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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## Decision

**Matter of:** Natural Resources Conservation Service—Obligating Orders with GSA’s AutoChoice Summer Program

**File:** B-317249

**Date:** July 1, 2009

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### DIGEST

The General Services Administration (GSA) instructs agencies to obligate current year appropriations for orders of next year model motor vehicles submitted through GSA’s AutoChoice Summer Program, even though such orders cannot be finalized until the next fiscal year when vendors first make available the requisite information on next year models. The Natural Resources Conservation Service requested an advance decision on whether orders submitted through GSA’s AutoChoice Summer Program constitute a valid obligation of the current fiscal year. We conclude that they do not, because, until finalized in October, they are tentative and incomplete.

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### DECISION

The Chief Financial Officer (CFO) of the Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA), requests an advance decision under 31 U.S.C. § 3529 on whether NRCS may properly obligate current year appropriations to buy next year model motor vehicles (cars)<sup>1</sup> through the General Services Administration’s (GSA) AutoChoice Summer Program. Letter from E. Steven Butler, CFO, NRCS, to Gary L. Kepplinger, General Counsel, GAO, Sept. 24, 2008 (NRCS Request). In this program, while NRCS may submit an order to GSA in

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<sup>1</sup> For purposes of this decision, we use the term “cars” to refer to “motor vehicles” as defined in 40 U.S.C. § 102(7), which includes “any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers” and excludes certain vehicles used for military, investigative, law enforcement, or intelligence duties. Thus, “cars” would include sedans, vans, sport utility vehicles, and pickup trucks, as well as such special-purpose vehicles as medium and heavy trucks, buses, ambulances, firefighting trailers, and wreckers.

the summer of one fiscal year, it must wait until the next fiscal year for the information on next year model cars that it needs to finalize its order; at that time, GSA will award NRCS's order to a vendor for manufacture and delivery. NRCS Request. For the reasons stated below, we conclude that an order submitted through GSA's AutoChoice Summer Program does not constitute an obligation of the current fiscal year. GSA has informed us that it is in the process of retooling GSA AutoChoice to eliminate its Summer Program. Teleconference between Nathan C. Guerrero, Assistant General Counsel, Personal Property Division, GSA, Susan A. Poling, Managing Associate General Counsel, GAO, and Lauren S. Fassler, Senior Attorney, GAO, June 30, 2009.

Our practice when rendering decisions is to obtain the views of the relevant agencies to establish a factual record and elicit the agencies' legal positions on the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html)*. In this regard, we requested clarification on facts and legal issues from GSA's General Counsel. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to Leslie A. Nicholson, General Counsel, GSA, Oct. 20, 2008. We received GSA's response on November 24, 2008. Letter from Janet L. Harney, Acting Associate General Counsel, Personal Property Division, GSA, to Thomas H. Armstrong, GAO, Nov. 24, 2008 (GSA Response Letter). *See also* E-mail from Nathan C. Guerrero, GSA, to Neill W. Martin-Rolsky, Senior Attorney, GAO, Jan. 22, 2009 (GSA Response E-mail); Teleconference between Nathan C. Guerrero, GSA, Lauren S. Fassler, GAO, and Thomas H. Armstrong, GAO, Feb. 3, 2009.

## BACKGROUND

NRCS is a USDA agency established to "provide national leadership in the conservation, development, and productive use of the Nation's natural resources," including working with private landowners to conserve soil, water, air, plant, and animal resources. 7 C.F.R. § 600.1. *See also* 7 U.S.C. § 6962. In general, to buy new cars NRCS enters into an interagency agreement with GSA, obligating the costs of the car order to current appropriations. GSA is an executive branch agency that was established under the Federal Property and Administrative Services Act of 1949, as amended, to provide the federal government with an economical and efficient system for procuring and supplying property and certain services. 40 U.S.C. §§ 301, 101. GSA is required to procure and supply certain property and services for executive agencies, as well as issue regulations prescribing implementing policies and methods. 40 U.S.C. § 501. Under the Federal Procurement Policy Act, executive agencies are required to make purchases and contracts consistent with GSA regulations. 41 U.S.C. § 252. In its Federal Property Management Regulations (FPMR or Property Regulations), GSA requires federal civilian executive agencies, such as NRCS, to submit to GSA all of their procurement orders for new cars to be bought in the United States. FPMR, 41 C.F.R. § 101-26.501-1.

"Wherever practical," the Property Regulations require agencies to use GSA's existing standardized car buying programs to satisfy their new car requirements. FPMR,

41 C.F.R. § 101-26.501-2. In its standardized car buying programs, GSA “leverages its buying power to obtain significant discounts” by competitively awarding indefinite-delivery, indefinite-quantity contracts for obtaining new cars directly from original equipment car manufacturers for given periods of time at stated prices below the dealer invoice prices.<sup>2</sup> The Property Regulations, in certain circumstances, provide exemptions from the general requirement that agencies must buy their new cars from GSA. *Id.* First, GSA will grant waivers authorizing an agency to buy cars locally when GSA determines that buying new cars from GSA would offer no advantage over buying them locally. FPMR, 41 C.F.R. § 101-26.501-1(c). Second, GSA will grant waivers, which are “handled on an individual basis,” that authorize an agency to buy new cars from a non-GSA source if the agency provides a sufficient justification, such as “urgency of need.” FPMR, 41 C.F.R. § 101-26.501-1(b). When it is not practical to use a standardized car buying program, such as with emergency orders, GSA will procure cars from an alternative source, making every effort to meet the order’s accelerated delivery date. FPMR, 41 C.F.R. § 101-26.501-5(b). For example, in its Express Desk program, GSA will solicit competitive quotes from car dealerships for emergency orders of cars to be “delivered within 30 days or less.” *Vehicle Buying Overview*, at 11. GSA states that this expedited procedure is “disfavored, however, because it typically results in prices 30% to 40% higher than the standard [GSA AutoChoice] contract prices.” GSA Response Letter, at 2 n.1.

Generally, however, where the exemptions do not apply, an agency buys new cars from GSA by logging into GSA’s AutoChoice, a Web-based ordering application linked to GSA’s contracts awarded under its standardized car buying program.<sup>3</sup> GSA’s AutoChoice processes orders placed from October through May differently from orders placed from June through September. *AutoChoice Tutorial*, at 13; *Vehicle Buying Overview*, at 7. For orders placed from October through May, GSA directs the agency to its standard AutoChoice Program (Standard Program). *Vehicle Buying Overview*, at 7; *AutoChoice Tutorial*. Once logged into the Standard Program, the agency selects new cars it would like to buy—including preferred color, equipment, and other options—and adds them to its online shopping “garage,” which is the “holding area” from which the agency can retrieve, review, edit, or delete its order before submitting the order to GSA. *AutoChoice Tutorial*, at 22. To place an order with GSA, the agency goes into its “garage,” identifies the cars it wants to order, and completes a requisition detail screen. *Id.* at 19. Among the details the agency must provide to GSA is the fund code for the appropriation the agency is obligating for the cost of the cars and from which GSA will pay the vendor for the cars. *Id.* To submit

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<sup>2</sup> See GSA Response Letter, at 1-2; see also FPMR, 41 C.F.R. § 101-26.501-2; GSA, *Vehicle Buying Overview: GSA Automotive*, at 2, available at [www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=8161](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=8161) (last visited June 30, 2009).

<sup>3</sup> See GSA, *AutoChoice Tutorial*, at 2, available at [www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA\\_BASIC&contentId=8161](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=8161) (last visited June 30, 2009).

its order, the agency clicks on the “Finalize Selected Pending Order(s)” button, which prompts a GSA e-mail with the agency’s order confirmation and GSA’s internal order number. *Id.* at 22-23. GSA then awards the car order to a vendor and e-mails the agency the associated vendor delivery order number. *Id.* at 24. GSA estimates delivery will take 3 months for sedans, vans, sport utility vehicles, and pickup trucks and 5 to 10 months for ambulances, buses, wreckers, and medium and heavy trucks. *Vehicle Buying Overview*, at 8.

If, however, an agency places a car order between June and September, the agency can no longer use the Standard Program and is directed instead to GSA’s AutoChoice Summer Program (Summer Program).<sup>4</sup> *Vehicle Buying Overview*, at 7; *AutoChoice Tutorial*, at 13. GSA explains that in June, “most vehicles have closed out for ordering as manufacturers are preparing the next model year vehicles.” *AutoChoice Tutorial*, at 13. Because from June through September no cars are available and GSA and agencies have only an approximate idea of what features manufacturers will offer on the new next year model cars, the agency selects a specific number of cars of a general type and price and parks these cars in its garage. *Id.* In October, after GSA receives next year model car pricing and specifications from the vendors, the agency must “re-configure and re-submit each vehicle order based on the new . . . model year pricing, equipment options and colors.” *Id.* Once the agency submits its car order based on next year model information, GSA will award the order to a vendor and obtain a delivery order number. *Id.* at 24.

Although GSA cannot place the order with a vendor until October, GSA advises agencies that “the AutoChoice Summer Program will permit you to obligate current year funds to purchase new model year vehicle(s) in the fall.” *Vehicle Buying Overview*, at 7. To do so, the agency completes the same requisition detail screen used for the Standard Program. *Id.* GSA instructs the agency, when it completes the requisition detail screen, to add 5 percent of the current year model price to estimate possible increases in the price of next year model cars. *AutoChoice Tutorial*, at 13. GSA states that once the agency clicks on the “finalize” button, “[y]ou will receive an e-mail acknowledgement stating that your funds have been obligated to GSA.” *Id.* It is this feature of the Summer Program that gives rise to NRCS’s question: that is, notwithstanding GSA’s notice that a Summer Program order obligates the agency’s appropriation, the agency is required to reconfigure and resubmit its order at the beginning of the next fiscal year and the agency does not receive delivery of a car until at least 3 months into the next fiscal year.

## DISCUSSION

In order to establish an obligation that may be charged against an appropriation, an agency must have documentary evidence of a “binding agreement” for “specific goods

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<sup>4</sup> As noted above, GSA has informed us that it is in the process of retooling GSA AutoChoice to eliminate its Summer Program.

to be delivered . . . or work . . . to be provided.” 31 U.S.C. § 1501(a)(1) (the so-called Recording Statute). With the Recording Statute, Congress established that it did not want agencies to record obligations against current appropriations based on inchoate agreements. B-308944, July 17, 2007. Before an agency may consider an order as legally obligating the appropriation of the fiscal year in which it issued the order, that order must state the specific goods or services ordered: that is, the agency’s order must be firm and complete. *Id.*; 44 Comp. Gen. 695, 697 (1965); B-196109, Oct. 23, 1979. An order that lacks a specific, definite description of the goods or services to be provided is not firm and complete. B-308944.

In circumstances similar to those at issue here, the United States Travel Service (USTS) submitted a printing order to the Government Printing Office (GPO) on June 16, 1964, near the end of the fiscal year ending June 30, 1964, but without the manuscripts or other copy to be printed; USTS did not supply the copy to GPO until February 1, 1965 (fiscal year 1965). 44 Comp. Gen. at 695, 696, 698. We concluded that the June 1964 order did not constitute an obligation against fiscal year 1964 appropriations because the order was incomplete. *Id.* at 698. Instead, USTS incurred an obligation in fiscal year 1965 when it completed its order. *Id.* We opined that the only objective USTS had accomplished was a *prima facie* invalid attempt to obligate fiscal year 1964 appropriations. *Id.* at 696. Similarly, in a 1979 decision, we concluded that the National Park Service (NPS) incurred an obligation on December 22, 1978 (fiscal year 1979) when it provided Federal Prison Industries, Inc., with descriptions of signs, thereby completing the order NPS had submitted on September 13, 1978 (fiscal year 1978), without specific descriptions. B-196109. Recently, we concluded that the Department of Defense did not incur an obligation on March 24, 2004, when it submitted an order to GovWorks (then a Department of the Interior franchise fund) for “the procurement and fielding of AT/FP shipboard equipment utilized for the protection of Navy afloat assets” because the order lacked specificity. B-308944. Instead, Defense incurred an obligation on May 16, 2005, when it e-mailed its specific requirements to GovWorks: “50 sets of T1 Special Body Armor and 100 Gamma Plates.” *Id.*

We see no substantial difference between these three cases and GSA’s AutoChoice Summer Program. Applying that case law to GSA’s AutoChoice, we view a Summer Program order as tentative and incomplete for the very reason that the agency cannot, and does not, finalize the order until October when the next year model car information first becomes available. GSA argues that, with a Summer Program order, the ordering agency “has taken steps indicating the certainty of the order.” GSA Response E-mail. We disagree. While we view these steps as a close approximation of what the agency wants to buy, these steps do not amount to a firm and complete order. Indeed, the agency may decide to edit or even delete its order in October when it receives the new model year car information. As GSA notes, “the order is placed on hold by GSA until the new models, features, and prices are confirmed.” *Id.* Without that confirmation, GSA does not proceed with the order.

GSA points out that when an executive agency places an order for a car from GSA, the order falls within the coverage of 31 U.S.C. § 1501(a)(3). GSA Response Letter,

at 4. GSA states that section 1501(a)(3) “provides that an agency will incur an obligation when it places an order required by law to be made from another agency,” and notes that GSA is the mandatory source of supply for new cars. *Id.* GSA concludes that if an agency has a “genuine” *bona fide* need<sup>5</sup> for a new car, the *bona fide* need “is not negated by the fact that the agency must order vehicles through GSA via the AutoChoice Summer Program and wait upon delivery of the vehicle into the next fiscal year.” GSA Response Letter, at 6.

The fact that GSA is a mandatory source of supply for new cars does not permit an agency to obligate expiring appropriations on the basis of an incomplete order. Section 1501(a)(3) permits an agency, for interagency orders required by law, to obligate those orders as it does contracts with private vendors: that is, when the agency places the order. Section 1501(a)(3), however, does not obviate the requirement of specificity. We agree with GSA that delivery of an order in a subsequent fiscal year does not necessarily mean that the agency must obligate the order against the appropriation current at the time of delivery;<sup>6</sup> that presumes, however, that the order was valid—that is, firm and complete, defining specific requirements. These are not the facts here. An agency that submits an order to the Summer Program (during June through September) cannot, and does not, finalize that order until October, at the earliest. Indeed, if an agency actually requires a car during the summer months, GSA has offered four ways the agency can obtain the car: (1) buy a used car; (2) lease a car; (3) request a GSA Express Desk emergency order for a new current year model car; or (4) obtain a GSA waiver to buy a new current year model car from a car dealer. That is not to say, however, that the Summer Program serves no purpose. Because it takes GSA at least 3 months to deliver a car after an order is finalized in October, the Summer Program permits an agency to identify its need for next year model cars (during the summer) and finalize its order at the earliest possible time (October) so as not to delay delivery in the next fiscal year. That said, an agency may not use the Summer Program to invalidly obligate expiring fiscal year appropriations.

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<sup>5</sup> The *bona fide* needs rule provides that an appropriation is available for obligation only to fulfill a genuine, legitimate, and otherwise *bona fide* need arising during the period of availability of the appropriation. The rule is derived from the so-called Time Statute, a law that was first enacted in 1789 (1 Stat. 95) and is now codified at 31 U.S.C. § 1502(a): “The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability . . . [and] is not available for expenditure for a period beyond the period otherwise authorized by law.”

<sup>6</sup> In our *bona fide* needs case law, we have long held that an agency has a *bona fide* need in the current fiscal year to place orders for goods to be delivered in the next fiscal year to (1) replace used inventory or (2) procure goods requiring lead times that are necessary for manufacture and delivery. *See, e.g.*, 73 Comp. Gen. 259 (1994); B-308944, July 17, 2007.

## CONCLUSION

GSA established GSA AutoChoice to provide agencies, such as NRCS, with an efficient method for buying new cars, and GSA has instructed agencies to obligate current year appropriations when submitting their car orders through GSA's AutoChoice Summer Program. To properly obligate appropriations for interagency agreements, such as Summer Program orders, an agency must submit a firm and complete order that establishes a valid obligation consistent with the Recording Statute's specificity requirement. Summer Program orders are not valid obligations until agencies—using next year model car information first made available in October—complete and finalize their orders. Orders should be charged to appropriations available when the order is finalized. Consequently, NRCS may not properly obligate a Summer Program order to current year appropriations.

A handwritten signature in black ink, appearing to read 'D. Gordon', with a long horizontal flourish extending to the right.

Daniel I. Gordon  
Acting General Counsel