FISCAL LAW

Purpose – Time – Amount

USAMRAA Stand Down

2009

Outline

- Background
- Basic Fiscal Limitations
- Antideficiency Act (ADA)
- Questions

Background

U. S. Constitution, Art. I, Sec 9, provides that "(N)o Money shall be drawn from the Treasury but in Consequence of an Appropriation made by Law…."

The "Purpose Statute", 31 U.S.C. Sec. 1301 provides that agencies shall apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law.

The Antideficiency Act (ADA), 31 U.S.C. Sections 1341,1342, 1350, 1351, and 1511-1519 (2000), consists of several statutes that authorize administrative and criminal sanctions for the unlawful obligation and expenditure of appropriated funds.

Basic Fiscal Limitations

An agency may obligate and expend appropriations only for a proper **purpose**.

An agency may obligate only within the **time** limits applicable to the appropriation.

An agency may not obligate more than the **amount** appropriated by the Congress.

Purpose

- The Purpose Statute does not require Congress to specify every item of expenditure in an appropriation act…agencies have reasonable discretion to determine how to accomplish the purpose of an appropriation.

- An appropriation for a specific purpose is available to pay expenses necessarily incident to accomplishing that purpose.

Appropriations

- Operation & Maintenance
- Personnel
- Research, Development, Test & Evaluation
- Procurement
- Military Construction/Shipbuilding

Necessary Expense Rule

- The expenditure must bear a logical relationship to the appropriation sought to be charged.

- The expenditure must not be prohibited by law.

- The expenditure must not be otherwise provided for; that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.

Application of the Test

- The concept is a relative one, and determinations are fact, agency, purpose, and appropriation specific.

- The expenditure does not have to be the only way, or even the best way to accomplish the object of an appropriation, but must be more than merely desirable.

- The agency's determination how to accomplish the purposes of appropriations is given considerable deference.

Determining Purpose

- Appropriations Acts
- Authorization Acts
- Organic Legislation
- Miscellaneous Statutory Provisions
- Legislative History
- Budget Request Documentation
- Agency Regulations
- Case Law

Time

- An appropriation is available for obligation for a definite period of time. An agency must obligate funds within their "period of availability".

- Expired funds retain their fiscal year identity for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations, but not incur new obligations.

Appropriations

- Operation & Maintenance (annual)
- Personnel (annual)
- Research, Development, Test & Evaluation (2 yr)
- Procurement (3 yr)
- Military Construction/Shipbuilding (5 yr)
- Special Purpose

Bona Fide Needs

Agencies may obligate appropriated funds only for requirements that represent bona fide needs of an appropriation's period of availability.

Period of Availability - Exceptions

- Protests
- Terminations for Default
- Terminations for Convenience, pursuant to a court order or agency determination of erroneous award.

Bona Fide Needs – Supply Contracts

- Stock-Level Exception – Supplies ordered to meet authorized stock levels are the bona fide need of the year of purchase, even if the agency does not use them until a subsequent year; e.g., replenishment of operating stock levels, safety levels, mobilization requirements, and authorized backup stocks.

- Lead-Time Exception – Recognizes that agencies may need and contract for an item in a current FY, but cannot physically obtain the item in the current FY due to the lead time necessary to produce and/or deliver it.

Bona Fide Needs – Service Contracts

- Severable Services – Agencies may award severable service contracts for a period not to exceed 12 months at any time during the fiscal year, funded completely with current appropriations.

- Nonseverable Services – Agencies must obligate funds for the entire undertaking at contract award, even if performance will cross fiscal years.

Amount & Antideficiency Act

- Making obligation in excess of the amount available in an appropriation.
- Making an obligation in excess of an apportionment or a formal subdivision of funds.
- Incurring an obligation in advance of an appropriation, unless authorized by law.
- Accepting voluntary services, unless authorized by law.

Antideficiency Act (ADA)

Violations of the Purpose Statute or the use of the wrong fiscal year funds will not result in an ADA violation if the error can be properly corrected. The accounts can be adjusted if:

- The proper funds were available at the time of the obligation;
- The proper funds are available at the time of correction; and
- The proper funds were available continuously from the time of the erroneous obligation to the time of correction.

ADA Investigating Violations

- Flash Report within fifteen (15) working days
- "team of experts" preliminary investigation
- If violation, an AR 15-6 investigation
  - Cause
  - Responsible parties
- Report to Congress and President

ADA Penalties

- Adverse Personnel Actions
  - Suspension w/o pay
  - Removal

- Criminal Penalties ("knowing and willful")
  - Fine, up to $5,000
  - Confinement, up to 2 years

Questions?