



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

B-178103

June 1, 1973

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Mr. C. Vernon Janisch  
Authorized Certifying Officer  
Through the Acting Director, Office of  
Finance and Accounting  
Department of Housing and Urban  
Development

Dear Mr. Janisch:

Reference is made to your request of February 26, 1973, for an advance decision relative to the propriety of payment of an invoice submitted by Airways Rent-A-Car under Contract No. GS-058-08588.

The contract in question, negotiated by the General Services Administration, provided for the use of 70 automobiles by the Department of Housing and Urban Development (HUD), Detroit, Michigan, for the period June 1, 1972, through approximately November 30, 1972. Payment was to be effected by HUD at the prescribed total monthly rental rate per car of \$282.75. Billing was to be on the first day of each month.

Pursuant to the Scope of Contract clause, which provided the Government with an option for cancellation upon delivery of a 30-day written notice to the contractor, HUD initiated a series of vehicle cancellations involving 67 of the original 70 units. Thus, by letter dated August 29, 1972, HUD informed the contractor that eight vehicles were available for immediate pick up, and that it was anticipated that all vehicles would be returned by the end of October 1972. The record (HUD letter of September 11, 1972) indicates that 11 vehicles were actually returned on September 1. By its letter of September 11, 1972, HUD also notified the contractor that 47 vehicles would be returned no later than September 29, 1972, and that 12 units would be turned in on October 15, 1972. The record does not show when this letter was received by Airways. In reality, it appears that 56 vehicles were returned to the contractor on various days during the period September 14 through October 13, 1972 (45 in September and 11 in October), and 3 vehicles were retained by HUD until the end of November 1972.

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On October 1, 1972, Airways submitted an invoice requesting remuneration in the amount of \$17,530.50 (62 automobiles at \$282.75 per unit per month) for the October 1972 rental. The record does not show why the invoice covered 62 vehicles when it appears that 11 of the 70 units had been returned on September 1, 1972. You express the opinion that the contractor is entitled only to a pro rata charge per vehicle for October for the vehicles returned after notice was given. Thus, you contend that the applicable rental charge for October on the returned vehicles should be computed on a daily basis up to and including the date of expiration of "the 30-day notice," i.e., mid-October. Apparently, your reference to the 30-day notice pertains to HUD's letter dated September 11, 1972.

You state that the invoice covering charges for the month of October will remain unpaid pending a decision from this Office.

Where a written contract has been executed as the supposed embodiment of the parties' intentions, a dispute concerning the obligations of the parties must, if possible, be resolved according to the contract's provisions. In this situation, not only is the contract itself silent as to the manner in which the contractor would be remunerated for vehicles returned at various times within a month, but there is no indication from the record that the contracting parties even considered, during the contract formation period, the possibility of such returns. While the contract does not expressly provide for partial cancellations, no disagreement between the parties is indicated as to the propriety of fractional returns of the 70 vehicles, and it is not considered to be an issue.

Although the Scope of Contract clause provides an option for cancellation of the contract "upon receipt of a 30 day written notice by the Government," it does not state that the notice must be given on any particular day of the month, nor do we find this to be required elsewhere in the contract. Therefore, this provision must be construed as permitting the 30-day notice to be given on any day of the month and to allow a cancellation of the contract for those vehicles returned at the end of the 30 days pursuant to such notice. To conclude that rental would continue after the 30-day notice period unless the notice was given on a particular day would be tantamount to adding qualifications to the contract where none existed, and would thus be a violation of elementary principles of contract construction. Thus, it is our view that Airways is not

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entitled to rental for any additional days during October after the return of a vehicle at the end of a 30-day notice given in accordance with the option for cancellation reserved to the Government under the Scope of Contract clause.

In relation to the payment to be effected to the contractor, the action of HUD in returning the various vehicles to the contractors prior to the expiration of the required 30-day written notice, or without such a notice, does not preclude the contractor from receiving appropriate compensation for the unexpired portion of the notice period. The amount which a lessor may recover when the lessee prematurely returns rented items, is generally considered as the equivalent of the specified rentals for the remainder of the notice period less the benefits accruing to the lessor by reason of the early returns. In relation to any units returned to the contractor without written notice, the amount for payment should be computed for the 30-day period from the date of the automobile's return to the contractor.

The file transmitted with your letter is returned.

Sincerely yours,

PAUL G. DEMBLING

Acting  
Comptroller General  
of the United States

Enclosure

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