

LEGALITY AND COSTS OF SERVICE CONTRACTS

I think it is well to keep in mind here, Mr. Chairman, that there are two distinct aspects of this problem. One is the question of legality, which goes to the question of whether or not an employee is actually an employee of the contractor and operating under his supervision and direction, and therefore in the position of rendering a contractual service to the Government, or whether the contractor is in fact only supplying manpower, who for all practical purposes are under the supervision and direction of the Government. In such cases, they are tantamount to being Government employees, although actually being paid through a contract. This is the legal question that the Civil Service Commission addressed and outlined in the course of its opinion some six tests for criteria which the agencies could utilize in judging whether or not there was a contractual relationship, or whether it was actually an employee-employer relationship that existed.

We feel that the six criteria, while they may have to be revised in the light of experience, will for the first time give needed guidance as to legal determinations, but the second part of this problem has to do with relative costs, the cost of providing a service by the Government directly as against providing that service by contract, and this is the area that we have been most directly concerned with.

I think that leads us right into the next point here. We have been interested in the question of lease versus purchase of facilities by contractors.

LEASE VERSUS PURCHASE OF FACILITIES BY CONTRACTORS

Government contractors frequently rely on other private enterprises for furnishing, under lease agreements, land and buildings for use in performing Government contracts.

We have performed a review at 20 locations of 17 major contractors for the purpose of ascertaining the effect on costs to the Government of the practice by contractors of leasing land and buildings to be used extensively in the performance of Government contracts. The sales to the Government resulting from contractor operations at these 20 locations amounted to about \$4.3 billion in 1966.

In this review we compared the costs to the Government resulting from contractors' leasing arrangements with the estimated cost the Government would have incurred if the contractors had owned the land and buildings directly. In making these comparisons, we used property values based on actual costs, sales prices, appraisals, or other related data obtained from the contractors or local taxing authorities.

We identified 63 leasing agreements which committed the contractors to pay rentals of about \$95.3 million during the initial lease periods for land and buildings. We found from our review of these leasing agreements that in every case but one, leasing was more costly to the Government during the periods of the initial leasing.

Chairman PROXMIRE. In 62 of 63 agreements the leasing was more expensive to the Government than it would have been—

Mr. STAATS. If the contractor had owned the property.

Chairman PROXMIRE. If the contractor had owned it.

Mr. STAATS. Right.