

DECISION

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

Canbasos
GSM
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FILE: B-213771.2

DATE: April 1, 1985

MATTER OF: General Services Administration's Incremental Reimbursement of General Supply Fund for Operating Equipment Purchases -
DIGEST: Reconsideration

1. Decision holding that the General Services Administration is bound to same 45-day reimbursement requirement for procurements made on its behalf through General Supply Fund (GSF) as are other agencies for procurements made on their behalf is affirmed. Review of prior decision discloses no material error of fact or law. Any agency (including GSA) that has items procured through the GSF on its behalf is a "requisitioning agency" within the meaning of 40 U.S.C. § 756(b) and is bound by the 45-day reimbursement requirement.
2. Provision of 40 U.S.C. § 756(b) authorizing amortization of cost of "equipment utilized for lease or rent to executive agencies" permits GSA to recover costs of common use type items which are used intermittently by more than one agency over the useful life of the items by assessing users a rental fee, but does not permit GSA to procure an item through the GSF for the sole use of GSA and then lease it to itself merely to avoid the 45-day reimbursement requirement. If this were permissible, then every procurement, regardless of whether it is made on GSA's or some other agency's behalf, could be so classified rendering meaningless the application of the 45-day reimbursement requirement.

This decision is in response to a request for reconsideration of our decision B-213771, July 10, 1984, submitted by Ray Kline, former Acting Administrator of General Services. That decision held that the General Services Administration

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(GSA) must promptly reimburse the General Supply Fund (GSF) for GSF operating equipment, the cost of which is ultimately to be charged to annual appropriations available for paying GSF operating expenses. Section 109(b) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 756(b) (1982) (1949 Act), which applies a prompt reimbursement requirement to other requisitioning agencies, applies to GSA also, since GSA possesses no legal authority on which it can base its claim for exemption from application of this provision and the Congress has not by acquiescence approved GSA's action.

BASIS FOR GSA'S REQUEST

The Acting Administrator urges that we reverse our decision because GSA from its inception in administration of the GSF has taken the position that it is not a requisitioning agency for the purposes of 40 U.S.C. § 756(b). In support of its view, the Acting Administrator refers to:

- A November 27, 1953, opinion of GSA's General Counsel to the GSA Comptroller that GSA was not bound by the prompt payment requirements of 40 U.S.C. § 756(b);
- The fact that lump-sum appropriations have been justified by GSA in its budgetary requests by mention of the amortized nature of some equipment purchases;
- The fact that this Office has previously been in agreement with GSA's interpretation of the inapplicability of the prompt reimbursement requirement to itself; and,
- The fact that other language in 40 U.S.C. § 756 authorizes GSA's practice.

Additionally, GSA indicates that even should we choose to affirm our prior holding, it will seek legislative enactment to exempt itself from the law's requirement and will continue its prior practice until legislative authority is obtained.

DECISION

For the reasons stated below, we affirm our prior decision. As we indicated in our prior decision in this matter, the purpose of the prompt reimbursement requirement is to prevent the use of the GSF to finance procurements made specifically on behalf of an agency for that agency's use. Since the impact of delayed reimbursement upon the capital requirements of the GSF is the same regardless of which agency

has purchases made on its behalf through the GSF (that is, the longer capital is tied up financing a particular agency procurement, the longer it is unavailable to finance another agency procurement), there is no basis for raising an implied exception in favor of GSA merely because it administers the GSF.

In order to permit GSA to take the steps necessary to (1) adjust its future appropriation requests to permit GSF purchases on GSA's account to be promptly reimbursed or (2) seek enactment of legislation to except GSA from the reimbursement requirement, our decision should be prospectively applied to new equipment purchases made by GSA through the GSF beginning in fiscal year 1987.

DISCUSSION

We note that the views of GSA's General Counsel set forth in the November 27, 1953, opinion were duly considered by this Office in our July 10, 1984, decision. We found that the 1949 Act and the 1950 amendment thereto worked a fundamental change to the previously existing method of funding administrative and operating costs connected with the operation of the GSF. By eliminating the surcharge method of financing operations which was employed by Treasury's Bureau of Federal Supply prior to 1949 and shifting these costs to annual appropriations made to GSA for these purposes, the underlying basis for recovering these costs incrementally to the GSF by fairly allocating them to using agencies ceased to exist.

We found no support for GSA's contention that the Congress when enacting the 1949 Act and the 1950 amendment thereto, intended to exempt GSA from its provisions. Nor did GSA's explanation in budget submission of its planned incremental reimbursement of the GSF for equipment purchased on its behalf support an argument that the prompt reimbursement requirement did not apply to GSA. We have reviewed our prior decision and find no material error of fact or law.

GSA argues in its request for reconsideration that because it administers the GSF it is not a "requisitioning agency" within the terms of 40 U.S.C. § 756(b) and that the prompt reimbursement requirement of that section therefore does not apply to it. GSA also argues, however, that as a "Federal agency" for purpose of the 1949 Act, it may use the GSF to

procure items on its own behalf for GSF operating purposes in the same manner that purchases may be made by the GSF for other Federal agencies.

The spending authority granted the GSF by 40 U.S.C. § 756 is limited to procurements of personal property and non-personal services "for the use of Federal agencies in the proper discharge of their responsibilities" and to expenditures related to the repair, rehabilitation, and conversion of personal property. Reimbursement for expenditures made on behalf of requisitioning Federal agencies is required by 40 U.S.C. § 756(b). No provision is made in the GSF legislation for expenditures made on a requisitioning agency's behalf by using the GSF on a non-reimbursable basis. Thus, any agency which qualifies as a Federal agency for purposes of GSF expenditures on its behalf must comply with the reimbursement requirement applied by 40 U.S.C. § 756(b) to "requisitioning agencies." This requirement applies with equal force when GSA appropriations are used to pay for operating equipment for the GSA Office of Federal Supply and Services (FSS) which was initially purchased by the GSF.

GSA also suggests in its request for reconsideration that the authority provided by 40 U.S.C. § 756(b) to the GSF to recover the amortized cost of "equipment utilized for lease or rent to executive agencies" allows it to pay for operating equipment used by FSS and other GSA organizational elements on an incremental basis. Initially, we note that the 1953 opinion of GSA's General Counsel mentioned above did not rely on this authority when it concluded that GSA appropriations could be used to reimburse the GSF for operating equipment on an incremental basis. That opinion pointed out that "some question could conceivably be raised" as to whether FSS operating equipment was purchased for "rent to executive agencies" and resolved the matter instead on the basis that pre-existing authority to incrementally reimburse the GSF for operating equipment had been incorporated by the 1949 Federal Property and Administrative Services Act.

More importantly, this authority, in our view, only permits GSA to recover the cost of common use type items which are used intermittently by more than one agency over the useful life of the item, by way of assessing users a rental or lease

fee.^{1/} Presumably, it would include GSA within the scope of possible lessees. However, it would not permit GSA to procure an item through the GSF for sole use of GSA's FSS operation and then lease it back to itself in order to avoid the 45-day reimbursement requirement. If this were permissible then every procurement, regardless of whether made on GSA's or some other agency's behalf, could be so classified, rendering meaningless the application of the 45-day reimbursement requirement.

Prior GAO Concurrence with GSA view

Nothing in the submission leads us to conclude that this Office had previously been in agreement with the view expressed by GSA that it is not a requisitioning agency under section 109(b) of the 1949 Act, as amended, 40 U.S.C. § 756(b).

The Acting Administrator of General Services refers to our letter B-95136, dated July 18, 1950^{2/}, commenting on S. 2842, a predecessor bill to S. 3959, the bill which became the 1950 Amendment to section 109 of the 1949 Act and which totally eliminated GSA's surcharge authority. That letter stated:

"Section 2 of the bill would have the general effect of eliminating the surcharge presently added to the cost of goods procured for other agencies so that operating costs would be borne by annual appropriations to the General Services Administration instead of being hidden in the expenses of the requisitioning agencies. This result would appear desirable." (Emphasis supplied.)^{3/}

We do not agree that this general comment on a proposed piece of legislation supports GSA's contention. First, it

1/ In this regard, see the explanation of GSA's need for an increase in capital in the GSF to provide funding to undertake this activity by Harry Kurth, Special Assistant to the Administrator of General Services, during Hearings on the Supplemental Appropriations Bill for 1951 before Subcommittees of the House Committee on Appropriations, 81st Cong., 2d Sess., pp 493-494 (1950).

2/ To the Honorable John McClellan, Chairman of the Senate Committee on Expenditures in the Executive Departments, signed by Acting Comptroller General Frank Yates.

3/ See S. Rep. No. 2140, to accompany S. 3959, 81st Cong., 2d Sess., 21 (1950); 1950 U.S.C.C.S. 3569.

merely addresses the fact that the proposal would eliminate the surcharge at that time added to the cost of goods purchased for other agencies, which served to reimburse the GSF for operating equipment purchases charged to the GSF. The reference to "goods procured for other agencies" can be explained as reflecting the fact that since operating equipment was purchased through the GSF (which also received the surcharges) there would be no point in adding a surcharge to operating equipment transactions conducted through the GSF since the GSF then would only be paying itself.

Second, this statement cannot support the contentions that in our view, GSA was exempted from the 45-day reimbursement requirement imposed on agencies that had procurements made on their behalf through the GSF or that only GSA could charge costs incrementally to the appropriations made available to it to fund the GSF's operating and administrative costs.

Third, regardless of how one interprets our analysis, the Senate Committee adopted its own language when preparing its section-by-section analysis of the 1950 amendment to section 109 of the 1949 Act. It stated:

"Section 2(a) modifies section 109(a) by eliminating the surcharge on general supply fund transactions and provides for charging requisitioning agencies with the purchase price, transportation to the first storage point of supplies and services, and the cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property."^{4/}

The clear intention of the oversight committee was that the 1949 Act as amended in 1950 completely changed the method of financing the administration and operation of the GSF, as well as assuring that the GSF would not be used to provide long term financing for agency procurements. Nowhere is there any indication that if an item was procured through the GSF on GSA's behalf that it would be exempted from this requirement.

GSA also refers to GAO's approval of its accounting system in 1965 as a further indication that we concurred in its view that it was exempted from the 45-day reimbursement requirement imposed upon agencies having procurements made on their behalf through the GSF.

^{4/} See S. Rep. No. 2140, to accompany S.3959, 81st Cong., 2d Sess., 6 (1950); 1950 U.S.C.C.S. 3552.

GAO approves accounting systems when they are deemed adequate and in conformity with the overall principles, standards, and related requirements as prescribed by the Comptroller General. By necessity, since these standards apply throughout the Government, they are broad based and general in character. One assumption that must be made, therefore, is that when an agency develops its own system it will assure that the accounting system reflect any legal requirements applicable to it. Consequently, even if GSA's accounting system encompassed the exemption from the prompt reimbursement requirement that GSA now claims it is legally entitled to, it is likely that we would have relied on GSA's representation that it possessed this authority, unless a specific question had been raised at that time. However, prior to the request by GSA's Inspector General as to the legal propriety of GSA's practice, this matter had never been the subject of specific scrutiny of this Office regarding its legality.

Also, as we have already indicated, the 1949 Act, as amended, expressly authorizes cost recovery for certain property by way of amortization or depreciation and there is nothing in GSA's system as approved by GAO which requires the conclusion that the references to amortization and depreciation in GSA's system were intended to apply to other than the situations where the law specifically authorized it.

Finally, since accounting systems must reflect the law, where a conflict exists, the law must govern. Consequently, we can find no prior support by this Office of GSA's opinion as to its authority to ignore the 45-day prompt reimbursement requirement.

CONCLUSION

We reaffirm our prior decision that except where the Congress has specifically authorized GSA to amortize (or depreciate) costs of property procured through, or capitalized to, the GSF, GSA is subject to the 45-day reimbursement requirement for procurements made through use of the GSF on its behalf. This is true, regardless of how GSA characterizes the property in question for charging to the various subaccounts maintained within the fund (for example, operating or administrative), the governing factor being instead whether it is used for the purpose the Congress intended when authorizing amortized recovery of costs. See, for example, section 211 of the 1949 Act, as amended, 40 U.S.C. § 491.

Finally, we recognize that budgeting decisions have been made in reliance upon the 1953 internal advice of GSA's General Counsel and strict application of our decision could cause problems for GSA were it to attempt to immediately obligate the full amount of all equipment previously procured through the GSF and for which it is currently only incrementally reimbursing the GSF. Therefore, in order to permit the GSA to take the steps necessary to either (1) implement the 45-day reimbursement requirement and adjust its future appropriation requests to permit obligations to be incurred in accordance with the law's requirements or (2) seek enactment of legislation to except GSA from the law's application, our decision should be prospectively applied only to new equipment purchases made by GSA through the GSF beginning in fiscal year 1987.

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