

DECISION



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

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FILE: B-184716

DATE:

MATTER OF: Robert E. Stoltenberg - Rental of boat
and other equipment

DIGEST: Expenses of renting boat and equipment from Government employee for the purpose of performing acoustical measurements are not reimbursable as travel expenses. Equipment should have been obtained by procurement means with due regard to section 1-1.302-3 of the Federal Procurement Regulations and public policy prohibiting the Government from contracting with its employees except for the most cogent of reasons as where the Government's needs cannot otherwise reasonably be met. Payment may, however, be made on a quantum meruit basis insofar as receipt of goods and services has been ratified by an authorized official.

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This action is in response to a request from a certifying officer of the National Bureau of Standards, United States Department of Commerce, for an opinion concerning the authority to pay its employee, Mr. Robert E. Stoltenberg, certain of the items of expense claimed on the travel voucher which he submitted in connection with a temporary duty assignment during the period May 9 through May 18, 1975.

The travel order pursuant to which Mr. Stoltenberg's temporary duty was performed authorized, among other expenses, "boat rental and miscellaneous purchases of equipment." In addition to transportation and per diem expenses Mr. Stoltenberg has claimed the following expenses:

Boat rental for 7 days	\$140.00
Gasoline for boat	7.15
Gasoline for motor generator	6.68
Outboard oil for boat	2.38
Waders, 3 pair for project personnel	57.21
Life vest	27.99
Boarding ladder for boat and barge	14.90
Redwood, 2" x 4"	2.71
Oak sounding rod	.71
	<u>\$259.73</u>

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The National Bureau of Standards expresses doubt as to whether the above-listed items of expense are payable as travel expenses.

In explaining the rationale for its authorization of boat rental and miscellaneous expenses, the Bureau states that the purpose of the temporary duty assignment was to perform acoustical measurements for the United States Navy and that the performance of such measurements required the use of costly equipment which it did not own. While certain of the necessary items of equipment were loaned to the Bureau by the Navy, we are told that "timing and logistics prevented the loan of scuba and boat equipment." The Bureau's actions authorizing boat rental and purchase of equipment are explained as follows:

"Due to the limited time requirements for this equipment and the small yearly funding, each of which is contingent upon the preceding work, purchase of these items was not reasonable and rental was chosen. Due to the remoteness of the areas (Blythe and Needles, California vicinity on the Colorado River as well as some lakes in Colorado) rentals were not available locally. As a result, the equipment would have had to be rented in Denver or Phoenix requiring rental costs to include all travel time as well as the loss of personnel time required to pick up and return this equipment. In the case of the boat, no rental could be found which included the trailer. To acquire a trailer would have required additional arrangements and costs.

"Since project personnel owned this type of equipment, they were compensated at a rate less than commercial rental (nominally 80%) on a per day basis and were paid only for the time actually in use. The equipment was brought to NBS for the trips on their own personal time thus saving the salary money which would have been necessary to pick up and return the boat and scuba gear. The action was investigated with the travel unit prior to its inception two years ago to determine if any regulations specifically prohibited it. We were advised of

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none; however, our procurement people suggested the rental be accomplished via the travel order rather than a purchase request. "

The laws and regulations governing reimbursement for travel expenses make no provision for payment of items of expense in the nature of those claimed by Mr. Stoltenberg inasmuch as they bear no relation to the travel of the employee involved. More correctly characterized, they are expenses for the acquisition or use of equipment or supplies necessary to accomplishment of the Bureau's mission. Their lease or acquisition should have been secured by proper procurement methods involving the execution of a lease contract or purchase order as appropriate.

There is, however, some question as to the propriety of the Government's execution of a contract or purchase order under the particular circumstances presented. With regard to the specific matter of a Government agency contracting with one of its employees, section 1-1.302-3 of the Federal Procurement Regulations (FPK) provides:

"(a) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

"(b) When a contracting officer has reason to believe that an exception as described in paragraph (a) of this section should be made, approval of the decision to make such an exception shall be handled in accordance with agency procedures and shall be obtained prior to entering into any such contract. "

The above-quoted provision is the regulatory implementation of well-established policy. While contracts between the Government and its employees are not expressly prohibited by statute, they are undesirable and should be authorized only in the exceptional case where the needs of the Government cannot reasonably be otherwise

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supplied. We have recognized that such contractual arrangements are open to criticism as to alleged favoritism. Particularly is this so in cases where the contract is between the employee and the particular service for which he works. See 4 Comp. Gen. 116 (1924), 5 id. 93 (1925), 13 id. 281 (1934), 14 id. 403 (1934), 27 id. 735 (1948), 41 id. 569 (1962).

An exception to this policy in the instance where the Government's needs cannot otherwise be met has been found to exist in a case somewhat similar to that under consideration. In B-146259, July 13, 1961, we considered the question of the propriety of the Army's award of a contract to one of its employees for the lease of equipment and horses for the Government's use in patrolling and inspecting the White Sands Missile Range. Copies of the Army's invitation for bids to furnish the required horses and equipment had been publicly posted and, in addition, copies had been sent to four individuals who were employed by the Army as range inspectors. Only one bid--that of the supervisory inspector--was received. Payment under the contract was authorized by this Office inasmuch as the services in question were essential to the operation of the Missile Range and were not otherwise available. We found the contract in that case to fall within the exception to the general policy prohibiting the Government from contracting with its own employees.

It is unclear from the record presented in this case whether the situation justifies the National Bureau of Standards' securing equipment from its own employees. The record indicates merely that it would have been more costly to have leased a boat from a commercial concern. We do not believe the fact that commercial arrangements would be somewhat more costly is sufficient to establish that the necessary equipment would not reasonably have been otherwise provided in view of the strong public policy against the Government's contracting with its employees. However, the agency is responsible for the determination required by section 1-1.302-3 of the FPR that compelling reasons exist for contracting with a Government employee.

In the future equipment needs of the Bureau should be met by proper procurement methods, with due regard to the Federal policy expressed in section 1-1.302-3 of the FPR. Although that portion of Mr. Stoltenberg's claim for lease or purchase expenses of equipment may not be certified for payment as travel expenses, we have recognized an obligation on the part of the Government to pay for the value

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of goods or services received without benefit of a valid contract. See 37 Comp. Gen. 330 (1957), 38 id. 368 (1958), 40 id. 447 (1961), 46 id. 348 (1966). In such cases payment may be made on a quantum meruit or quantum valebat basis where it is shown that the Government has received a benefit and that acceptance of the unauthorized goods or services was expressly or impliedly ratified by the authorized contracting officials. See B-173765, November 18, 1971; B-180630, May 2, 1974; B-182584, December 4, 1974. It has been recognized that the acceptance of benefits by authorized representatives of the Government with knowledge of the circumstances may, in a proper case, result in a ratification of the unauthorized act by implication. B-164087, July 1, 1968; B-182854, supra; B-183878, June 20, 1975. We are told that in this case National Bureau of Standards procurement officials advised that rental of the equipment in question should be secured by travel order rather than by purchase order. Insofar as those officials may be authorized to procure the equipment by contractual means, their advice as to the use of a travel order may be regarded as sufficient indication of the required ratification. In the event that those officials are not so authorized, appropriate officials may, within their discretion, hereafter ratify the otherwise improper rental arrangements.

Action on the voucher should be taken in accordance with the foregoing.

B.F.KELLER

Deputy

Comptroller General
of the United States