



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** National Park Service Soil Surveys

**File:** B-282601

**Date:** September 27, 1999

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### DIGEST

1. Subsection 1535(d) the Economy Act, 31 U.S.C. § 1535(d), requires an ordering agency to deobligate funds at the end of the period of availability unless the servicing agency has completed performance or awarded a contract for the goods or services. Here, the National Park Service entered into interagency agreements for soil surveys with the National Resource Conservation Service, Department of Agriculture, pursuant to a statute other than the Economy Act. Where an interagency agreement is based on specific statutory authority other than the Economy Act, an agency is not required to deobligate funds at the end of the period of availability since section 1535(d) only applies to interagency agreements under the Economy Act.
2. A time limited appropriation may be obligated only to meet a legitimate, or bona fide, need of the fiscal year in which the appropriation is made. Generally, funds may be obligated for the provision of services beyond the fiscal year in which the appropriation is made only to the extent those services constitute a single nonseverable undertaking.

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### DECISION

Mr. John J. Reynolds, Regional Director, Pacific West, National Park Service, United States Department of Interior asks whether fiscal year 1998 funds obligated for soil surveys pursuant to interagency agreements with the National Resource Conservation Service, Department of Agriculture, remain available to pay for ordered services provided subsequent to fiscal year 1998. For the reasons stated below, to the extent the National Park Service has ordered nonseverable services, the fiscal year 1998 funds remain available to liquidate the obligation.

## BACKGROUND

The National Park Service (NPS) has an ongoing need for soil surveys incident to its inventorying and monitoring of a number of properties that it manages. The NPS uses the results of the soil surveys to assist in determining the suitability of uses and activities of the property. Beginning in 1995, after a review of various options, NPS entered into a series of interagency agreements with the National Resource Conservation Service, Department of Agriculture (NRCS), to obtain soil surveys at various NPS locations. Each agreement delineated specific tasks organized in two or three phases across several fiscal years and culminating in the publication of a final soil survey report for each location. Under these agreements, NPS transferred funds to NRCS each year to cover each phase of the soil survey work. NPS states that a major factor for entering into these interagency agreements was NRCS' assurances that 42 U.S.C. § 3274 would, in effect, convert NPS' annual funds to no-year funds and prevent the funds from lapsing at the end of their period of availability.<sup>1</sup>

The Office of the General Counsel, USDA, issued a legal opinion dated December 28, 1998, in connection with one such soil survey agreement. The opinion concluded that the interagency agreement is subject to the Economy Act. Under the Economy Act, NRCS would have to deobligate any NPS funds at the end of the fiscal year to the extent that NRCS, the performing agency, has not incurred obligations by performing the work or entering into valid contracts for the work. 31 U.S.C. § 1535(d) (1994).

The USDA counsel explored the various statutory authorities of NPS and NRCS to enter into an agreement for soil surveys. The memorandum concluded that both NPS and NRCS have authority to enter into interagency agreements for soil surveys of NPS' lands. With respect to NPS, the opinion cites the Secretary of Interior's authority to cooperate with federal departments and agencies and obtain "information, data, reports, advice, and assistance that are needed." 16 U.S.C. § 4601-1 (1994). The opinion also notes that that provision specifically authorizes other federal agencies to expend funds for such purposes, with or without reimbursement. *Id.* Likewise, the USDA counsel found that NRCS has broad authority to conduct soil surveys under 16 U.S.C. chapter 3B, Soil Conservation. However, the opinion concluded that the statutory provision cited by the interagency agreement as authority to preserve NPS' funds across fiscal years, 42 U.S.C. § 3274, only applies to certain funds appropriated to USDA, and thus cannot serve as authority to preserve the NPS funds beyond the fiscal year.

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<sup>1</sup>Section 3274 authorizes no-year appropriations to be made to the Department of Agriculture to carry out a soil survey program. It states, "There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, such sums to remain available until expended."

We agree with the USDA counsel that both NPS and NRCS have authority to enter into interagency agreements independent of the Economy Act. These interagency agreements were not based on the authority of the Economy Act, however. Thus, any NPS funds that are properly obligated under such an agreement do not lapse at the end of the fiscal year. We also agree with the USDA counsel that section 3274, which relates to appropriations for NRCS, does not apply to NPS funds.<sup>2</sup>

## ANALYSIS

The USDA legal opinion concluded that NPS' funds would expire at the end of each fiscal year due to a provision of the Economy Act, 31 U.S.C. § 1535(d). As noted above, that subsection requires that any funds obligated by the ordering agency under an interagency agreement must be deobligated at the end of their period of availability unless the performing agency has completed performance or entered into a binding agreement with a contractor to provide the ordered goods or services.

The obligational treatment of funds under an interagency agreement depends on whether an agency enters into an agreement for goods or services under the Economy Act or possesses other specific statutory authority to obtain goods or services from other agencies. 51 Comp. Gen. 766 (1972). The distinction is an important one since the deobligation requirement of section 1535(d) is unique to Economy Act transactions. It does not apply to interagency agreements that are specifically authorized by law. 59 Comp. Gen. 563 (1980); 55 Comp. Gen. 1497 (1976); B-167790, Sept. 22, 1977; see generally, 2 Principles of Federal Appropriations Law, p. 7-22 (GAO/OGC 92-13). Where an interagency agreement is based on specific statutory authority independent of the Economy Act, the funds do not expire at the end of the period of availability if they have been otherwise properly obligated. 73 Comp. Gen. 77 (1994); B-257977, Nov. 15, 1995.

Thus, a threshold question is whether the interagency agreements involved here are subject to the Economy Act. The interagency agreement between NPS and NRCS specifically refers to 16 U.S.C. § 460l-1(g) (1994). That section authorizes NPS to

“[c]ooperate with and provide technical assistance to Federal departments and agencies and obtain from them information, data, reports, advice and assistance that are needed and can reasonably be

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<sup>2</sup>NPS emphasizes that each agreement specifically refers to section 3274, stating that “NRCS acknowledges in the Agreement that 42 U.S.C. § 3274 authorizes the NRCS to utilize the funds that NPS transfers to the NRCS until the funds are expended for the purposes of the Agreement.” As noted above, section 3274 authorizes appropriations to be made on a no-year basis for USDA’s soil survey program. It has no bearing on appropriations made to NPS, even if transferred to USDA pursuant to an interagency agreement to conduct soil surveys.

furnished in carrying out the purposes of this part [National Parks, outdoor recreation programs] \* \* \* Any department or agency furnishing advice or assistance hereunder may expend its own funds for such purposes, with or without reimbursement, as may be agreed to by that agency.”

This section authorizes NPS to enter into interagency agreements with other federal departments and agencies for the purposes stated. It also authorizes a servicing agency to use its own funds or seek reimbursement from NPS for any services provided.

The interagency agreement also refers to the authority of NRCS, through the Secretary of Agriculture, to “coordinate and direct all activities with relation to soil erosion \* \* \* (1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed \* \* \* .” 16 U.S.C. § 590a. The Secretary is further authorized by 16 U.S.C. § 590k to transfer funds both within the Department and to other agencies of the federal government to carry out the soil conservation provisions of 16 U.S.C. § 590a – 590q. Thus, the Secretary of Agriculture is authorized to “coordinate and direct” activities relating to soil erosion, including soil surveys, and to transfer funds appropriated to the Department for this purpose to other agencies.

Both of these provisions provide authority independent of the Economy Act for NPS and NRCS to enter into the interagency agreements at issue here. *See* 52 Comp. Gen. 128 (1972). However, since the soil surveys are incident to NPS’ management of the National Park system, we conclude that the primary authority for the particular agreements at issue is 16 U.S.C. § 460l-1(g). As the ordering agency, its funds are properly chargeable for the costs that NRCS incurs in providing soil surveys for National Park system properties. It follows that the Economy Act deobligation requirement does not apply to funds obligated under the authority of section 460l-1(g). Those funds, if otherwise properly obligated, would not be deobligated at the end of the fiscal year, but would remain available to liquidate the obligations.

#### BONA FIDE NEEDS RULE

The final issue is whether NPS otherwise properly obligated its one-year funds. Under the bona fide needs rule, an appropriation limited in time may be obligated only to meet a legitimate need of the time period for which Congress provided the appropriation. 73 Comp. Gen. 77 (1994); 70 Comp. Gen. 296 (1991); B-257977, Nov.15, 1995. Thus, an agency may obligate a fiscal year appropriation for the provision of services that extend beyond the fiscal year in which the appropriation is made only to the extent those services constitute a single nonseverable undertaking. 73 Comp. Gen. 77 (1994); 70 Comp. Gen. 296 (1991); B-257977, Nov. 15, 1995; *see generally*, 2 Principles of Federal Appropriations Law, p. 5-22 (GAO/OGC 91-5). The term “severable services” refers to those services which are continuing and recurring

in nature, such as window cleaning, maintenance or security services, etc., where an agency realizes a benefit at the time that services are provided even if the contract is not fully performed. In other words, severable services are those services that can be separated into components that independently provide value to meet agency needs. Under the bona fide needs rule, any portion of severable services completed in a subsequent fiscal year are severable and, thus, chargeable to appropriations available in the subsequent year. 58 Comp. Gen. 321 (1979).

There is insufficient information in the supporting documents submitted by NPS to permit us to determine to what extent the particular services called for under each agreement entered into between NPS and NRCS constitute either severable or nonseverable services. For example, the Interagency Agreement for the Yosemite National Park dated September 29, 1995, sets forth specific work that NRCS is required to perform in order to complete each phase of the project. These include such items as completed methodology, aerial photographs, purchases of equipment, soil survey correlation, interim reports and a final report for the areas designated for soil surveys. While each phase and each item within each phase may be necessary for the ultimate completion of the soil survey of each NPS property, it is unclear to what extent these tasks independently provide value to meet agency needs. 73 Comp. Gen. 77 (1994). NPS should review the transactions under each of its agreements with NRCS to determine whether the particular services are severable or nonseverable. NPS should then adjust its accounts based on the results of this analysis.

## CONCLUSION

NPS entered into a number of binding written agreements with NRCS pursuant to 16 U.S.C. § 4601-1(g). Under these agreements, NRCS would perform certain agreed upon functions leading to soil surveys for specific NPS properties. Since NPS has statutory authority for these interagency agreements, NPS funds obligated pursuant to these agreements are not subject to the deobligation requirement of the Economy Act, 31 U.S.C. §1535(d). To the extent the funds were properly obligated consistent with the bona fide needs rule, they remain available to liquidate the obligation.

Comptroller General  
of the United States