



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Office of Revenue Sharing--Contracts for
Personal Services

File: B-226413

Date: May 1, 1987

DIGEST

A contract which results in a direct employer-employee relationship between a federal agency and the contractor's personnel is prohibited under current civil service directives. Hence, a federal agency may not properly contract with a commercial firm for the assignment of contractor personnel to the agency's offices to act, for all practical purposes, as duly appointed federal employees in performing personal services for the agency.

DECISION

The question presented here is whether the Office of Revenue Sharing, Department of the Treasury, may use non-federal employees under a contract with a private commercial firm to perform professional secretarial services, instead of using federal employees appointed under the civil service laws and regulations for the performance of those services.^{1/} We conclude that, under current civil service directives, only duly appointed federal employees may properly perform these services.

BACKGROUND

The Office of Revenue Sharing (ORS) is an establishment within the Department of the Treasury. It is scheduled to go out of existence on September 30, 1987.

Officials of ORS state that, because there is no guarantee ORS employees will be placed in other positions by the Department of the Treasury after September 30, 1987, persons holding career appointments to secretarial positions with the

^{1/} This action is in response to a request for an advance decision received from the Honorable Charles O. Sethness, Assistant Secretary for Domestic Finance, Department of the Treasury.

038794

ORS have been resigning as soon as they have been able to secure career appointments to other secretarial positions in the government. To fill these vacancies, the ORS has issued employment opportunity announcements to obtain replacements to serve under temporary civil service appointments. The ORS has also "requested approximately 80 personnel offices throughout the Government to detail personnel." However, the response to these initiatives has been unsatisfactory. This has created a substantial problem because, while the secretarial workforce is declining, in the coming months increased secretarial services will be required for ORS to carry out its mission requirements and simultaneously prepare to terminate its operations in an orderly manner.

The officials believe that this problem will be remedied if the ORS is permitted to obtain additional secretarial services through a contract with a private commercial firm specializing in the field of short-term secretarial assignments. Under this proposed arrangement, the firm would assign its employees to work at ORS office sites under the supervision of ORS officials.

The officials note that in Kelly Services, Inc., B-186700, January 19, 1977, we held that federal agencies may not properly use non-federal employees assigned under contract by commercial firms for the performance of professional secretarial services. They further note, however, that in 43 Comp. Gen. 390 (1963), we expressed the view that, while it is the general rule that personal services for the government are to be performed by federal personnel under government supervision, we would not object to the procurement of such work through contract when it is administratively determined that it would be substantially more economical, feasible or necessary by reason of unusual circumstances to have the work performed by non-governmental employees. The officials question whether this reasoning could be applied to their situation to permit them to obtain the use of secretaries who are not federal employees during the last few months of ORS's existence.

ANALYSIS AND CONCLUSION

The laws and regulations relating to the employment of persons by federal agencies generally provide for the preliminary examination and subsequent selection of qualified applicants for appointment to classified positions in the civil service. Persons so selected become federal employees

by accepting the tendered appointment, taking the prescribed oath, and entering on duty.^{2/} As indicated, we have long expressed the view that as a general rule, personal services for the government are to be performed only by federal employees duly appointed to civil service positions under these procedures.^{3/}

As further indicated, we have also expressed the view that when it is administratively determined that it would be more economical or feasible to have work performed by non-federal personnel, there is no basis for objection "to the procurement of such work through proper contract arrangement."^{4/} We have summarized this principle as follows:

"It has been held that services normally performed by Government personnel may be performed under contract if it can be shown that the contracting out is substantially more economical, feasible, or necessary by reason of unusual circumstances. That rule is to be applied to contract procurement on a strictly job basis under which the Government contracts for the furnishing of a product or the performance of a service with no detailed control or supervision over the method by which the result -- required is accomplished."^{5/}

Current civil service directives which supplement the Federal Personnel Manual provide that contracts which result in a supervisory, employer-employee relationship between an agency and a contractor's personnel are proscribed.^{6/} Thus, the circumstances in which it is permissible for government agencies to contract for services is limited to situations in which the contract employees can perform the work without direct agency supervision.

^{2/} See, generally, title 5 of the United States Code; title 5 of the Code of Federal Regulations; and the Federal Personnel Manual.

^{3/} See 43 Comp. Gen., supra, at page 392, and decisions there cited.

^{4/} 43 Comp. Gen., supra, at page 392.

^{5/} 45 Comp. Gen. 649, 650 (1966). To identical effect see also 51 Comp. Gen. 561, 562-563 (1972).

^{6/} See Federal Personnel Manual System Letters No. 300-8 and 300-12, dated December 12, 1967, and August 20, 1968, respectively.

Our decision in Kelly Services, Inc., B-186700, supra, involved a situation in which a non-federal employee obtained from a commercial firm by a federal agency under a contract was allowed to work in one of the agency's field offices for a 10-day period. Based on the civil service directives described above, we held that the arrangement had given rise to an impermissible employer-employee relationship between the government and the contractor employee.^{7/}

In the present case, the arrangement proposed for ORS does not appear to be limited to services provided by an independent contractor without agency supervisory authority over the contract employees.^{8/} Rather, the proposal contemplates that the contract personnel will perform professional secretarial services in the ORS offices, and for all practical purposes the contract personnel will act as federal employees in their relationship to the Department of the Treasury as well as to outside parties. Hence, the proposed arrangement is impermissible under the current civil service rules governing the employment of persons to perform services for federal agencies.

Accordingly, we conclude that the proposal may not properly be adopted.

William J. Foster
for Comptroller General
of the United States

^{7/} To the same effect see Manpower Temporary Services, B-194970, July 3, 1979; and Indian Health Management, Inc., B-193858, October 25, 1979.

^{8/} The proposal is not, for example, limited to work orders or jobs for typing services performed outside of a federal office by an independent contractor having primary supervisory authority over the typists.