

DECISION

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

A. S. Shivamurthy

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SEP 11 1978

FILE: B-193888

DATE:

MATTER OF: **Obligations and change orders under National Park Service contract**

- DIGEST:
1. An obligation is required to be recorded under Section 1501(a) of the Supplemental Appropriation Act, 1965, 31 U.S.C. § 200(a) (1970), when a definite commitment is made or a legal liability is incurred to make payment from an appropriation. There is no liability to make payment under a construction contract provision calling for miscellaneous work not otherwise provided for until a written order is accepted by the Contractor. Therefore, an obligation may not be recorded until such time.
 2. Under a construction contract which provides that quantities of unit price items are estimates and payment will be made only for actual quantities completed, change order would not be required for quantity overruns on individual estimated unit price items. However, in order to prevent violation of section 3078, Revised Statutes, there should be administrative reservation of sufficient funds to cover excess of estimated increases over decreases in unit price items resulting from quantity changes.

Mr. Bruce Kaiser, an authorized certifying officer, National Park Service, Department of the Interior, has requested our opinion on questions concerning obligations and change orders under a contract for the development of a national historic site (Contract No. CX-0000-0-0000). Specifically, the questions are:

- (1) whether the contingent sum of \$25,000, which is included in the contract price for "Force Account Work", may be obligated in its entirety under the provisions of section 1501(a) of the Supplemental Appropriation Act, 1965, 31 U.S.C. § 200 (1970) and
- (2) whether contract and accounting procedures require a change order for quantity overruns on unit price items.

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B-122006

Section 1311(a) of the Supplemental Appropriation Act, 1964, 31 U.S.C. § 506, provides, in pertinent part, as follows:

“§ 506. Documentary evidence of obligations

“Requirements; character of evidence

“(a) After August 31, 1964 no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of--

“(2) 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; * * *

In one of our earlier decisions, we noted that--

“Section 1311 was designed to remedy the then-existing practice of some agencies to avoid the withdrawal and reversion of appropriated funds remaining unexpended at the end of their period of availability by adopting various and diverse concepts of obligation, thereby making it difficult for the Congress to distinguish those items which truly deserved to be treated as obligations. See H. Rept. No. 2004, 86d Cong., 2d sess. 45-50; 86d Cong. Rec. 12470 (1964). The remedy was accomplished by establishing specific standards for the determination of valid obligations, and by requiring that agency reports of obligations conform to these standards.” H. Cong. Gen. Inv. 633 (1972).

Section 1311(a), with which we are primarily concerned, sets forth specific standards for the determination of valid obligations. Generally speaking, an obligation is required to be recorded when a definite commitment is made or a legal liability is incurred to make payment from an appropriation. 30 Comp. Gen. 81 (1950).

B-122000

The construction contract under consideration provides for lump sum payments for items such as "preservation of Government equipment", "relocation of granite paving blocks", and "demolition"; and for payments based on the actual quantities of work completed for items involving estimated quantities or units of work, such as "50,000 cubic yards of unclassified excavation", "27,000 square yards of chlorination", and "17 concrete benches". The total price estimated for the contract, including the \$50,000 for "Force Account Work," is \$2,905,175.00. This sum should be obligated. Although estimated quantities are included in the total, a legal liability for payment exists, regardless of the fact that the precise amount payable cannot be determined until time of performance.

Section 0000 of the contract, "Force Account Work", provides for "miscellaneous materials, labor, and equipment of minor nature necessary for the work and for which no specific bid item exists in the Contract Bid Schedule." No work may be done under this section until a written order is received by the contractor. That section reads as follows:

"1. DESCRIPTION: The intent of this section is to provide miscellaneous materials, labor, and equipment of minor nature necessary for the work and for which no specific bid item exists in the Contract Bid Schedule.

"2. WRITTEN ORDERS: No work shall be done under this section until a written order is received by Contractor. Any request for an order after unauthorized work has been performed will be denied.

"3. RECEIPTS: Contractor shall furnish cost invoices, including delivery cost, for all materials and supplies provided under this section. At the end of each day, Contractor and Contracting Officer shall compare and sign, in duplicate, records of all work performed on a force account basis with each retaining a copy.

"4. PAYMENT: Payment for this work shall be in accordance with Clause 3 'Changes' of the General Provisions."

Under Clause 3, payment is made upon submission of a claim by the Contractor for an equitable adjustment in the contract. The contract must be modified in writing to accomplish the adjustment.

B-100000

Since a written order, apart from the contract, is required for the performance of work under the Force Account Work section, funds provided for "Force Account Work" should not be recorded as an obligation until such orders are issued by the Contracting Officer and accepted by the Contractor. Until such time, there is no legal liability for payment which would require the recording of an obligation under the provisions of 31 U.S.C. § 200(a), GRSA.

With regard to the second question, the Changes Clause of the contract reads, in pertinent part, as follows:

"2. CHANGES

"(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

"(1) In the specifications (including drawings and designs);

"(2) In the method or manner of performance of the work;

"(3) In the Government-furnished facilities, equipment, materials, services, or sites; or

"(4) Directing acceleration in the performance of the work."

The contract specifically incorporates the provisions of the invitation for bids, which states that the quantities required for unit price items are estimates and that "payment will be made only for actual quantities of work completed." This language, in our view, may reasonably be said to contemplate both increases and decreases in such estimates and to authorize payment based on the actual quantities. Therefore, resort to a change order would not be necessary for "overruns" in unit price items. However, in order to prevent a violation of Section 3679 of the Revised Statutes, as amended, 31 U.S.C. § 665(a) (1970), there should be an administrative reservation of sufficient funds to cover the excess of the estimated increases over decreases resulting from variations from the estimated quantities of unit price items. 34 Comp. Gen. 418, 420 (1955).

B-120002

The Certifying Officer raises the point that failure to use change orders--

*** does not provide the Finance and Programs Office with any documented justification or support data to justify additional allotment of funds to cover any increased costs of the contract, nor does it provide the contract file documents that would be required to support the legality of each increased quantity payment * * ***

In the event of an audit, proper accounting procedures require that the amount of an obligation or adjustment to an obligation be recorded in the accounts provided that it is for a valid purpose which is supported with proper documentation and authorization. Prior to certifying a contract payment, the certifying officer must have evidence that the work was performed in accordance with the terms of the contract. Accordingly, whether or not change orders are used, the contracting agency is responsible for instituting administrative controls which will provide adequate documentation to support payments for quantity overruns.

R. F. KELLER

**Deputy] Comptroller General
of the United States**