

DECISION



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

FILE: B-221536

DATE: June 12, 1986

MATTER OF: Propriety of purchasing pen refills for pens purchased at personal expense

- DIGEST:** 1. The Office of Personnel Management may properly use appropriated funds to purchase refills for pens initially purchased at personal expense but since used strictly in the conduct of Government business. As office supplies, pens and pen refills are considered necessary expenses arising out of and directly related to the work of an agency. Where the needs of the Government require the use of particular items (such as pens), thereby making appropriated funds available for their purchase, it is proper to use appropriated funds to maintain in working order similar employee-owned items, which are used in the conduct of Government business.
2. Since pen refills, as well as pens themselves, are ordinary stock items listed in the General Services Administration's (GSA) mandatory supply schedule, their procurement is governed by the mandatory source requirements of 41 C.F.R. § 101-26.301. Absent the applicability of an exception provided in 41 C.F.R. § 101-26.301, the Office of Personnel Management may not purchase pen refills from non-GSA sources unless it first requests and receives a waiver from GSA on the grounds that the pen refills available from GSA stock will not serve the functional end-use purpose of other types of pen refills proposed to be purchased.

By letter dated December 24, 1985, we have been asked by the Chief of the Acquisitions Branch of the United States Office of Personnel Management (OPM) to issue an advance decision concerning the propriety of using appropriated funds to purchase refills for pens that were not originally purchased at Government expense. For the reasons indicated below, we conclude that the refills may be purchased using appropriated funds. They may be purchased from commercial sources, however, only if there is an applicable exemption to the regulatory requirement that ordinary stock items be purchased exclusively from the General Services Administration (GSA), or if GSA

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grants a waiver on the grounds that the stock items available will not serve the required functional end-use purpose of the commercial items proposed to be purchased.

BACKGROUND

This issue has arisen as a result of requests from several employees of OPM that appropriated funds be used to purchase refills for pens initially purchased at personal expense but since used strictly in the conduct of Government business. The OPM Acquisitions Branch Chief asks 1) whether the pen refills should be considered personal convenience items, within the meaning of 41 C.F.R. § 101-26.103-2, or personal expenses or furnishings, within the rule established in 3 Comp. Gen. 433 (1924); 2) whether the requirement to use mandatory sources of supply specified in 41 C.F.R. § 101-26.301, is applicable; or 3) whether this is a matter within the agency's discretion.

ANALYSIS

Appropriated funds are properly available to agencies, such as OPM, to purchase office supplies like pens and pen refills. Such expenditures are generally labelled "necessary expenses" and are considered "current or running expenses of a miscellaneous character arising out of and directly related to the Agency's work." See 38 Comp. Gen. 758, 762 (1959); 4 Comp. Gen. 1063, 1065 (1925). Therefore, as necessary expenses, pen refills would not be considered personal convenience items, within the meaning of 41 C.F.R. § 101-26.103-2, or personal expenses or furnishings, within the rule established in 3 Comp. Gen. 433 (1924).

In addition, it is irrelevant that the refills would be used in pens not purchased at Government expense. We have held that where the needs of the Government require the use of particular items, thereby making appropriated funds available for their purchase, it is proper to use appropriated funds to maintain in working order similar employee-owned items which are used in the conduct of Government business. See B-171227, Dec. 14, 1970. Therefore, so long as the pens, for which the refills are being purchased, are used substantially in the conduct of Government business, OPM may properly use appropriated funds to purchase the refills.

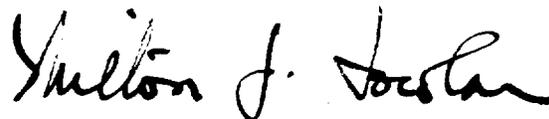
However, since pen refills, as well as pens themselves, are ordinary stock items listed in GSA's mandatory supply schedule, their procurement is governed by 41 C.F.R. § 101-26.301 which states:

"All executive agencies within the United States * * * shall requisition from GSA needed stock items available from GSA supply distribution facilities * * * except as provided in this * * * [section]."

See 63 Comp. Gen. 579, 581 (1984). Therefore, any purchase of pen refills is governed by this section and is subject to its mandatory source requirements, absent the applicability of one of its exemptions.

One exemption to the mandatory source requirement, which may be pertinent in this instance, is when the agency's "total value of the line item requirement is less than \$25," 41 C.F.R. § 101-26.301(b). The total value of a line item requirement is a function of the unit price of the item and the quantity and frequency of orders placed for that particular item in the normal course of agency operations. The exemption also states that agencies shall not divide orders just to avoid the requirement to requisition from GSA. Thus, this exemption would be available only if the total value of pen refills normally ordered by OPM at any one time is less than \$25.

Under 41 C.F.R. § 101-26.301-1(b), an agency may request GSA to waive the mandatory source requirements when the agency determines that items available from GSA stock will not serve the required functional end-use purpose of the item proposed to be purchased. The provision governing waiver, 41 C.F.R. § 26.100-2, states that an agency shall not initiate action to procure similar items from non-GSA sources until a request for a waiver has been requested from and approved by GSA. 63 Comp. Gen. at 582. Therefore, absent the applicability of an exemption provided in 41 C.F.R. § 101-26.301, OPM may purchase pen refills from non-GSA sources only if it first requests and receives a waiver from GSA.



Acting Comptroller General
of the United States