

Decision

Matter of: Bureau of Land Management: Payment of Pocatello Field Office
Photocopying Costs

File: B-290901

Date: December 16, 2002

DIGEST

Photocopying services procured by a Bureau of Land Management field office from a commercial source in violation of 44 U.S.C. § 501, requiring that all such services be procured through the Government Printing Office absent a waiver, were not authorized and may not be paid with federal funds.

DECISION

A certifying officer of the Bureau of Land Management (BLM), U.S. Department of the Interior, has requested an advance decision under 31 U.S.C. § 3529 regarding the payment of photocopying services incurred by the Pocatello Field Office in Idaho. For the following reasons, we conclude that absent a waiver, BLM's appropriated funds are not available to pay for the services because of the statutory prohibition on procuring such services from a commercial vendor.

BACKGROUND

When the BLM Pocatello field office was named as a party to a lawsuit in the federal district court, the field office assigned staff members to help the Interior Solicitor's office prepare documents needed for the lawsuit. The documents needed filled six large boxes and included monitoring files, case files, allotment files, trespass files, technical documents, drawings, photographs and odd-sized maps. Each document needed to be "Bate Stamped," meaning each page in the documents needed to be stamped, numbered sequentially by page and recorded into an index using a spreadsheet format.

The Interior attorney sent an e-mail message to the Pocatello staff member in charge as well as others at the field office on November 20, 2001, requesting that three copies of the material be provided to him by November 28. However, work on

assembling the documents did not begin until November 26 when the staff member in charge returned from leave. When notified of the delay, the Interior attorney agreed to an extension to December 10 for at least three copies of the files. Given the volume of records involved and the tight timeframes, the field office staff decided to use a local Kinko's to copy the documents. The records were delivered to Kinko's on November 28 and one copy was returned to the office for Bate Stamping on December 1. The first copy was paid for by credit card (\$2,109.90) by an authorized charge card holder.¹ The record was sent back to Kinko's and an additional eight copies were completed on December 4. The bill for the additional copies came to \$19,501.93. BLM has not paid that bill.

The BLM Idaho State Office issued guidance to all employees setting forth the procedures for obtaining printing and photocopying services, including the following:

“All printing services (printing, photocopying, binding, and collating) are required to be obtained through an established Government Printing Office (GPO) contract, or waivers can be granted from GPO. These waivers can normally be obtained with a simple phone call . . . In-house copy machines are to be used only for simple copy jobs (300 copied pages or less). The State Office has a local GPO photocopy contract which must be used for the larger jobs. This contract includes many services and, in most cases, can deliver in 24 hours.”

BLM Instruction Memorandum No. ID-2000-054, April 14, 2000. Since the Pocatello staff did not comply with these procedures in this case, the Pocatello Field Office submitted the procurement action for ratification of the unauthorized commitment to the Idaho State Office chief contracting officer and the State Director in accordance with BLM regulations. The regulations also include requesting concurrence from the Interior Solicitor for amounts exceeding \$2,500. BLM Manual 1510-1.602-3, June 15, 2000, and BLM Instruction Memorandum No. ID-201-004, Oct. 11, 2000. The ratifying officials declined to ratify the purchase of Kinko's services based on their determination that 44 U.S.C. § 501 and Federal Acquisition Regulation Part 8.8 require agencies to obtain printing and duplicating services through the Government Printing Office (GPO) or a GPO contract vendor in the absence of a waiver for the services to be performed at a commercial firm. “Ratification Action, Report of Unauthorized Procurement, Bureau of Land Management Printing at Kinkos,” signed by Julie Lewis, State Office Chief Contracting Officer (May 17, 2002), Kenneth M. Sebbby, Solicitor (May 22, 2002) and

¹ BLM has indicated that if we determine that payment in this case is not authorized, it will seek recovery of the amount inappropriately charged. Letter to Thomas H. Armstrong, Assistant General Counsel, GAO, from Julie Lewis, Procurement Analyst, BLM, Sept. 16, 2002.

Jonathan S. Fost, Acting State Director (May 23, 2002) (hereafter, "Ratification Determination"). The Ratification Determination stated that GPO will not issue a waiver for more than \$1,000.00 or issue a waiver retroactively. Id. at 2. The Determination also noted that the price charged by Kinko's was substantially higher than the GPO contract vendor negotiated rates, and that there was a GPO vendor in Boise that could have facilitated the project by the due dates at a lower cost of \$5,791.27. Id.

DISCUSSION

With certain exceptions not pertinent here, all printing and binding for the government "shall be done" at the GPO, absent a waiver from the Joint Committee on Printing (JCP). 44 U.S.C. § 501. See B-300192, Nov. 13, 2000. The term "printing" includes the process of duplicating using a photocopy machine. See Legislative Branch Appropriations Act, 1993, § 207, Pub. L. No. 102-392, 106 Stat. 1703, 1719 (1992), as amended by Pub. L. No. 103-283, 108 Stat. 1423, 1440 (1994) (reproduced at 44 U.S.C. § 501 note); B-251481.4, Sept. 30, 1994. The Public Printer may authorize an executive department, independent office, or establishment of the government to purchase such printing directly if he determines that the GPO is not able or suitably equipped to execute the printing or if it would be more economical or in the best interest of the government to have the printing performed elsewhere. 44 U.S.C. § 504. Here, according to Interior officials, GPO had a mandatory contract in place with a vendor in Boise, Idaho who in fact could have performed in a timely manner at considerably lower cost. Ratification Determination at 2. The Ratification Determination also stated that GPO will not retroactively waive the requirement to use a GPO source.²

In this case the employees who contracted for the Kinko's duplicating services did not follow the procedures outlined in the BLM Instruction Memorandum No. ID-2000-054 or seek a prior waiver from the GPO. According to the Pocatello Field Office Manager, the staff involved were apparently unaware that it was mandatory to contact the Idaho State Office for large copying jobs and believed that the logistics of handling the large volume of documents justified the use of the local Kinko's. Memorandum from Jeff Steele, Pocatello Field Office Manager, to Idaho State Office, Attn: Procurement Analyst, "Ratification of Expenditures for Copying Costs," Dec. 12, 2001. However, as the Ratification Determination indicated, the available GPO contractor could have delivered the records on time and less expensively than the Kinko's. Consequently, since there was no authority to contract with Kinko's for the photocopying services, the contract imposed no legal obligation on the government. The United States is neither bound nor estopped by the acts of its

² The official in GPO's Office of General Counsel responsible for reviewing agency requests for waivers advised us that GPO as a matter of practice refuses to grant waivers retroactively.

employees in entering into, approving, or purporting to authorize the contract even though the government may have received the benefit of the photocopying. See B-251481.4, Sept. 30, 1994; B-178496, Oct. 9, 1973.

Accordingly, we have no basis to authorize payment of the photocopying services procured by the field office staff from Kinko's. We understand, however, that the Joint Committee on Printing will consider granting a retroactive waiver in some circumstances, and BLM may consider requesting such a waiver in this case. See 72 Comp. Gen. 291 (1993); B-251481, Feb. 23, 1993; B-163762, Sept. 2, 1975.

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