



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Supply Schedule - Debt Collection Services

File: B-259975

Date: September 18, 1995

DIGEST

Agency authority under 31 U.S.C. § 3718 to contract for debt collection services is subject to the General Services Administration's authority under 40 U.S.C. § 481 to prescribe the method of procurement, including requiring agencies to purchase from a mandatory federal supply schedule.

DECISION

The Acting Chief Financial Officer of the Department of Labor has requested our opinion on whether the agency's Mine Safety and Health Administration (MSHA) is required to use a General Services Administration (GSA) mandatory federal supply schedule contract for its debt collection services. MSHA considers section 13 of the Debt Collection Act of 1982, 31 U.S.C. § 3718, as providing authority for it to contract for such services independent of GSA. We disagree.

Under the Federal Property and Administrative Services Act (FPAS Act), 40 U.S.C. § 481, the Administrator of GSA is authorized to prescribe policies and methods of procurement and supply of personal property and nonpersonal services for executive agencies to the extent that he determines that so doing is advantageous to the government in terms of economy, efficiency or service. 40 U.S.C. § 481(a)(1). The Administrator is also authorized to "procure and supply personal property and nonpersonal services for the use of executive agencies" 40 U.S.C. § 481(a)(3).

Pursuant to FPAS Act authority, the Administrator, GSA, established a federal supply schedule program. Under this program, GSA administers a mandatory federal supply schedule contract for debt collection service. Pursuant to section 8.404-3 of the Federal Acquisition Regulations, MSHA applied to GSA for a waiver from mandatory use of debt collection services listed in the federal supply

schedule. 48 C.F.R. § 8.404-3.¹ Section 8.404-3(a) provides: "When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the Commissioner"

MSHA maintained that it required and could get more comprehensive collection services from a debt collection agency that specialized in collecting debts within the mining industry. MSHA stated that while the cost of such specialized services could be higher, because of the familiarity of such firms with industry participants, the rate of return typically more than covered the additional cost of using a specialist firm. GSA denied the request for waiver because it concluded that the services provided by a specialist firm were no different than services currently provided by the schedule contractor. MSHA requested reconsideration of that determination and GSA reaffirmed its initial determination. In its request for reconsideration, in addition to arguing for a waiver, MSHA asserted that it had authority pursuant to section 13 of the Debt Collection Act, 31 U.S.C. § 3718, to contract on its own with a debt collection agency. MSHA has asked that we review this authority.

MSHA's question is one of statutory construction. It is a well established rule of statutory construction that statutes should be construed harmoniously so as to give maximum effect to both whenever possible. B-258163, Sept. 29, 1994; 53 Comp. Gen. 853, 856 (1947). We can easily harmonize both statutes here.

An agency's authority to procure particular goods or services is distinct from GSA's authority to prescribe how the procurement is to be accomplished or even to conduct the procurement itself. The Administrator of GSA is vested by statute with the authority and responsibility for determining policy and methods of procurement and to procure and supply personal property and nonpersonal services for executive agencies. 40 U.S.C. § 481(a)(1), (3). Civilian agencies are required to "make purchases and contracts for property and services in accordance with . . . implementing regulations of the Administrator." 41 U.S.C. § 252.

GSA has issued its implementing regulations as the Federal Acquisition Regulations. Section 8.404(b) provides: "Before soliciting commercial sources, executive agencies shall determine if the required supplies or services, or similar supplies or services fulfilling the same purpose, are available from schedules (see FPMR 101-26.4)." 48 C.F.R. § 8.404(b).² Further, "[o]rdering offices shall not initiate actions to

¹The Federal Property Management Regulations (FPMR) contain a similar waiver provision. 41 C.F.R. § 101-26.100-2.

² The FPMR provides that: "(a)ll executive agencies shall procure needed articles
(continued...)"

acquire similar items from nonschedule sources until a request for waiver is approved, except as otherwise provided in interagency agreements." 48 C.F.R. § 8.404-3(b).³

Section 13 of the Debt Collection Act, 31 U.S.C. § 3718(a), provides: "Under conditions the head of an executive or legislative agency considers appropriate, the head of an agency may make a contract with a person for collection services to recover indebtedness owed the United States Government" ⁴ Such contracts however, as with any other executive agency service contract, are subject to GSA's Federal Acquisition Regulations.

In the case of debt collection services, the prescribed method of procurement is the federal supply schedule and the accompanying regulations in section 8.401 et seq. We find support for this view in the legislative history of section 3718. Congress enacted section 3718 to dispel any doubts concerning the adequacy of agency authority to contract with debt collection agencies. See S. Rep. No. 378, 97th Cong., 2d Sess. 18-20 (1982).⁵ We find nothing in section 3718 or its legislative history that would exempt an agency from following the contracting policies and methods prescribed in the Federal Acquisition Regulations. The grant of authority to

²(...continued)

and services for Federal Supply Schedule contracts in accordance with the provision of the appropriate Federal Supply Schedule." 41 C.F.R. § 101-26.401. Exceptions to the mandatory use provision are set forth at 41 C.F.R. § 101-26.401-4 and also at 48 C.F.R. § 8.404-1.

³"Prior to initiating procurement directly from commercial sources, agencies shall determine whether the required commodities and services or similar commodities and services serving the required functional end-use purpose are available from a Federal Supply Schedule." 41 C.F.R. § 101-26.401.

⁴The Federal Claims Collection Standards, implementing the Debt Collection Act, provide that: "[a]ll agencies have authority to contract for collection services to recover delinquent debts" 4 C.F.R. § 102.6(a).

⁵Prior to 1981 GAO had maintained that federal agencies were prohibited from using private collection agencies. Although GAO modified that opinion on April 17, 1981, (46 Fed. Reg. 22353), most agencies were still reluctant to contract with private collection agencies. See S. Rep. No. 378, 97th Cong., 2d Sess. 18-20 (1982).

contract, absent more, is not equivalent to an exemption from the federal government procurement system. Accordingly, under the circumstances, we do not think that MSHA may contract for debt collection services outside of the GSA federal supply schedule system.

/s/Robert Murphy
for Comptroller General
of the United States

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