



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-234427

August 10, 1989

The Honorable Sean O'Keefe  
Comptroller  
Department of Defense  
Room 3E822, The Pentagon  
Washington, D. C. 20301-1100

Dear Mr. O'Keefe:

This Office is currently reviewing the financial management of a disaster assistance project that the Office of Foreign Disaster Assistance (OFDA), Agency for International Development (AID), conducted in conjunction with the Department of Defense (DOD), during 1985. We initiated this review to respond to a request from the Army Finance and Accounting Center, Indianapolis, Indiana for instructions on the disposition of uncollected bills in the amount of \$139,294.41 that the Army had submitted to OFDA, which it could not pay. On the basis of information currently available to this Office, we have tentatively determined that a unit of the Department of the Army expended funds on this project in violation of: (1) 31 U.S.C. § 1301(a) (use of appropriations for objects other than for which the appropriations were made); and, (2) the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A). We request that you review our tentative findings and conclusions regarding this matter and provide us with any comments you may wish to make. We have summarized the factual data and our legal conclusions below.

In early May 1985, representatives of OFDA apparently had informal discussions with the staff of the J4, Logistics Readiness Center (LRC), Joint Chiefs of Staff (JCS), DOD, regarding a proposed disaster assistance project in Gao, Mali, which was to be conducted by organizational elements of the Army and the Air Force. The project called for an Army Engineer unit stationed in Europe to be transported to Gao, Mali, where it was to install and operate an M4T6 raft on a waterway for approximately 120 days. An Air Force Transport unit was to provide the transportation support required. DOD estimated that the cost of its part of the

project would amount to \$510,000. Apparently an agreement was reached by OFDA and the JCS to implement the project.

On May 11, 1985, the Secretary of State sent a message to the Secretary of Defense and the JCS which provided funding information for the installation and operation of the raft in Mali for the 120 day period. The funding information that OFDA provided DOD in the message is as follows:

"A. For DOD: For all costs associated with the Gao operation, use the following fund cite from the Office of U.S. Foreign Disaster Assistance.

Appropriation: 72-115/61035  
Budget Plan Code: JFD5-85-39698-HG41  
Control Number: 5071801

AID/OFDA is establishing an obligation of dols 510,000 to cover the costs associated with this operation.

Billing Address: Send invoices with supporting documentation to AID.  
FM/PAFD/CMAB Rm 623, SA-12, Washington, D.C. 20523."

When the Deputy Chief of Staff for Operations (DCSOPS), U.S. Army Europe (USAREUR), sent a message to the Seventh Corps on May 16, 1985, tasking it to provide the Army's contribution of troops and equipment to operate the raft, apparently no funds limitation was stated in the message.<sup>1/</sup> (This lack of funding limitation may have mislead the operational units into assuming that there was no funding limitation on the operation.)

The Air Force airlifted the Army unit and the raft from Germany to Mali using a C130 and three C141 aircraft and submitted a bill to OFDA for \$303,373. Shortly thereafter, the Air Force submitted another bill for shuttle flights in the amount of \$61,212. OFDA was able to discover through discussions with Air Force representatives that only \$47,954 of this amount was for the mission. In August 1985, the Army recommended to OFDA that the raft operation be extended

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<sup>1/</sup> USAREUR DCSOPS msg. 161435Z May 85, cited in a October 23, 1986 Memorandum for Don Bowen, DACA-FAP-A, file symbol "AEAGF-F" Subject: Project M4T6 Raft, signed by Colonel R. M. Gifford, Chief, Finance and Accounting Division.

for 60 days and stated that the cost should not exceed \$84,000. OFDA approved the extension.

In November 1985, OFDA received another bill in the amount of \$405,783 from the Air Force for thirteen C130 flights and eight C141 flights. The bill did not reveal the purpose of the flights or the contents of the loads of the aircraft. Ultimately, OFDA paid the bills it had received through the summer of 1985 which were primarily submitted by the Air Force. These bills amounted to \$756,783 which exhausted all the funds it had allocated to the project. OFDA then closed the raft project. In late 1985, OFDA received a bill from the Army for \$64,475.57, which it was unable to pay. It received another bill from the Army in September 1986, for \$74,818.84 which left it with a deficiency of \$139,294.41. OFDA notified J4 LRC, JCS, that no funds were available to pay these bills. The Army submitted these bills to this Office for instructions on how to handle the deficiency, which precipitated this review.

We have concluded that an Army unit violated section 1341(a) of the Antideficiency Act. That statute prohibits a federal official from authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation. Further, the permanent expenditure of Army appropriations for OFDA mission objectives also violated 31 U.S.C. § 1301(a), because Army funds were not appropriated for this purpose.

OFDA made an expenditure transfer to DOD for disaster assistance services with an obligation ceiling of \$510,000 on May 11, 1985. (See 22 U.S.C. § 2392(a) & (b) and section 81.2(a)(1) of Office of Management and Budget (OMB) Circular No. A-34, August 26, 1985). Subsequently, OFDA authorized an increase in the obligation ceiling of \$84,000. The Secretary of Defense relayed the tasking down through subordinate commands to Army and Air Force units that were to perform the services. There is no evidence in the files available to us that Headquarters DOD or subordinate commands administratively sub-divided the obligation ceiling between these units in compliance with DOD regulations contained in section D of enclosure 5 "Procedures" to DOD Directive 7200.1, May 7, 1984, that governs administrative control of funds for all DOD components.

Correspondence relating to this issue indicates that Headquarters U.S. Army Europe failed to place any obligation ceiling on VII Corps, when it tasked it to perform the services required of the Army. The initial large expenditures by Air Force units indicates that they too may not have been given any obligational ceiling. For example,

Air Force units expended \$303,373 for the initial airlift of troops, equipment, and supplies into Mali. Spending by DOD organizational components soon exceeded the \$510,000 original ceiling and an \$84,000 supplement to the ceiling authorized by OFDA. However, OFDA continued to reimburse DOD organizational components for expenditures that exceeded the authorized ceiling until OFDA's appropriations for this project were exhausted.

As a general rule, over-obligation of an administrative obligation ceiling is a violation of the Antideficiency Act only when it causes an over-obligation or over-expenditure of an allotment, apportionment or appropriation. (See 31 U.S.C. § 1517(a) and subsection 31(7) of OMB Cir. No. A-34.) Accordingly, over-obligation by DOD components did not result in a violation of the Antideficiency Act as long as OFDA continued to reimburse DOD components for over-obligations. However, after OFDA exhausted the appropriations available for this project, over-obligations by DOD components for this project constituted violations of 31 U.S.C. § 1301(a) and 31 U.S.C. § 1341(a)(1)(A).

The basis for this conclusion is that performing agencies have no appropriations of their own to permanently expend for the OFDA (the ordering agency) disaster assistance project. While a performing agency has authority to temporarily use its own appropriations for an ordering agency's project, its appropriations must be reimbursed so that these funds will be available for activities of the performing agency, which is the purpose for which these funds were originally appropriated. (See 22 U.S.C. § 2392(c) and sections 81.2 and 82.1 of OMB Cir. No. A-34.)

Here, the Army expended \$139,294.41 of its own appropriations in excess of OFDA's obligational ceiling, which OFDA could not reimburse. The Army's appropriations were intended and provided for Army mission activities and were available for the disaster relief project only on a temporary reimbursable basis. The Army's permanent expenditure of \$139,294.41 on a project for which its appropriations were not available resulted in a violation of 31 U.S.C. § 1301(a)(use of appropriations for objects other than for which the appropriations were made) and 31 U.S.C. § 1341(a)(1)(A) of the Anti-deficiency Act. The only theory that we are aware of that might result in the Army avoiding an Antideficiency Act violation, is that the expenditures that exceeded the obligation authority were in furtherance of the Army's mission and an appropriate use of its own appropriations. (See 22 U.S.C. § 2392(c)). We do not know whether or not such a conclusion is justified in this case. Clearly, no determination that the project was related to


the Army's mission was made when the project was originally undertaken, and we are not aware of any since that time. Moreover, there is a strong contrary indication that such a determination was not made, since the Army has continued to request reimbursement.

We have also tentatively concluded that OFDA did not violate the Antideficiency Act. The obligations and expenditures it incurred for the project do not appear to have exceeded its appropriations available for the project.

We request that you provide us with your comments by the close of business September 15, 1989, so that we may fully consider them before we make a final determination.

We appreciate your cooperation in this matter. If you have further questions, please contact Johnnie Lupton, Senior Attorney, Office of General Counsel, at 275-5544.

Sincerely yours,



Gary L. Kepplinger  
Associate General Counsel