

DOCUMENT RESUME

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[Agreement between the Department of Housing and Urban Development and the Army Corps of Engineers on Flood Insurance Studies]. E-167790. September 22, 1977. 4 pp.

Decision re: Department of Housing and Urban Development; Department of the Army: Corps of Engineers; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Environmental Protection Programs (2200).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: Miscellaneous: Financial Management and Information Systems (1002); Natural Resources, Environment, and Energy (300).

Authority: Economy Act (31 U.S.C. 635). National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.). 31 U.S.C. 200(a)(1). 34 Comp. Gen. 418. 55 Comp. Gen. 1497. 51 Comp. Gen. 766. 52 Comp. Gen. 128.

The Secretary of the Army requested an opinion on whether an agreement entered into by the Department of Housing and Urban Development (HUD) and the Army Corps of Engineers for the performance of flood insurance studies is exempted from the requirements of the Economy Act so that funds transferred from HUD to the Corps remain available to finance performance of such studies beyond the end of the fiscal year for which the funds were appropriated. Under this agreement, HUD appropriations are obligated and remain fully payable from appropriations initially charged for order regardless of when performance occurs. Agreement for flood insurance studies is authorized by statutory provisions other than the Economy Act and is, therefore, not subject to the unique obligation treatment applicable to Economy Act transactions. (Author/HTW)

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Henry Tracy
G.C.A.



DECISION

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

FILE: B-167790

DATE: September 22, 1977

MATTER OF: HUD-Corps of Engineers Flood Insurance Studies

DIGEST: Under agreement between Department of Housing and Urban Development (HUD) and Army Corps of Engineers which provides for Corps' performance of flood insurance studies pursuant to orders placed by HUD, HUD appropriations are obligated by such orders and remain fully payable from appropriations initially charged for order regardless of when performance occurs. Agreement for flood insurance studies is authorized by statutory provisions other than Economy Act and is therefore not subject to unique obligation treatment applicable Economy Act transactions.

This decision to the Secretary of the Army is in response to a request by the Acting Chief of Engineers for our opinion on whether an agreement entered into by the Department of Housing and Urban Development (HUD) and the Army Corps of Engineers for the performance of flood insurance studies is exempted from the requirements of the "Economy Act," *infra*, so that the funds transferred from HUD to the Corps of Engineers remain available to finance performance of such studies beyond the end of the fiscal year for which the funds were appropriated.

The Acting Chief of Engineers explains the background of this matter as follows:

"Under the terms of the agreement between HUD and the Corps of Engineers, HUD periodically issues orders for Flood Insurance Studies to be performed by the Corps of Engineers. In some cases, the required services are performed in-house by Corps personnel. In other cases, the Corps of Engineers enters into contracts for the performance of such studies. The specific instances that raise the present question involve situations where the HUD orders were issued during Fiscal Year 1976, citing Fiscal Year 1976 funds available to HUD. In some cases, the services by the

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Corps of Engineers were not performed until Fiscal Year 1977 citing the Fiscal Year 1976 funds. In other cases, contracts for such services were not entered into until Fiscal Year 1977 and again citing Fiscal Year 1976 funds."

Under the normal rules applicable to appropriation obligations, HUD funds would be obligated at the time orders are placed under the agreement between HUD and the Corps referred to above. See 31 U.S.C. § 200(a)(1)(1970).*/ Thus, for example, orders placed in fiscal year 1976 would constitute obligations of that fiscal year and would remain payable from 1976 funds even if the Corps did not complete performance of "in-house" work, or did not enter into contracts for performance of the work, within 1976.

The treatment of obligations is different for transactions governed by the so-called "Economy Act," 31 U.S.C. § 686 (1970). The Economy Act constitutes general authority for the provision of materials or services by one Federal agency (or bureau or office thereof) to another. While orders placed and accepted under the Economy Act may initially be recorded as obligations, 31 U.S.C. § 686-1 (1970) provides that:

"No funds withdrawn and credited pursuant to section 686 of this title, shall be available for any period beyond that provided by the Act appropriating such funds."

*/ This provision authorizes obligations to be recorded based on documentary evidence of:

"* * * 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 * * *."

We assume that the HUD-Corps agreement requires performance by the Corps as orders are placed by HUD.

By virtue of this provision, fiscal year funds obligated on the basis of Economy Act orders must be deobligated to the extent that performance is not completed within the fiscal year. See, e.g., 34 Comp. Gen. 418 (1955).

However, we have held that the deobligation requirement of 31 U.S.C. § 686-1 is unique to Economy Act transactions. Thus if an interagency transaction is based on statutory authority independent of the Economy Act, section 686-1 does not apply and the obligation remains payable in full from the appropriation initially charged, irrespective of when performance occurs, in the same manner as contractual obligations generally. 55 Comp. Gen. 1497 (1976); 51 Comp. Gen. 766 (1972); cf., 52 Comp. Gen. 128 (1972).

In view of the foregoing, the issue in the present case is whether the agreement between HUD and the Corps of Engineers for the Corps' performance of flood insurance studies is based on statutory authority independent of the Economy Act.

The Acting Chief of Engineers refers to several provisions of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. §§ 4001, et seq. (1970 & Supp. V, 1975), which, in the view of both HUD and the Corps, constitute independent statutory authority for the instant agreement. Section 1360(a) of the Act, as amended, 42 U.S.C. § 4101(a), authorizes the Secretary of HUD to--

"* * * consult with, receive information from, and enter into any agreements or other arrangements with the Secretar[y] of the Army * * * on a reimbursement basis * * * in order that he may--

"(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards * * * and

"(2) establish flood-risk zones in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas * * *."

Other provisions of the National Flood Insurance Act cited by the Acting Chief of Engineers emphasize the utilization of services by the Corps of Engineers for purposes of that Act. See 42 U.S.C. §§ 4101(c), 4014(b).

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The Acting Chief of Engineers refers to additional statutory provisions which could be regarded as conferring independent authority for the agreement here in question. However, we are satisfied that the above-cited provisions of the National Flood Insurance Act are sufficient to preempt the general authority of the Economy Act. Accordingly, it is our opinion that the instant agreement is not subject to the Economy Act and 31 U.S.C. § 686-1. Since the statutory provisions which are applicable do not impose any special obligation requirements, obligations pursuant to the agreement are governed by 31 U.S.C. § 200(a)(1), supra.

W. Koster
Deputy Comptroller General
of the United States