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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195133

DATE: January 19, 1981

MATTER OF: Bureau of Indian Affairs - Procurement of lodgings and meals for employees on temporary duty.

DIGEST:

1. A Government contracting officer may contract for rooms or meals for employees traveling on temporary duty. Appropriated funds are not available however, to pay per diem or actual subsistence expenses in excess of that allowed by statute or regulations, whether by direct reimbursement to the employee or indirectly by furnishing the employee rooms or meals procured by contract. Because of the absence of clear precedent, the appropriations limitation will only be applied to travel performed after the date of this decision.
2. When a contracting officer procures lodgings or meals for an employee on temporary duty and furnishes either to the employee at no charge, the lodgings plus system is normally inappropriate and a flat per diem at a reduced rate should be established in advance.
3. When an employee submits a travel voucher which includes three different trips, the average cost of lodging is determined by dividing the total amount paid for lodging by the traveler during the three trips by the number of nights lodging was or would have been required.

This action is in response to a request from Donald M. Gray, an authorized certifying officer of the Department of the Interior, Bureau of Indian Affairs (BIA), Albuquerque, New Mexico, for an advance decision concerning various questions raised by six

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vouchers. These questions arise because contracting officers of the BIA have directly procured rooms or meals from hotels for travelers during the performance of the travelers' temporary or authorized training duty. We shall discuss the three main general issues and then answer the specific questions raised by each voucher.

1. May a Government contracting officer contract for rooms and meals for employees on temporary duty?

Normally, an individual employee on temporary duty is responsible for obtaining and paying for his own lodging and meals. The employee then submits a voucher which details his expenses and he is reimbursed on the basis of the voucher. This is the usual method of incurring and paying for travel expenses.

We have found no express prohibition that would prevent an agency from contracting for lodgings or meals, other than the restriction in 40 U.S.C. § 34 (1976) on the rental of space in the District of Columbia. Thus, a Government contracting officer may enter into a contract with a commercial concern for rooms or meals, or both, for employees on temporary duty. However, since it is well established that officers of the Government may not do indirectly that which a statute or regulation forbids doing directly, we conclude that the statutory and regulatory limitations on per diem rates or actual expense rates are equally applicable to contracts or purchase orders entered into by agencies for lodgings or meals. Thus, appropriated funds are not available to pay for subsistence expenses in excess of the amounts authorized by statute or the implementing regulations, regardless of whether the employee is reimbursed for such expenses or the agency has procured lodgings or meals by contract. Because of the lack of precedent in this area, the above-stated limitation on the use of appropriated funds for travel expenses will only be applied to travel performed after the date of this decision.

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2. Should the amount paid by the Government by contract with a vendor for lodging or meals for an employee on temporary duty be applied to the \$35 per diem limitation contained in 5 U.S.C. § 5702?

At the time in question, the statute which establishes a per diem rate, 5 U.S.C. § 5702 provided in pertinent part:

"(a) Under regulations prescribed under section 5705 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$35,
* * *."

The applicable regulations promulgated pursuant to this statute provided:

"Reimbursement for official travel within the limits of the conterminous United States shall be a daily rate not in excess of \$35 except when actual subsistence expenses travel is authorized or approved due to the unusual circumstances of the travel assignment or for travel to a designated high rate geographical area as provided in 1-8.1."

Federal Travel Regulations (FTR) 1-7.2a, FPMR 101-7, Temp. Reg. A-11, Supp. 4, April 1977.

Both the statute and regulation quoted above imposed a \$35 limitation on the amount of money to which an employee is entitled or may be reimbursed while in a per diem status on temporary duty.

The regulations also provided that, in order to establish a per diem rate, the average amount which

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the traveler pays for lodging should be used. See FTR para. 1-7.3c(1)(a). The regulations do not specifically address the issue as to how to treat the amount paid under a contract with a commercial concern for lodging and/or meals in determining the proper per diem or actual expense entitlement. If a Government contracting officer procures food and/or lodgings for an employee on temporary duty either no per diem should be allowed or a reduction should be made from the amount otherwise allowable to the employee as appropriate. FTR para. 1-7.6f.

In instances where it is known in advance that rooms will be furnished to the employee under a contract for the entire trip the lodgings plus system is normally inappropriate in such cases. Rather, a specific per diem rate appropriately reduced, should be established in advance under FTR para. 1-7.3c.(3) FPMR 101-7, Temp. Reg. A-11, Supp. 4, May 1, 1977. In that regard, it is pertinent to note that the training act, 5 U.S.C. § 4101 et seq. specifically provides for direct arrangements with a school or other institution sponsoring training courses for lodgings, meals and other necessary costs of training. If the training cost charges include lodging and meal costs as an integral part of the charges they would be considered a "necessary cost of training" payable by the Government. A reduced per diem rate, if appropriate, still would be allowed to the employee. If charges submitted by sponsor for the training course do not include lodging or subsistence costs the per diem rate or subsistence charges should be treated as indicated above for temporary duty travel.

3. Should lodging procured by a Government contracting officer be considered Government furnished quarters?

If such a reduced per diem rate is not established in advance, the Federal Travel Regulations provide that when meals or lodging are furnished without charge or at a nominal cost by a Federal Government agency at a temporary duty station, an appropriate

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deduction shall be made from the authorized per diem rate. FTR para. 1-7.6f, FPMR 101-7, May 1973. Hence, we conclude that when the Government rents rooms, and/or meals by purchase order for employees on temporary duty, these rooms or meals should be treated as Government furnished quarters or meals. Thus, a reduction in per diem otherwise due is required in such cases. In the case of actual expense travel no reimbursement would be made for meals or lodgings furnished by the Government.

We will now answer the specific questions raised by the certifying officer which pertain to the six vouchers submitted.

INDIVIDUAL VOUCHERS

A. Emil Kowalczyk, an employee of the BIA, traveled on temporary duty between Juneau, Alaska, Seattle, Washington, and Denver, Colorado, from February 19, 1979, to February 28, 1979. For 6 of the 9 nights he traveled, the Government procured lodgings for him by purchase order at a total cost of \$147.52. For the days he procured his own lodgings he did not provide receipts nor did he claim to have spent any specific amount. In his travel voucher, Mr. Kowalczyk claimed \$35 per diem for the portions of the trip which involved his securing his own lodgings and \$16 per diem for the portions of the trip in which the lodgings were paid by the BIA. The certifying officer determined that this method of computing reimbursement was inappropriate because it could result in charges to the BIA in excess of the \$35 limitation in 5 U.S.C. § 5702 (1976). The BIA computed reimbursement by combining all costs of lodging, including the amounts paid by purchase order by the BIA, and divided that total by the number of nights which lodgings were required. To complete the lodging plus computation the certifying officer added \$16 a day to the lodging cost, and a \$33 per diem rate was established and applied according to the appropriate regulation. After the computation of the per diem allowance, the certifying officer deducted the exact

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amount paid by the BIA for Mr. Kowalczyk's lodgings. We find no objection to the certifying officer's method for computing per diem in these particular circumstances as there are apparently no excess costs chargeable against Mr. Kowalczyk.

B. The second travel voucher was submitted by Mr. Peter Soto who traveled to Denver, Colorado, on temporary duty from April 16-19, and secured lodgings by a Government purchase order for \$28 per night. Mr. Soto claims per diem expenses of \$16 a day for 4-3/4 days. Since the combination of the costs of lodging and other expenses would exceed the limits set by 5 U.S.C. § 5702 the certifying officer refused to certify this amount and asks us who should bear the excess cost. Any excess costs resulting from hotel accommodation charges normally in the future will be regarded as being in violation of the above stated rule limiting the availability of appropriations. However, as stated above, since there has been some confusion in this area and no decision of this Office has stated a clear rule, the limitation on the availability of appropriations for such excess costs will only be applied to travel performed after the date of this decision. Accordingly, the amounts claimed are allowable, if otherwise proper.

The certifying officer also asks what documentation should support the traveler's vouchers regarding the cost of lodging supplied by the purchase order. Regulations state that lodging receipts may be required at the discretion of each agency. FTR para. 1-7.3c(a) supra. Therefore it is up to BIA to decide if employees should supply receipts.

C. The third voucher covers three separate trips made by Mr. Daniel Sadongei, whose official duty station was Anadarko, Oklahoma. On the first trip, from Anadarko to Oklahoma City, from February 28 to March 2, 1979, Mr. Sadongei claimed only a mileage allowance and turnpike tolls since lodging and meals were paid by Government purchase order. Mr. Sadongei's second trip was from Anadarko to Horton, Kansas, from

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March 4 to 9, and his final trip included on the voucher was to Pawnee, Oklahoma, from March 13 to 14. In computing his per diem, he figured out the average cost of lodging to be \$13.42 for the two trips together. The issue is when an employee includes three trips on one voucher should per diem for each trip be computed separately or should per diem for the three trips be computed together.

The Federal Travel Regulations clearly state that in order to compute the average cost of lodging, the total amount paid for lodging during the period covered by the voucher should be computed. FTR para. 1-7.3c(1)(a). The General Services Administration has informally advised us that the purpose of this regulation is to allow an employee some latitude if he is faced with a situation in which the cost of lodging in one area is more expensive than another. In this way the employee can average in less expensive trips with others that cost more. However, when an employee exercises his option and includes more than one trip on a travel voucher, all the trips must be counted together in order to compute per diem expenses. This rule would normally apply to Mr. Sadongei's case. However, in view of the confusion in this area, referred to above, we will not object to payment for subsistence as claimed by the employee, notwithstanding any excess cost that may have resulted from the use of the purchase order.

COMMERCIAL VOUCHERS

The next three vouchers which the certifying officer has sent to us concern billing from commercial vendors directly to the Government for services rendered employees of the Government. None of the vouchers cover a situation in which the lodging costs or meal cost is part of a training course package under which such costs are a part of necessary costs of training. Accordingly, these vouchers will be treated as if they were for travel on regular temporary duty.

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D. Three employees of the BIA traveled to Tempe, Arizona, from March 13 to March 30, 1979, to attend a training conference at Arizona State University. On March 6, 1979, Duane Marion, contracting officer for the BIA, issued an order for supplies or service (Standard Form 147) to the Holiday Inn in Tempe, Arizona, for lodging and meal costs for these employees. BIA was billed \$493.65 for each employee which included \$312 for room and \$181.65 for food. The certifying officer has not paid this bill since he states that the average cost per day per employee is \$41.11 and this is in excess of the limitation contained in 5 U.S.C. § 5702.

The certifying officer asks whether the voucher should be paid in full and if the voucher is paid, who should bear the cost of payment. If the employee must pay back some money, the certifying officer also asks whether the employees should submit a travel voucher, even though there might not be an additional claim. The certifying officer asks if the voucher could be treated on an actual subsistence basis in a per diem area. Finally, the certifying officer inquires into the itemization necessary by the vendor to determine the correctness of the claim.

Earlier in this decision we held that a Government contracting officer may procure rooms or meals from a commercial concern for employees on temporary duty, provided the cost is not in excess of that authorized by statute to be paid for per diem or actual subsistence expenses. The second issue which must be decided before the Government may pay Holiday Inn is whether the Government entered into a contract with the Holiday Inn for hotel accommodations or whether the agency personnel just reserved a room on behalf of an employee. We have examined this issue in cases where a room reserved by an agency was not used and the employees and the agency failed to cancel the reservation. We have held that if a contract existed between the Government and hotel, then the Government is liable to pay for the rooms, 51 Comp. Gen. 453 (1972) and 41 Comp. Gen. 730 (1962), but

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if there is no contract then the Government is not obligated to pay. Richard E. Cunningham, B-192804, December 18, 1978; B-181286, December 5, 1974.

In this situation Standard Form 147 establishes the fact that a contract existed between the Government and the hotel. Since Holiday Inn supplied the services as requested, the Government is liable to pay for the rooms and meals on the basis of the contract. In the future, agencies are not authorized to expend appropriated funds for any such excess costs.

The next question that the certifying officer asks is whether or not the travelers should submit a travel voucher even though there may be no additional claim. Federal Travel Regulations provide that agencies are authorized to prescribe the manner of submitting vouchers for travel. FTR para. 1-11.4. We believe BIA must decide for itself whether the proper administration of its official travel requires that vouchers be submitted where no reimbursement is claimed.

The certifying officer inquires into what type of itemization is required when the vendor submits a bill. Since the vendor is paid on the basis of the contract established by the purchase order, the vendor must show that the services rendered are covered by the contract.

In this regard we have held that coffee, soft drinks and similar refreshments are in the nature of entertainment and are not payable from appropriations for necessary expenses in absence of specific statutory authority. 47 Comp. Gen. 657 (1968), B-188078, May 5, 1977. We have also held that where an employee is authorized actual subsistence incident to official travel, expenditures made by him for coffee during coffee breaks may not be reimbursed since such expenditures are not necessary expenses of subsistence under the Federal Travel Regulations. Samuel S. Roy, B-197830, April 22, 1980. It is incumbent upon the

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hotel to itemize its bill so that the agency uses appropriated funds only for necessary items of subsistence. Therefore, this voucher should be paid if the goods and services provided were reimbursable under the Federal Travel Regulations.

E. An acting procurement officer for the BIA, issued Standard Form 147 to a Holiday Inn in Oklahoma City for meals and lodging for BIA employees to attend a Social Services Staff Meeting and Motivation Seminar from March 22 to 23, 1979. The only restriction on Standard Form 147 was that the cost was not to exceed \$2,500. There also was a statement on Standard Form 147 that the Holiday Inn was the only hotel having conference space and sleeping rooms available on the dates of the meeting. The total bill submitted to the certifying officer for payment was \$1,077.36, for a total of 25 people. This bill comes out to a total of approximately \$21.50 per person for each day.

The certifying office asks if this type of Blanket Authorization is legal because of the potential that some employees would exceed the \$35 per diem limitation established in 5 U.S.C § 5702.

As we have previously stated, a contracting officer can contract for rooms and meals for employees on official travel only within the limitations of the per diem and actual subsistence expenses authorized by statute or regulations. Here the total cost divided by the number of employees came out to about \$21.50 per day. Since this is less than the per diem maximum, the certifying officer need not examine individual costs to make sure that each employee was under the per diem or subsistence maximum.

F. The last voucher concerns a commercial bill submitted by employees and students and teachers on a field trip. The certifying officer asks if this is the proper method for covering the expenses of teachers and students on a field trip. The certifying officer also asks if students are subject to the

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per diem limitation established in 5 U.S.C. § 5702 under the circumstances.

We believe that a contracting officer may procure rooms for employees and students on a field trip as long as it is necessary to conduct official business. The determination as to whether the trip is necessary to conduct official business should be made by an appropriate agency official. Under these circumstances, we would not object to this type of procurement. The per diem limitation set forth in 5 U.S.C. § 5702 is applicable in this situation and the amount due shall be computed consistent with the discussion in the other situations covered in this decision.

The certifying officer asks if a traveler on temporary duty may be required to eat and lodge at a specific place. The general rule is that agencies may not require its employees to use Government quarters while on temporary duty without making the finding that use of such quarters was necessary to accomplish the employee's mission. Federal Aviation Administration, B-195859, March 18, 1980. The "necessity" determination cannot be made on a blanket basis but must be tailored to each particular situation. We are not aware of any similar requirement in law for such a determination in the case of meals. However agencies should only require meals at a specific place when it is clearly required by the circumstances and only after consideration of both the Government's and employee's interest. Generally, we would not object to the use of the same test, namely, whether it is "necessary to accomplish the employee's mission." This would place quarters and meals on the same basis. An example of a situation requiring furnished meals and quarters are certain training courses.

Milton J. Fowler

For the Comptroller General
of the United States