



GSA Office of General Counsel

Via Facsimile and Mail

January 12, 2006

Mr. William J. Haynes II  
General Counsel  
Department of Defense  
Room 3E980  
1600 Defense Pentagon  
Washington, DC 20301-1600

Dear ~~Mr. Haynes~~,

This letter is to advise you of GSA's policy regarding the use of interagency agreements (IAs) to procure severable services. Given the large volume of IA's between GSA and the Department of Defense (DoD), much of it involving the acquisition of severable services, we think it will be useful for our two agencies to have a common understanding of how these IA's are to be handled. A cohesive and consistent position will also benefit both our agencies in responding to questions posed by both the GSA and DoD Offices of Inspector General in their review of GSA task orders on behalf of DoD. As discussed below, we intend to handle IA's involving severable services in the same manner as those involving nonseverable services except that, as required by statute, the contracts for severable services will have a performance period of no more than one calendar year.

As you know, when an IA is entered into under authority other than the Economy Act, 31 U.S.C. § 1535, the existence of a defined requirement at the time the IA is executed forms the basis for incurring and recording a financial obligation by the requesting agency. The servicing agency then has a reasonable period of time to fill the requesting agency's need, and the fiscal year appropriation current at the time of the IA should be charged for the full costs of the IA, notwithstanding that the work may not be completed during that fiscal year. See *Transfer of Fiscal Year 2003 Funds from the Library of Congress to the Office of the Architect of the Capital*, B-302760 (May 17, 2004); *Independent Statutory Authority of Consumer Product Safety Commission to Enter Into Interagency Agreements*, B-289380 (July 31, 2002); *Matter of: Continued Availability of Expired Appropriation for Additional Project Phases*, B-286929 (April 25, 2001).

GSA's authority for IA's is the Federal Property and Administrative Services Act (Property Act), 40 U.S.C. §§ 501, 502 and section 5112 of the Information Technology Management Reform Act (ITMRA), 40 U.S.C. § 11302. Thus, when DOD and GSA enter into a valid IA under these authorities, DoD properly may

U.S. General Services Administration  
1800 F Street, NW  
Washington, DC 20405-0002  
www.gsa.gov

record an obligation for the full annual value of the services to be procured by GSA, and GSA properly may issue task orders or award contracts using annual DOD funding even if the award occurs in a subsequent fiscal year.

When the IA is for procurement of severable services, the terms of the IA and the resultant contract must also comply with the following statutory restriction. Pursuant to 10 U.S.C. § 2410a and 41 U.S.C. § 2537, the performance period can be no more than 12 months. Section 2410a provides,

**(a) Authority. (1)** The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

**(2)** The purpose of a contract described in this paragraph is as follows:

**(A)** The procurement of severable services.

**(B)** The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

**(b) Obligation of funds.** Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

Section 2537 of Title 40, U.S. Code, the equivalent of section 2410a for civilian agencies, provides,

**(a) Authority**

The head of an executive agency may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

**(b) Obligation of funds**

Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a) of this section.

Based on these authorities, contracts for severable services can be for no more than one calendar year. When the contract for severable services is awarded via an IA, there may be an issue as to when the period of performance begins -- that is, whether the period of performance begins when the IA is accepted or whether it begins when the contract is awarded.

GSA's position is that the authority of a servicing agency to enter a contract to fulfill an IA following the close of the fiscal year, discussed above, complements the authority in 10 U.S.C. § 2410a and 41 U.S.C. § 253l to contract for severable services for a period of up to one calendar year. Therefore, we do not view the time period for GSA's procurement services as part of the 12 month period of performance.

In reaching this conclusion, we have considered that both 10 U.S.C. § 2410a and 41 U.S.C. § 253l apply to "contracts", limiting the "contract period" to one year where it is a procurement of severable services. While IA's are like contracts in some ways, they differ from contractual transactions in other ways. See, B-302760, *supra*, at note 10. Applying the plain meaning of the statutes, these provisions apply to contracts, not interagency agreements. Had Congress intended to make them applicable to interagency agreements, it would have done so. We also find it significant that the purpose of 10 U.S.C. § 2410a, enacted as part of the Federal Acquisition Streamlining Act, was to provide agencies with greater flexibility in managing their contracts. The provision was enacted to overcome the *bona fide* needs rule, 31 U.S.C. § 1502, as it had been interpreted by the Government Accountability Office (formerly the General Accounting Office) (GAO). The GAO had long held that severable services were a *bona fide* need of the fiscal year in which they were rendered, and must be paid for with appropriations current at the time. By making current fiscal year budget authority available in the next fiscal year, Sections 2410a and 253l are statutory exceptions to the *bona fide* needs rule. See *Matter of: Funding of Maintenance Contract Extending beyond Fiscal Year*, B-259274 (May 22, 1996). We believe it would be contrary to the purpose of Sections 2410a and 253l, to apply them in the context of IA's in such a way as to limit the flexibility of Executive agencies in meeting their needs for severable service contracts.

There are also practical reasons not to include the servicing agency's performance on the IA as part of the period of performance of the contract. Typically when DoD components come to GSA for assisted acquisition services, they are seeking a full year of contract performance and have funded the IA accordingly. If GSA's lead time is subtracted from the period of performance on the contract or task order, the result would be contracts and orders for less than a year -- that is, for less than what the component needs. In some cases, vendors may be unwilling to modify their prices to meet these short performance periods. This could have the result of limiting competition and/or increasing overall cost to the taxpayer. Also, if contracts and task orders were issued for a period of less than a year, GSA would have to refund small amounts of budget authority and both GSA and DoD would have to make time-consuming accounting corrections involving the deobligation of small

amounts, or DoD would lose the ability to obligate those amounts. It would also be very difficult to communicate and implement such a policy for both DoD and GSA personnel.

I trust that this outlines our common understanding on IA's involving severable services. If you have any questions, please do not hesitate to contact me. I can be reached at (202) 501-2200.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan R. Swendiman", with a long horizontal flourish extending to the right.

Alan R. Swendiman  
General Counsel