



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NSA Employees - Relocation Service Contracts -
Property Rental Management Service
File: B-219547
Date: July 17, 1987

DIGEST

The National Security Agency (NSA) questions whether a property rental management service may be included in the agency's relocation service contracts for its employees who are transferred within the continental United States. Although the statutory authority for relocation service contracts contained in 5 U.S.C. § 5724c (Supp. III, 1985) does not necessarily preclude this type of service, it has not been provided for by regulations implementing the statute. In the absence of such implementing regulations, there is no authority for NSA to include property rental management service in its relocation service contracts.

DECISION

This decision is in response to a request by the Deputy Director for Administration, National Security Agency (NSA), for an opinion as to the permissibility of including property rental management service in relocation service contracts. We conclude that property rental management services may not be authorized in the absence of implementing regulations which specifically authorize this service.

BACKGROUND

With the enactment of section 118, Pub. L. 98-151, 97 Stat. 978, November 14, 1983, as amended by section 120(b), Pub. L. 98-473, 98 Stat. 1837, 1984, October 12, 1984, Federal agencies were authorized to enter into relocation service contracts in connection with the transfers of their

employees. This authority is contained in 5 U.S.C. § 5724c (Supp. III, 1985), and it provides as follows:

"Under such regulations as the President may prescribe, each agency is authorized to enter into contracts to provide relocation services to agencies and employees for the purpose of carrying out the provisions of this subchapter. Such services include but need not be limited to arranging for the purchase of a transferred employee's residence."

To date, the General Services Administration (GSA) has not issued regulations implementing this authority. See Exec. Order No. 12522, June 24, 1985, delegating the President's authority to issue regulations to GSA. However, GSA issued guidelines on August 27, 1984, in Supplement 11 of the Federal Travel Regulations, FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). Prior to that, GSA issued a circular letter dated June 21, 1984, to heads of agencies advising them of the status of implementation of the new relocation allowance provisions and also providing preliminary guidelines to agencies for the use of third party relocation services.

The NSA advises that it is currently negotiating for a domestic relocation contract service, pursuant to 5 U.S.C. § 5724c, for its personnel relocating within the continental United States. The NSA wishes to include property rental management service as an integral part of its relocation service contract. Under this arrangement, the employee would retain title to the house at the old duty station and the contractor would rent the house out and manage it for a fee. However, NSA recognizes that, absent GSA regulations, there is some uncertainty as to whether property rental management may be included in relocation service contracts and whether it is properly a relocation expense.

The NSA believes that because its field tour policy in the continental United States differs from other agencies, property rental management is a proper relocation expense. The NSA employees rotate from their headquarters in Fort Meade, Maryland, to the field and then back to headquarters. Thus, the NSA employees are actually "relocated" for the duration of the tour. It is NSA's belief that if

they were able to pay for property management, it would encourage more employees to keep their homes in the Fort Meade area rather than incur real estate expenses. Further, the cost of property rental management is considerably less than reimbursement costs to an employee for the sale and purchase of a home.

OPINION

The concept of a relocation service contract represents a departure from the pre-existing authority for reimbursement of real estate expenses for a Federal employee. Under the authority of 5 U.S.C. § 5724a(a)(4)(1982), a transferred employee is entitled to be reimbursed for certain expenses in the sale of a residence at the old official station and purchase of a residence at the new official station. Under a relocation service contract the contractor could, in addition to arranging a purchaser for the employee, purchase the property directly from the employee.

That portion of the statutory language which provides for the purchase arrangement is clear; however, we agree with NSA that there is some question as to whether property rental management may also be included in relocation service contracts. There is virtually no legislative history in the form of committee hearings or reports pertaining to the enacted section. However, it was the objective of the primary sponsors of the bill, Representative Frank R. Wolf and Senator John Warner, that this provision and several other changes made to the relocation statutes (increasing the household goods weight allowance, payment of a relocation income tax allowance, etc.) would alleviate inequities and hardships which occur when a government employee is transferred.^{1/}

Consistent with this theme, we believe that section 5724c should be given a liberal interpretation. We also note that the statutory language which states that "such services include but need not be limited to," suggests an expansive construction.

^{1/} This is explained in a letter of January 26, 1984, from the sponsors to the Administrator, GSA.

For the foregoing reasons, we believe that GSA would have sufficient discretion in prescribing implementing regulations under 5 U.S.C. § 5724c to allow the inclusion of property rental management services in relocation service contracts. However, to date GSA has not issued any regulations implementing section 5724c. We believe that regulatory authorization would be necessary to provide for inclusion of property rental management services since these services are not clearly provided for by the statute itself and since a regulatory framework would delineate the scope of allowable services. For example, eligibility requirements should be spelled out, provision should be made for recouping the portion of reimbursement expended if the employee later sells his home, and a maximum period for reimbursement should be specifically prescribed.

Accordingly, in the absence of GSA regulations, we conclude that there is no authority for NSA to include property rental management service in its relocation service contracts.

for *Harry R. Van Cleave*
Comptroller General
of the United States