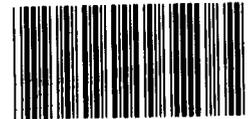


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Comptroller General  
of the United States  
Washington, D.C. 20548

B-241514.13



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October 2, 1991

To the President of the Senate and the  
Speaker of the House of Representatives

This letter reports a deferral of budget authority in the Department of Veterans Affairs (VA) major construction appropriation that should have been, but was not, reported to the Congress as a deferral pursuant to the Impoundment Control Act of 1974.

The VA Secretary is required by law to report to the Appropriation Committees and our Office any approved major construction projects for which construction and working drawing contracts are not awarded within specified time limits. See, generally Pub. L. No. 101-507, 104 Stat. at 1354 (1990); Pub. L. No. 101-144, 105 Stat. at 842 (1989). GAO is required, by law, to examine the implications of such delays under the Impoundment Control Act. Pub. L. No. 93-344, Stat. (1974). On May 30, 1991, we provided the Congress with our report which concluded that the delays in 15 of the 17 projects reported by the Secretary did not constitute impoundments. GAO/HRD-91-84. However, we advised that with respect to 2 projects we were continuing to review the impoundment implications of the VA's actions and would report on those projects separately. Our Office has determined, for the reasons set forth below, that the VA's action with regard to one of the projects constitutes an unauthorized deferral of budget authority.

BACKGROUND

In fiscal year 1989 the Congress appropriated a lump sum of \$363,040,000 to remain available until expended, for "construction, major projects." Pub. L. No. 100-404, 102 Stat. 1032-1033 (1988). The Conference Report accompanying the law budgeted \$14,000,000 for the design of a clinical addition, a renovation of building two, and a Spinal Cord Injury Center project at the VA Medical Center in Dallas, Texas (SCI project). H.R. Rep. No. 817, 100th Cong., 2nd Sess. 28 (1988); H.R. Rep. No. 701, 100th Cong., 2nd Sess. 60 (1988). The appropriation act required the Secretary to report any approved major construction project for which working drawings contracts were not awarded by September 30, 1989. Pub. L. No. 100-404, 102 Stat. 1033. The act also

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required the Comptroller General to review the Secretary's report in accordance with the procedures established by section 1015 of the Impoundment Control Act of 1974, 2 U.S.C. § 686. The project was reported as delayed in fiscal year 1989 because a major redesign of preliminary plans for the SCI facility and the central energy plant was being conducted; also OMB approval of bed numbers was pending. In our 1990 report to Congress we concluded that the delay did not constitute an impoundment of funds. GAO/HRD-90-91, Apr. 5, 1990.

This year the SCI project was again reported as delayed because the VA, at the request of OMB, has decided to extend the construction timeframes of the three components of the SCI project in order to spread out budgetary resources over several fiscal years. The VA in its fiscal year 1992 budget submission, requested construction funding for only the SCI 30-bed long-term spinal cord injury building, energy plant, utility tunnels and sitework. Department of Veterans Affairs FY 1992 Budget Submission, Construction Programs, Volume 3 at 14-22 (1991). VA awarded a working drawing contract for the SCI facility and energy plant on May 2, 1991. Award of a working drawing for the clinical addition was scheduled for September 26, 1991. VA officials informed us that there is no intent whatsoever to downsize the SCI project.

#### ANALYSIS

Under the Impoundment Control Act, a deferral of budget authority includes:

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

"(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority . . . ."

2 U.S.C. § 682(1).

The Act permits deferrals only for very specific reasons:

"(1) to provide for contingencies;

"(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

"(3) as specifically provided by law."

2 U.S.C. § 684(b). Deferrals for any other purpose are not authorized. Id.

The determination of whether an impoundment has occurred is often difficult because not all delays in obligating appropriated funds are considered impoundments. Our decisions distinguish between programmatic delays that fall outside the reach of the Impoundment Control Act and withholdings of budget authority that are deferrals subject to the Act. Programmatic delays typically take place when an agency is taking necessary steps to implement a program even if funds temporarily go unobligated. GAO/OGC-91-3, B-241514.2, Feb. 5, 1991. This presupposes that an agency is making reasonable efforts to obligate funds and that delays are, even with such efforts, unavoidable. Id.; B-96983, B-225110, Sept. 3, 1987. Our Office has recognized that agencies frequently need a reasonable time to accomplish administrative tasks due to program requirements which are prerequisites to obligation. B-214687, Apr. 26, 1984.<sup>1/</sup>

In Dallas, an initial contract for the working drawings has been awarded for the SCI facility and energy plant. A working drawing award for the clinical addition is being finalized by the VA and was scheduled for September 26, 1991. Apparently, however, VA has decided to extend the working drawing award and construction timeframes of the third phase (clinical renovation) of the facility at this time. The rationale for the delay is twofold. First, spreading out the project into phases results in spreading out the facilities financing. Second, there is no sense in designing phase three now if there is no guarantee that VA will be able to obtain sufficient appropriations in the future to proceed with the actual construction.

In our view, the delay in awarding a working drawing contract for the third phase of the Dallas project is not programmatic in nature since it is not the result of any unavoidable delay

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<sup>1/</sup> Thus, in the VA major construction account, our Office has viewed the following types of delays as program related and not impoundments: bids received for construction contracts exceed available funds (East Orange, New Jersey) or bids received are nonresponsive (Calverton National Cemetery, New York); difficulty in finding small business contractors (Milwaukee, Wisconsin); change in state licensing laws for asbestos removal contractors delayed asbestos removal work (Cleveland and Brecksville, Ohio). Our Office has also held that funds in the VA "working reserve" are not being impounded because the funds remain available for obligation for other authorized purposes. B-229149, Aug. 8, 1988.

experienced in program execution. Rather, the funds for Dallas's phase III design are being reserved for that project pending a VA decision of when to proceed with a working drawing contract for the third phase. This reflects a conscious decision to "delay the obligation or expenditure of budget authority . . . provided for projects or activities." Thus, we conclude that the VA's action with regard to Dallas constitutes a deferral of budget authority.

As previously stated, the Impoundment Control Act permits deferrals only to: provide for contingencies, achieve savings, or as specifically provided by law, and for no other purposes. See 2 U.S.C. § 684(6). VA's reasons for delaying award of the final phase of the working drawing are not permissible under the very narrow criteria just outlined. The funds are not being delayed to provide for a contingency nor is the delay authorized by law. There are no savings brought about by changed requirements, for the only requirement that has changed is VA's decision to stretch out the project. Furthermore, we have not been shown any savings brought about by or through greater efficiency of operations in drawing construction plan for part rather than all of the project. This is particularly true when, according to VA, there is an intent to eventually construct the entire project. Thus, with the information currently available our Office can only conclude that the deferral is unauthorized.

Thus, in accordance with section 1015(a) of the Impoundment Control Act, we are apprising the Congress of this unauthorized withholding of budget authority in the VA major construction account.

*Milton J. Fowler*  
for Comptroller General  
of the United States