwork for either fiscal year 1998 (when the agreement was signed) or fiscal year 1999 to account for any financial obligation that AFOSR incurred under the agreement. Consequently, AFOSR never transferred to DOE the agreed-upon amount of \$131,000. Also it is not stated in any of the documents included with the submission whether AFOSR received the services that DOE and FIE promised to provide under the interagency agreement. Further, for some reason not clear from the record, DOE did not seek payment from AFOSR until June 3, 2003, by voucher number 2003-003. The voucher merely references the interagency agreement and shows the amount due as \$131,000. There is no breakdown detailing services rendered under the agreement for either fiscal years 1998 or 1999. The record also does not indicate whether there were any subsequent agreements continuing this service beyond August 31, 1999. It is in this context that you ask whether fiscal year 1999 funds can be used to pay the voucher.

DISCUSSION

The threshold question, as with any interagency transaction such as this, is the authority under which AFOSR and DOE entered into the agreement. Unless otherwise authorized by law, transfers of funds between federal agencies and instrumentalities are prohibited by law. 31 U.S.C. § 1532. The Economy Act, 31 U.S.C. § 1535, authorizes an agency to provide goods or services to another agency on a reimbursable payment basis. 70 Comp. Gen. 592, 595 (1991). We offer you a discussion of the applicability of the Economy Act with regard to your agreement since that Act governs interagency transactions when there is no other, more specific authority. *See* 59 Comp. Gen. 415, 416 (1980); B-206668, Mar. 15, 1982. In this case, the agreement, the submission, and our informal discussions with the parties failed to disclose any other statutory basis. We note, however, that revolving fund, working capital fund, and other interagency transaction authorities frequently differ from the Economy Act in application. *See, e.g.*, B-302760, May 17, 2004.

The Economy Act was enacted to “permit the utilization of the materials, supplies, facilities, and personnel belonging to one department by another department or independent establishment which is not equipped to furnish the materials, work, or services for itself, and to provide a uniform procedure so far as practical for all departments.” B-289380, July 31, 2002; 57 Comp. Gen. 674, 678–80 (1978). An order placed or agreement made under the Economy Act obligates an appropriation of the ordering agency (here AFOSR). 31 U.S.C. § 1535(d). Payment by the ordering agency may be made in advance or upon receipt of the goods and services. 31 U.S.C. § 1535(b). The performing agency (here DOE) may only recover the actual cost of goods and services provided. *Id.*

We have held that, with respect to transactions governed solely by the provisions of the Economy Act, the ordering agency (AFOSR), with some exceptions that we discuss later, must charge its obligation for reimbursements for work, service, or materials ordered to the fiscal year appropriation in which the work, service, or materials were rendered. The performing agency must credit reimbursements to the fiscal year appropriation which earned the reimbursements irrespective of when it collects the reimbursements. 59 Comp. Gen. 563 (1980); B-194711, June 23, 1980. Where the work performed or service rendered covers more than one fiscal year, the ordering agency must pay the performing agency from its respective annual appropriations for the particular fiscal years in which the work was performed or services were rendered. 55 Comp. Gen. 1497 (1976).

It is difficult here to determine the specific appropriation from which AFOSR should pay DOE for any services provided under the interagency agreement at issue. AFOSR signed the agreement on September 25, 1998, but for services beginning September 1, 1998, through August 31, 1999. Even if we assume that service under this agreement did not begin until the date it was signed, that still means the service spanned two fiscal years—5 days of service in fiscal year 1998 (the last day of which was September 30, 1998), and the remainder, from October 1, 1998, through August 31, 1999, in fiscal year 1999.

The situation is further complicated because we do not know the relationship between DOE and FIE. If DOE, in fulfillment of its interagency agreement with AFOSR, had entered into a specific contract with FIE on behalf of AFOSR, the DOE-FIE contract would have obligated AFOSR’s funds as of the date of the DOE-FIE contract, and AFOSR would use appropriations current at that time to pay DOE. 31 U.S.C. § 1535(d). *See, e.g., American Telephone & Telegraph Co. v. United States*, 32 Fed. Cl. 672 (1995) (funds are considered obligated upon execution of a binding agreement between a federal agency and another entity before the end of the period during which an appropriation remains available). For example, if DOE were to have entered into a contract with FIE for the full cost of the AFOSR services (\$131,000) on September 25, 1998, when AFOSR and DOE entered into their interagency agreement, the DOE-FIE contract would have obligated AFOSR’s fiscal year 1998 funds and AFOSR would use those funds to reimburse DOE under the interagency agreement. If, on the other hand, DOE were to have entered into such a contract on or after

October 1, 1998, but before September 30, 1999, AFOSR should use its fiscal year 1999 funds to reimburse DOE.

However, in the event that DOE had a contract with FIE covering multiple years and agencies, charges to AFOSR would accrue as services were rendered. If we were to assume that service to AFOSR began the date the agreement was signed, September 25, 1998, AFOSR would have to split its payment to DOE between fiscal years 1998 and 1999 based on work actually performed, since only work actually performed by the performing agency during each fiscal year satisfies the *bona fide* need of the ordering agency for that year. *See* 31 U.S.C. § 1502; 58 Comp. Gen. 471 (1979); B-223833, Nov. 5, 1987. Thus, AFOSR may not pay for service during fiscal year 1998 from fiscal year 1999 funds. We note also that, to the extent the agreement amount (\$131,000) reflected charges for the period from September 1, 1998, to the date the agreement was signed, and services were not yet provided before September 25, that total amount would have to be adjusted to reflect the actual costs for fiscal year 1998 as well as fiscal year 1999. *See* 72 Comp. Gen. 120 (1993).

The final question involves the availability of the funds needed to meet AFOSR's obligation under the agreement. An appropriation available for obligation for a fixed period of time (*e.g.*, one fiscal year) is closed 5 years after the expiration of availability for incurring new obligations, and any remaining balance in the account (whether obligated or unobligated) is canceled. 31 U.S.C. § 1552(a). During the 5 years between expiration (at the end of the fiscal year) and closing, the appropriation retains its fiscal year identity and is available for recording, adjusting, and liquidating obligations properly chargeable to that appropriation. 31 U.S.C. § 1553(a). Thus, agencies are required to record obligations previously incurred but that were not properly recorded against the expired appropriation, and to adjust amounts of recorded obligations to reflect the amount actually incurred and properly chargeable to the appropriation.¹ Agencies must report an overobligation of an *expired* appropriation resulting from such adjustments to the President and Congress and when necessary request additional funding to cover the overobligation or obtain authority to charge the overobligation to the agency's current appropriation. *Id.* *See also* 70 Comp. Gen. 416 (1991). Finally, 31 U.S.C. § 1553(b) authorizes payment of valid obligations properly chargeable to *closed* accounts from current appropriations subject to certain limitations not relevant here.

In this case, the record does not indicate whether AFOSR obligated the interagency agreement against a fiscal year appropriation. AFOSR's fiscal year 1998 appropriation is closed now, since it would have expired on September 30, 1998 and closed on September 30, 2003. Consequently, under 31 U.S.C. § 1553(b), AFOSR

¹ By doing so agencies are not creating new budget authority but rather correcting the records. *See, e.g.*, 73 Comp. Gen. 338 (1994); 72 Comp. Gen. 343 (1993); 71 Comp. Gen. 502 (1992).

would have to use current funds to pay any part of its obligation under the agreement as described above that would be otherwise payable from fiscal year 1998 funds. *See also* B-260993, June 26, 1996. On the other hand, AFOSR's fiscal year 1999 appropriation, having expired on September 30, 1999, but not yet closed, is still available until September 30, 2004, to pay that part of the vouchered amount due attributable to fiscal year 1999 funds. We assume from your letter that such a payment would not constitute an overobligation of the fiscal year 1999 account.

I trust the foregoing is of assistance to you. If you have any questions, please call Tom Armstrong of my staff, who can be reached at 202-512-5644.

Sincerely yours,

Susan A. Poling
Managing Associate General Counsel

cc: Joyce Gaskin
U.S. Department of Energy
Accounting & Finance
Chicago Operations Office

Don W. Fox
Deputy General Counsel
Department of the Air Force

Digest

Submission from the Air Force Office of Scientific Research (AFOSR) and subsequent informal contacts with AFOSR and the Department of Energy (DOE) did not provide the information needed to definitively address whether AFOSR could use fiscal year 1999 funds to pay a voucher for amounts owed under an agreement with DOE to implement a governmentwide online research, education, and information service. GAO letter responding to AFOSR discusses the various funding options depending on different scenarios that would require using fiscal year 1998 or 1999 funds, or both. Under account closing laws, fiscal year 1998 funds are now closed, so, to the extent payments should have been charged to fiscal year 1998, AFOSR would need to use current funds to pay the voucher. Fiscal year 1999 funds are expired but will not be closed until September 30, 2004, so under 31 U.S.C. § 1553(a) the appropriation account is still available to pay that part of the vouchered amount attributable to fiscal year 1999 funds.