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DECISION

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

[Air Force Claim for GSA Reimbursement of Property Maintenance Costs]

FILE: B-197646 DATE: May 29, 1980

MATTER OF: Liability of General Services Administration for Cost of Maintaining Excess Real Property held by Air Force

DIGEST: 1. General Services Administration (GSA) regulations make GSA responsible for cost to agencies of maintaining excess real property, beginning one year after it becomes excess. FPMR § 101-47 402-2(b). Air Force spent $197,546 to maintain property. GSA says it is liable to reimburse only $56,000 because it offered to pay only that amount and because it lacked funds to pay more. GSA is liable for full amount but we will not require GSA to seek deficiency appropriation for intragovernmental payment. GSA should budget for these expenses or change its regulation.

2. In dispute between General Services Administration (GSA) and Air Force over Air Force claim for reimbursement, Air Force withheld Standard Level User Charge payment owed to GSA in order to collect unrelated debt. Inter-agency claims are not to be collected by offset but should be submitted to GAO for adjudication.

This is in reference to the dispute between the General Services Administration (GSA) and the Air Force (AF) over reimbursement of expenses incurred for the protection and maintenance of two parcels of Federal excess real property--the Matagorda Island Air Force Range and the associated Port O'Connor Dock Facility, Calhoun County, Texas. As explained below, we agree that GSA should reimburse the AF for the balance of the protection and maintenance costs incurred by AF. However, it would require a deficiency appropriation to do so and we see no purpose in requiring this action under the circumstances. Also, offset by a creditor agency against a debtor agency is not appropriate. AF should remit the balance owed to GSA for Standard Level User Charge fees.

The AF remained in possession of these installations after they were declared excess to AF requirements, and continued to provide protection and maintenance services for twelve months, as required of the holding agency by the terms of the Federal Property Management

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Regulations (FPMR). Beginning on October 1, 1977, GSA, as the disposal agency under the FPMR, became obligated to provide these services itself or to reimburse the AF for the cost of these services and on October 15, presented the AF with a proposed protection and maintenance agreement with an $18,000 maximum on the costs it would reimburse to the AF for the first quarter of fiscal year 1978 (FY 78). Since the AF expected that the level of protection and maintenance required by the FPMR would necessitate expenditures in excess of $18,000, the agreement was neither signed nor returned and identical agreements, covering the second and third quarters, were likewise disregarded.

The AF billed GSA $197,546 representing its actual costs for the protection and maintenance services provided during the first three quarters of FY 78. Due to inadequate funds, GSA denied any obligation to reimburse more than $54,000, representing the payment of $18,000 for each of the three quarters, as proposed by GSA originally. In an attempt to satisfy this debt, the AF withheld $197,546 owed GSA for third quarter FY 78 Standard Level User Charges (SLUC) for space occupied by the AF outside the National Capital Region. GSA has submitted the matter as a claim for the remaining $143,546 in SLUC charges. We here consider the propriety of the actions of both GSA and the AF.

As a preliminary matter, interagency claims are not to be collected, as the AF did, by offset. The AF must pay the SLUC charge due GSA. Disputed interagency bills should be submitted to this Office for settlement, as provided in the GAO Manual of Policies and Procedures for the Guidance of Federal Agencies (title 7, sec. 8.4(1(c)).

Responsibility for the care and handling of Federal excess real property--property not needed by the agency holding it--is addressed in section 202(b) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 483(b) (1976)) and the implementing Federal Property Management Regulation (FPMR), 41 C.F.R. 101-47.401 et seq. (1979)). Under section 202(b), the agency in possession is required to perform the care and handling of its own excess property. Compare section 203(b), 40 U.S.C. § 484(b), under which GSA, as the agency responsible for disposing of surplus property--property not needed by any agency--is vested with discretion either to furnish the protection and maintenance services for the surplus property itself or to require the agency in possession (the holding agency) to perform this function. Despite this distinction in the statute between treatment of surplus and excess real property, GSA has adopted a policy of treating all care and handling responsibilities, for both surplus and excess real property, in the same manner. In this regard, FPMR section 101-47.402-1 provides in part that:

> "The holding agency shall retain custody and accountability for excess and surplus real property * * * and shall perform the physical care, handling, protection, maintenance, and repairs of such property pending its transfer to another Federal agency or its disposal.* * *"

The holding agency must bear the cost of providing care and handling services for a maximum of twelve months plus the period preceding the first day of the next succeeding fiscal year quarter. FPMR section 101-47.402-2(a). Thereafter, if the property has not yet been transferred to another agency or otherwise disposed of by the disposal agency, FPMR section 101-47.402-2(b) provides that:

> "* * * the expense of physical care, handling, protection, maintenance, and repairs of such property from and after the expiration date of said period shall be reimbursed to the holding agency by the disposal agency." (Emphasis added).

This is done even though, under the excess property statute, the holding agency is responsible for these costs insofar as they pertain to excess property. 40 U.S.C. § 483(b).

GSA has not denied its liability to the AF under the FPMR nor has it questioned the amount which the AF spent. It only disputes the amount which it is obligated to reimburse. Based upon its understanding that the regulations implicitly contemplate reimbursement of costs only to the extent of available resources, GSA believes that no agreement with the AF was necessary to limit its responsibility for costs. GSA contends that its quarterly obligation to the AF should not exceed $18,000 (a total of $54,000 for three quarters) both because it attempted to limit its liability to this amount and because "budget limitations precluded us from funding these costs at a higher level," so that, in GSA's view, "no additional funds are available for this purpose." The AF, on the other hand, has interpreted the regulations to require reimbursement of actual protection and maintenance costs which it expended.

The general GSA policy governing reimbursable excess property expenses is embodied in FPMR section 101-47.401-1 which states:

> "(a) * * * the management of excess real property and surplus real property, including related personal property, shall provide only those minimum services necessary to preserve the Government's interest therein, realizable value of the property considered." (Emphasis added).

Although GSA, under its regulations, has assumed financial responsibility for excess property after 12 months, the applicable statute makes the care and maintenance of excess property the responsibility of the holding agency, without a time limit. 40 U.S.C. § 483(b). There is therefore no doubt that AF funds were available for the purpose for which they were expended. Accordingly, reimbursement of the AF by GSA is not required in order to prevent an improper expenditure.

This is not to say that GSA can avoid its self-imposed responsibility for care of Government property by pleading insufficient funding. We addressed this issue in a letter report to GSA, "Improvement Needed in Management of Protection and Maintenance Funding," LCD-78-336, July 31, 1978. The property which is the subject of this decision, the Matagorda Island Air Force Range and Dock, was among those discussed in that report. We said then:

> "Since GSA has 12 to 15 months before it becomes financially responsible for the property, we believe that it should be able to anticipate the funding needs for the protection and maintenance for those properties remaining in its inventory and include an estimate for such costs in its budget."

We do not concede that GSA can negate the effect of its regulations by failing to budget or obligate sufficient funds to carry out its responsibilities. However, we see no useful purpose to be served by requiring, in effect, that GSA seek a deficiency appropriation merely to reimburse another Government agency in an intra-governmental transaction.

We have no general objection to GSA's practice under the cited regulations of establishing ceilings on reimbursable costs where the holding agency agrees to the proposed amount. Under these circumstances, the holding agency presumably will have determined either that the services required by the regulations can be furnished at the agreed amount or that it is capable of assuming any additional expenses. Where no agreement is adopted, however, so long as the holding agency furnishes only those services required by the regulations, GSA should budget for and reimburse the actual cost of these services. Alternatively, GSA can amend its regulation to make the holding agencies responsible for these costs, so that they can budget for them.

Milton J. Socolar

For the Comptroller General
of the United States