



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

MAR 23 2018

OFFICE OF
GENERAL COUNSEL

Julie Matta
Managing Associate General Counsel
U.S. Government Accountability Office
441 G Street
Washington, D.C. 20548

Subject: Environmental Protection Agency—Compliance with Statutory Notification Requirement and Antideficiency Act (B-329603)

Dear Ms. Matta:

This responds to your letter, dated November 2, 2017, and provides the legal views of the U.S. Environmental Protection Agency (EPA or Agency) regarding the use of fiscal year (FY) 2017 funds and the requirements of section 710 of the Financial Services and General Government Appropriations Act, 2017.

Based on my staff's review of the facts and analysis of the relevant law detailed below, all uses of appropriated funds were consistent with the appropriations act identified. Specifically, I have not identified any violation of section 710 of the Financial Services and General Government Appropriations Act, 2017 or the Antideficiency Act.

Section 710 requires advance notice to the appropriations committees of Congress prior to expending more than \$5,000 to furnish or redecorate an agency head's office or to purchase furniture for or make improvements to said office. EPA's obligation of funds for the installation of a privacy booth was an expense necessary to ensure that the Administrator's office was equipped with an item that enables the Administrator to conduct agency business in a private space. This expenditure, therefore, did not fall within the purview of section 710.

Below we address the specific questions raised by the Government Accountability Office (GAO) delineated in your December 21, 2017 letter to me. Our responses are provided below each question.

1. *According to information available on USAspending.gov, in FY 2017 the EPA obligated \$24,570 on a contract that provides for a "privacy booth for the Administrator." Please confirm the amount the EPA obligated for this project, the date on which EPA obligated such funds, the name and description of the appropriation that EPA obligated for the project.*

Response

This project entailed the expenditure of appropriated funds for delivery and installation of a soundproof privacy booth. Additionally, costs also were incurred to reconfigure the space in which the booth is housed. EPA obligated a total of \$43,238.68¹ from its FY 2017 Environmental Programs and Management (EPM) appropriation to support this project. The table below outlines project items/activities, the amount of funds obligated and date those funds were obligated.

Project Item/Activity	Amount Obligated	Funds Obligation Date
Privacy booth purchase, delivery and assembly	\$ 24,570.00	August 29, 2017
Concrete Floor Leveling	\$ 3,470.00	September 12, 2017
Drop Ceiling Installation	\$ 3,360.97	December 12, 2017
Prep and Wall Painting	\$ 3,350.00	August 23, 2017
Removal of CCTV Equipment	\$ 7,978.00	September 14, 2017
Infrastructure Cabling and Wiring	\$ 509.71	July 12, 2017

The EPM appropriation provides in relevant part:

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs . . . \$2,619,799,000, to remain available until September 30, 2018. . . .

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2017, Pub. L. No. 115-3 div G, title II (May 5, 2017). This appropriation includes funds for salaries, travel, contracts, grants, and cooperative agreements for pollution abatement, control, and compliance activities and administrative activities of the operating programs, including activities under the Working Capital Fund. This appropriation supports core agency programs.

2. *Please provide a description of the project and a copy of the statement of work from the contract identified on USAspending.gov.*

Response

The project requirement entailed the delivery and assembly of a small privacy booth approximately 50'' wide, 42'' deep and 90'' high that could fit through a 34'' wide doorway. Telephone conversations inside the booth could not be audible outside the booth from any

¹ Of this amount, \$509.71 was expended for infrastructure cabling and wiring. This amount was transferred from the agency's EPM appropriation to its working capital fund appropriation which is available to provide centralized services. We are providing this information as part of the total project cost because it is unclear whether GAO is only seeking information related to costs that involved vendor payment.

side. Additionally, it was required that the booth walls be capable of supporting a ten-pound telephone affixed to the booth and that the booth contain: a shelf capable of supporting twelve pounds, one window, lockable door(s), ventilation, and a switch controlled light. It was further required that the booth accommodate installation of cables for telephone lines. The booth also had to meet Sound Transmission Class (STC) 50. The statement of work is attached.

3. *Absent advance notice to the appropriations committees of Congress, section 710 prohibits use of funds "in excess of \$5,000 to furnish or redecorate . . . or to purchase furniture or make improvements for" an agency head's office. Pub. L. No. 115-31, 131 Stat. at 379. Please provide your legal views on the application of this provision to the obligation of funds for the installation of the privacy booth. In particular, please address whether the installation of the privacy booth constitutes an "improvement" to which the section 710 notification requirement would apply.*

Response

It is our view that section 710 does not apply to the obligation of funds for the installation of the privacy booth or associated costs for space reconfiguration. The purpose of the \$5,000 redecorating limitation is to ensure that Congress is aware of any funds (above \$5,000) that are being spent for items to accommodate the individual preferences of the appointee, rather than for items to conduct official agency business. In this case, the privacy booth does not constitute an aesthetic improvement contemplated by section 710. The definition of "improve" is to enhance in value or quality or to make better.² Here, the purpose of the privacy booth is not to enhance the value of existing office space or to make it better. Rather, the secure area serves a functional purpose, namely, to ensure that the agency head has access to a soundproof area in which he can engage in telephone conversations to facilitate agency business, without concern that classified, deliberative, privileged, or sensitive information might inadvertently be disclosed to those who are not intended to receive such information.³

The agency's installation of a soundproof privacy booth and the outfitting of space to house it constitute a change to the functionality of unused space in order to support specific mission requirements. Given the historic nature of the building, the installation was coordinated with the General Services Administration, as lessor, to ensure that the integrity of the building was not compromised and that the installation conformed to certain building standards. Such functional changes are not aesthetic office enhancements. The secure space not only enables the Administrator to make and receive

² Merriam Webster, Definition of Improve available at <https://www.merriam-webster.com/dictionary/improve> (last visited January 31, 2018).

³ We understand that GAO is not opining on the application of the necessary expense rule, however, the agency determined that the expenditure of appropriated funds to procure the privacy booth was a necessary agency expense to support the Administrator's ability to conduct official business.

phone calls to discuss sensitive information, but it also enables him to use this area to make and receive classified telephone calls (up to the top secret level) for the purpose of conducting agency business. The agency's Security Management Division requires that a classified telephone must be located in an area where the employee can have private conversations. That is, a classified phone cannot simply be put on an office desk or in a conference room. Accordingly, the expenditure of appropriated funds to pay for the privacy booth was undertaken in order to further the mission of the agency and not to make an improvement designed to enhance the aesthetic appeal of the office.

The privacy booth is analogous to other functional items an employee might require to perform his job duties such as a high speed computer, high speed copier/scanner, or television. EPA, by procuring a soundproof booth, ensured that the Administrator's office was equipped with an item to allow him to perform his official duties. Therefore, there is no basis for concluding that this type of expenditure was subject to the \$5,000 limit in section 710.

4. *Section 710 defines the term "office" as "the entire suite of offices assigned to the [agency head], as well as any other space used primarily by the [agency head] or the use of which is directly controlled by the [agency head]". Id. Please describe the location of the privacy booth and state whether the location is used primarily by, is directly controlled by, or is assigned to the Administrator. In addition, please provide your legal views on whether the privacy booth is located in the Administrator's "office" under the section 710 definition of the term.*

Response

The privacy booth is located in the Administrator's office as that term is defined under section 710. As previously explained, however, the functional changes made to the closet space to support installation of the privacy booth do not constitute improvements to the office. In fact, the privacy booth is not at all visible upon entering the office. Therefore, it cannot be said to add to or detract from the aesthetic appeal of the office. The privacy booth is located in a former storage closet in the Administrator's office. The storage closet was reconfigured to support the privacy booth requirement. The area where the privacy booth is located is assigned to the Administrator and primarily used by him. The privacy booth is akin to office equipment installed to support mission requirements.

5. *Please provide the date, if any that the EPA sent the Committees on Appropriations of the House of Representatives and the Senate notice of the installation of the privacy booth.*

Response

The installation of the privacy booth was not subject to the rider in section 710; therefore,

notice was not sent to the Committees on Appropriations of the House of Representatives and the Senate.

6. *To the extent they have not been addressed by the previous questions, please provide any additional facts or legal views you believe GAO should consider with regard to application of section 710 to the obligation of funds for the installation of the privacy booth.*

Response

As explained above, we determined that the expenditure of funds related to the privacy booth was not subject to the rider in section 710. Given that appropriated funds were not used in a manner prohibited by law, the Antideficiency Act was not violated.

Conclusion

Based upon a review of all available information and the application of the legal standard to the facts of this situation, EPA's actions were consistent with all provisions of law GAO identified in its letter. We appreciate the opportunity to document the facts and legal analysis for the record.

If you have any questions, or would like to discuss the provided responses, please feel free to contact me, at (202) 564-8064 or minoli.kevin@epa.gov or Elise Packard, Associate General Counsel for Civil Rights and Finance at (202) 564-7729 or packard.elise@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin S. Minoli", followed by the word "for" in a cursive script.

Kevin S. Minoli
Principal Deputy General Counsel

Attachment

