



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

100-5  
Approval  
1978  
3-59-70

B-163120



LM090655

The Honorable Edmund S. Muskie  
United States Senate

Dear Senator Muskie:

On January 16, 1978, you requested that we send you a report on the details concerning the proposed sale of Government-owned equipment to the Detroit Diesel Allison, division of the General Motors Corporation, Indianapolis, Indiana. The General Services Administration (GSA) is negotiating the sale of the equipment located in the contractor's plant. Our comments are directed to those matters referred to in your letter and discussed with staff members of the subcommittee on Intergovernmental Relations.

Summary of Issue

The Department of Defense policy is to retain its ownership of industrial facilities to ensure its availability and still provide appropriate facilities to meet the essential defense items. Under the Federal Acquisition Regulation (FAR) and other applicable regulations, the Department's policy is that contractors should fulfill all obligations required for the performance of Government contracts. In furtherance of this policy, the Department is conducting a program to phase out contractor use of Government-owned facilities.

The Departments of the Air Force and Army have determined that the Government-owned equipment at the Allison facility must be retained for ongoing and future defense production requirements. Since the equipment is required by Allison to produce defense items, it is not considered excess to the needs of the Air Force and Army. However, as long as the operating contractor agrees to purchase the equipment and make it available to the Government for its future needs, the equipment is considered to be excess to Government ownership. If Allison refuses to buy the equipment, or for some other reason the sale is not approved, the Air Force and Army will withdraw the offer.

GSA is selling the equipment under section 203(e)(3)(C) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 44(c)(3)). Subsection (3) contains exceptions to the provision of the act which states that all disposals shall be made after publicly advertising for bids. Paragraph (2) of subsection (3) provides the following exception that:

904362

BEST DOCUMENT AVAILABLE

D-163120

"With respect to real property only, the character or condition of the property or unusual circumstances make it impractical to exercise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation."

GSA officials advised us that some of the Government-owned equipment at the Allison facility is recoverable and is considered to be the same as real property. Several of other severable Government-owned equipment would maintain the production capabilities of the facility. GSA officials claim that the severable equipment is considered an integral part of the real property within the meaning of the subsection of the act. Since the contractor has a contractual obligation to use all equipment for defense contracts, it would be impractical to sell only nonrecoverable equipment to the holding contractor and interrupt production schedules by disposing of severable equipment through normal disposition procedures. GSA retained a commercial firm to independently appraise the value of Government-owned equipment at the Allison facility and has negotiated a selling price that approximates that value.

Existing legislation does not require direct sale of severable equipment through negotiation with the holding contractor unless it be sold in a parcel that is located at Government facility or is non-recoverable and essentially did so real property.

Legislation to permit direct sale of personal property equipment to holding contractors through negotiation has been introduced in the Congress on several occasions. We have supported such legislation on the basis that it would facilitate DOD's efforts to phase out ownership of Government-owned equipment at contractors' plants.

While it can be argued that it is not entirely appropriate for GSA to refer to section 203(a)(3)(G) of the Federal Property Administrative Act in support of this sale, it should be pointed out that the Commission on Government Procurement has recognized that the Department of Defense's efforts to divest itself of equipment has been hampered by the lack of clear authority to negotiate sales of equipment excess to Government ownership to the holding contractor. In its report, the Commission has recommended that legislation be enacted to authorize the negotiated sale of equipment which is excess to Government ownership but not to Government requirements. The sales agreement should provide adequate protection to the Government for its future needs of the equipment when competition is not feasible.

B-153110

In discussing the sale with your representative, he questioned why the equipment was not sold as part of a unit package when the first two units were sold to other contractors. As a result of this discussion, it was decided that, as a matter of fact, the Army had no intention of selling the equipment. It was considered re-quiring the equipment to be sold as a unit to provide the production capability for the production of their position items. It was agreed to provide the production capability for 10 years in the case of the sale.

Reference to the Contract  
to the Contract  
to the Contract

As per the contract, contract FSO-57-46-3-111, copy dated with ALLS, the contract provides for the use of Government-owned equipment. The use of equipment is necessary for the production of equipment and is provided usually to use the equipment for the production of equipment. They obtain advance notice and approval from the Administrative Contracting Officer.

The contract provides for the use of Government-owned equipment. The use of equipment is necessary for the production of equipment and is provided usually to use the equipment for the production of equipment. They obtain advance notice and approval from the Administrative Contracting Officer.

Reference to the Contract  
to the Contract  
to the Contract

The criteria governing payment of rent by contractors for use of Government-owned plant equipment are contained in ASER 7-702.12, the 'Use and Charges' clause which is required to be included in all facilities contracts. The requirements of the use and charges clause are generally implemented by a written agreement which supplements the facilities contract. The length of time covered by each rent payment is subject to agreement between the contractor and the Government, but it cannot be less than 1 month or more than 6 months. Rental rates--expressed in percentages--are based on the age and/or type of equipment and are uniform for all facilities contracts.

The use and charges clause provides that the full rent due for the rent period is to be computed by applying the specified rental rates contained in ASER to the acquisition costs of the items authorized to be rented. The full rent is to be reduced by a credit for

