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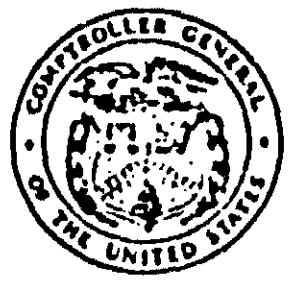
DECISION



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

FILE: B-206560 DATE: September 29, 1982

MATTER OF: IRS maintenance and repairs of occupied building

DIGEST: Since Treasury Department lacks specific statutory authorization or a delegation of authority from GSA, Treasury Department may not itself procure building services by entering into a service contract with an independent third party contractor. Any building services Treasury Department desires would have to be provided or otherwise arranged by GSA which has the statutory authority and responsibility to make repairs, etc., to public buildings.

The Assistant Secretary (Administration) of the Department of the Treasury has requested our opinion regarding the legality of a Federal agency expending its appropriated funds for maintenance, repairs, or services to buildings assigned to it by the General Services Administration (GSA).

Specifically, the Assistant Secretary poses two questions:

1. Whether a Federal agency, absent a delegation of authority from GSA, may enter into contracts with third parties for maintenance, repairs, or services to buildings in instances where GSA is unwilling or unable to provide services adequate to protect the health and safety of the agency's employees, and

2. If so, whether Treasury Department may withhold from its standard level user charge payments to GSA for amount which Treasury Department has paid to a third party contractor for services rendered.

For reasons stated below, we hold that GSA has the exclusive statutory authority to provide or otherwise to arrange for maintenance, repairs, and necessary services required to house occupant agencies. Therefore, the issue of whether Treasury Department can make deductions from the standard level user charge it pays to GSA is moot. Also, compare 57 Comp. Gen. 130 (1977).

Under Reorganization Plan No. 18, effective July 1, 1950, 15 Fed. Reg. 3177, 64 Stat. 1270, (40 U.S.C. § 490 note), any authority of other Government agencies to lease and assign space in federally-occupied buildings outside the District of Columbia was transferred to the Administrator of General Services. Section 1 of Reorganization Plan No. 18 provided for transfer to GSA of leasing authority in pertinent part as follows:

> "Transfer of space assignments and leasing functions--All functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings for use by agencies (including both space in buildings acquired by lease and space in Government-owned buildings), are hereby transferred from the respective agencies in which such functions are now vested to the Administrator of General Services * * *"

To further effectuate this transfer of functions and authorities to GSA, Section 2 of Reorganization Plan No. 18 placed the responsibility of providing building maintenance in GSA. It provided in pertinent part as follows:

> "All functions with respect to the operation maintenance, and custody of office buildings owned by the Government and of any of office buildings or parts thereof acquired by lease * * * are hereby transferred from the respective agencies in which now vested to the Administrator of General Services * * *"

In response to Reorganization Plan No. 18, Congress enacted the Federal Property and Administrative Services Act of 1949, as amended, (Property Act), ch. 288, approved June 30, 1949, 63 Stat. 377, 40 U.S.C. §§ 471 et seq. (1976). The 1950 amendment to the Property Act, now located at 40 U.S.C. § 490, was intended by Congress to provide continuing statutory authority to do essentially what the Reorganization Plan had contemplated. See S. Rep. 81-2140, 81st Cong., 2d Sess. (1950). The Property Act provided that GSA shall perform centralized property management functions for agencies of the Federal Government. It charged GSA with the maintenance, operation, and protection of Federal facilities under its jurisdiction. See generally 40 U.S.C. § 490 (1976). See also the Public Buildings Act of 1959, as amended, 40 U.S.C. §§ 601 et seq. (1976).

It was the intent of Congress to simplify the management and utilization of Government properties, to eliminate competition among various Federal agencies, to reduce waste and duplicative actions, and to realize savings through merger of common services. See H. R. Rep. No. 670, 81st Cong., 1st Sess. pp. 4,7 (1949) and S. Rep. No. 1625, 81st Cong., 2d Sess. 7 (1950). Therefore, in view of the intent of Congress to mandate GSA to perform centralized leasing and management functions on buildings assigned by GSA to an occupant agency, we are unable to accept the proposition advanced by the Treasury Department that it has implied inherent procurement authority, independent from GSA, to enter into service contracts with a third party in instances where Treasury feels the service normally provided by GSA is inadequate.

Although Treasury Department acknowledges that it was the intent of Congress to centralize in GSA the authority and responsibility for providing facilities and incidental services to occupant agencies, it contends that Executive Order No. 12196, 45 Fed. Reg. 12769 (1980) has created an "inherent authority" in the head of the occupant agency to enter into service contracts with an independent contractor to maintain and repair its building in order to protect the health and safety of the agency's employees. We accept the Treasury Department's contention to the extent that the Executive Order has placed a duty on the head of each occupant agency to furnish to employees an environment that is free from recognized hazards that are likely to cause serious bodily harm or death to its employees. However, we cannot agree with the proposition that the Executive Order vests any authority in the head of the occupant agency to contract for independent building services.

Executive Order 12196 entitled "Occupational Safety and Health Programs for Federal Employees," provides in pertinent part as follows:

> "The head of each agency shall:
>
> "(a) Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm." (§ 1-201(a) (1980))

It further states that the head of each agency shall:

> "(e) Assure prompt abatement of unsafe or unhealthy working conditions. * * * When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, an agency shall act with the lessor agency to secure abatement." Id. § 1-201(e).

In our view, this Executive Order places a duty on the head of the occupant agency to consult and to coordinate occupational safety and health programs with GSA in accordance with section 19 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 668 (1976). It provides an orderly scheme for an occupant agency to notify GSA of deficiencies in building services normally provided by GSA. Section 1-602(b) of the Executive Order clearly mandates the Administrator of GSA to

> "assure prompt attention to reports from agencies of unsafe or unhealth conditions of facilities subject to the authority of the General Services Administration; where abatement cannot be promptly effected, [the Administrator of General Services shall] submit to the agency head a timetable for action to correct the conditions; and give priority in the allocation of resources available to the Administrator for prompt abatement of conditions."

Our reading of this Executive Order is that it explicitly continues GSA's responsibility to provide or otherwise to arrange for building services in buildings it assigns to other Federal Government agencies. Nowhere does the Executive Order give authority to the occupant agency to maintain or repair these buildings.

Further, the Treasury Department does not have specific statutory authority which would authorize it to contract independently for building services. See B-162021, July 6, 1977. Nor does the Treasury Department have an appropriate delegation of authority from GSA to contract for such services. Therefore, any building services the Treasury Department desires would have to be provided or otherwise arranged by GSA.

In view of the answer to your first question that Treasury may not enter into contracts for building service and repairs, we need not answer your second question concerning Treasury's withholding from its SLUC payments to GSA those amounts it pays to contractors for these services. For a general discussion of SLUC payments, compare 57 Comp. Gen. 130 (1979).

Comptroller General
of the United States