



Comptroller General
of the United States

Washington, D.C. 20548

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B-254086

May 2, 1994

The Honorable Robert L. Livingston
House of Representatives

Dear Mr. Livingston:

This responds to your letter of July 6, 1993, asking us to determine whether the Department of Defense's (DOD) submission of its Data Center Consolidation (DDCC) plan to the Base Realignment and Closure (BRAC) Commission violated the funding and reporting requirements of section 9047 of the DOD Appropriations Act for fiscal year (FY) 1993. The conference committee for DOD's FY 1994 appropriations has also directed the Comptroller General to provide such an analysis.

Specifically, you question whether DOD's submission of the plan to the BRAC Commission and related actions constituted an implementation of a consolidation plan, which section 9047 prohibited until 60 days after a report was submitted to the appropriations committees.¹

As explained below, we do not believe that the submission of the DDCC plan, or the related actions, violated section 9047, because they did not constitute the implementation of a consolidation plan.

Background

Section 9047 was enacted in October 1992 as part of the DOD FY 1993 Appropriations Act, Pub. L. No. 102-396.² The section prohibited DOD from obligating or expending funds either to "implement" any consolidation plans for specified automatic data processing and information technology facility activities, or to make any reductions in force or transfers in personnel at certain facilities, until 60 days

¹We discuss whether the DDCC plan fully addresses the areas and criteria called for in section 9047 in our comments to DOD on the plan, as provided for in section 9047.

²As a part of an appropriations act, section 9047 expired at the end of FY 1993, September 30, 1993. Section 8035 of the DOD FY 1994 Appropriations Act, Pub. L. No. 103-139, November 11, 1993, includes similar funding restrictions on DOD's consolidation effort.

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after submitting a report to the House and Senate appropriations committees justifying such actions. The report is first to be submitted to our Office for review, comment and certification.

In February 1993, before submitting its DDCC plan to our Office or to the appropriations committees under section 9047, DOD submitted the plan to the 1993 BRAC Commission. Base closure legislation specifies the general process for recommending and approving base closures and realignments.³ DOD submission of closure and realignment recommendations is the first step in the process, which includes Commission analysis and subsequent consideration by the President and the Congress. DOD recommended a significant DOD-wide consolidation of its data processing centers into 15 megacenters, calling for the disestablishment of 44 processing centers.⁴

The BRAC Commission submitted its recommendations to the President on July 1, 1993, recommending the disestablishment of 43 information data processing centers, and consolidating the workload into 16 megacenters. The President submitted the report to the Congress and, pursuant to the BRAC legislation, because there was no congressional action the recommendations may now be implemented.

As stated above, all of these DOD actions took place before any actions were taken in response to section 9047, even though the recommended consolidations affected installations and activities that section 9047 covered. DOD submitted the DDCC plan to our Office in August 1993, with minor changes, for purposes of section 9047's reporting requirement. We are providing DOD our comments, copies of which will be forwarded to you and the appropriations committees.

³The Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, November 5, 1990, Title XXIX, §§ 2901-2910, 10 U.S.C. § 2687 note.

⁴DOD's submission to the BRAC Commission was permissive--not mandatory--because none of the affected facilities exceeded the statutory thresholds that mandate BRAC input. The law requires any proposed realignments to undergo the BRAC process if, with respect to any military installation, there will be a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at the installation. 10 U.S.C. § 2687(a).

DOD Position

We asked DOD to address the propriety, in terms of section 9047, of DOD's submission to the BRAC Commission and of (1) site surveys, (2) operational control activities, and (3) purchases and hiring that appear to be directly related to the planned consolidation. In response, DOD's Office of General Counsel points out that the restriction in section 9047 is on implementation of a consolidation plan, and argues that simply including the DDCC plan in the submission to the BRAC Commission cannot be considered implementation. DOD also maintains that visits by Defense Information Systems Agency site survey teams to gather information for the DDCC plan for purposes of the BRAC Commission were proper under section 9047. DOD maintains that a plan cannot be prepared and recommendations made without collecting information to put in the plan, so that site visits for that purpose should not be viewed as implementation of the plan. On the other hand, DOD has suspended "capitalization site visits" to identify personnel and property before assumption of operational control of certain activities.

Analysis

We agree with DOD that it did not violate section 9047's prohibition. By its terms section 9047 precludes the obligation or expenditure of funds to implement the designated consolidation plans until certain conditions are met: the submission of a report to the appropriations committees justifying any proposed actions, including prior review and certification by our Office, and then a 60-day waiting period.

DOD's submission of its consolidation plan to the BRAC Commission, however, constituted only a Department recommendation with respect to base closures and realignments. Under section 2903(c) of the Base Closure and Realignment Act of 1990, which established the Commission and set out the process,⁵ DOD is to submit to the Commission a list of installations that it "recommends" for closure or realignment. The Commission transmits to the President a report of its findings and conclusions based on a review and analysis of DOD's recommendations. Section 2903(d). If the President approves the Commission's recommendations, the President submits them in a report to the Congress. Section 2903(e). DOD may carry out the closures and realignments recommended by the Commission in the President's report only if the Congress does not disapprove of the recommendations within a prescribed timeframe. Section 2904.

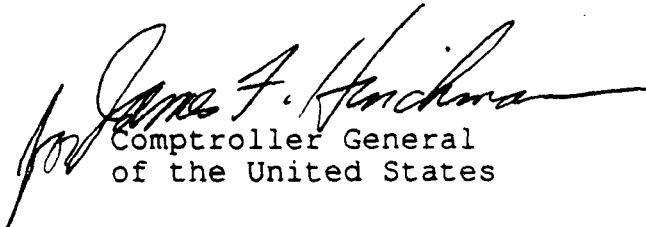
⁵See footnote 3, supra.

Thus, by the terms of the base closure legislation, DOD's submission of a plan to the BRAC Commission constitutes a recommendation for the Commission's review and analysis. "Implementation" can begin only after the full process, including Commission, Presidential, and Congressional consideration, is completed. Consequently, we agree with DOD that submission of the plan - the Department's recommendation - to the Commission cannot be considered implementation in violation of section 9047.

For the same reason, we also agree with DOD's view that the site survey visits that occurred in order to gather information for preparing the DDCC plan did not constitute implementation of a consolidation plan.

Although the above DOD actions did not violate section 9047, we note that both the House Committee on Appropriations and the conference committee have criticized DOD's decision to route the DDCC plan through the BRAC process. Section 8035 of the DOD FY 1994 Appropriations Act restricts DOD's consolidation efforts until DOD submits a report to the appropriations committees, but specifically allows for the use of funds to implement the 1993 BRAC-approved recommendations. Nevertheless, in a statement by the House Committee on Appropriations, which was highlighted by the conferees, the Committee directed DOD "not to use the BRAC process in the future to circumvent Congressional oversight or legislative restrictions that impact future below threshold data processing [and related] initiatives."⁶

Sincerely yours,


for James F. Hinchman
Comptroller General
of the United States

⁶See H.R. Rep. No. 103-254 at 306-307 (1993), and H.R. Rep. No. 103-339 at 163 (1993).