



B-328485

April 24, 2017

The Honorable Patty Murray  
United States Senate

The Honorable Suzan DelBene  
House of Representatives

Subject: *U.S. Army Corps of Engineers—Statutory Restrictions on the Use of Appropriated Funds for Welded Shipboard Anchor and Mooring Chain*

This responds to your request for an opinion on whether the U.S. Army Corps of Engineers (USACE) complied with statutory restrictions on the use of appropriated funds for the procurement of “welded shipboard anchor and mooring chain.” The statutory restrictions pertain to where the chain is manufactured. As explained below, we conclude that USACE did not violate the statutory restrictions because it obligated amounts for a purpose, mooring a buoy, and from an appropriation, both of which were not subject to the statutory restrictions.

In accordance with our regular practice, we contacted USACE to seek additional facts, and its legal views, on this matter. *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). USACE provided us with information and its legal views. Letter from Chief Counsel, USACE, to Assistant General Counsel for Appropriations Law, GAO (Nov. 3, 2016) (USACE Letter).

## BACKGROUND

In February 2016, USACE Wilmington District sought price quotations for “buoy anchor chain.”<sup>1</sup> USACE, Solicitation No. W912PM-16-R-0014, Feb. 9, 2016. Per USACE’s description, the chain would be used to moor, or secure, a buoy to a plate anchor buried in the seafloor. Drawing Sheet 17, *Mooring System Assembly and Installation Details*, Amendment 1 to USACE Solicitation, Feb. 18, 2016. On March 31, 2016, USACE awarded a contract for anchor chain manufactured in the

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<sup>1</sup> Specifically, USACE sought quotations for “2-1/2” stud link buoy anchor chain and 2-1/2” shackles.”

Republic of Korea, according to your request letter. USACE, Contract Award No. W912PM-16-P-0050, Mar. 31, 2016. USACE obligated Corps of Engineers—Civil, Operation and Maintenance funds appropriated by the Energy and Water Development and Related Agencies Appropriations Act, 2015.<sup>2</sup> USACE Letter, at 1. You asked whether USACE’s obligation of funds for this contract complied with statutory restrictions on the procurement of “welded shipboard anchor and mooring chain.”

Congress has enacted three statutory restrictions on the procurement of “welded shipboard anchor and mooring chain” that are relevant here: (1) a permanent provision in 10 U.S.C. § 2534; (2) a recurring provision in the annual Department of Defense (DOD) appropriations acts beginning in FY 1989; and (3) a new provision in the Energy and Water Development and Related Agencies Appropriations Act, 2016.

First, section 2534 of title 10 of the U.S. Code limits the procurement of “welded shipboard anchor and mooring chain” with a diameter of four inches or less by DOD when such chain is considered part of the “components for naval vessels.” 10 U.S.C. § 2534(a)(3)(A)(ii). DOD may only procure such chain when the manufacturer is part of the “national technology and industrial base.” *Id.* § 2534(b)(1). The “national technology and industrial base” is defined as “the persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States, the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada.” 10 U.S.C. § 2500(1).

Second, since FY 1989, Congress has enacted a provision in the annual DOD appropriations act that restricts the obligation of funds made available by the act for the purchase of “welded shipboard anchor and mooring chain” that is not manufactured in the United States from components which are substantially manufactured in the United States.<sup>3</sup> See, e.g., Pub. L. No. 114-113, div. C, title VIII, § 8016, 129 Stat. 2242, 2354 (Dec. 18, 2015) (providing that unless otherwise permitted, no funds made available in the Department of Defense Appropriations Act, 2016 “may be available for the purchase by [DOD] (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States

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<sup>2</sup> See Pub. L. No. 113-235, div. D, title I, 128 Stat. 2130, 2304–05 (Dec. 16, 2014) (designating Corps of Engineers—Civil, Operations and Maintenance funds as “available until expended”). Funds that are “available until expended,” commonly known as “no-year funds,” are not subject to the *bona fide* needs statute, 31 U.S.C. § 1502(a), and remain available for obligation for an indefinite period of time. B-326945, Sept. 28, 2015, at 3.

<sup>3</sup> Department of Defense Appropriations Act, 1989, Pub. L. No. 100-463, § 8089, 102 Stat. 2270, 2270-32 (Oct. 1, 1988).

from components which are substantially manufactured in the United States”). DOD has incorporated this restriction into the Defense Federal Acquisition Regulation Supplement (DFARS). See 48 C.F.R. § 225.7007.

Third, in FY 2016, Congress extended the applicability of the restriction on the obligation of funds for the procurement of “welded shipboard anchor and mooring chain” to funds made available by the Energy and Water Development and Related Agencies Appropriations Act, 2016, by incorporating DFARS § 225.7007 by reference. Pub. L. No. 114-113, div. D, title I, § 108 (“None of the funds made available in this title may be used for any acquisition that is not consistent with 48 CFR 225.7007”).

## DISCUSSION

At issue in this opinion is whether the statutory restrictions on the procurement of “welded shipboard anchor and mooring chain” apply to USACE’s procurement of “buoy anchor chain.” USACE contends that the restrictions did not apply because it obligated amounts for a purpose, mooring a buoy, and from an FY 2015 appropriation, both of which were not subject to such restrictions. We agree.

### 10 U.S.C. § 2534

Section 2534 of title 10 of the U.S. Code restricts DOD’s procurement of “welded shipboard anchor and mooring chain” to manufacturers who are part of the “national technology and industrial base” when such chain is considered part of the “components for naval vessels.” 10 U.S.C. § 2534(a)(3)(A)(ii). This restriction is inapplicable to USACE’s procurement of “buoy anchor chain” because USACE intends its anchor chain to be used to tether buoys to weights on the seafloor. USACE Letter, at 2. A “buoy” (defined as an “anchored float serving as a navigation mark, to show reefs or other hazards, or for mooring”) is not considered a vessel, as a “vessel” is commonly defined as a “ship or large boat.” *The New Oxford American Dictionary* 229, 1870 (2<sup>nd</sup> ed. 2005). As such, USACE’s procurement of “buoy anchor chain” would not be a component of a naval vessel and thus, would not be subject to the restriction in 10 U.S.C. § 2534.

### Department of Defense Appropriations Acts

The recurring provision found in the annual DOD appropriations acts is similarly not germane to USACE’s obligation of funds for this procurement. By its terms, the provision’s restriction on the procurement of “welded shipboard anchor and mooring chain” applies only to funds made available “in this Act,” that is, made available in the DOD appropriations act. When USACE obligated funds, it did not obligate funds appropriated by the Department of Defense Appropriations Act, 2016 or any other DOD appropriations act, but instead, USACE obligated funds appropriated by the Energy and Water Development and Related Agencies Appropriations Act, 2015. As such, the recurring provision found in section 8016 of the Department of Defense

Appropriations Act, 2016 or prior DOD appropriations acts does not apply to USACE's obligation for "buoy anchor chain."

### Energy and Water Development and Related Agencies Appropriations Act, 2016

The restriction in section 108 of the Energy and Water Development and Related Agencies Appropriations Act, 2016 applies only to "funds made available in this title." Pub. L. No. 114-113, div. D, title I, § 108. That is, it applies only to funds appropriated by title I of the Energy and Water Development and Related Agencies Appropriations Act, 2016, which appropriates funds to USACE for "authorized civil functions of the Department of the Army pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related efforts."<sup>4</sup> *Id.*, 129 Stat. at 2397. In the procurement at issue, however, USACE did not obligate funds made available by title I of the Energy and Water Development and Related Agencies Appropriations Act, 2016. Rather, USACE obligated amounts from its Corps of Engineers—Civil, Operation and Maintenance appropriation that were appropriated by the Energy and Water Development and Related Agencies Appropriations Act, 2015. See Pub. L. No. 113-235, 128 Stat. at 2304. Thus, USACE was not required to follow the restriction in section 108 when it obligated funds from the Energy and Water Development and Related Agencies Appropriations Act, 2015, which did not have a similar restriction.

Moreover, even if USACE had obligated funds from the Energy and Water Development and Related Agencies Appropriations Act, 2016, section 108 would not limit USACE's procurement here. USACE acquired "buoy anchor chain" to tether buoys to the seafloor.<sup>5</sup> Section 108, however, applies to "welded *shipboard* anchor and mooring chain" (emphasis added). Facially, there are at least two constructions of this provision: (1) the restriction applies to "*shipboard* anchor chain" and "*shipboard* mooring chain" or (2) the restriction applies to "*shipboard* anchor chain" and "mooring chain". In other words, the question is whether the adjective "shipboard" modifies both nouns in the conjunctive phrase (*shipboard* anchor chain and *shipboard* mooring chain), or only the first (*shipboard* anchor chain and [any] mooring chain).

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<sup>4</sup> USACE refers to these purposes as its Civil Works functions. USACE Letter, at 1; [www.usace.army.mil/Missions/Civil-Works/](http://www.usace.army.mil/Missions/Civil-Works/) (last visited Apr. 7, 2017).

<sup>5</sup> USACE acknowledges that it is not aware of any difference between the chain used to anchor or moor a ship and the chain used to tether a buoy, so long as the size and other specifications are the same. USACE Letter, at 2. As such, USACE's use of the term "anchor chain" is not significant to our analysis.

As with any question involving statutory construction, the analysis begins with an examination of the language of the statute.<sup>6</sup> *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). One should assume “that the ordinary meaning of that language accurately expresses the legislative purpose.” *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). In determining what constitutes ordinary meaning, courts will strive to apply the most natural reading, based on traditional definitions and English grammar. See, e.g., *Voisine v. United States*, 136 S. Ct. 2272 (2016) (relying on the dictionary definition of “use” to interpret a criminal statute); *Flores-Figueroa v. United States*, 556 U.S. 646, 650 (2009) (interpreting a statute’s use of a transitive verb “[a]s a matter of ordinary English grammar”).

In the absence of an indication to the contrary, a modifier placed before words in a series normally applies to all nouns or verbs within that series. That is, where an adjective or adverb is followed by two or more nouns or verbs (for example, in a sequence or list), that adjective or adverb is interpreted to modify the entire enumeration. See, e.g., *United States v. X-Citement Video*, 513 U.S. 64, 68 (1994) (holding that the “most natural grammatical reading” of a statute is that the initial modifier applies to each element within a list); *Wash. Educ. Ass’n v. Nat’l Right to Work Legal Def. Found., Inc.*, 187 Fed. Appx. 681, 682 (9<sup>th</sup> Cir. 2006) (noting that “under generally accepted rules of syntax, an initial modifier ‘will tend to govern all elements in the series unless it is repeated for each element’”). This approach is sometimes termed the “series-qualifier canon” of interpretation. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 147 (2012).

Accordingly, the adjective “shipboard” modifies both “anchor [chain]” and “mooring chain.” “Shipboard” is defined as “used or occurring on board a ship.” *Oxford 1564*. Because of the statute’s modifier, only the procurement of anchor and mooring chain that is used on board a ship would be limited by the restrictions in 10 U.S.C. § 2534, the DOD appropriations acts, and section 108 of the Energy and Water Development and Related Agencies Appropriations Act, 2016. Thus, USACE’s procurement of anchor chain or mooring chain that was not shipboard (for example, when it is used to moor a buoy to the seafloor) would not be subject to these restrictions. If Congress wishes to restrict USACE’s procurement of buoy chain in the future, Congress may wish to consider a change to the statutory language. For example, Congress has enacted a restriction for the Coast Guard that limits the procurement of “buoy chain” specifically. 14 U.S.C. § 97.<sup>7</sup>

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<sup>6</sup> Section 108 of the Energy and Water Development and Related Agencies Appropriations Act, 2016 incorporates by reference the language of 48 C.F.R. § 225.7007. As such the regulation’s language is statutory language and the analytical tools used by courts to interpret a statute apply.

<sup>7</sup> The Coast Guard may not procure buoy chain that is “not manufactured in the United States” or “substantially all of the components of which are not produced or  
(continued...)

## CONCLUSION

Section 2534 of title 10 of the U.S. Code did not restrict USACE's procurement of "welded shipboard anchor and mooring chain" because it only applies to such chain when it is used as a component of a naval vessel and does not apply to its use with buoys. Neither the recurring provisions in the annual DOD appropriations acts nor section 108 of the Energy and Water Development and Related Agencies Appropriations Act, 2016 limit USACE's obligation of FY 2015 Corps of Engineers—Civil, Operation and Maintenance funds for "buoy anchor chain." USACE did not run afoul of the appropriations acts' restrictions because it obligated funds that were not subject to the appropriations act provisions in place at the time of USACE's obligation.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel for Appropriations Law, at (202) 512-4023.

Sincerely,



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manufactured in the United States" unless the Secretary makes certain determinations. 14 U.S.C. § 97.