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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: U.S. Army, Corps of Engineers Civil Works Revolving Fund
File: B-242974.8
Date: December 11, 1992

DIGEST

The Corps of Engineers is required under 31 U.S.C. § 1501 to recognize and record obligations of its Civil Works Revolving Fund when it awards contracts to be financed by the Fund. The Corps also is prohibited by the Antideficiency Act (31 U.S.C § 1341(a)(1)(A)) from overobligating the Fund's available budget authority. These provisions are generally applicable to revolving funds, and no law has exempted the Fund from them.

DECISION

During our audit of the U.S. Army fiscal year 1991 financial statements, we discovered that the U.S. Army, Corps of Engineers did not recognize obligations when it awarded equipment purchase contracts to be financed by the Corps' Civil Works Revolving Fund. See FINANCIAL AUDIT: Examination of the Army's Financial Statements for Fiscal Year 1991 (GAO/AFMD-92-83). The Corps' policy put at issue whether the Fund is subject to the general requirement under 31 U.S.C § 1501 to recognize and record obligations as they are incurred, and the prohibition in the Antideficiency Act (31 U.S.C § 1341(a)(1)(A)) against incurring obligations in excess of available budget authority. For the reasons discussed below, we conclude that the Fund is subject to these general provisions. The Corps' proposed change in its policy and practice, if properly implemented, will bring the Fund into compliance with section 1501 and the Antideficiency Act.

BACKGROUND

Section 576 of title 33, United States Code, establishes the Corps of Engineers Civil Works Revolving Fund. The Fund is

"available without fiscal year limitation, for expenses necessary for the maintenance and operation of the plant and equipment of the Corps of Engineers used in Civil Works functions

... ."

The purpose of the Fund is to finance and acquire equipment that will be used on two or more different civil works projects. The Fund provides this equipment for work on particular civil works projects, and receives reimbursements for the use of the equipment "at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment, and accrued leave" Id.

The Corps manages the purchase of plant and equipment for the Fund through its Plant Replacement and Improvement Program (PRIP). Under this program, the Corps' district offices annually submit requests for authorization to purchase PRIP equipment. The Corps' headquarters office then reviews the requests and authorizes each district office to purchase an approved level of equipment. The district offices then award contracts to acquire the equipment.

During our audit of the U.S. Army's fiscal year 1991 financial statements, we discovered that the Corps was not recording obligations for PRIP contracts when they were awarded. In response to our request for the Corps' views on whether 31 U.S.C. § 1501 requires that these PRIP contracts be recognized and recorded as obligations when awarded, the Corps advised that the Fund has a legislative mandate to "operate within its own resources." The Corps interprets this mandate to mean that the Fund must raise sufficient revenue to pay its outlays, and that the Fund should generally operate without receiving direct appropriations. The Corps argues that it is acting within this mandate, and therefore within its authority, so long as the Fund has a cash balance sufficient to pay its disbursements. The Corps also asserts that the Fund's legislative mandate allows the Corps to award contracts financed by the Fund without regard to the Fund's available budget authority. Thus, the Corps believes its policy and practice of not recording the Fund's PRIP contracts as obligations when the contracts are awarded is legally supportable.¹

The Corps' response to our inquiry raised the additional issue of whether the Civil Works Revolving Fund is subject to the Antideficiency Act's prohibition against incurring obligations in excess of available budget authority.

¹The Corps' views are reflected in its regulatory statement that the Fund need not maintain the budgetary accounts that are required for appropriated funds. See Corps of Engineers Regulation 37-2-10, ¶ 2-23b.

DISCUSSION

As an initial matter, we agree with the Corps' view that the Fund should "operate within its own resources" and that the Fund must have enough cash available to make its disbursements. Revolving funds in general collect and retain revenues to finance continuing cycles of business-like operations. Office of Management and Budget Circular A-34, Aug. 26, 1985, II-5. The Antideficiency Act prohibits the making or authorizing of expenditures "exceeding an amount available in an appropriation or fund." 31 U.S.C. § 1341(a)(1)(A). In this regard, the Fund is no different than other revolving funds that are required to operate within their own resources, and have the cash needed to pay their obligations when they come due. However, notwithstanding our agreement on the above matters, the Corps' policy presents two questions: first, whether, under 31 U.S.C. § 1501, the Corps must recognize and record an obligation when it awards a contract that is financed by the Fund, and second, whether the Antideficiency Act prohibits the Corps from incurring an obligation in excess of the Fund's available budget authority.

Applicable regulations require the Corps to record obligations promptly. E.g., DoD Directive 7200.1, Administrative Control of Appropriations, May 7, 1984 at Encl. 5, ¶ K.3. We have long held that agency actions involving revolving funds that meet the documentation requirements of 31 U.S.C. § 1501, such as awarding contracts for goods and services, must be recorded as incurred obligations. 65 Comp. Gen. 4, 7 (1985); 39 Comp. Gen. 422, 425 (1959); B-226801, Mar. 2, 1988. For example, in 65 Comp. Gen. 4, we discussed how obligations for loan guarantees made under the Student Loan Insurance Program should be recorded under section 1501. Payments under these guarantees are made out of an insurance fund, which is a revolving fund. See 20 U.S.C. § 1081. Thus, the requirement to recognize obligations once the conditions specified in section 1501 are met clearly applies to revolving funds.

We also have previously held that revolving funds are subject to the Antideficiency Act's prohibition against incurring obligations in excess of available budget authority. For example, in several cases we have considered an agency's authority to fund long-term contracts out of revolving funds. We stated that, under the Act, the agencies must ensure that the funds have available budget authority, as prescribed by OMB guidance, to support their obligations. 51 Comp. Gen. 598 (1972); 48 Comp. Gen. 497 (1969).

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In other contexts, we have discussed what budget authority is available to a revolving fund to cover its obligations. For example, we stated in 60 Comp. Gen. 520 (1981) that the inventory of the GSA General Supply Fund is not budget authority available to support the Fund's obligations. In addition, our audit report, The Air Force Has Incurred Numerous Overobligations in its Industrial Fund (AFMD-81-53, August 14, 1981), discussed why revolving funds may not count anticipated receipts from future customer orders as budget authority to support their obligations. Thus, we think it is well established that revolving funds are generally subject to the requirement to recognize and record obligations when contracts are awarded, and the Antideficiency Act's prohibition against overobligating available budget authority.

No law explicitly exempts the Corps' Civil Works Revolving Fund from either section 1501 or the Antideficiency Act. In addition, we do not find the legislative history of the Fund's authorizing statute to reflect a view of the Fund's operations that is inconsistent with requirements of section 1501 and the Antideficiency Act. For example, during testimony by both Corps and GAO officials who had developed the proposal to establish the Fund, a GAO official explained the significance of a proposed limitation on the Fund's corpus. The GAO witness stated:

"I believe the limitation was put in so that the corpus could not be increased above \$140 million without specific authorization. For instance, when a new piece of capital equipment is to be acquired, like a new dredge, and sufficient cash were not available in the fund, the Corps would go to Congress to get sufficient funds to build the new dredge."

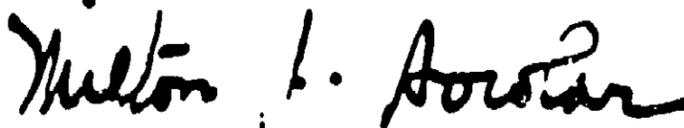
Civil Functions, Department of the Army Appropriations for 1954: Hearings Before the Subcomm. on Civil Functions and Military Construction of the House Comm. on Appropriations, 83rd Cong., 1st Sess. 593 (1953). This discussion clearly contemplates that the Fund would have sufficient cash available to finance the full amount of new equipment purchases. This method of operating the fund is not inconsistent with the generally applicable requirements of section 1501 and the Antideficiency Act.²

²Prior to 1966, the Antideficiency Act had been interpreted to require certain Department of Defense revolving funds to maintain cash balances sufficient to support all outstanding obligations. See 51 Comp. Gen. 598, 603 (1972). The
(continued...)

We are not persuaded that the Corps' Civil Works Revolving Fund has a unique status regarding the treatment of PRIP contract awards for purposes of section 1501 or the Antideficiency Act. Thus, we conclude that the Corps must ensure that contracts financed by the Fund are recorded as obligations and are supported by adequate budget authority.

CORPS PROPOSED NEW EQUIPMENT ACQUISITION POLICY

The Corps continues to believe that its policy was within its authority. However, in response to our advice concerning the applicability of section 1501 and the Antideficiency Act, the Corps has proposed a new method of managing and controlling the Fund's equipment purchases. The Corps proposes to collect the Fund's depreciation and other revenues that are intended to finance equipment acquisition into a reserve account. Quarterly, the Corps will authorize its district offices to award equipment contracts up to the level of budget authority (cash) accumulated in the reserve account. When contracts are awarded, they will be recorded as obligations against the reserve account. This cycle would be repeated quarterly, so that obligations for all outstanding equipment contracts would be supported by the cash balance held in the Fund's reserve account. This proposal, if properly implemented by the Corps, will bring the Civil Works Revolving Fund into compliance with section 1501 and the Antideficiency Act.

for 
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²(...continued)
testimony in regard to the Civil Works Revolving Fund is consistent with this interpretation of the Act's requirements. However, it is now well accepted that revolving funds may use forms of budget authority other than cash balances to support their obligations. See, e.g., OMB Circ. A-34 at VIII-8.