

Martin-Kalisky
GGM

DECISION



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

30726

FILE: B-198137

DATE: March 20, 1985

MATTER OF: GSA Transportation Audit Contracts

- DIGEST:**
1. Under 31 U.S.C. § 3718(b), transportation audit contractors engaged by the General Services Administration (GSA) to assist in carrying out GSA's responsibilities under 31 U.S.C. § 3726 may be paid from proceeds recovered by carriers and freight forwarders, but only for services attributable to the recovery of "delinquent" amounts (as defined in section 101.2(b) of the Federal Claims Collection Standards), as opposed to audits and other services in connection with non-delinquent accounts.
 2. The term "collection services," used in 31 U.S.C. § 3718(a), does not include the servicing of non-delinquent accounts, but rather, is limited to actions taken to collect amounts that have become "delinquent," as defined in section 101.2(b) of the Federal Claims Collection Standards (to be codified in 4 C.F.R. ch. II). Therefore, the exception to the miscellaneous receipts act (31 U.S.C. § 3302) contained in section 3718(b) authorizes agencies to pay debt collection contractors from the proceeds of their activities to collect delinquent amounts, but does not authorize payment from proceeds for contractors who service non-delinquent accounts.

Under 31 U.S.C. § 3726 (1982), the General Services Administration (GSA) is responsible for performing post-audits of amounts paid by Government agencies to carriers and freight forwarders for transportation services. In carrying out its duties under this statute, GSA has engaged contractors to, among other things, examine bills already paid, identify overcharges or other erroneous payments made by the Government, request repayment on behalf of the United States for those erroneous payments, and take such other actions as may be necessary and appropriate to effect

collection of those amounts. Because of constrained budget resources, GSA would like to use the proceeds recovered under those contracts to reimburse its contractors for their services. The General Counsel of GSA asks whether the limited exception to the so-called "miscellaneous receipts" act, 31 U.S.C. § 3302, provided by section 13 of the Debt Collection Act of 1982 (as amended in 1983), 31 U.S.C. § 3718(a), provides the necessary authority.

As explained below, we conclude that for those services directly related to collection of an established and delinquent claim, the GSA contractors may be paid from the recovered proceeds. However, the majority of the described services are not debt collection services for which payment from proceeds was authorized by section 3718(b).

BACKGROUND

Under 31 U.S.C. § 3726, carriers or freight forwarders are entitled to be paid upon presentation of their bills for transportation services--in some cases, even before the transportation is completed. The Administrator of GSA then has the duty to conduct a post-audit of the charges and to deduct the amount of any overpayment identified from subsequent amounts owed to the provider of the services. GSA has been using private contractors to perform many of the tasks necessary to carry out its duties under this act and wishes to continue this program. According to the GSA submission, its contractors will perform the following functions:

"1. Contractors will examine carriers' paid billings to identify overcharges and other improper payments.

"2. Contractors will send notices of overcharge and other notices to carriers advising them of specific mistakes in their billings and make demand for refunds, with remittances to be made payable to the Government and sent to the contractor.

"3. Contractors will collect remittances and forward same directly to GSA, with payment to the contractor to be made from these remittances.

"4. Though carrier protests will initially be sent direct to GSA, contractors will examine each protest and draft a

response for review and final determination by GSA, which is the procedure currently employed.

"5. Contractors will perform such other functions which are consistent with the debt collection process as specified in the contract, such as follow-up letters and telephone calls."

GSA advises us that it will "retain the authority to resolve disputes, compromise claims, terminate collection actions, and initiate legal action." As indicated in B-198137, June 3, 1982, as long as GSA retains inherently governmental functions, such as those described above, we have no objection to the utilization of contractors to perform any or all of the five functions listed above. Our problem is with the source of funding proposed to pay for these services.

DISCUSSION

Because of a reduction in its budget authority, GSA would like to conserve its appropriations and to pay for the contractors' services under a contingency arrangement from the proceeds of any overcharge reimbursements collected from the carriers. The General Counsel is aware that 31 U.S.C. § 3302(b) requires, unless otherwise provided by law, that officials "receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." (Emphasis added.) She suggests, however, that section 13 of the Debt Collection Act of 1982 (DCA), 31 U.S.C. § 3718, as amended by Pub. L. No. 98-167, 97 Stat. 1104 (1983), may provide the necessary "otherwise provided" authority.

Section 13 of the DCA provides that an agency "may make a contract with a person for collection services to recover indebtedness owed to the United States Government." It also provides that:

"Notwithstanding section 3302(b) of this title, a contract under subsection (a) of this section may provide that a fee a person charges to recover indebtedness owed the United States Government is payable from the amount recovered." 31 U.S.C. § 3718(b).

The GSA General Counsel suggests that the term "collection services," as used in section 13, may be construed to

encompass the audit of the vouchers, the identification and processing of any overcharges discovered, the handling of any protests to the Government's claim for reimbursement, and finally, the collection of any indebtedness determined to be due. We do not agree with GSA's interpretation of the term, "collection services." In our view, section 13 refers to contracts for collection of amounts previously found to be past due and owing, having afforded the alleged debtor the right to protest, have his protest adjudicated administratively, and generally to have the benefit of all due process procedures to which he is entitled by law.

For example, the initial tasks to be performed by the GSA contractors entail the examination of bills paid by the Government in order to determine whether the payments were proper. Once an erroneous payment has been identified, the contractor is to send the overpaid company a letter which, among other things, explains the contractor's determination that a debt exists, and demands a refund on behalf of the United States by a certain date. Up to this point, there was no debt owed to the United States, since 31 U.S.C. § 3726 specifically provides for payment in the full amount of the carrier's bill, subject, of course, to later adjustments as a result of GSA's post-audit processes. After receipt of that initial letter, there is a debt or a claim, but we would not consider it to be delinquent until any dispute over the existence or amount of the Government's claim has been resolved administratively and the claim is not paid by the specified due date.

Conceptually, the tasks to be performed under these contracts fall into two categories: "account servicing" and "debt collection." "Account servicing" generally refers to the provision of such services as billing, accounting, record keeping, and receipt and processing of payments on non-delinquent accounts. These tasks appear to encompass the major portion of the services for which GSA has or plans to contract. "Debt collection," in contrast, generally refers to action taken to collect amounts that have become delinquent. In our opinion, section 13 does not address the use of private contractors to service non-delinquent accounts and therefore does not provide the "other authority" necessary to overcome the miscellaneous receipts statute, discussed earlier.

Although section 13 itself does not use the term "delinquent accounts," the legislative history of the DCA is replete with statements to the effect that Congress was

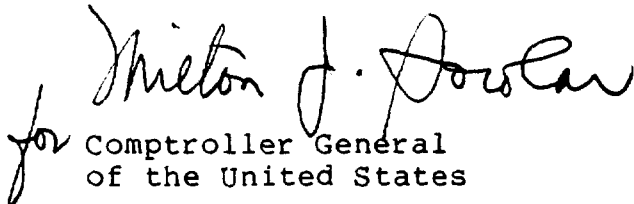
primarily concerned with, and intended this act to address, the collection of delinquent debts.^{1/}

Moreover, section 13 provides that persons who enter into contracts to collect debts owed to the United States must comply with the provisions of the Fair Debt Collection Practices Act (FDCPA). That act prohibits the use of abusive, deceptive, and unfair debt collection practices (15 U.S.C. § 1692(e)), and imposes a number of affirmative disclosure requirements (e.g., 15 U.S.C. § 1692(g)). The FDCPA definition of "debt collectors" specifically excludes "servicing agents." See, 15 U.S.C. § 1692a(6)(G)(iii). See also S. Rep. No. 382, 95th Cong., 1st Sess. 3-4 (The term, "debt collector" does not include "mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing."). As explained in Federal Trade Commission staff interpretatives (the FTC has primary administrative responsibility for enforcing the FDCPA), the exception excluding servicing agents, "contemplates a situation in which a bona fide servicing arrangement is entered into prior to the time the debt goes into default." 2 FTC Interpretives 37 (June 14, 1978). It also observed that "servicing an account is quite different from engaging in collecting efforts," 2 FTC Interpretives 55 (July 28, 1978), and "Congress specifically meant to exclude from the [FDCPA's] coverage, mortgage service companies, and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing," 1 FTC Interpretives 55 (Jan. 25, 1978). Consequently, it would be illogical, contrary to the legislative history of section 13, and inconsistent with the position of the staff of the agency charged with enforcement of the FDCPA to treat servicing agents as though they were debt collectors.

^{1/} E.g., S. Rep. No. 378, 97th Cong., 2d Sess. 2-4 (1982); S. Rep. No. 287, 97th Cong., 2d Sess. 5, 14 (1981); 128 Cong. Rec. E4653 (daily ed. Oct. 1, 1982) (Rep. Derwinski); 128 Cong. Rec. H8052 (daily ed. Sept. 30, 1982) (Rep. Conable); *Id.* at H8053 (Rep. Horton and Rep. Butler); 128 Cong. Rec. S12327-29 (daily ed. Sept. 27, 1983) (Sen. Percy); *Id.* at S12329 (Sen. Dole); 128 Cong. Rec. H1734 (daily ed. May 4, 1982) (Rep. Rostenkowski); 127 Cong. Rec. S5501 (daily ed. May 21, 1981) (Sen. Percy).

Finally, we point out that section 102.6 of the joint GAO and Department of Justice Federal Claims Collection Standards, which implements section 13 of the DCA, specifically provides that "all agencies have authority to contract for collection services to recover delinquent debts * * *." 49 Fed. Reg. at 8899 (to be codified as 4 C.F.R. § 102.6) (emphasis added). The comments accompanying the Federal Register publication of the revised FCCS specifically explain that section 102.6 "is intended to apply only to the recovery of delinquent debts and not to routine servicing arrangements for non-delinquent debts." 49 Fed. Reg. at 8892.

For these reasons, we conclude that the term, "collection services," as used in section 13, may not be construed to include "account servicing." Therefore, only the portion of the proceeds recovered by GSA's transportation audit contractors properly attributable to collection of "delinquent" amounts, as defined in section 101.2(b) of the FCCS, 49 Fed. Reg. at 8896, may be used to pay for the contractors' services. All other amounts collected by the GSA transportation audit contractors must be deposited into the Treasury, without deduction, as a credit to the appropriation or fund account against which the original payments were charged or to miscellaneous receipts if the accounts are not readily identifiable. Cf. 41 C.F.R. § 101-41.505.


for Comptroller General
of the United States