

**Department of
Veterans Affairs**

Memorandum

Date: June 16, 2000

From: General Counsel (025)

VAOPGCADV 4-2000

Subj: Application of Federal and VA Acquisition Regulations to General Post Fund Procurements

To: Director, Acquisition Resources Service (95A)

QUESTIONS PRESENTED:

- A. Is the General Post Fund an appropriated fund?
- B. Do FAR and VAAR apply to acquisitions using GPF?
- C. If FAR and VAAR apply, are there exceptions and if so, what are those exceptions?

DISCUSSION:

1. You have asked if the General Post Fund (GPF) is considered an "appropriated fund," and if FAR and VAAR apply to acquisitions made with money in the General Post Fund.
2. The GPF is a trust fund in the U.S. Treasury consisting of gifts, devises and bequests made to VA, as well as certain proceeds from the personal property of most patients who die intestate and without heirs while receiving care or treatment in a VA facility. See 31 U.S.C. § 1321(a)(45); 38 U.S.C. §§ 8301, 8302 and 8520. Monies in trust funds "are appropriated to be disbursed in compliance with the terms of the trust." 31 U.S.C. § 1321(b). The GPF is thus an appropriated fund.
3. FAR § 1.103 states that FAR "applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded." The term "acquisition" is defined in FAR § 2.101 as "the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated." FAR contains no express exception for acquisitions made by trust funds.

2.

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4. Since the General Post Fund is a trust fund consisting of appropriated funds, FAR and VAAR are applicable to acquisitions made with GPF money. See FAR § 2.101; 31 U.S.C. § 1321(a)(45); 38 U.S.C. §§ 8301, 8302; VAOPGCADV 46-93; VAOPGCADV 10-95.

5. There is an exception to the applicability of FAR and VAAR to GPF expenditures. VAAR specifically states: "[t]he FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply." 48 C.F.R. § 801.103-70. Therefore, absent a conflict between the specific terms and conditions laid down by the donor of the trust, acquisitions of supplies or services by contract using General Post Fund money are subject to the FAR.

6. The most significant impact of applying FAR to GPF acquisitions lies in the area of competition requirements, some of which are time-consuming and complex. However, we believe that most GPF acquisitions fall in the category of simplified acquisitions, i.e., purchases currently not exceeding \$100,000. Such acquisitions allow for informal procedures not applicable to larger dollar value acquisitions. GPF acquisitions in excess of \$100,000, of course, must follow the requirements of FAR, including the competition requirements unless FAR infringe upon a donor's prerogative to specify the exact item to be purchased and/or the source of supply

CONCLUSIONS:

1. Monies in the General Post Fund are appropriated funds.
2. FAR and VAAR apply to acquisitions using money in the GPF unless these regulations would infringe upon a donor's prerogative to specify the exact item to be purchased or the source of supply.


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