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The Honorable Edmund S. Muskie
United States Senate

Dear Senator Muskie:

On January 19, 1973, you requested that we send you a report on the details concerning the ~~unavailability~~ of Government-owned equipment to the current Metal Allison, division of the General Motors Corporation, Indianapolis, Indiana. The General Services Administration (GSA) is negotiating the sale of the equipment located in the contractor's plant. Our comments are directed to those matters referred to in your letter and discussed with staff members of the Subcommittee on Intergovernmental Relations.

Summary of the

The long-term objective of the Department is to minimize its ownership of fixed assets, subject to the need to provide an stable profile of government-owned facilities in order to protect the essential defense industrial base. Under the Federal Property and Administrative Services Disposal Legislation (PL 92-463), Subsection (3) of the Disposal Act, the Department's policy is that contractors furnish all facilities required for the performance of Government contracts. In furtherance of this policy, the Department is conducting a program to phase out contractor use of Government-owned facilities.

The Departments of the Air Force and Army have determined that the Government-owned equipment at the Allison facility must be retained for ongoing and future defense production requirements. Since the equipment is required by Allison to produce defense items, it is not considered excess to the needs of the Air Force and Army. However, as long as the remaining contractor agrees to purchase the equipment and make it available to the Government for its future needs, the equipment is considered to be "excess to government ownership." If Allison refuses to buy the equipment, or for some other reason the sale is not arranged, the Air Force and Army will withdraw the offer.

GSA is selling the equipment under section 203(e)(3)(C) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 44(c)(3)). Subsection (3) contains exceptions to the provision of the act which states that all dispositions shall be made after publicly advertising for bids. Paragraph (C) of Subsection (3) provides the following exception that:

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"With respect to real property only, the character or condition of the property or unusual circumstances make it impractical to appraise publicly for competitive bids and the fair market value of the property and other necessary terms of disposal can be obtained by negotiation."

GSA officials advised us that some of the Government-owned equipment at the Allison facility is nonreversible and is considered to be the same as real property. Several other reversible Government-owned equipment would match the production capabilities of the facility. GSA officials claim that the reversible equipment is considered to be integral part of the real property within the meaning of the definition of the act. Since the contractor has contractual responsibility to use all equipment for defense purposes, it would be impractical to sell only nonreversible equipment to the operating contractor and interrupt production schedules by disposing of nonreversible equipment through normal disposal procedures. GSA claimed a GSA official firm to immediately appraise the value of Government-owned equipment at the Allison facility and this would include a holding sale, thus appraising their value.

Initiating legislation is not yet in effect since of reversible equipment there is no authority held by contractor unless it is held in a leasehold interest where Government liability is non-reversible and cannot legally hold as real property.

Legislation to permit direct sale of personal property equipment to holding contractors through negotiation has been introduced in the Congress on several occasions. We have supported such legislation on the basis that it would facilitate DOD's efforts to phase out ownership of Government-owned equipment at contractors' plants.

While it can be argued that it is not entirely appropriate for GSA to refer to section 203(e)(3)(G) of the Federal Property Administrative Act in support of this sale, it should be pointed out that the Commission on Government Procurement has recognized that the Department of Defense's efforts to divest itself of equipment has been hampered by the lack of clear authority to negotiate sales of equipment owners to Government ownership to the holding contractor. In its report, the Commission has recommended that legislation be enacted to authorize the negotiated sale of equipment which is excess to Government ownership but not to Government requirements. The sales agreement should provide adequate protection to the Government for its future needs of the equipment when competition is not feasible.

In discussing the case with our representative, he questions why the government had not paid part of a rent charge when the Air Force had the right to either withdraw or add to the number of facilities authorized to them, as the time, the Army had re-located their facilities and equipment. It was considering retaining the existing facilities, but it decided to add more, the acquisition department for the Air Force stated they had no position other than that of the Air Force. The majority for 20 years from the date of the case.

AMENDMENT TO THE CONTRACT
TO ADD EQUIPMENT

Air Force contract F33-63744-C-114, originally with ALBET, was modified by a written addendum on the AMR 7-702.12, use of Government owned equipment. The addition of equipment is necessary for continued performance, and is provided usually to meet the requirements for training. The AMR 7-702.12 specifies that both addenda and original contract are considered Administrative Contracting Officers.

Contracting officers are required to make arrangements which will insure that the contractor will make available to the government the type of equipment required for the contract. The equipment must be equal to that required for the contract and be suitable for the purpose for which the equipment is required and complies with all requirements.

FEE FOR USE FOR GOVERNMENT EQUIPMENT
NOT PROVIDED BY GOVERNMENT UNDER
THE CONTRACT

The criteria governing payment of rent by contractors for use of Government owned equipment are contained in AFMR 7-702.12, the "Use and Charges" clause which is required to be included in all facilities contracts. The requirements of the use and charges clause are generally implemented by a written agreement which supplements the facilities contract. The length of time covered by each rent payment is subject to an agreement between the contractor and the government, but it cannot be less than 1 month or more than 6 months. Rental rates--are fixed in percentages--are based on the size and/or type of equipment and are uniform for all facilities contracts.

The use and charges clause provides that the full rent due for the rent period is to be computed by applying the specified rental rates contained in AFMR to the acquisition costs of the items authorized to be rented. The full rents is to be reduced by a credit for

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use of equipment which has been specifically authorized in advance as rent-free. Similarly, rent-free use is that part of the use application to work on government contracts and subcontractors.

All or entitled to receive payment on the basis of Government value to contractor. This would entitoware to compute the cost of delivery of direct labor hours, tools, machine hours, or other creditable resources.

Proprietary rights of the govt. in
to contractor's property

Much of the equipment used by government funds is in the early stages of its life: V-22 aircraft engines (2000 per month) and C-130 aircraft engines. Thus, since the plant initially was given an estimated useful life of more than 20 years ago, we did not require the contractor to furnish Government-owned property to the contractor. A-37. A contractor could during the Korean conflict target the plant, and it did. Similarly, Allison is providing the govt. with a new engine conversion on the A-7 aircraft. All of this equipment is in the early stages of its life, and it is difficult to identify. Therefore, the govt. does not have any specific rights in this equipment. It is the contractor's responsibility to furnish this equipment.

Re: G. Equipment utilization

There is a significant and increasing use of government-owned equipment by contractors. As you know, generally, it is DOD policy to encourage contractors to finance in their own equipment to perform the Government's contract out the same line of large holdings of plant equipment. Since it is a major cost difference to align equipment in an integrated production system, leasing is not uncommon particularly at commercial-owned plants. Leasing also occurs in Government-owned plants, especially those operated by the Air Force. In both situations, government equipment can be readily identified since it is rental. Responsibility for management of equipment under this lease-type contract is vested in the Air Force Plant Representative, located at the contractor's plant.

We trust that this information is responsive to your request. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Very truly yours,

James P. Roberts
Comptroller General
of the United States

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