



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of The Army--Claim of the Hyatt
Regency Hotel

File: B-230382

Date: December 22, 1989

DIGESTS

1. The Department of the Army may not use appropriated funds for payment of "entertainment" expenses such as meals, coffee breaks or buffets for employees attending an Army Audio-Visual Conference at their official duty stations. The Army, however, may use appropriated funds to pay costs resulting from an attendance guarantee of 300 persons for luncheon. Meal expenses of personnel attending the Army conference while on travel duty should be charged to their travel allowances.

2. The Army may not reimburse the Hyatt Regency Hotel for food and refreshments served. Payment may not be made on a quantum meruit basis where the Army could not have procured the goods or services had formal procedures been followed.

DECISION

The Finance and Accounting Officer, Anniston Army Depot, has asked, under our doubtful claim procedures, whether he should pay a claim by the Hyatt Regency Hotel for \$4,239.94 in food and refreshment charges. We conclude that only the luncheon guarantee costs should be paid.

BACKGROUND

In 1986, the Department of the Army chose Lexington, Kentucky, as the site for its World-Wide Audio Visual Conference. Mr. Arnold Talbott, audio visual manager at the Lexington Blue Grass Army Depot (LBAD), was selected to coordinate the conference by his immediate supervisor. Mr. Talbott chose the nearby Hyatt Regency Hotel as the conference site. On July 15, 1986, he entered into a written agreement with Hyatt even though he was not a contracting officer and, under Army regulations, had no authority to enter into contracts on behalf of the government. See Army FAR Supplement 1.670-1 (1985). In

047389/140 304

the agreement, Hyatt agreed to provide lodging, facilities, and catering services for the persons expected to attend the conference.

In October 1986, Mr. Talbott approved the following items, which resulted in the costs found in the third column:

<u>DATE</u>	<u>ITEM(s)</u>	<u>COST</u>
11/17	Coffee Break (i.e., Coffee, Soft drinks, Danishes)	\$ 239.73
	Buffet	1,492.05
	Open Bar	120.00
11/18	Coffee Break	1,271.59
11/19	Coffee Break	370.27
	Luncheon - Balance	746.30
	<u>TOTAL</u>	<u>\$4,239.94</u>

Since Mr. Talbott had no authority to contract for these items, the Hyatt's claim was submitted to the proper contracting officer who, pursuant to Army regulations, had authority to ratify Talbott's actions if otherwise proper. Army regulations, however, do not authorize ratification of a procurement transaction that would not have been valid if made by a properly authorized contracting officer.

The contracting officer refused to ratify most of the charges. She stated that the coffee breaks and bar costs were in the nature of "entertainment" expenses, which are not payable from appropriated funds. She also concluded that the buffet was an "entertainment" expense. Further, even if the buffet was labeled "food" instead of "entertainment," it would still be an invalid charge because each attendee's per diem should have borne the cost. Thus, she could not ratify those expenses.

On the other hand, the contracting officer thought that the luncheon was properly ratifiable. Each attendee paid a \$10 charge for lunch, totaling \$2,710. Mr. Talbott had given a 300 person guarantee at a total cost of \$3,456 (including a service charge and tax), which leaves a balance of \$746.30. The contracting officer thought the balance could be paid because she believed she could have made a contractually binding guarantee of a 300 person luncheon. Accordingly,

she thought the balance due was payable, but only after deducting \$150.30 of sales tax from the balance due. This left a sum of \$596, which she recommended for payment.^{1/}

DISCUSSION

Although statutory authority exists for the Army to pay for the meals of government personnel in travel status, see 65 Comp. Gen. 16 (1985), such costs should have been charged against individual travel allowances. See 5 U.S.C. §§ 5701, 5702 (Supp. III 1985) (civilian employees); 37 U.S.C. §§ 402, 403 (1982) (military personnel).

For government employees within their official duty stations, we have consistently held that appropriated funds cannot be used to pay for "entertainment" expenses such as buffets, refreshments and coffee, unless specifically authorized by statute. B-208729, May 24, 1983; 61 Comp. Gen. 260, 263 (1982); 43 Comp. Gen. 305, 306 (1963). We can find no provision in the relevant Department of the Army appropriation statute or any other statute which would authorize expenditures for such entertainment expenses. See, e.g., Department of Defense Appropriation Act, 1987, Pub. L. No. 99-501, 100 Stat. 3341-83 (1986).

We have, however, recognized two limited exceptions to this general rule. We have held that under the authority of 5 U.S.C. § 4110 ^{2/} federal agencies can expend appropriated funds for conference registration fees even though they include the cost of "social events," but only if such costs are a non-severable element of the conference registration fee and the "social events" represent an incidental part of

^{1/} Before the contracting officer issued her final report, the Army conducted an investigation which concluded, among other things, that: Mr. Talbott had no authority to contract with Hyatt; there was a lack of supervision over Mr. Talbott's dealings; Mr. Talbott received significant direction from upper echelon commands who also had no authority to contract; there was a second set of bills for "room rental services," apparently submitted as an attempt to disguise the food costs; and the contract was unauthorized and unratifiable.

^{2/} Neither this nor the following exception based on 5 U.S.C. § 4110 apply to routine business meetings primarily involving day-to-day agency operations and concerns. See B-230939, Aug. 14, 1989 and B-230576, Aug. 14, 1989.

the conference. 65 Comp. Gen. 143 (1985); B-2224830, Mar. 20, 1987.

In the second exception, in which meals are not included in the registration fee for attendance at a conference and separate charge is made, payments are permitted under 5 U.S.C. § 4110 for meals if three conditions are satisfied: (1) the meal must be incidental to the meeting; (2) attendance at the meal must be necessary to full participation in the meeting; and (3) the employees may not be free to take meals elsewhere without being absent from the essential business of the meeting. 65 Comp. Gen. 143, 144 (1985) and cases cited therein. There is no indication from the record that the refreshment and buffet expenses of the federally sponsored conference fall under either exception.^{3/}

Nevertheless, under our claims settlement authority, see 31 U.S.C. § 3702 (1982), we may authorize reimbursement to a provider of goods or services to the government on a quantum meruit basis when certain conditions are met. B-221604, Mar. 16, 1987; 64 Comp. Gen. 727 (1985). To justify payment for these goods or services on a quantum meruit basis, we must make a threshold determination that the acquisition of the goods or services would have been a permissible procurement had formal procedures been followed. 64 Comp. Gen. at 728. In this case, as we indicated earlier, the government could not have properly contracted for the refreshment or buffet costs even had permissible procedures been used in the first instance.

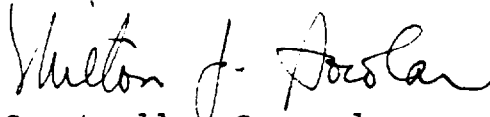
With regard to the contracting officer's assertion that she could have made a contractually binding guarantee of a 300 person luncheon, we agree that the cost of the guarantee may be ratified. Our Office has previously held that appropriated funds may be used to pay such an obligation. B-208729, May 24, 1983. In that case, the Army sponsored a commemoration for Dr. Martin Luther King. A contract was entered into under which at least 540 guests were expected to attend the event and the caterer was guaranteed a minimum amount of revenue. Those attending the event were to be charged \$6 each. Due to inclement weather, however, a large number of guests failed to attend. We held that the contract was a prerequisite to the holding of the luncheon

^{3/} Although we have made other exceptions to the "entertainment" expense prohibition, these exceptions are not applicable to the case at hand. See generally 65 Comp. Gen. 738 (1986); 60 Comp. Gen. 303 (1981).

in order to assure the accommodation of the expected number of guests. Id. We did not view the associated cost as related to providing food or entertainment but rather as an acceptable administrative expense in furtherance of the commemoration.

The same rationale applies to the case before us. A guarantee of 300 attendees was made. Each attendee paid a \$10 charge for the lunch. However, only 271 people actually attended. The guarantee was, as in B-208729, a prerequisite to the holding of the luncheon in order to assure the accommodation of the expected attendees. Thus, the costs resulting from the guarantee are an administrative expense associated with conducting a legitimate portion of the conference.

Accordingly, we conclude that payment here must be limited to the amount the contracting officer could have contracted for, namely, the luncheon balance guarantee cost minus the \$150.30 in state sales taxes from which the federal government is exempt.

for 
Comptroller General
of the United States