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Home and Automobile Security Systems for U.S. Customs Service Personnel

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Matter of: Home and Automobile Security Systems for U.S. Customs Service Personnel File: B-251710 Date: July 7, 1993

APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability Purpose availability Security safeguards APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability Purpose availability Appropriation restrictions Leasehold improvement The U.S. Customs Service may use appropriated funds to purchase home and automobile security devices for agents stationed in Puerto Rico and the U.S. Virgin Islands based on Customs' determination that such devices are needed to address safety concerns arising from Customs' law enforcement activities. Customs may use funds for permanent improvements to private property to the extent the four factors identified in our cases are present. See, e.g., 69 Comp. Gen 673 (1990).

DECISION The Commissioner of the U.S. Customs Service (Customs) has asked whether Customs may use appropriated funds to purchase home and automobile security systems for agents stationed in Puerto Rico and the U.S. Virgin Islands. We conclude that Customs may provide security systems for threatened Customs employees and their families consistent with the criteria discussed below.

BACKGROUND

For several reasons, the Special Agent in Charge, Caribbean Area, has concluded that Customs' law enforcement activities in Puerto Rico and the Virgin Islands are placing its personnel in danger. These reasons include: a generally high level of drug-related and violent crime; many attacks on local law enforcement officers; possible corruption within local law enforcement agencies; a history of anti-U.S. terrorist activity; and specific threats against Customs personnel. Customs has concluded that these dangers are directly related to the work of its employees, and are undermining the effectiveness of its law enforcement operations. Accordingly, the Special Agent in Charge has proposed that Customs provide home and automobile security systems for Customs personnel in these areas. The Commissioner supports his proposal and asks whether appropriated funds may be used to implement it.

DISCUSSION

We have previously concluded that federal agencies may use appropriated funds to pay the costs of protecting threatened federal officials. E.g., 71 Comp.Gen. 4 (1991); B-225089, Sept. 21, 1987. For example, we have stated that

"if a Government official were threatened or there were other indications he was

in danger, and if it were administratively determined that the risk were such as to impair his ability to carry out his duties, and hence to affect adversely the efficient functioning of the agency, then funds of his agency, the use of which was not otherwise restricted, might be available to protect him, without specific statutory authority."

54 Comp.Gen. 624, 628, modified, 55 Comp.Gen. 578 (1975).

In addition, Congress has recognized the need of federal law enforcement agencies to help protect the lives of threatened law enforcement personnel and their families. See 5 U.S.C. Sec. 5706a (1988). Accordingly, because its employees are subject to specific threats directly related to their work, Customs may provide security for threatened personnel and their families in Puerto Rico and the Virgin Islands.

However, Customs must take certain considerations into account in providing home and automobile security systems. The record before us suggests that parts of the security systems that Customs would provide may be portable pieces of equipment, while other parts may be permanently installed fixtures. Any security equipment provided to Customs' personnel and their families that is portable must be treated as "organizational issue" -i.e., government property that may be used only for official purposes and which Customs must ensure will remain government property. Cf. B-200154, Feb. 12, 1981.

Regarding any parts of the security systems that may be installed as permanent fixtures, our cases have recognized limited exceptions to the general rule against using appropriated funds for permanent improvements to private property. We have not objected to federal agencies making permanent improvements to private property when four factors are present. First, the improvements must be incidental and essential to accomplishing the purposes of the appropriation involved. Second, the costs involved must be reasonable. Third, the federal government must be the primary beneficiary of the improvement. Finally, the agency must protect the federal government's interest in the improvements. E.g, 69 Comp.Gen. 673, 675 (1990). Where the permanent improvement is being made to property leased by the government, the government may protect its interest in the permanent improvements through the contract establishing the landlord-tenant relationship between the owner and the government. Where the property is leased or owned by a Customs employee, Customs should consider whether a provisional agreement with the property owner or employee concerning disposition of the improvements is necessary. See 71 Comp.Gen. at 6.

We think the case before us is analogous to 71 Comp.Gen. 4 (1991), in which we did not object to the Drug Enforcement Administration making permanent improvements to a private residence to help alleviate safety concerns for the Administrator. To the extent the nature and cost of the specific improvements Customs makes in Puerto Rico and the Virgin Islands allows it to satisfy the four factors described above, we reach the same conclusion here.