



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Prize Drawing by General Services Administration's Public Buildings Service

File: B-286536

Date: November 17, 2000

DIGESTS

1) The General Services Administration's (GSA) Public Buildings Service (PBS) distributes customer surveys to employees of tenant-agencies in GSA-managed buildings in order to develop customer satisfaction information. To enhance the response rate to the surveys, PBS proposes to use the Federal Buildings Fund to provide work-related prizes to survey recipients whose names PBS chooses in a drawing connected to the survey. Since GSA has established that customer satisfaction information is useful in carrying out its statutory mission to operate, maintain and protect federally owned and leased buildings, and since the survey recipients have no statutory, regulatory or employment-related duty to reply to the survey, we have no objection to GSA's use of the Federal Buildings Fund for this purpose.

2) Because an award of prizes in a drawing accompanying a survey might be construed to contain elements of a lottery prohibited by certain federal criminal statutes and regulations, see 18 U.S.C. §§ 1301-1304, GSA should consult with the Department of Justice to ensure that its proposal is not a prohibited lottery before spending appropriated funds as proposed.

DECISION

By letter of October 11, 2000, the General Services Administration (GSA) requested an advance decision on whether the Public Buildings Service (PBS) may use appropriated funds to pay for prizes in a drawing held in connection with customer satisfaction surveys. PBS proposes to conduct the drawing and award prizes in order to increase the response rate to customer satisfaction surveys and achieve a statistically valid representation of the satisfaction level of its customers. We

conclude that PBS may use appropriated funds to pay for prizes in a drawing held in connection with customer satisfaction surveys to the extent discussed below.¹

BACKGROUND

Pursuant to section 210(a) of the Federal Property and Administrative Services Act of 1949, as amended (codified as 40 U.S.C. § 490), the Administrator, General Services, is responsible for the operation, maintenance, and protection of all government owned and leased buildings under GSA control. According to GSA, its inventory comprises approximately 40% of all federal office space. Pursuant to the Public Buildings Act of 1959 (codified as 40 U.S.C. §§ 601-619), the Administrator also is responsible for the construction and alteration of public buildings. The Act requires the Administrator to make a continuing investigation and survey of the public building needs of the federal government in order to remain informed regarding the building needs of all federal agencies. 40 U.S.C. § 611(a)-(b). The Administrator has delegated these responsibilities to GSA's Public Buildings Service.

The Government Performance and Results Act of 1993 (GPRA) requires federal agencies to set goals, measure performance, and report on their accomplishments. Pub. L. No. 103-62, 107 Stat. 285. The Act requires agencies to develop strategic plans that include comprehensive mission statements based on the agency's statutory requirements, a set of strategic goals, and a description of how the agency intends to achieve these goals. In its submission to us, GSA explained that its mission, as articulated in its strategic plan, is to provide policy leadership and expert

¹ Pursuant to the Paperwork Reduction Act of 1995 (PRA) "an agency shall not conduct or sponsor the collection of information unless...[the Office of Management and Budget] has approved the proposed collection of information..." 44 U.S.C. 3507(a) & (a)(3). The Office of Management and Budget's (OMB) implementing regulations state, however, that an agency does not need to seek OMB review and approval to survey federal employees acting in their professional capacities. 5 C.F.R. 1320.3(c)(4). Accordingly, GSA is not required to seek OMB review and approval before implementing the drawing and customer satisfaction survey discussed in this decision.

An agency that proposes to conduct a survey that is subject to PRA review is required to justify to OMB any strategy that relies on incentives. 5 C.F.R. 1320.5(a)(1)(iii)(D). Pursuant to guidance that OMB has issued as an exposure draft, OMB would conduct a case-by-case review to ensure that incentives are only used in the context of a rigorous design that is professionally implemented. OMB would also review proposals to ensure that incentives are not used to offset the effects of poor questionnaires, inadequate follow-up, imposition of inappropriate risks, or other deficiencies that compromise respondent cooperation. See The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection, Office of Information and Regulatory Affairs, Office of Management and Budget (draft, Aug. 16, 1999).

The goal of the PRA is not only to minimize the federal paperwork burden, but also to maximize the utility of information the government produces, as well as to ensure its integrity. 35 U.S.C. 3501(10). While OMB's regulations exempt surveys of federal employees acting in their professional capacities from OMB review, any agency proposing to use incentives may wish to consider consulting with OMB before implementing its proposal.

solutions in services, space and products, at the best value, to enable federal employees to accomplish their missions.

One approach PBS has chosen to advance its statutory mission is to collect information on its customers' satisfaction with PBS's services through the use of customer satisfaction surveys. The survey requests that federal employees² of tenants in GSA-controlled buildings rate their level of satisfaction with their building and office environment, the services provided by the building management staff, and safety and security issues in the building. The goal of the survey is to measure performance as well as to identify long and short term program improvements. According to material provided to us by GSA, average national response rates to PBS customer satisfaction surveys declined from a 52% response rate in 1993, to a 32% response rate in 1998, despite continuous efforts and the use of a variety of approaches to increase overall response rates.

In 1999, GSA awarded a contract to Gallup Organization to assist PBS in conducting its customer satisfaction surveys. To counter the decline in survey response rates, in January 2000, PBS, with the assistance of Gallup, conducted a pilot test using a drawing in conjunction with a standardized customer satisfaction survey. PBS distributed drawing entry forms along with the survey. To participate in the drawing, recipients had to submit the drawing entry form, but were not required to complete the survey.³ The Gallup Organization advised PBS that a small proportion of people will return the drawing entry form only and not complete the survey; however, the usual result is that more people complete the survey than would if there were no drawing. PBS awarded three laptop computers as grand prizes, as well as 150 portfolio cases, to employees whose forms were pulled in the drawing. According to material provided by GSA, following the pilot, the overall response rate rose from 32% to 51%. In addition, following the pilot test, the number of buildings surveyed that had response rates below 30% declined from 25% of buildings surveyed in 1998, to 8.9%. GSA has stated that according to Gallup, a response rate of at least 30% is needed to have confidence that the survey results are valid and representative of the satisfaction level of survey respondents. GSA proposes to formalize its pilot as a regular, annual practice. In fiscal year 2001, PBS plans to expand the survey and drawing to include its regional offices. As a result, the number of laptop computers awarded as grand prizes will increase from three to eleven. In addition, 150 leather portfolio cases filled with work-related items will be awarded. GSA estimates that the total annual cost of the prizes will not exceed \$35,000.

GSA proposes to pay the costs of the prizes from the Federal Buildings Fund. Monies deposited into the fund are available for expenditures for real property management and related activities in such amounts as are specified in annual

² Recipients of surveys are randomly selected staff of GSA-tenant agencies not necessarily involved in building management.

³ PBS employees are not eligible to participate in the drawing.

appropriations acts. 40 U.S.C. § 490(f). The Treasury and General Government Appropriations Act, 2000, permitted revenues and collections deposited into the Federal Buildings Fund to be used for necessary expenses of real property management and related activities, including operation, maintenance, and protection of federally owned and leased buildings. Pub. L. No. 106-58, 113 Stat. 430. On October 30, 2000, the President vetoed the combined Legislative Branch and Treasury-Postal Service appropriations bill for fiscal year 2001, which included similar language.⁴

DISCUSSION

Pursuant to 31 U.S.C. § 1301(a) (1988), appropriated funds may be used only for authorized purposes. Even if a particular expenditure is not specifically provided for in the appropriation act, the expenditure “is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of the function, and if it is not otherwise prohibited by law.” 66 Comp. Gen. 356 (1987).

We have held that whether or not a particular expense is necessary in fulfilling an authorized purpose is, in the first instance, a matter of agency discretion. B-223608, Dec. 19, 1988. When we review an expense to determine if it is necessary to fulfill an authorized purpose, we determine whether the expense falls within the agency’s legitimate range of discretion, or whether its relationship to an authorized purpose is so attenuated as to take it beyond the range. *Id.*; 70 Comp. Gen. 720 (1991).

We have concluded in several instances that agencies may use appropriated funds to provide prizes to individuals to further the collection of information necessary to the accomplishment of the agency’s statutory mandate. For example, in 70 Comp. Gen. 720 (1991), we held that the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, could use appropriated funds to pay cash prizes to encourage fishermen to return information used by NOAA for research on the history and migration rate of certain fish. To facilitate this research, NOAA issued fish tags containing questions about the circumstances under which the fish was caught. NOAA had been distributing a \$5 reward for the return of each fish tag, but proposed expanding the reward program to include the alternative of participating in an annual drawing for a limited number of cash prizes. NOAA proposed to offer \$1,000 for first prize and \$500 each for two additional prizes.

In our decision, we noted that the Department of Commerce is statutorily required to conduct research to support fishery conservation and management. Because the prizes were intended to induce fishermen to return fish tags that would facilitate

⁴ Since October 1, 2000, GSA has been operating under a series of continuous resolutions that allow GSA to continue activities for which appropriations were available during the previous fiscal year. *See, e.g.*, Pub. L. No. 106-275, 114 Stat. 808 through October 6, 2000, and H.R.J. Res. 125, 106th Cong. (2000) through December 5, 2000.

NOAA's acquisition of information needed for its statutorily required research, the proposed prizes were reasonably necessary to the accomplishment of an authorized purpose.

We also concluded that the Army could use appropriated funds to pay for framed posters, which the Army distributed as prizes to winners of drawings in order to collect information needed for recruiting purposes. B-230062, Dec. 22, 1988. The Army was statutorily required to conduct "intensive recruiting campaigns to obtain enlistments" and annual appropriations were provided for this purpose. The purpose of the prizes was to prompt individuals to provide "directory information" to the recruiters, including addresses and telephone numbers, in order to "continue the dialogue" with potential recruits. We found a direct connection between the purchase of posters to obtain recruiting information and the Army's statutory mandate to "conduct an extensive recruiting campaign." Therefore, this was a permissible expenditure of appropriated funds.⁵

Factually, there is one difference between this case and the decisions discussed above. In those decisions, the agencies awarded prizes to the general public whereas here GSA proposes to award prizes to federal employees. We do not view this distinction as meaningful under the circumstances presented here. First, GSA proposes to randomly distribute surveys and drawing cards to federal employees in GSA-tenant buildings to ensure that survey recipients will represent many different agencies and job classifications. Second, most of the employees selected to receive the survey will be under no statutory, regulatory, or employment-related requirement to return the survey to GSA.⁶ In this particular drawing, federal employees will not be receiving prizes for what they already are required to do, and are in this sense akin to the general public.

While the Federal Buildings Fund does not specifically provide budget authority to GSA to cover the cost of prizes, we see a direct connection between the purpose of the Fund and the use of prizes to increase the response rate to customer satisfaction surveys. Because GSA's statutory mission is to operate, maintain, and protect GSA-controlled buildings as well as to ensure that the building needs of federal agencies

⁵ See also decisions dealing with rewards for the furnishing of information that is necessary to the effective administration and enforcement of the law. B-172259, April 29, 1971 (holding that the Forest Service, which is statutorily responsible for protecting the national forests from destruction, could use appropriated funds to pay individuals for information regarding violations of laws and regulations protecting national forests); B-106230, Nov. 30, 1951 (holding that the Treasury Department could reward informers for information or evidence on violations of the revenue, customs, or narcotics laws under an appropriation for the necessary expense of law enforcement); B-117628, Jan. 21, 1954 (holding that the Commerce Department could pay rewards to informers as a necessary expense under a provision of the Export Control Act of 1949 which authorized the obtaining of confidential information incident to enforcement of the act).

⁶ While GSA may have the ability to influence GSA employees working in GSA-tenant buildings to respond to the survey without offering incentives, the number of GSA employees responding to the survey will comprise a small proportion of total respondents.

are met, it is necessary for GSA to collect valid information about the status of federal buildings and the needs of federal employees. Also, as noted earlier, GPRA places a premium on agency acquisition of information needed to measure performance towards their goals since agencies now must report annually on their performance. Pub. L. No. 103-62, 107 Stat. 285.

One important way to collect measurable information on performance is through the use of data collection instruments. Indirect incentives, such as self-addressed, postage-paid envelopes, free software to compile requested information, and free copies of publications resulting from the survey, are commonly used by the federal government to collect data for a variety of purposes. No objections to these practices have been raised. GSA does not control the surveyed employees nor does it have the authority to compel federal employees to return data collection instruments. However, by using incentives, it can encourage federal employees to provide the information it needs. Indeed, GSA has demonstrated, statistically, that conducting a drawing in connection with its customer satisfaction surveys will enhance the response rate to the survey and, thus, the value to GSA of the information that GSA obtains from its customers. We, therefore, have no objection to GSA's use of the Federal Buildings Fund for this purpose.⁷

Apart from the appropriations law issue addressed above, various federal statutes prohibit federal employees and the public from participating in lotteries except under limited circumstances. See, e.g., 18 U.S.C. §§ 1301-1304. The essential elements of a lottery include: (1) the distribution of prizes, (2) according to chance, (3) for consideration. See Federal Communications Commission v. American Broadcasting Co., Inc., 347 U.S. 284 (1954). A test for sufficient consideration is "whether the act, forbearance or return promise results in a benefit to the promisor or a detriment to the promisee." Laurence P. Simpson, The Handbook of the Law of Contracts, 80 (2d ed. 1965). The act, forbearance or return promise must be bargained for as the required return for the promise. Id. at 99. In our 1991 NOAA decision, we observed that its proposal to award prizes for the return of fish tags contained the first two elements of a lottery and arguably the third, i.e., consideration. 70 Comp. Gen. 720 (1991). We suggested that NOAA consult with the Department of Justice, the Office of Personnel Management, and appropriate congressional committees before implementing the proposal.

In its submission, GSA noted its conclusion that by not requiring federal employees to fill out a survey in order to enter the drawing, consideration would not be

⁷ Our decisions prohibiting the use of appropriated funds for personal gifts are not applicable here. We have consistently held that agencies may not use appropriated funds to purchase personal gifts or awards, except as authorized by law. See 57 Comp. Gen. 385 (1978); 54 Comp. Gen. 976 (1975); 55 Comp. Gen. 346 (1975). In these cases, and in others in which we applied the general prohibition, we based our conclusion on the absence of any direct connection, such as exists in this case, between the purpose for which the funds were appropriated and the gifts or awards in question.

required, and thus its drawing would not be a prohibited lottery. We appreciate the point. However, since these statutes at issue are criminal statutes, we offer no opinion on whether GSA's proposed drawing as presently structured would avoid the consideration element of a prohibited lottery. As we did in our response to NOAA, we suggest that GSA consult with the Department of Justice before implementing its proposal.

Anthony H. Gamboa
Acting General Counsel