

DOCUMENT RESUME

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[Automobile Rental Agreements with Employees]. B-188500. August 1, 1977. 6 pp.

Decision re: R. A. Caruso, Authorized Certifying Officer, Forest Service; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Agriculture.

Authority: (P.L. 89-270; 16 U.S.C. 502(a)). Forest Service Procurement Regulations 46-4.5080-71. B-153618 (1964). 53 Comp. Gen. 670.

R. A. Caruso, Authorized Certifying Officer, Forest Service, Department of Agriculture, requested a decision on the propriety of paying the claims of seven employees who rented their private vehicles to the Forest Service at both daily and mileage rates. Such rental was reasonable under statutory authority where there were insufficient commercial alternatives at reasonable rates. (DJM)

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DECISION



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

FILE: B-188500

DATE: August 1, 1977

**MATTER OF: Forest Service - equipment rental agreements
with employees**

DIGEST: Decision to award rental agreement contracts to agency employees for vehicular equipment under authority of 16 U.S.C. § 502 is reasonable in view of lack of availability of commercial equipment at reasonable rental rates. Further, 16 U.S.C. § 502 contemplates contractual procurement arrangements and all claims would be for settlement under rules of contract law.

Mr. R. A. Caruso, Authorized Certifying Officer, Forest Service, Department of Agriculture, requests our advance decision as to the propriety of certifying for payment claims by seven Forest Service employees under rental agreements entered into by the Forest Service for the use of employee-owned vehicles. The agreements specified a daily rental rate in addition to a mileage rate. The certifying officer specifically questions providing for both daily and mileage rates.

In April 1976 the Medicine Bow National Forest, Laramie, Wyoming, determined a need for vehicles in addition to the Forest's normal fleet. In response to this need the contracting officer issued a prospectus letter to 34 prospective bidders approximately April 1, 1976. Five companies requested and received copies of the invitation for bids (IFB), with the bid opening date scheduled for May 13, 1976. No responses were received by the bid opening date. After consultation with the regional office, the contracting officer canvassed in excess of 20 potential commercial sources for sole source negotiation. Four quotations from commercial sources were received for various types of equipment. However, while the rates were considered to be excessive, the file does not indicate whether they were accepted. Thereafter, rental agreements were entered into with seven employees for various vehicles at the daily rate of \$10 plus \$0.15 per mile. The agreement stipulated that the vehicles would be used only when regular Forest Service equipment

B-188500

was not available, and that the daily rental rate would be applicable only on days the vehicle was used on official Government business. The agreement also provided that all drivers must be approved by the employee-owner.

The rental agreements were entered into under authority of Public Law 89-270, October 19, 1965, 16 U.S.C. § 502(a), set forth below:

"The Secretary of Agriculture is authorized, under such regulations as he may prescribe:

"(a) To hire or rent property from employees of the Forest Service for the use of that Service, whenever the public interest will be promoted thereby. As soon as practicable after the end of each fiscal year the Secretary shall transmit to the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a statement of rentals under the authority of this paragraph during the fiscal year."

The Forest Service has issued the following implementing procurement regulations:

"4G-4.5080-71 - Rental of Equipment from Forest Service employees.

"(b) Policy.

"(1) Public Law 89-270. Forest Supervisors or his designated acting may approve renting or hiring of employee-owned property for project use *and shall document the procurement file in writing as to the basis for each rental transaction.

"(i) In cases where Forest-owned or commercial equipment is not available, the rental file should state the extent of the geographic area considered.

"(ii) Where commercial equipment is available but suppliers are not interested because of small or intermittent use periods, the file shall include the names of the commercial sources contacted and, where possible, their written statements of disinterest.

"(iii) Where commercial equipment is available but is offered at an unreasonable rental rate, the file shall contain a copy of the commercial quotation and a copy of a letter of explanation to the supplier as to why his offer was rejected. The fact that an employer's equipment is available at a lesser rate does not automatically disqualify use of the commercial item. The commercial bid must be either unreasonable on its face or grossly unrealistic in relation to the rate offered by the employee. At the same time, rental from an employee must be at a fair and reasonable rate. Employees shall not be* *-encouraged to reduce their rates in competition with private suppliers.

B-188500

"Since rentals from employees are obviously open to public criticism and challenges from equipment dealers, each of the above findings should be updated periodically during the season to assure that private sources receive full consideration. Sound judgment must be exercised. Full documentation and disclosure must be made on any rental transaction with an employee. (See 4-1.302-3 and 4G-1.302-3, *-*)"

The certifying officer questions whether the above guidelines and regulations allow other than a mileage rate to be paid employee-lessors, although he states that normal commercial rentals include both a daily rate and mileage rate and would have been paid by the Government.

In support of the rental agreements entered into by the Forest Service, the Forest Supervisor at Laramie provided a statement dated December 1, 1976, that reads in pertinent part as follows:

"The Contracting Officer entered into the equipment rental agreements based on his interpretation of the Forest Service Procurement Regulations, 4G-4.5080-71, and the authority of Public Law 89-270. This law authorizes the Forest Service to rent or hire property from Forest Service employees on a reimbursement basis whenever the public interest will be promoted thereby. It was determined that the agreements were in the public interest because no vehicles were available from commercial sources and there was not a sufficient number of Government vehicles available to perform programmed work in the field.

B-188500

"The basis for denying the daily rate was because a daily rate is not authorized under the travel regulations. The Contracting Officer has consistently maintained that the employees were not performing their field work under travel regulations. With possibly one exception (Pat Lynch - Encampment) none of the employees used their rented vehicles while in travel status. They used their vehicles while performing work in the field. A significant portion of the use was on rough mountain roads.

"The Contracting Officer presented the whole problem to the new branch chief of Administrative Services in the R.O., L.C. English. English reviewed the entire transaction and the pertinent regulations and arrived at the conclusion that the above referenced Forest Service procurement regulations could be interpreted either way. Mr. English contacted the Washington Office for their interpretation of the regulations. They didn't offer much help either way."

The authority given in Public Law 89-270 contemplates contractual procurement arrangements, and all claims in connection with such procurements normally would be for settlement in accordance with pertinent contractual provisions and applicable rules of contract law. See B-153618, April 9, 1964. It follows that the Federal Travel Regulations are not applicable to the rental agreements.

As a general rule a non-competitive award is justified where time is of the essence and only one known source can meet the Government's needs within the required time frame. Matter of Hughes Aircraft Company, 53 Comp. Gen. 670 (1974). In this

B-188500

case the Forest Service required the use of vehicular equipment on relatively short notice for irregular short term intervals. The contracting officer made reasonable efforts to award the contract through the normal competitive process but the necessary equipment was not available for short-term lease at reasonable rentals.

It has been the policy of our Office not to question a contracting officer's decision to make a sole-source award unless it is clear from the record before our Office that he acted in an arbitrary or capricious manner in abuse of that discretion. We believe that the determination to rent the needed vehicles from Forest Service employees reasonably flows from the administrative record and the formal justification provided by the contracting officer. We do not regard as arbitrary or capricious the determination to award rental contracts to Forest Service employees under the circumstances of record.

In view of the foregoing we would not question settlement of the claims on the terms of the Equipment Rental Agreements that provide for a daily rate and mileage rate for hire of equipment from Forest Service employees.


Deputy Comptroller General
of the United States