

Comptroller General
of the United States
Washington, D.C. 20548



Decision

AF

Matter of: Federal Highway Administration Purchase of
Commercial Insurance

File: B-237654

Date: February 21, 1991

DIGEST

Insurance should not have been purchased by the Federal Highway Administration for a traveling highway technology exhibit because of the government's long-standing policy of self-insurance. However, the shipping company that obtained the insurance for the agency may be paid for the premiums because the insurance was obtained in good faith, the agency is taking steps to prevent future violations of the self-insurance rule, and payment has been allowed previously in similar circumstances. 55 Comp. Gen. 1196 (1976).

DECISION

The Associate Administrator for Administration at the Federal Highway Administration, U.S. Department of Transportation, has requested an advance decision as to whether a shipping company can be paid for premiums it paid for commercial insurance acquired with the Administration's permission to insure a traveling highway technology exhibit. For the reasons indicated below, we hold that the shipping company may be paid for the insurance premiums even though the purchase of insurance was a violation of the government's self-insurance policy.

BACKGROUND

In March 1989 the Administration contracted with a freight shipping company to transport a highway technology exhibit overseas. The shipping company asked whether the Administration wanted insurance to protect the exhibit. After consulting with Administration officials, an employee, who was not a contracting officer, advised the shipping company to purchase the insurance. The shipping company paid premiums to an insurance company for coverage during transportation and display of the exhibit. The Administration, which was designated the insured party, was

subsequently billed by the shipping company for the insurance premiums.^{1/}

Payment has not been made because the Administration now views the insurance contract as an unauthorized contract which cannot be ratified by a contracting officer because of the government's self-insurance policy. However, the Administration states that the insurance was taken out in "good faith" and that unjust enrichment would result if the shipping company is not paid.

DISCUSSION

The United States Government has long maintained a policy of self-insuring its own risks of loss upon the theory that the magnitude of the government's resources makes it more advantageous for the government to carry its own risks than to have them assumed by private insurers. 21 Comp. Gen. 928, 929 (1942). The Administration's purchase of insurance does not fall within any of the exceptions we have recognized from the self-insurance rule. See B-151876, Apr. 24, 1964 and 55 Comp. Gen. 1321, 1323 (1976).

Even though, as the Administration points out, appropriated funds should not have been used to purchase insurance, the insurance policy was taken out in good faith in an attempt to protect unique government property. The employee who solicited the insurance upon the instructions of other agency officials was not familiar with the contracting process or the role of the contracting officer and did not know that his action was wrong. Moreover, the shipping company acted in good faith in obtaining the policy in the government's behalf. Finally, the Administration advises that it is taking steps to assure that a violation of the self insurance rule will not occur in the future.

We have allowed payment under these circumstances in the past. In 55 Comp. Gen. 1196 (1976), we allowed an agency to pay premiums for commercial insurance to cover display items on loan from another agency which the loaning agency required to be insured. We stated that the policy of self-insurance was applicable and that commercial insurance should not have been obtained. Nevertheless, we held that,

this policy of self-insurance is not based on positive law, and no law or regulation affirmatively prohibits the purchase of insurance [in such

^{1/} The premiums were \$880.00 and \$750.00 on commercial insurance policies of \$88,000.00 and \$75,000.00, respectively.

circumstances). Therefore, and since the insurance was apparently procured and issued in good faith, no objection will be made to payment. . . .

Id. at 1197X Thus, we will not interpose an objection to payment to the shipping company for its purchase of insurance.

Milton A. Acolar

for Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT

- Appropriation Availability
- Purpose availability
- Liability insurance

PROCUREMENT

- Payment/Discharge
- Unauthorized contracts
- Quantum meruit/valebant doctrine