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

April 29, 1980

B-198137

The Honorable R. G. Freeman III
Administrator of General Services
Washington, D.C. 20405

Dear Mr. Freeman:

AGC 02017

Your letter of March 11, 1980, requests our consideration of the proposed use by the ~~General Services Administration (GSA)~~ of commercial audit companies to identify overcharges on paid transportation bills which, because of the small amounts involved, are below the current monetary limit considered by GSA to be cost effective for the performance of a detailed technical audit under 49 U.S.C. 66 (1976). These bills have been passed over by GSA's statistical sampling process. The contractor would be paid a percentage of any overcharges recovered.

The letter recognizes that this Office, for legal and practical reasons, has consistently disapproved proposals that would have used commercial firms for the audit of the Government's paid transportation vouchers; however, you point out that the outside audit contemplated by your proposal is substantially different from any of the others previously considered in that GSA would retain and exercise its audit responsibilities under section 201 of the General Accounting Office Act of 1974, Pub. L. No. 93-604, 88 Stat. 1960, which amended section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (1976).

Previous proposals required our consideration of offers by commercial audit firms to audit or reaudit Government freight bills for a percentage of the overcharges recovered. See B-175574, April 3, 1972; B-165818, December 17, 1968; and B-157484, August 26, 1965.

We have held consistently that the proposed arrangements would be contrary to the responsibilities of this Office to receive, examine, and certify the accounts of Government agencies under 31 U.S.C. 72; to settle and adjust all claims and demands whatever by or against the Government of the United States pursuant to 31 U.S.C. 71; to perform the audit in a timely manner so as to

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permit suit within the time periods provided by statute; and to preserve all adjusted accounts and records, as required by 31 U.S.C. 74. Further, the statutory right to effect collection of overcharges by deduction, which is considered very beneficial in protecting the Government's interests, could not accrue to a commercial audit company. See B-175574, supra.

These responsibilities, relative to the transportation rate audit, were transferred to GSA by the General Accounting Office Act of 1974, supra. See B-183020, October 6, 1975. Published regulations of GSA indicate that the agency has accepted these responsibilities. See 41 C.F.R. Subpart 101-41.5 (1979). And your letter indicates that none of the responsibilities would be abrogated through implementation of the proposal.

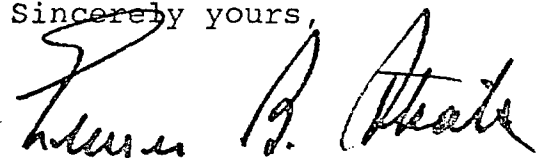
GSA would continue to receive paid vouchers, process those items below the established cost-effective level through a statistical sampling technique, and forward to the outside audit company the passed-over items solely for the identification of overcharges. The function of the commercial firm appears advisory only in that, according to our understanding of the proposal, GSA would perform a detailed technical audit of the overcharges identified by the firm to determine the carrier's indebtedness to the Government. GSA would issue overcharge notices; process carriers' protests to GSA's audit action; recover the overcharges from the indebted carriers by voluntary refund, by setoff or by other means, and adjust and settle any and all carriers' claims.

In view of the microfiche and filming procedures to be followed by military and civilian agencies, records will be available to the Government at all times to aid GSA in providing litigation assistance to the Department of Justice, and for other purposes. Since we approved the application of statistical sampling techniques to the rate audit of transportation payments, which were described by the Director of our former Transportation Division (TD) in a memorandum of May 13, 1968 (see B-164321-O.M., July 5, 1968), the possibility that some of the items might not be audited by the commercial firm in time to allow suit is of minor importance because in the absence of the proposed outside audit, none of these items would have been audited anyway.

We have explained that the application of statistical sampling techniques conforms to the principle set forth in the Congressional declaration of policy in the Accounting and Auditing Act of 1950, 31 U.S.C. 65(e), that auditing requirements and procedures which do not serve a purpose commensurate with costs, be eliminated. Based on this rationale, we assume that GSA would retain the contractual right (as well as the statutory duty) to determine whether the issuance of a Notice of Overcharge for the recovery of overcharges identified by the commercial firm, would be cost effective. See also our reply to questions raised by the Director, TD, on July 28, 1970 (B-170342-O.M., September 16, 1970). Therefore, it seems reasonable to consider the issuance of a Notice of Overcharge by GSA, rather than the amounts identified as overcharges by the contractor or amounts actually recovered by GSA as the basis for the contractor's payment. We further assume that GSA, pursuant to sections 113 and 118 of the Accounting and Auditing Act of 1950, 31 U.S.C. 65a and 66a, would establish internal controls to assure that its statutory responsibilities for the transportation audit would be performed during the longevity of any contract with outside audit firms.

In the light of our understanding of the proposal, as described above, we have no legal objection to its implementation.

Sincerely yours,



Thomas B. Heath
Comptroller General
of the United States