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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

B-308968

November 27, 2007

The Honorable Barbara A. Mikulski
United States Senate

Subject: *No-Cost Contracts for Event Planning Services*

Dear Senator Mikulski:

This opinion responds to your letter of January 26, 2007, requesting that we “clarify the suitability of using no-cost contracts to obtain conference, event and trade show planning services.” Specifically, you asked us to review a model contract supplied to us by National Conference Services, Inc.’s (NCSI) counsel.¹ Letter from Antonio R. Franco and Jonathan T. Williams, Piliero Mazza, to Thomas H. Armstrong, Assistant General Counsel, GAO, *Re: No Cost Contract for Conference Services*, Jan. 23, 2007 (NCSI Letter). In its model contract, NCSI offers to provide conference planning services with no financial obligation to the government; NCSI would recoup its costs by charging exhibitors, sponsors, and attendees of the conference. *Id.*

We conclude that the NCSI contract is a valid, binding no-cost contract that agencies may utilize to obtain conference planning services without violating the voluntary services prohibition of the Antideficiency Act, 31 U.S.C. § 1342. Because of the terms and conditions of the NCSI contract, an agency would incur no financial liability and NCSI would have no expectation of payment from the government. Before engaging in no-cost contracts, however, agencies should address several considerations to balance the financial flexibility of no-cost contracts with achievement of agency objectives in hosting a conference.

¹ Our practice when rendering legal opinions is to obtain the views of the relevant agency to establish a factual record and to elicit the agency’s legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006) *available at* www.gao.gov/congress.html (last visited Oct. 16, 2007). In this instance, your letter did not identify an agency that had contracted with NCSI. At your request, NCSI provided us with a copy of its model contract and its explanation of the contract.

BACKGROUND

NCSI provides “event planning, production and support services.” NCSI, *About NCSI—Who We Are*, available at www.ncsievents.com/aboutncsi/who_we_are.aspx (last visited Oct. 16, 2007). NCSI reports that it has conducted business with various government agencies, including those within the intelligence community and the Department of Defense, by facilitating “information technology conferences, industry days, [and] meetings and technology expositions . . .” *Id.*

NCSI’s services include: “Planning; Selecting venues; Negotiating contracts; Marketing; Coordinating logistics; Taking registrations; Processing payments; [and] Post-event reporting.” NCSI, *Federal, Intelligence Community and Department of Defense Services—Conferences*, available at www.ncsievents.com/federal/federal_conferences.aspx (last visited Oct. 16, 2007) (NCSI Conferences). NCSI offers to plan “Sponsored receptions;” “Break-out meetings; Seminars; Working luncheons;” and “Workshops.” NCSI, *Events—Conferences*, available at www.ncsievents.com/event/conferences.aspx (last visited Oct. 16, 2007). In contracting with its clients, “NCSI is able to . . . offer its event planning services to government hosts at zero cost . . .” NCSI Conferences.

The proposed NCSI contract provides:

“The Contractor may choose to provide for all services as required by the task order at no cost to the Government. The Contractor is entitled to all of the registration, exhibition, sponsorship and/or other fees collected as payment for performance under the task order if there is no cost to the Government. In this case, the Contractor is liable for all costs related to the performance of the task order as defined in the task order and the government’s liability for payment of services under this task order is ‘zero.’”

NCSI Letter, Exhibit E. NCSI explained that it recoups its costs by “charging the attendee and exhibitor participants of the event.” NCSI Letter.

DISCUSSION

Generally, a no-cost contract is a formal arrangement between a government entity and a vendor under which the government makes no monetary payment for the vendor’s performance. B-302811, July 12, 2004. “Under a typical no-cost contract, a vendor provides a service that [an] agency would otherwise perform, but instead of receiving compensation from the agency, the vendor charges and retains fees [assessed against third parties] for its services.” B-300248, Jan. 15, 2004. *See also Ober United Travel Agency, Inc. v. United States Department of Labor*, 135 F.3d 822, 823 (D.C. Cir. 1998). In the instant case, NCSI intends to recoup its costs, and

presumably earn a profit, by charging conference attendees and other participants.² At issue when a federal agency agrees to a no-cost contract and receives services without having to pay is whether the agency has violated the Antideficiency Act's voluntary services prohibition, 31 U.S.C. § 1342.

The Antideficiency Act prohibits federal agencies from accepting voluntary services without specific statutory authority.³ 31 U.S.C. § 1342. The purpose of the prohibition is to preclude situations that might generate claims for compensation that might exceed an agency's available funds. *See, e.g.*, B-211079.2, Jan. 2, 1987.

We have previously examined no-cost contracts in the context of the voluntary services prohibition.⁴ In 1928, we concluded that the Federal Trade Commission (FTC) was not prohibited from entering into a no-cost contract for stenographic services. 7 Comp. Gen. 810 (1928). There, FTC gave the contractor the exclusive right to report FTC proceedings and to sell copies of transcripts to the public at rates specified in the contract; in return, the contractor would furnish copies to FTC without cost. *Id.* We determined that FTC did not violate the prohibition because "services furnished pursuant to a formal contract are not voluntary within the meaning" of the statute. *Id.* at 811.

More recently, we found no violation when the General Services Administration (GSA) proposed a no-cost contract with real estate brokers. B-302811, July 12, 2004; B-291947, Aug. 15, 2003. The contract awarded four real estate brokers "exclusive rights to represent the United States with respect to all GSA real property leases" in exchange for the brokers' lease acquisition services. B-302811, July 12, 2004. Reflecting industry practice, the real estate brokers would stipulate in the contract that they had no expectation of payment from the government and GSA had no financial liability to the brokers. B-302811, July 12, 2004; B-291947, Aug. 15, 2003. Nor would any other party pay the brokers on the government's behalf. Instead, consistent with industry norms, the brokers would receive commissions from landlords with whom they did business. B-302811, July 12, 2004; B-291947, Aug. 15,

² To be enforceable, a contract with the United States government requires an offer, acceptance of the offer, and consideration. *Rick's Mushroom Service, Inc. v. United States*, 76 Fed. Cl. 250, 259 (2007), *citing Total Medical Management, Inc. v. United States*, 104 F.3d 1314, 1319 (Fed. Cir. 1997). A no-cost contract "raises the question . . . whether it is void for lack of consideration." 7 Comp. Gen. 810, 811 (1928). A federal agency accepting the NCSI-proposed contract would provide as consideration exclusive access to a group from which the contractor may earn income. Concurrently, the federal agency would receive NCSI's services in planning a conference.

³ The Act makes an exception "for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

⁴ GAO has also considered award of various no-cost contracts in the context of bid protests. *See, e.g.*, B-283731.2, Dec. 21, 1999.

2003. We reiterated our long-standing rule that “services received . . . free of cost pursuant to a formal contract or agreement do not constitute ‘voluntary services’” within the meaning of the Antideficiency Act, and determined that GSA did not violate the voluntary services prohibition.⁵ B-291947, Aug. 15, 2003.

Critical in the GSA case were the terms and conditions of the contract and the attendant expectations of each party regarding payment. We emphasized, “Because the contract was constructed as a no cost contract, GSA will have no financial liability to [the] brokers, and [the] brokers will have no expectation of a payment from GSA.” B-302811, July 12, 2004. As a consequence, even if the third parties making remuneration to the real estate brokers failed to pay, “the broker would have no claim against GSA.” *Id.* Cf. B-300248, Jan. 15, 2004. We concluded that “accept[ing] services without payment pursuant to a valid, binding no-cost contract does not augment an agency’s appropriation nor does it violate the voluntary services prohibition.” B-302811, July 12, 2004.

In its contract, NCSI would stipulate that it will provide its services “at no cost to the Government,” specifying that “the government’s liability for payment of services under this task order is ‘zero.’” NCSI Letter, Exhibit E. NCSI expects to retain “all of the registration, exhibition, sponsorship and/or other fees collected as payment for performance.” *Id.* As with the FTC and GSA contracts, an agency agreeing to the NCSI contract would have no financial liability to NCSI, nor would NCSI have any expectation of payment from the government. Consequently, an agency entering into the NCSI contract would neither augment its appropriation nor run afoul of the voluntary services prohibition.

In 2006, the Department of Justice’s Office of Legal Counsel (OLC) addressed a Department of Commerce proposal asking whether an agency, when hosting a conference, may permit its contractor “(1) to provide meals, lodging, refreshments, and other goods and services to conference attendees and (2) to charge the attendees a ‘personal convenience’ fee to cover the costs of these items.” Memorandum Opinion for the General Counsel, Department of Commerce, *Applicability of the Miscellaneous Receipts Act to Contractors Receiving Personal Convenience Fees from Attendees at an Agency-Sponsored Conference*, OLC Opinion, Nov. 22, 2006. OLC did not object to the proposal because the personal convenience fees “are not used, and are not intended to be used, by or for the benefit of the host agency that hires the event planner.” *Id.* OLC noted that collected amounts do not “compensate the event planner for any contractual obligation that the host agency owes to it, or enable the agency to avoid expending appropriations . . .” *Id.* We agree with OLC’s distinction and the rationale OLC applied to the issue before it.

⁵ In our decision, we did not evaluate “the soundness of the terms of the contract or advisability of entering into” no-cost contracts. B-291947, Aug. 15, 2003. In January 2007, GAO reported on the first contract year of GSA’s no-cost leasing contracts with the brokers. GAO, *GSA Leasing: Initial Implementation of the National Broker Services Contracts Demonstrates Need for Improvements*, GAO-07-17 (Washington, D.C.: Jan. 31, 2007).

Notably, the scenario presented by the Department of Commerce to OLC differs from scenarios that we have considered previously regarding agency attempts to collect fees from conference participants. In 2005, we advised the National Institutes of Health (NIH) that absent statutory authority to charge a fee and retain the proceeds, neither NIH, *nor a contractor on its behalf*, may charge a registration or other fee to defray the costs of providing meals or light refreshments integral to a conference. B-300826, Mar. 3, 2005. Doing so would impermissibly augment NIH's appropriation. *Id.* In January 2006, we reiterated the holding in B-300826 – an agency may no more engage a contractor to charge and retain a fee than the agency itself may charge and retain fees for its own benefit without specific statutory authority. B-306663, Jan. 4, 2006. In its request to OLC, the Department of Commerce represented that the department did not intend to provide meals, refreshments, and lodging to conference participants. Nov. 22, 2006, OLC Opinion. In both B-300826 and B-306663, however, we addressed a scenario where the host agency provided food as part of the conference with the purpose of ensuring full participation in the conference. In that situation, an agency may not charge participants to offset the agency's costs without statutory authority.

As with the no-cost contract GSA employed with real estate brokers, we do not opine on the wisdom of such arrangements for conference planning services.⁶ Although a no-cost contract such as that offered by NCSI does not violate the Antideficiency Act, there are other considerations beyond compliance with fiscal laws that an agency should take into account before agreeing to a no-cost contract. An agency contemplating use of a no-cost contract for conference planning services should weigh the value of the services received from the contractor with that of the concession offered by the contractor. Important considerations include, for example, who may approve and sign such contracts, registration procedures and collection of fees, and, particularly where many, if not most, attendees are expected to be government employees, the ultimate cost to the government as a whole. Agency officials also should consider possible conflicts of interest before signing a no-cost contract, keeping in mind that control of the agenda, selection of speakers, and other matters concerning content should serve the government's, not the contractor's, purpose. In addition, agencies should ensure an open, transparent selection process before entering into no-cost contracts. Ultimately, an agency must not lose sight of its objectives for a particular event and should ensure that in avoiding costs to the

⁶ An agency, of course, may request legislation authorizing the agency to charge an attendance fee at conferences and use the fees to offset conference costs. B-306663, Jan. 4, 2006. Last year, Congress enacted authority for the Department of Defense to collect and retain conference fees for the purpose of crediting the appropriation charged to pay conference costs. National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, div. A, title X, subtitle F, § 1051, 120 Stat. 2083, 2395–96 (Oct. 17, 2006), *codified at* 10 U.S.C. § 2262. *See* S. Rep. No. 109-254, at 385-86 (2006). The same provision also allows the department to permit a contractor to collect fees on the department's behalf. *Id.*

agency, it does not take actions that compromise the effectiveness of its conference, undermine the achievement of agency goals, or violate ethics rules.

CONCLUSION

The NCSI contract is a valid, binding no-cost contract. An agency may enter into such a contract without violating the Antideficiency Act's voluntary services prohibition, 31 U.S.C. § 1342. Services performed pursuant to a formal contract, in which the agency has no financial obligation and the contractor has no expectation of payment from the government, are not "voluntary" within the meaning of the prohibition. *Id.*

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel