

30793

**DECISION**



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

**FILE:** B-207731

**DATE:** March 25, 1985

**MATTER OF:** Collection of User Fees in National  
Forests by Contractor Personnel

**DIGEST:**

Department of Agriculture proposal to permit contractor employees to collect recreation fees in national forests is permissible. GAO decision in 62 Comp. Gen. 339 (1982), holding that a similar proposal involving volunteers was not permissible, is not pertinent in view of current plan to use contractor employees. Further, in view of a recent change in Office of Management and Budget Circular No. A-76, the collection of established fees should not be considered to be an inherent governmental function, and therefore need not be performed only by government employees.

This decision is in response to a request from the Secretary of Agriculture for reconsideration of our decision in 62 Comp. Gen. 339 (B-207731, April 12, 1983). In that decision we declined to approve the proposal of the Department of Agriculture to permit individuals who are designated for public volunteer service pursuant to the Volunteers in the National Forests Act of 1972 to collect camping fees and similar types of recreation user fees. The Department now contemplates having the fees collected by contractor employees, rather than by volunteers. Based on that change, and a recent change in Office of Management and Budget (OMB) Circular No. A-76, we conclude that the Department of Agriculture proposal, as now contemplated, would be permissible.

In 62 Comp. Gen. 339 (1982), we reviewed a Department of Agriculture proposal to use public volunteers to collect recreation user fees in national forests. The volunteers were to be retained pursuant to the Volunteers in the National Forests Act of 1972, which authorizes the use of volunteers "for or in aid of interpretive functions, visitor services, conservation measures and development, or other activities in and related to areas administered by the Secretary [of Agriculture] through the Forest Service." 16 U.S.C. § 558a (1982). The volunteers were to periodically empty campground collection boxes, in which campers were expected to deposit their payments.

031584

We concluded that the volunteer collection plan proposed by the Department of Agriculture was not permissible for three reasons: (1) there was no indication that Congress intended that volunteers under the Volunteers in the National Forests Act would perform such a function, (2) "fee collection is an inherent governmental function which may be performed only by Government employees," and (3) it would have been difficult or impossible to obtain necessary surety bonds to protect the Government against loss. 62 Comp. Gen. at 342-43.

We conclude that our analysis in 62 Comp. Gen. 339 is not applicable in the instant case in view of a critical change in the Department of Agriculture's proposal and a change in an OMB Circular and our interpretation of it.

Initially, we note that under the proposal as now contemplated, the fee collection will not be done by volunteers, but rather by contractor personnel. Accordingly, our first objection in 62 Comp. Gen. 399, the use of volunteers for purposes not contemplated by the Congress, is no longer relevant.

Second, we no longer find it necessary to reach the conclusion that "fee collection is an inherent governmental function which may be performed only by Government employees." 62 Comp. Gen. at 342. That conclusion was based in large part on our reading of OMB Circular No. A-76, March 29, 1972, entitled, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government." Circular No. A-76 included "monetary transactions and entitlements" within a group of functions which could not be contracted out "due to a special relationship in executing governmental responsibilities." We concurred in the conclusion of the Department of Agriculture legal staff that "the contracting out of the collection function was thus precluded, and that, by analogy, 'the delegation of such function outside the Department [of Agriculture] to a non-employee would appear to be inappropriate.'" 62 Comp. Gen. at 340-41.

However, subsequent to our decision in 62 Comp. Gen. 399, the Office of Management and Budget revised Circular No. A-76 so that it now defines a Government function as:

"\* \* \* a function which is so intimately related to the public interest as to mandate performance by Government employees \* \* \* [including] those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. \* \* \*" OMB Circular No. A-76, August 4, 1983.

In B-215326, December 14, 1984, 64 Comp. Gen. \_\_\_\_, a case involving a General Services Administration proposal to sell used government vehicles on consignment through private auction houses, we interpreted revised Circular No. A-76. We concluded:

"Although 'monetary transactions and entitlements' are still defined as inherently governmental under the revised definition, it appears in the context of this case that only the setting of a minimum fee should be viewed as an inherently governmental function because it requires discretion and judgment. The administrative task of collection, however, need not be so considered, in our view. \* \* \*"

Here, the contractor personnel will merely be performing the "administrative task of collection" and will not be involved in setting fees or any other discretionary governmental function. Accordingly, our analysis in 62 Comp. Gen. 339 is no longer pertinent, and we conclude that the collection of established fees would not constitute an inherent governmental function which could not properly be delegated to contractor personnel.

Finally, we conclude that the proposal of the Department of Agriculture would provide sufficient protection of the Government's interests. The Department has recognized that "a system of internal controls, guarantees, and adequate safekeeping facilities \* \* \* would be required." We recommend that that system include bonding of the contractor employees. Because profit-making contractors, rather than volunteers, will be involved in the instant case, we do not question the availability of adequate bonding in these circumstances. B-215326, December 14, 1984, 64 Comp. Gen. \_\_\_\_.

*for* Harry D. Van Cline  
Comptroller General  
of the United States