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UNITED STATES GENERAL ACCOUNTING OFFICE

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July 20, 1959

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DEFENSE ACCOUNTING AND
AUDITING DIVISION

The Comptroller General

Attached is a copy of a memorandum dated April 27, 1959, from our Assistant Director, Dayton, Ohio, requesting a legal interpretation regarding four questions arising in connection with our review of the operation of the Air Force Departmental Industrial Equipment Reserve Storage Site No. 6 at Marietta, Georgia, by Tumpane Company, Inc.

Our Assistant Director, Dayton, Ohio, is concerned about the legality of the retention by the contractor of proceeds from sales of equipment furnished by the Government for use in operating the storage site and applying such proceeds against future billings for operating the storage site. This practice has been questioned because it possibly results in an augmentation of the appropriation 57-3400, operation and maintenance, which provides funds for the operation of the storage site and contravenes the requirement that all proceeds from any sale of surplus property be covered into the Treasury as miscellaneous receipts.

We have discussed the attached memorandum with the Assistant General Counsel (Miscellaneous) who suggested that the matter be submitted for consideration. Accordingly, we respectfully request instructions regarding the questions presented by our Assistant Director at Dayton.

Sincerely yours,

Lawrence J. Powers

Lawrence J. Powers
Director

Attachment

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Indorsement

Director, Defense Accounting and Auditing Division

Returned. While Government-furnished property is not specifically included in the definition of "contractor inventory" as contained in section 3(k) of the act (40 U. S. C. 472(k)), it is included in the definition by the rules and regulations promulgated under the act (40 U. S. C. App. 55.17). However, the statutory definition specifies "any property acquired by * * * a contractor * * *" with title to the property vested in the Government. Since "acquire" means to obtain by any means, the statutory definition is broad enough to include Government-furnished property.

The augmentation of appropriation 57-3400, if any, occurs at the time equipment purchased from 57-3100 funds is furnished by the Government, rather than when such equipment is sold and the proceeds applied against current billings, since the contractor presumably would have had to purchase the equipment and would have been reimbursed with 57-3400 funds if such equipment had not been furnished by the Government. However, section 202(c) of the act (40 U. S. C. 483(e)) not only authorizes but requires each executive agency, as far as practicable, to "make reassignments of property among activities within the agency when such property is determined to be no longer required for the purposes of the appropriation from which it was purchased * * *." Thus, the reassignment of property among activities within an agency financed by different appropriations is specifically authorized and directed. The operation of a storage site, whether by contract or otherwise, would appear to be an "activity within the agency." Hence, the furnishing of the property was authorized by statute; (assuming it to be a bona fide transfer for use and not a mere subterfuge); section 203(f) of the act (40 U. S. C. 484(f)) permits executive agencies to authorize contractors to retain or dispose of contractor inventories; and section 204(e) of the act (40 U. S. C. 485(e)) recognizes contract provisions, authorizing proceeds of sales of property in the custody of the contractor to be credited against the cost of the work covered by such contract, as controlling and not subject to the requirement of the act that proceeds of sales be covered into miscellaneous receipts. Accordingly, the transaction cited appears to be authorized by statute.

In view of the above, it is apparent that, where property acquired with 57-3100 funds and furnished for the operation of a Government storage site is disposed of, it is properly classified as "contractor inventory" within the intent of 40 U. S. C. 472(k), assuming, of course, that such furnishing for use was bona fide and not a subterfuge. Question 1 is answered accordingly.

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Question 2 is answered in the affirmative, assuming, of course, that the contract so provides.

In view of the answer to Question 1, no reply is necessary to Question 3.

Since 40 U. S. C. 485(e)^X specifically states "any contract," it must be deemed applicable to all types of contracts. However, while it refers to "any sale of property," it must be deemed applicable only to property properly classified as "contractor inventory," inasmuch as 40 U. S. C. 484(f)^X permits executive agencies to authorize contractors to dispose of only "contractor inventory." Question 4 is answered accordingly.

JOSEPH CAMPBELL

Comptroller General
of the United States

Attachments