U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

B-329603

December 21, 2017

Kevin S. Minoli
Acting General Counsel
U.S. Environmental Protection Agency

Subject: *Environmental Protection Agency—Compliance with Statutory Notification Requirement and the Antideficiency Act*

Dear Mr. Minoli:

Section 710 of the Financial Services and General Government Appropriations Act, 2017 states that "no funds may be obligated or expended in excess of $5,000 to furnish or redecorate the office of . . . [an] agency head . . . or to purchase furniture or make improvements for any such office" without first notifying the Committees on Appropriations of the House of Representatives and the Senate.[1] Pub. L. No. 115-31, div. E, title VII, § 710, 131 Stat. 135, 379 (May 5, 2017). In response to a congressional request, GAO will issue a legal opinion on whether the Environmental Protection Agency (EPA) obligated fiscal year (FY) 2017 funds in a manner inconsistent with section 710 and the Antideficiency Act.

In accordance with our regular practice, the purpose of this letter is to seek additional facts and your legal views. GAO, *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. We would appreciate your responses to the following questions:

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."[2] Please confirm the amount the EPA

[1] The section 710 limitation applies to the offices of "the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States." Pub. L. No. 115-31, div. E, title VII, § 710, 131 Stat. 135, 379 (May 5, 2017).

[2] USAspending.gov, *Transaction Details*, *available at* www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=471

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obligated for this project, the date on which the EPA obligated such funds, and the name and description of the appropriation that EPA obligated for the project.

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

3. Absent advance notice to the appropriations committees of Congress, section 710 prohibits the 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.

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 this term.

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.

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 the application of section 710 to the obligation of funds for the installation of the privacy booth.

We would appreciate your response, and any other information and documentation you believe to be relevant, by Tuesday, January 23, 2018. If you have any questions, please contact me at (202) 512-4023 or MattaJ@gao.gov, or Christie Wentworth at (202) 512-7426 or WentworthC@gao.gov. Thank you for your attention to this matter.

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Sincerely,

Julia C. Matta

Julia C. Matta
Managing Associate General Counsel