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WASHINGTON, D.C. 20548

B-115369

April 14, 1976

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The Honorable  
The Attorney General

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AGC00412 R.

Dear Mr. Attorney General:

R  
D-602952

We refer to a letter dated January 8, 1976, from the Deputy Assistant Attorney General, Office of Legal Counsel asking our opinion as to whether the Brooks Act (Public Law 89-306, 79 Stat. 1127, 40 U.S.C. § 759 (1970)) permits delegations of procurement authority by the General Services Administration (GSA) for automatic data processing equipment (ADPE) acquisitions if determined to be in the interests of economy and efficiency of operations or essential to national defense or security. The Office of Management and Budget (OMB) has requested from your department a legal opinion on this question, since it is concerned over certain implications it believes emanate from our audit report LCD 74-115, B-115369, October 1, 1975, entitled "Further Actions Needed to Centralize Procurement of Automatic Data Processing Equipment to Comply with Objectives of Public Law 89-306."

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In the audit report, we found that centralization of ADPE management and procurement authority in GSA pursuant to the Brooks Act has resulted in significant savings and improvements, although not as much as could be realized if the Brooks Act had been fully implemented as Congress had intended. Specifically, the legislative history of the Brooks Act indicates an intention that GSA eventually become the "single purchaser" of ADPE for the Federal Government, and that the revolving fund, specially created to facilitate the financing of ADPE acquisitions, eventually be fully utilized to accomplish this objective. We found these objectives had not been accomplished.

[Delegation of GSA Procurement Authority for Automatic Data Processing Equipment Acquisitions]

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Abstract

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The January 8 letter states that OMB has expressed concern that the report implied a construction of the Brooks Act, which:

"(1) requires GSA eventually to become the 'single' Government purchaser of all ADPE, (2) permits GSA to delegate authority to purchase ADPE only 'pending implementation' of this single purchaser concept, and (3) prohibits GSA, once it has become such a single purchaser, from making further delegations. \* \* \*"

OMB disagrees with the second and third implications.

We do not believe the second and third implications follow from the audit report. As discussed below, we recognize that delegations of procurement authority can be made under limited circumstances, even after the "single purchaser" concept has been achieved.

As pointed out by your department, 40 U.S.C. § 759(b)(2) (1970) allows GSA to delegate its procurement authority to agencies to acquire ADPE when GSA determines it is "necessary for the economy and efficiency of operations" or "essential to national defense or national security." See H. Rep. No. 802, 89th Cong., 1st Sess. 39 (1965), and S. Rep. No. 938, 89th Cong., 1st Sess. 39 (1965). In addition, this section provides for GSA to delegate its procurement authority when it finds it necessary or desirable to allow for the orderly implementation of a program for the utilization of ADPE. Our Office has consistently recognized the authority of GSA to delegate its procurement authority under the foregoing standards. See 47 Comp. Gen. 275, 278 (1967); 48 *id.* 462, 464 (1969); 51 *id.* 457, 460-461 (1972); PRC Computer Center, Inc., 55 *id.* 60 (1975), 75-2 CPD 35.

On the other hand, Congress intended that GSA become the "single purchaser" of ADPE, as is evidenced by the Brooks Act legislative history. For example, see H. Rep. No. 802, supra, at 30, where it is stated:

"\* \* \* But, the most compelling need for the revolving Fund is in establishing the single purchaser concept in Government ADP acquisition.

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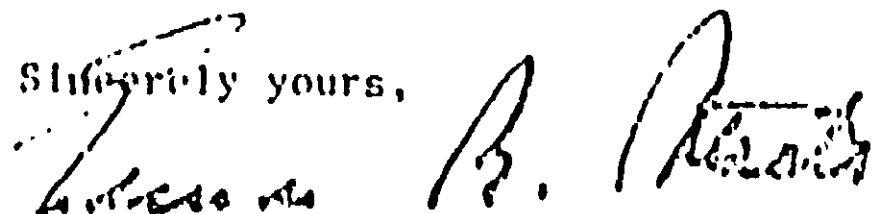
"Under this arrangement, GSA would have all of the Government's general purpose ADP acquisition money in its pocket and would be in a position, once all aspects of the coordinating program have been fully implemented so that adequate information of prospective Government agency requirements is available, to offer ADP manufacturers firm contracts for specific amounts of ADP equipment. In turn, GSA could reasonably expect to receive some reduction in purchase and lease prices reflecting the magnitude of the Government's acquisition."

Also, see 47 Comp. Gen., supra. The "single purchaser" concept was to prevail after an orderly step-by-step transition from individual agency management of ADPE to coordinated management by GSA. Congress recognized that during the transitional period GSA could delegate its procurement authority. See H. Rep. No. 802, supra, at 35.

This is not to say that GSA cannot delegate its procurement authority after the transitional period. We agree with your department that the Brooks Act allows GSA to delegate its procurement authority at any time, either prior to or after the full implementation of the "single purchaser" concept, when it finds the 40 U.S.C. § 759(b)(2) (1970) standards have been met. However, in view of the congressional intent and since increased economy and efficiency would result if the "single purchaser" concept were achieved, GSA would delegate its procurement authority only in limited cases after achieving this status. Unlike the widespread delegations of procurement authority now necessary because of GSA's lack of resources due to the failure to fully implement the Brooks Act as Congress intended, delegations of procurement authority after the achievement of this concept would be the exception rather than the rule, and, as such, should be specifically justified by GSA on a case-by-case basis.

With the foregoing qualifications, we substantially agree with your department's analysis of GSA's discretion to delegate its procurement authority. We trust the foregoing satisfies the purpose of your inquiry.

Sincerely yours,



Comptroller General  
of the United States

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