



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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Major J. M. Cook, Jr., USAF, Disbursing Officer
Through Director of Finance
Department of the Air Force
Washington 25, D. C.

Dear Major Cook:

By letter dated July 9, 1953, the Director of Finance forwarded to this Office your letter of March 26, 1953, with enclosures, requesting a decision as to whether the vouchers in payment of invoices Nos. 1-186, 1-463, 1-540, 2-1-564, 11-1-15, 11-1-16, 11-1-17 and 10-1-459, from the Panama Canal Company, which were attached to your letter, are proper for payment.

It is stated in your letter that the questions at issue on these vouchers fall into the following categories, which are considered in the order presented.

"a. Is it obligatory upon the Finance Officer to require that the Panama Canal Company furnish a detailed breakdown, by classification and actual rate of pay (in the case of labor), description and unit price (in the case of materials) and basis of determination of 'other' costs, on bills rendered by the Panama Canal Company?"

The answer to this question would depend upon the terms of the agreement. It must be remembered that both the Panama Canal Company, which was created a body corporate as an agency and instrumentality of the United States (section 245 of Title 2 of the Canal Zone Code) and the Department of the Air Force, are instrumentalities of the Federal Government. Payments by one to the other represent adjustments

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between appropriation and fund accounts of Government agencies as distinguished from payments to private concerns where an excess payment might result in a financial loss to the United States. To require the Company to furnish the described detailed breakdown in all cases would increase overhead costs which, in turn, would be passed on to the Department of the Air Force. While it would seem preferable for a detailed breakdown to be furnished in some cases, especially where no or very little additional overhead costs would be incurred, such as where specific lists of materials and supplies were purchased or possibly in the construction of a facility, there are other cases where it would be costly, impracticable, and serve little purpose to supply details of the several elements of cost. Answering this question specifically, it is not obligatory upon the finance officer to require a detailed breakdown in the absence of a provision in the agreement to the contrary, assuming that it is determined that the overall services were rendered to the extent reimbursement is requested. See B-45236, November 17, 1944.

"b. Are transactions between the United States Air Force and the Panama Canal Company, a wholly-owned Government corporation as defined in the Government Corporation Control Act of 1945, governed by the Economy Act of 1932? * * *"

Since the Panama Canal Company was created as an agency and instrumentality of the Government, there seems no doubt that, as such, it is an "independent establishment of the Government" within the

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meaning of that term as used in section 601 of the Economy Act, 47 Stat. 417, as amended, 31 U.S.C. 656, notwithstanding its corporate form. The service here involved may have been performed under the authority of that act. However, such services also could have been rendered by the Company under the authority of section 249 of Title 2 of the Canal Zone Code to "make or furnish sales, services, equipment, supplies and materials * * * to agencies of the Government of the United States." Your question is answered accordingly.

"c. If the Economy Act applies, does the provision of such act that:

"the amount to be paid shall be based on actual cost of supplies or services as agreed upon by the departments or agencies concerned"

"preclude the addition to direct costs by the Panama Canal Company of an overhead rate admittedly computed on a theoretical, hypothetical or estimated basis which includes, depreciation, interest and reserves and is intended to recover not only the operating costs of the corporation but the net cost of operating the Canal Zone Government as well? Would not payment of such an overhead charge be in contravention with Section 3676 of the Revised Statutes (Title 31, Sec. 628, U.S.C.) which requires that:

"All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made and for no others?"

Regardless of whether the services were rendered under section 601 of the Economy Act or section 249 of Title 2 of the Canal Zone Code, the Company would still be required to attempt to collect all of its costs, including a part of the cost of the Canal Zone Government.

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Section 601 of the Economy Act provides for the recovery of "actual costs" as determined by the agencies and it has been held that that term "actual costs" includes, in addition to direct costs, the indirect cost proportionately allocable to such services. 22 Comp. Gen. 74. The legislative history of the act of September 26, 1950, Public Law 841, 81st Congress, ^{64 Stat. 1038,} which reorganized the Panama Railroad Company and renamed it the Panama Canal Company, makes it clear that the Company is required to be self-sustaining and to reimburse the United States Treasury for the cost of the Canal Zone Government. The Committee on Merchant Marine and Fisheries, House of Representatives, in its report, H. Rep. 2935, 81st Congress, on H. R. 8677 (enacted as Public Law 841) specifically noted the language in the Bureau of the Budget's report appearing in H. Doc. No. 460, as follows:

" * * * Sales or services between divisions of the Company, or between the Company and the Canal Zone Government, should be charged as nearly as possible at the cost of producing such goods or services, excluding interest and the Company's share of the cost of civil government. Sales and services to all others, including Government agencies, should be at prices over cost which may reasonably be expected to cover, in the aggregate, the interest on the Government's investment and the Company's share of the expense of civil government and related activities."

In view thereof, it is believed that the cost, to be recovered by the Company, should be expected to cover, in the aggregate, the interest on the Government's investment and the company's share of the expense of civil government and related activities in addition to other costs. It apparently was contemplated that Government agencies be charged generally on the same basis as private concerns in this respect. Both

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questions are thus answered in the negative, although this Office is not aware of what you refer to as "theoretical, hypothetical or estimated" basis for determining indirect costs.

"d. If applicable, does the Economy Act restrict the Panama Canal Company from submitting a firm bid when such transaction is in competition with privately-owned commercial organizations capable of furnishing the same supplies or performing the same services? In this connection, it has been evidenced in some cases that by awarding work to the Panama Canal Company, who submitted the lowest bid, the Air Force was charged a greater amount than would have been the case had the firm bid been accepted."

Section 601 of the Economy Act specifically provides that the transactions thereunder shall be on an "actual cost" basis as agreed upon between departments or agencies concerned, and it has been held that the methods of ascertaining the amount of the "actual cost" are primarily for determination by the agencies concerned. As long as the amount agreed upon results from a bona fide attempt to determine the actual cost and, in fact, reasonably approximates the actual cost, no objection to payment in the amount agreed upon will be made by the General Accounting Office. There undoubtedly are transactions where the "actual cost" may be determined in advance with a reasonable degree of certainty, and, in such cases, section 601 of the Economy Act would not preclude the submission of a firm bid by the performing agency. But a firm bid under that section would be precluded where the actual cost could not be ascertained in advance with a reasonable degree of certainty. Question d. is answered accordingly. However, it may be stated that the Panama Canal Company could make firm bids on materials, supplies or services to be furnished Government

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agencies under section 249 of Title 2 of the Canal Zone Code, provided that the bid is in an amount expected to cover the costs of the material, supplies or services, including the interest on the Government's investment and the company's share of the expense of civil government and related activities.

"e. Again, if the Economy Act applies, does not the provision of such act as quoted in c. above infer that a bilateral, formal agreement should be entered into between the requisitioning and requisitioned agencies which would set out the manner of requisitioning and the prices to be charged?"

It consistently has been held that section 601 of the Economy Act contemplates that a written order or agreement in advance will be entered into by the responsible administrative officer of each of the departments or agencies. 13 Comp. Gen. 234; 15 id. 32; 24 id. 420.

In answer to question e., it may be stated that the manner of requisitioning materials or supplies and the method of determining the actual cost undoubtedly are proper elements for inclusion in the required agreement.

"f. If the Economy Act does not apply to transactions with the Panama Canal Company, should the vouchering procedures applicable to regular commercial accounts apply, including mandatory audit of cost-reimbursement type transactions when necessary?"

Question f. is answered in the negative since, irrespective of whether the Economy Act is applicable, the payments are still between instrumentalities of the Government and represent mere adjustments between appropriations and fund accounts of Government agencies. It may be stated that the accounting system of the Panama Canal Company is now being revised, which, when completed, will provide a better basis

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for determining the cost of material, supplies and services furnished to Government agencies.

The vouchers enclosed in your letter, which are returned herewith, represent mere partial payments under the various contracts involved and are proper for payment, if it is determined that services have been rendered in accordance with the terms of the contracts to the extent reimbursement is requested and the certificate of the contracting officer is signed, except that the voucher in payment of invoices Nos. 10-1-459, 11-1-15, 11-1-16 and 11-1-17, should be in the amount of \$4,434.35 instead of \$4,434.25.

Sincerely yours,

Lindsay C. Warren

Comptroller General
of the United States

Enclosures