



UNITED STATES GENERAL ACCOUNTING OFFICE
REGIONAL OFFICE
SUITE 300-D, 2420 W. 26TH AVENUE
DENVER, COLORADO 80211

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APR 2 1980

Mr. Kenneth Payton, Area Director
U.S. Bureau of Indian Affairs
Albuquerque Area Office
P.O. Box 8327
Albuquerque, New Mexico 87198

ACC 00365



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Dear Mr. Payton:

During our [review of yearend spending practices] at your agency, we found 22 procurement actions that appear to violate various appropriation provisions. We found cases in which contracts or modifications were funded with expired appropriations in violation of the Anti-Deficiency Act, 31 U.S.C. 665, and improperly recorded as obligations in the prior fiscal year, in violation of 31 U.S.C. 200(a). We also found cases in which annual appropriations were used to purchase products or services which did not appear to fulfill a bona fide need of that fiscal year. This violates 31 U.S.C. 712(a) and numerous decisions of the Comptroller General issued thereunder. For your reference we have cited the above-mentioned statutes in enclosure II of this letter.

Ten of the procurement actions were contracts awarded under Public Law 93-638 (The Indian Self-Determination and Education Assistance Act of 1975). Eight of these contracts were, according to the contract files, fully funded contracts to which additional funds were added without increasing the amount of services to be provided under the contract, and with no request for additional funds from the contractor or any indication of a bona fide need. The remaining two contracts had additional funds added without a written agreement between the Government and the contractor to support the obligation.

Details of the contracts are in enclosure I to this letter.

Unless you furnish documentary evidence to the contrary, or take action to correct the defects, any past or future payments under the contracts may be subject to exception.

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Group III
See 103 for full assignment

Please furnish your written response, stating what action you are taking, by April 17, 1980.

Sincerely yours,

for Ashley & Whitwell

Robert W. Hanlon
Regional Manager

Enclosures - 2

cc: Mr. Butron (DOI/IG), w/enclosures

Bureau of Indian Affairs
Defective Contracts

Case 1

In late September 1978, \$135,000 of fiscal year 1978 funds was obligated to support modification 16 to contract MOOC14201809. The modification, however, was not executed until October 25, 1978, after the appropriation charged had expired.

Case 2

Contract MOOC14202785 was amended on November 27, 1978, to include additional work, and added \$30,000 to the contract. The funds were improperly recorded as an obligation on September 29, 1978, using fiscal year 1978 funds. The contractor was not asked to submit a proposal until November 2, 1978, and the amendment was signed on November 27, 1978. At this time fiscal year 1978 funds were no longer available for obligation.

Case 3

Modification 2 to contract MOOC14202723, awarded March 7, 1979, increased the scope of the contract and added \$142,662.85 of fiscal year 1978 funds. The funds were recorded as an obligation on September 29, 1978, without a contract supporting the obligation. The contractor was asked to submit a proposal on December 18, 1978, and the modification was signed on March 7, 1979, after the expiration of the fiscal year 1978 funds.

Case 4

Contract MOOC14202984 was awarded on September 24, 1979, using \$460,440 of fiscal year 1979 funds to purchase eight road graders. Modification 2 to the contract was mailed to the contractor for his signature on October 5, 1979. The contractor's signature, however, was apparently backdated, because the modification was returned bearing a signature dated September 28, 1979. The modification added three graders and \$172,665 to the contract. The funds were recorded as an obligation on September 24 and 25, 1979, using fiscal year 1979 funds. Since modification 2 was executed in fiscal year 1980, the obligation of \$172,665 in September 1979 was improper.

Case 5

Modification 1 to contract MOOC14202271 was awarded on December 14, 1979, using \$50,000 of fiscal year 1979 funds. The obligation was recorded on September 7, 1979. This was a violation of 31 U.S.C. 200(a), in that an obligation was recorded without a written binding agreement to support it. In addition, the appropriation used expired before the modification was executed.

Case 6

Modification 3 to contract MOOC14202887 was awarded on September 27, 1979, using \$200,000 of fiscal year 1979 funds. The proposal contained two alternatives (one for \$90,350 and one for \$110,600). The modification awarded the \$90,350 proposal, but added \$200,000. In addition, \$20,800 of the proposal had been previously funded by modification 2. As a result of these errors, the contract was overobligated by \$130,450:

Actual obligation:		\$200,000
Proposal:	\$90,350	
Less previously funded:	<u>20,800</u>	
Actual proposal:	\$69,550	<u>69,550</u>
Overobligation:		<u>\$130,450</u>

Purchase orders

There were six purchase orders issued in September 1979, totaling \$442,646.17, that did not have a demonstrated bona fide need in the year they were purchased. Below are the order numbers, amounts, and specific defects of the orders questioned.

<u>P.O. number & date</u>	<u>Amount</u>	<u>Defect</u>
TA9MOO-0101700 (9/27/79) Microfiche manuals and regulations	\$111,471.00	No advance planning for this purchase, and no justification in records. No demonstrated bona fide need in year of purchase.
CA9MOO-0101689 (9/26/79) Two word processors	30,200.40	Purchase order unsupported by any documented need. GSA Bulletin FPMR B-86 not complied with. No demonstrated bona fide need in year of purchase.
TA9MOO-0101708 (9/27/79) Kardex retrieval files (11 units)	78,979.07	Requisitions generated after order issued. No demonstrated bona fide need in year of purchase.

<u>P.O. number & date</u>	<u>Amount</u>	<u>Defect</u>
TA9M00-0101695 (9/26/79) Seven reader/printers and associated equipment	\$ 51,617.10	Requisitions generated after order awarded. No documented bona fide need in year of purchase.
DA9M00-0101711 (9/27/79) Fifteen Toro Mower-snowplows	61,353.00	No documented bona fide need in year of purchase. No requisitions from receiving agencies to support order.
DA9M00-0101712 (9/27/79) Eighteen Haulster gas vehicles and ten electric vehicles	109,025.60	No documented bona fide need in year of purchase. No requisitions from receiving agencies to support order.

Each of these purchase orders violated 31 U.S.C. 712(a), in that none supported a bona fide need in the year issued. For the most part, they were generated without supporting requisitions, validated justifications, and in some cases without knowledge of who was to receive the goods.

Public Law 93-638 (Indian
Self-Determination Act) contracts

Ten of the eleven Public Law 93-638 contract modifications we reviewed had deficiencies. Eight of the modifications were to otherwise fully funded contracts and, according to the contract file, simply added funds without requiring any additional services from the contractor.

The remaining two modifications were not executed before the expiration of the appropriation charged.

The contracts and their defects are summarized below:

31 U.S.C. 712(a) Violations

<u>Contract No.</u>	<u>Obligation date</u>	<u>Amount questioned</u>	<u>Deficiency</u>
MOOC14202343 (mod.)	9/29/78	\$ 10,000	Added to a fully funded contract with neither evidence of bona fide need nor additional service for the additional funds.
MOOC14202347 (mod.)	9/14,26,29/78	46,000	Same
<u>a</u> /MOOC14202387 (mod.)	9/15,28/78	95,000	Same
MOOC14202630 (mod.)	9/28/78	47,000	Same
MOOC14202806 (mod.)	9/19/79	200,000	Same
<u>b</u> /MOOC14202604 (mod.)	9/27/78	75,000	Same
MOOC14202604 (mod.)	9/19/79	140,000	Same
<u>c</u> /MOOC14202269 (mod.)	9/26/79	50,000	Same

a/No modifications for the obligated funds were ever executed; there is no binding agreement upon which to base the obligations.

b/The 1978 modification for \$75,000 to contract MOOC14202604 was not awarded until after the appropriation charged had expired.

c/This modification involved funds which were obligated on September 26, 1979, but the modification was not signed by both parties until October 15, 1979, after the appropriation had expired.

Anti-Deficiency Act Violations

<u>Contract No.</u>	<u>Amount</u>	<u>Obligation date</u>	<u>Award date</u>
MOOC14202456 (mod.)	\$170,000	9/29/78	7/24/79
MOOC14202309 (mod.)	166,049	9/22,27/78	11/15/78

Excerpts from Title 31, U.S. CodeSection 200(a)

"After August 26, 1954, no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of--

(1) 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 * * *."

Section 665(a)

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

Section 712(a)

"Except as otherwise provided by law, all balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year."