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7-27-70

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

B-169903 Commerce 088626

JUL 27 1970

Dear Mr. Chairman:

In response to your letter dated May 19, 1970, and as agreed in discussions with Mr. Miles Romney of your staff, we have examined into the administration of a March 1970 sale of personal property by the Research Laboratories, Environmental Science Services Administration (ESSA), Department of Commerce, under the exchange/sale authority. Specifically, you requested that we determine whether any law was violated in the March 1970 transaction by the Laboratories, ascertain the justification for carrying out the sale, and determine the role of the General Services Administration (GSA) in this type of transaction. Preliminary findings were reported informally to your staff by July 1, 1970, as requested. The results of our review are presented in more detail in the enclosure to this letter.

The exchange/sale authority was established by section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)). Policies and methods governing the use by executive agencies of the exchange/sale authority are contained in part 101-46 of title 41 of the Code of Federal Regulations.

Our examination revealed that several violations of the act and the Code occurred in the March 1970 exchange/sale transaction by the Laboratories. These violations are discussed in more detail in the enclosure and are summarized as follows: (1) excess property was included in the sale, (2) the Laboratories did not intend to acquire similar items for all those sold, (3) property was sold that had not been utilized by ESSA before the sale, (4) nine items of equipment listed in a new or unused condition were sold, (5) ESSA did not screen Federal agencies outside the Department of Commerce known to use or distribute such property, and (6) no written administrative determination was prepared to apply the proceeds of sale toward acquiring property.

With regard to the Laboratories' justification for conducting this sale, the use of the exchange/sale in this transaction is related to the Laboratories' attempt to establish an equipment rental service pool. Proceeds from the sale were to be used to supplement other funds available for acquiring property for the pool.

The Laboratories' Chief of the Supply and Field Engineering Branch (Property Management Officer) advised us that he was responsible for the decision to proceed with the sale under the exchange/sale authority. The ESSA Deputy

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Administrator stated that the Property Management Officer had taken a too liberal interpretation of the term "similar property." Discussions with the Property Management Officer revealed that he did not consider the property to be excess to ESSA and that he was unfamiliar with certain restrictions contained in the Code of Federal Regulations.

The Department of Commerce, including ESSA, has not issued any instructions or guidelines concerning exchange/sale transactions but has emphasized that the Code of Federal Regulations should be followed. Officials from GSA advised us that GSA acts as an agent in exchange/sale transactions. They advised also that the agency holding the property has the responsibility for determining whether property is eligible for sale under the exchange/sale authority.

The information in the enclosure has been discussed with ESSA officials who generally concurred in the facts as presented herein. The Deputy Administrator advised us that ESSA was preparing procedures that would prevent future occurrences of this nature. Also, ESSA transferred the sale proceeds of $12,335.89 to the Treasury as miscellaneous receipts.

We are recommending to the Secretary of Commerce that procedures be established to ensure adherence to applicable Federal regulations in subsequent exchange/sale transactions. We are recommending also that the Administrator of GSA ensure that property lists submitted by agencies are properly reviewed to determine the eligibility of the property for sale under the exchange/sale authority.

We plan to furnish copies of this report to appropriate Department of Commerce, ESSA, and GSA officials. We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

Enclosure

The Honorable John S. Monagan
Chairman, Special Studies Subcommittee
Committee on Government Operations
House of Representatives

GENERAL ACCOUNTING OFFICE
EXAMINATION INTO THE ADMINISTRATION OF AN EXCHANGE/SALE DISPOSAL OF PERSONAL PROPERTY BY THE RESEARCH LABORATORIES ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, DEPARTMENT OF COMMERCE

INTRODUCTION

The General Accounting Office has examined into the administration of a March 1970 sale of personal property by the Research Laboratories, Environmental Science Services Administration (ESSA), Department of Commerce, under the exchange/sale authority. Our review was undertaken to determine whether any violations of law or regulations had occurred and to obtain other information pertaining to this transaction.

Our examination included a review of section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(c)), and related legislative history and the agency files pertaining to the March 1970 sale. Also, we discussed the sale and the general policies and procedures for such sales with ESSA and General Services Administration (GSA) officials. Our work was performed at the headquarters office of ESSA in Rockville, Maryland; ESSA Research Laboratories in Boulder, Colorado; the headquarters office of GSA in Washington, D.C.; and the GSA Regional Office in Denver, Colorado.

ESSA was established on July 13, 1965, through the consolidation of the Coast and Geodetic Survey and the Weather Bureau in accordance with the provisions of Reorganization Plan 2 of 1965 (15 U.S.C. 311). The Laboratories was organized to conduct basic research necessary to fulfill the responsibilities of ESSA. Research is carried out by 12 principal research laboratories and supporting administrative and service units. The Office of the Director is located at Boulder, Colorado.

Proceeds from sales by ESSA under the exchange/sale authority for fiscal years 1968 through 1970 totaled $299,066.79. This amount includes $17,196.62 received by the Laboratories. The appendix to this enclosure shows the sales proceeds and the disposition and balance of these proceeds for each of the 3 fiscal years.

During our visit to the Laboratories, the Property Management Officer showed us listings containing about 400 additional items of equipment which he planned to sell in the near future under the exchange/sale authority. Subsequently, the Chief, Property Support Section, Washington, D. C., informed us that the Laboratories had been notified to report the equipment to GSA as excess.

VIOLATIONS OF THE PROPERTY ACT AND IMPLEMENTING REGULATIONS

The Laboratories offered for sale 303 items of personal property consisting mostly of electronic equipment with an acquisition cost of $414,633 through GSA Invitation for Bid No. 8DPS-70-142 dated March 12, 1970. The Invitation stated that the property was being offered for sale in accordance with the exchange/sale provisions of the Federal Property and Administrative Services Act of 1949, as amended (Property Act). Through the sale of 297 of the 303 items offered by GSA, the Laboratories realized $12,335.89. ESSA's Finance Division prepared a journal voucher dated June 30, 1970, to transfer the $12,335.89 to the Treasury as miscellaneous receipts. Of the six items not sold, two items were withdrawn by the Laboratories, bids were rejected on two items by GSA, and no bids were received on the two remaining items.

Section 201(c) of the Property Act states that:

> "In acquiring personal property, any executive agency, under regulations to be prescribed by the Administrator, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: Provided, That any transaction carried out under the authority of this subsection shall be evidenced in writing."

Policies and methods governing the use of the exchange/sale authority are contained in part 101-46 of title 41 of the Code of Federal Regulations. Specific sections of the Code that were violated in this transaction are discussed below.

Subpart 101-46.202 (restrictions and limitations) provides that:

1. The application of exchange allowances or proceeds of sale in whole or part payment for personal property is authorized only when all the following conditions apply:

    a. The items sold or exchanged are similar to the items acquired.

    b. The items sold or exchanged are not excess, and the items acquired are needed in the conduct of approved programs.

    c. One item is to be acquired to replace one similar item, except when a different number of items will perform the same task.

The Laboratories reported to the GSA Denver Regional Office that the property was for sale, on the prescribed Standard Form 126, Report of Personal Property for Sale. In lieu of listing the 303 items of equipment directly on the form, the items were listed on attachments to the form, identified as Excess Property Bulletins #3 and #4. The Property Management Officer for the Laboratories informed us that these bulletins were prepared only for screening the property through ESSA and the National Bureau of Standards, Boulder, Colorado, prior to sale to determine whether a need for any of the equipment existed within the two agencies. GSA accepted the form and attachments without questioning the listing of the items as excess property.

To determine whether the property was excess as indicated by the bulletins, we traced 53 of the items to the laboratory or shop in which they had been located. In all 53 cases, we found that the custodians had identified the property as excess on the ESSA Form 77, Report of Personal Property. This form is used by ESSA for reporting personal property transactions.

In addition, we visited one shop and two laboratories and discussed with property custodians the utilization of 16 of the 53 items of property previously held by them and included in the exchange/sale transaction under review. We were advised that utilization records are not maintained ? on such property. However, at two locations the custodians told us that the property (12 items) had never been used and that they had no plans to replace the property with similar items. At the third location the custodian explained that the property was excess and that there was little need for such equipment in the laboratories.

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The decision to use the exchange/sale authority was part of an attempt to establish an equipment rental service pool at the Laboratories. Proceeds from the sale would be used to supplement other funds for acquiring property for the pool. The Property Management Officer advised us that none of the items sold had been replaced and that no acquisitions had been classified as replacement property. Recent funding limitations have caused the Laboratories to defer establishing the equipment pool.

Subpart 101-46.202(a)(4) states that:

> "There has been at the time of exchange or sale (or at time of acquisition if it precedes the sale) a written administrative determination to apply the exchange allowance or proceeds of sale in acquiring property in accordance with this Subpart 101-46.2."

The Property Management Officer advised us that no such written administrative determination had been prepared for the transaction.

Subpart 101-46.202(d)(8) provides that:

The sale of personal property in new or unused condition in connection with the acquisition of personal property is not authorized.

The two Excess Property Bulletins listed nine equipment items as new. However, the GSA Invitation for Bids listed only five of these nine equipment items as unused. A listing of these items and of pertinent data is shown below.

Invitation item number	Quantity for sale	Description	Acquisition cost	Proceeds from sale
40	2[a]	Preamplifiers	$ 135	$ 8.73
44	1	Amplifier	935	10.03
45	1	Amplifier	935	10.04
46	1	Amplifier	935	10.05
48	2[a]	Attenuator	390	2.27
139	1	Mimeograph machine	484	21.79
235	1[a]	Vacuum cleaner	1,500	166.00
Total	9		$5,314	$228.91

[a]Listed as unused in GSA Invitation for Bids

Subpart 101-46.202(d)(10) provides that:

Personal property originally acquired from another agency as excess or surplus is not eligible for sale or exchange unless such property has been placed in use by the acquiring agency for at least 1 year.

We identified one item in the sale, a drilling machine, that had not been used after the Laboratories had obtained it as excess from the National Bureau of Standards. The Property Management Officer informed us that another item, a vacuum cleaner, had not been used after it was obtained as excess from the Department of the Navy. This item was listed in the GSA Invitation for Bids as unused.

Subpart 101-46.301 (agency responsibility) states that:

"Executive agencies having property determined to be available for exchange or sale pursuant to this Part 101-46 shall to the fullest extent practicable or economical and prior to any disposal action, solicit Federal agencies known to use or distribute such property and arrange for transfers thereto ***."

Our review revealed that Excess Property Bulletins #3 and #4 had been distributed throughout the Laboratories and the National Bureau of Standards, Boulder, Colorado. Further distribution of Bulletin #3 was accomplished through the ESSA Property and Supply Branch in Washington, D.C., which transmitted it to other ESSA offices and to the Department of Commerce. Additional distribution was not accomplished for Bulletin #4, however, because it was not received by the Property and Supply Branch, according to the Chief of the Property Support Section. He informed us that Federal agencies outside the Department of Commerce had not been solicited to determine whether they had any need for the property listed in the two bulletins.

IMPLEMENTING REGULATIONS AND APPROVAL FOR SALE

The Department of Commerce, including ESSA, has not issued any instructions or guidelines for exchange/sale transactions but has emphasized that the Code should be followed.

A Laboratories' directive dated August 29, 1969, defines policies, procedures, and responsibilities of the staff for effective property management. This directive delegates the authority to administer and conduct property management activities to the Property Management Officer. The Property Management Officer advised us that he was responsible for the decision to proceed with the exchange/sale transaction. He stated that the only certification or justification for proceeding with the sale was contained in Standard Form 126, Report of Personal Property for Sale, which served to advise GSA that the property was available and ready for sale under the exchange/sale authority.

ROLE OF GSA IN EXCHANGE/SALE TRANSACTIONS

GSA officials have informed us that GSA acts as an agent in exchange/sale transactions and that the agency holding the property has the responsibility for properly determining whether the property is eligible to be sold under the exchange/sale authority. These officials state that GSA reviews property lists submitted by agencies to ensure that the type and condition of the property to be sold is eligible for sale under exchange/sale authority.

According to a GSA official, instructions and guidelines have not been issued by GSA to prevent incurring sales effort and expense when the prospect of significant return is doubtful. GSA estimated that its expenses for the March 1970 sale totaled about $1,100, less than 10 percent of the realized proceeds of $12,335.89.

We also requested an opinion from a GSA official as to the reasonableness of the proceeds for the sale which was about 3 percent of the acquisition cost of $413,747 for the sale items.

The official stated that the percent of return in this transaction (3.4 percent according to GSA records) was reasonable and in line with returns from other sales of equipment of this nature.

Our review revealed that the Excess Property Bulletins, attached to the Standard Form 126, Report of Personal Property for Sale, submitted to GSA, listed nine property items to be in a new or unused condition. We believe that GSA should have declared the nine items to be ineligible for sale under exchange/sale authority and should have considered the possibility that all the items were excess since the attachments were entitled "Excess Property Bulletins." GSA officials agreed that GSA should have declared the nine items ineligible; however, they stated that each agency has the responsibility for determining eligibility of property sold under this authority.

The Chief, Property Support Section, ESSA, advised us that it was unusual for ESSA to offer 303 items for sale under the exchange/sale authority at one time and that GSA should have questioned the eligibility of such a large number of items. A GSA official advised us that he did not know whether it was usual to have an exchange/sale transaction involving over 300 items of mostly electronic equipment. He stated that this would be a matter for the agency to consider in making its determination of eligibility.

GSA officials stated that, at the time the sale was processed, no requests had been received from State or local governments to negotiate for the purchase of surplus electronic equipment.

CONCLUSIONS

Several violations of the Code occurred in the March 1970 sale by ESSA of personal property under the exchange/sale authority. These violations are as follows:

1. Excess property was included in the sale.

2. The Laboratories did not intend to acquire similar items for all those sold.

3. Property was sold that had not been utilized by ESSA.

4. Nine items of equipment listed in a new or unused condition were sold.

5. ESSA did not solicit Federal agencies outside the Department of Commerce known to use or distribute such property.

6. The Laboratories did not prepare a written administrative determination to apply the proceeds of sale toward acquiring property.

We believe that the preparation of an administrative determination might have resulted in management's attention being directed to the several restrictions and limitations on exchange/sale transactions set forth in the Code.

We believe that GSA should have declared the nine items listed as new or unused as being ineligible for sale. We also believe that, since the property was listed on attachments entitled "Excess Property Bulletins," GSA should have considered the possibility that all the items were excess and, therefore, not eligible for sale under the exchange/sale authority.

AGENCY COMMENTS AND OUR EVALUATION

On July 7, 1970, we met with ESSA officials to obtain their comments on the matters discussed in this enclosure. The ESSA officials advised us that they were in general agreement with the facts presented.

The Deputy Administrator stated that the property included in the sale was excess to the individual laboratories but not necessarily to ESSA. We believe that, since the other ESSA operating components did not claim the property during the screening period, the property was excess to ESSA's needs.

The Deputy Administrator informed us that the Laboratories did not intend to acquire similar items for all those sold. He stated that the Property Management Officer for the Laboratories had taken a too liberal interpretation of the term "similar property." He explained that the Property Management Officer had believed, for example, that the proceeds from the sale of an electronic item could be applied to the purchase of any item of electronic equipment.

The Deputy Administrator advised us that only one of the nine items listed in the bulletins as new was actually in a new and unused condition. He stated that the Laboratories had not used the other eight items but that the items might have been used before being acquired by the Laboratories. He explained that the classifying of this property as new was due to poor judgment on the part of the property custodians. The Code, however, specifies that property obtained from another agency as excess or surplus is not eligible for sale or exchange unless such property has been placed in use by the acquiring agency for at least 1 year.

The Deputy Administrator stated that procedures were being drafted that would prevent future occurrences of this nature.

DATA ON ESSA's
EXCHANGE/SALE TRANSACTIONS
FISCAL YEARS 1968 THROUGH 1970

Fiscal year	Exchange/sale proceeds: Laboratories	Exchange/sale proceeds: Other ESSA	Exchange/sale proceeds: Total	Amount applied to replacement	Amount returned to Treasury as miscellaneous receipts	Balance
1968	$ 473.70	$109,774.09	$110,247.79	$ 98,663.75	$ 11,584.04	—
1969	75.00	146,593.95	146,668.95	51,561.51	95,107.44	—
1970	16,647.92[a]	25,502.13	42,150.05	17,636.35	12,335.89[b]	$12,177.81
Total	$17,196.62	$281,870.17	$299,066.79	$167,861.61	$119,027.37	$12,177.81

[a]Includes proceeds from March 1970 sale.

[b]Proceeds from the Laboratories' March 1970 sale returned to Treasury as miscellaneous receipts.