

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, **D.C.**

DATE: March 6, 1989
CASE NO. 84-CPA-3

IN THE MATTER OF
CHICANO EDUCATION AND MANPOWER SERVICES,

v.

UNITED STATES DEPARTMENT OF LABOR.

BEFORE: THE SECRETARY OF LABOR

ORDER

In an order entered January 20, 1989, the United States Court of Appeals for the Ninth Circuit granted the motion of the Department in this case that the matter be remanded to the Secretary **"for** the limited purpose of determining whether the March 14, 1988 decision and order [of the Secretary] should be amended to include the King-Seattle **Employment** and Training Consortium [sic] as a party liable for repayment of the **\$104,954.74** in disallowed **costs.**" For the reasons discussed below, I find that amendment of the March 14, 1988, decision and order is appropriate and that the Seattle-King County Employment and Training Consortium (SKCETC) is liable for repayment of the disallowed costs.

On February 13, 1989, I issued an Order to Show Cause why the March 14, 1988, decision should not be amended to include the

Seattle-King County Employment and Training Consortium as a party liable for repayment of disallowed costs. Chicano Education and Manpower Services (CEMS) and SKCETC responded to the Order to Show Cause. The Grant Officer did not file a response.

In response to the Order to Show Cause, SKCETC argued in its Memorandum to Show Cause Why the Secretary's Decision and Order should Not Be Amended that to amend the order would prejudice the interests of the members of the former consortium because the consortium did not fully participate in appellate proceedings before the Secretary. (SKCETC's Memorandum asserts that the SKCETC, a consortium of local governments in the Seattle-King County area of Washington, no longer exists.) ^{1/} SKCETC also argued that none of the member local governments of the consortium has had notice of these proceedings. ^{2/} SKCETC and

^{1/} I would note that the SKCETC had an opportunity to protect its interests when the Final Determination of the Grant Officer (F.D.) was issued in 1983, but in failing to request a hearing either on the substantive nepotism issue or its liability for repayment of disallowed costs, it chose not to do so. See -20 C.F.R. § 676.88(f) (1988).

^{2/} I would also note that the SKCETC itself, which presumably was the agent of the members for all purposes here relevant, was served with the F.D. and the F.D. was served on the mayors of the member local governments. In addition, attorneys for the SKCETC filed a Notice of Appearance and Intent to participate "in all stages of this proceeding" with the Administrative Law Judge on December 13, 1983. The SKCETC joined in the Proposed Findings of Fact and Conclusions of Law of CEMS on February 8, 1985. The ALJ's Decision and Order was served on the attorneys for the SKCETC on February 13, 1985, the Secretary's Order asserting jurisdiction pursuant to 20 C.F.R. § 676.91(f) was served on SKCETC's attorneys on April 1, 1985, and the Final Decision and Order of the Secretary was served on SKCETC's attorneys on March 14, 1988. The SKCETC and its member governments can hardly

CEMS also argued that Rule 60 of the Federal Rules of Civil Procedure affords no basis for amending the order, that reopening the proceedings would be inappropriate, and that I lack jurisdiction to amend the Final Decision and Order. ^{3/}

The arguments of CEMS against remanding this matter and correcting the March 14, 1988, decision were made to the Court of Appeals and rejected. Therefore, I need not consider them here. The arguments of SKCETC have been considered and I do not find them persuasive. I find that the failure to include SKCETC as a party liable for repayment of the disallowed costs in the March 14, 1988, decision was an inadvertent omission. It is well established that a prime sponsor is responsible for violations of CETA and the regulations by its contractors and subgrantees.

San Diego Regional Employment and Training Consortium v. Donovan, 713 F.2d 1441, 1444 (9th Cir. 1983); City of Oakland v. Donovan, 703 F.2d 1104, 1107 (9th Cir. 1983); Commonwealth of Kentucky

claim to have had no notice of these proceedings or that due process has been denied them.

^{3/} I do not consider this order to be a reopening of the proceedings in this case, but rather, as described in the text, the correction of an oversight. There can be no question of lack of jurisdiction to make this correction because the Court of Appeals has remanded this matter to me for this express purpose.

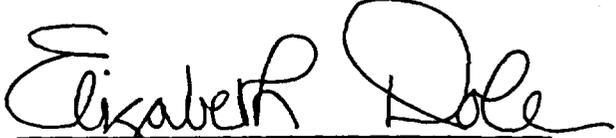
With respect to **SKCETC's** argument based on Rule 60(a) of the Federal Rules of Civil Procedure, the Supreme Court has held that "[i]t is axiomatic that courts have the power and the duty to correct judgments which contain clerical errors or judgments which have been issued due to inadvertence or mistake. ... [In addition) the presence of authority in administrative officers and tribunals to correct such errors has long been recognized" American Trucking Association v. Frisco Co., 358 U.S. 133, 145 (1958).

Department of Human Resources v. Donovan, 704 F.2d 288, 293 (6th Cir. 1983).

Therefore, the last sentence of the Final Decision and Order issued March 14, 1988, is amended as follows:

Seattle-King County Employment and Training Consortium and Chicano Education and Manpower Services are jointly and severally liable for the funds disallowed in **violation** of the applicable nepotism provisions and they are hereby ordered to reimburse the Employment and Training Administration of the United States Department of Labor from non-CETA funds the sum of **\$104,954.74**.

SO ORDERED.


Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: In the Matter of Chicano Education and Manpower Services v. U.S. Department of Labor

Case No. : 84-CPA-3

Document : Order

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