



DEPARTMENT OF THE ARMY
UNITED STATES ARMY AFRICA/SOUTHERN EUROPEAN TASK FORCE
OFFICE OF THE STAFF JUDGE ADVOCATE
UNIT 31401, BOX 7
APO AE 09630

ARAF-JA

24 SEP 2013

MEMORANDUM FOR RECORD

SUBJECT: Functionality of Section 1206 Program Funds

1. References:

- a. FY09 NDAA, P.L. 110-417, Section 1206(b).
- b. Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual, Section C15.3.4.3. (updated 5 February 2013)
- c. GAO Principles of Federal Appropriations Law (Redbook), Third Edition, Volume II, pages 7-3 and 7-4 (2006).

2. Issue. US Army Africa (USARAF) G4 has requested a legal opinion regarding whether Section 1206 funds can cross fiscal years (FYs).

3. BLUF: Section 1206 has a "cross-fiscal year" authority which provides a time-limited exception to the bona fide needs rule. Pursuant to this authority, amounts available for a fiscal year may be used for programs that begin in that FY but end in the subsequent FY.

4. Law. Congress has provided the Section 1206 Program with "cross-fiscal year" authority, applicable to both contracted and government-sourced services which are funded with Section 1206 program funds. *See* FY09 NDAA, P.L. 110-417, Section 1206(b).

5. Analysis. This authority provides a time-limited exception to the bona fide needs rule which requires that appropriated funds be used only for goods and services during the period of availability for new obligations. Pursuant to the cross-fiscal year authority, amounts available for a FY may be used for programs that begin in that FY but end in the subsequent FY. Services and training are considered to begin when the case funds are obligated, even though actual conduct of the activity may occur later. This authority does not extend the period of availability for new obligations; all Section 1206 funds providing support must be obligated prior to the end of the period of availability. Performance of program services may extend through the end of the subsequent fiscal year (to include services such as travel and government civilian services as they pertain to TDY that is properly chargeable to the program). *See* DSCA Security Assistance Management Manual, Section C15.3.4.3.

6. Obligation Defined. "Obligation" is defined as an act which creates a legal liability on the part of the Government for the payment of appropriated funds for goods and services ordered or

ARAF-JA

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received. *See* GAO Redbook, Vol. II, pages 7-3 to 7-4. Examples include contracts awarded, services received, and similar transactions that will require payments during the same or a future period. Obligation takes place when the definite commitment is made, even though the actual payment may not take place until the following fiscal year. *See* GAO Redbook, Vol. II, page 7-4. Therefore, in order to constitute a proper obligation in a situation like the 1206 cases, a contract must be awarded (or the funds must be obligated to a vehicle such as a group travel order) prior to the expiration of funds (i.e., 30 September 2013). The funds with FY13 availability cannot be obligated after 30 September 2013.

7. Point of contact for this memorandum is the undersigned at 634-5144.



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