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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215326

DATE: December 14, 1984

MATTER OF: General Services Administration - Sale of
Used Government Vehicles by Private Sector
Auction Houses

DIGEST:

GSA proposal to sell used Government vehicles on consignment through private sector auction houses is not objectionable. The proposal does not provide for an improper delegation of the inherent Government function of fee setting since the Government will set a minimum bid price on each vehicle and the final sales price will be determined by the market. The security of Government funds is assured by a contractor guarantee and bonding. Collection of Recreation User Fees by National Forest Volunteers, B-207731, April 22, 1983, distinguished.

The General Services Administration (GSA) is currently implementing a program to test the feasibility of selling used Government vehicles on consignment through private sector auction houses. The General Counsel of the GSA has requested our opinion on whether the program, as outlined, would impermissibly place Government funds in the custody of the contractor. As will be explained below, we do not object to the GSA proposal since it does not provide for the improper delegation of an inherent governmental function. Furthermore, the proposal incorporates safeguards which are adequate to assure the security of Government funds.

The submission explains that the Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator of General Services to dispose of surplus property. 40 U.S.C. § 484(a) (1982). The proceeds of such sales are available to pay the direct expenses incurred in disposing of the property, and amounts not used for this purpose are covered into the Treasury as miscellaneous receipts. 40 U.S.C. § 485 (1982). The Administrator is also authorized to exchange or sell property and use the proceeds of such transactions to acquire similar items. 40 U.S.C. § 481(c) (1982). GSA notes that virtually all of the vehicles that it sells are classified as either exchange/sale or surplus property.

According to the submission, GSA currently sells approximately 30,000 vehicles each year, primarily by public auction. This figure is expected to rise sharply due to the size of the fleet and a greater turnover of vehicles. At the

same time, the number of GSA personnel available to conduct sales is being reduced. Although GSA currently performs most of its vehicle sales function internally, it has, on occasion, contracted with the private sector for transportation, storage, reconditioning, and auctioneering services. It now proposes to purchase these services as a package and to make the contractor, rather than the purchaser, responsible for paying the Government.

GSA indicates that the proposed program will incorporate the following elements:

- Within five days of notification of vehicle availability, the contractor will pick up vehicles and store them on contractor controlled premises.
- The contractor will recondition the vehicles to improve marketability.
- Approximately once a month the contractor will conduct a sale. All cars are to be offered for sale within 45 days of pick up.
- The contractor will collect all money from the sales and turn it over to GSA within three business days. (Three days are allowed in recognition of the banking process.) The contractor will be required to guarantee payment of sales receipts in full regardless of the status of collections.
- A GSA warranted contracting officer will be present at all sales and will execute the documents necessary to transfer title to the purchaser.
- The contractor, in turning over the sale proceeds and a sales report to GSA, will also submit an invoice for services rendered. Payment will be made from the appropriate agency account and the net proceeds will be remitted to the owning agency or to miscellaneous receipts of the Treasury depending on the status of the vehicle sold.

GSA also indicates that precautions will be taken to protect the Government's financial interests. The contractor will be bonded and will be required to maintain property and liability insurance to indemnify the Government in the event of any property damage or personal injury. In addition, GSA proposes to file Uniform Commercial Code financing statements to protect the Government against possible third-party creditor claims against the contractor.

GSA notes that in a recent decision concerning the collection of recreation user fees by National Forest volunteers, 62 Comp. Gen. 339 (1983), we held that the collection of fees owed the United States was an inherent governmental function which could be performed only by Federal employees. GSA argues that its proposal is distinguishable from the Forest Service plan in that the contractor will assume full responsibility by contract for payment to the Government and will be fully bonded and insured to protect the Government against any potential loss. We agree that our holding in the Forest Service case does not control the outcome in the case currently before us.

Our conclusion that the collection of fees owed the United States was an inherent governmental function was based on OMB Circular No. A-76, March 29, 1979, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government." This circular defined governmental functions which were required to be performed in-house "due to a special relationship in executing governmental responsibilities" as including "monetary transactions and entitlements." The Office of Management and Budget has since revised Circular No. A-76 to define a governmental function as:

"[A] * * * function which is so intimately related to the public interest as to mandate performance by Government employees * * * [including] those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government."

OMB Circular No. A-76, August 4, 1983. Although "monetary transactions and entitlements" are still defined as inherently governmental under the revised definition, it appears in the context of this case that only the setting of a minimum fee should be viewed as an inherently governmental function because it requires discretion and judgment. The administrative task of collection, however, need not be so considered, in our view. Since the GSA proposal provides for a minimum bid price set by the Government below which the contractor will not be permitted to sell the vehicle and, as in all auction sales, a final sale price set by the market, we do not think that the GSA proposal will result in the improper delegation of an inherent governmental function. We note by way of analogy that the use of contractors to collect Government debts is specifically authorized by 31 U.S.C. § 3718 and thus is not classified as inherently governmental by that law.

In our decision concerning the collection of recreation user fees by National Forest volunteers, we also questioned the feasibility of developing controls adequate to assure the security of the funds collected. Although the Forest Service proposed to require that each volunteer obtain a surety bond, we pointed out that such bonds would need to indemnify against both non-negligent and negligent losses by the volunteers and expressed doubts as to whether such coverage could be obtained at a cost which a volunteer would be willing to bear.

GSA will require that the contractor guarantee payment of sales receipts in full regardless of the status of collections. It will also require that the contractor be bonded. Because profit-making contractors rather than volunteers will be involved in the situation discussed here, we do not question the availability of adequate bonding in these circumstances. We think that these measures will adequately assure the security of Government funds.

In conclusion, we do not object to the implementation by GSA of a pilot program to test the feasibility of selling used Government vehicles through private sector auction houses. The GSA proposal would not delegate an inherent governmental function, and incorporates safeguards adequate to assure the security of Government funds.

for 
Comptroller General
of the United States