

amount of funds authorized under them was \$389,685.³ Under the terms of Contract No. 05 OSORO was to develop a comprehensive training and technical assistance program which would enable regional ETA offices to assist CETA prime sponsors in meeting administrative and legislative requirements for monitoring and evaluating local CETA programs. Under the terms of Contract No. 134 OSORO was to provide group training and onsite technical assistance to CETA, Title III, Section 303 grantees and the DOL Division of Farmworkers Programs.

Pursuant to the terms of the Contracts the DOL authorized the accounting firm of Craven, Wooldridge & Dooley (hereafter "auditors") to perform a financial and compliance audit of the contracts.

On June 16, 1981, the Contracting Officer transmitted to OSORO his "Preliminary Decision" regarding Contract No. 05 and the auditors' final audit report. (AF, Tab A, pp. 10-11). The Contracting Officer decided that the entire \$2,850 in costs questioned by the auditors should be disallowed. On August 14, 1981 the Contracting Officer transmitted to OSORO his "Final Decision" regarding allowed and disallowed costs under Contract No. 05 (AF, Tab A, pp. 6-7). The Contracting Officer's "Final Decision" was issued after a careful review of all documentation submitted as of the date of its issuance. The Contracting Officer concluded that under Contract No. 05 costs totaling \$2,850 should be disallowed (*ibid* at pp. 8-9).

On August 11, 1981, the Contracting Officer transmitted to OSORO his "Preliminary Decision" regarding Contract No. 134 and the auditors' final audit report (AF, Tab A, pp. 19-20). The Contracting Officer decided that the entire \$10,378 in costs questioned by the auditors should be disallowed. On September 14, 1981 the Contracting Officer transmitted to OSORO his "Final Decision" regarding allowed and disallowed costs under Contract No. 134 (AF, Tab A, pp. 14-15). The Contracting Officer's "Final Decision" was issued after a careful review of all information available as of the date of its issuance. The Contracting Officer concluded that under Contract No. 134 costs totaling \$10,378 should be disallowed (*ibid* at pp. 16-18).

Pursuant to notice, a hearing was scheduled to commence on August 30, 1984. At the request of OSORO, the original date for hearing was canceled and rescheduled to commence on October 26, 1984. However, on September 14, 1984 OSORO requested to submit an affidavit instead of attending a formal hearing. On October 9, 1984 the Administrative Law Judge (ALJ) assigned to hear OSORO's appeal granted its request and ordered that it submit its affidavit within sixty (60) days.

On December 6, 1984 OSORO submitted its affidavit together with documentation attached which it contended supported the allowability of certain costs at issue in this case. OSORO, however, neglected to serve a copy of its December, 1984 submission on the Contracting Officer. On October 30, 1985 the Contracting Officer's former counsel was provided with a copy of OSORO's December, 1984 submission which she subsequently forwarded to the present attorney for the Contracting Officer who then forwarded it to the Contracting Officer for his review and consideration.

³ The amount of funds authorized under Contract No. 05 was \$91,685 and under Contract No. 134, \$298,000.

On December 13, 1985 the Contracting Officer notified his attorney of his assessment of the documentation submitted by OSORO in December, 1984. The Contracting Officer determined that the documentation was insufficient to alter his final decision under Contract No. 05 to disallow \$2,850 in costs. However, the Contracting Officer decided that OSORO's documentation was sufficient to allow \$1,161 of the \$10,378 in costs originally disallowed under Contract No. 134.⁴ Accordingly, these proposed findings and conclusions relate only to the Contracting Officer's decision to disallow \$2,850 in costs under Contract No. 05 and \$9,217 in costs under Contract No. 134.

1. OSORO charged the DOL a total of \$11,090 which it allegedly incurred under the Contracts for travel expenses. The Contracting Officer disallowed these costs because they were not supported by adequate documentation (AF, Tab A, pp. 8 & 16). In response to the Contracting Officer's decision OSORO submitted the affidavit of its Executive Vice President. The affidavit indicates that when travel was undertaken by automobile OSORO's employees were required to submit information which indicated the total miles driven and the beginning and ending destinations (see OSORO's submission of December 6, 1984). Further, the affidavit indicates that all travel required prior approval and that requests for reimbursements were verified. (*Ibid*) However, OSORO's Executive Vice President did not attach any documentation to support the statements made in his affidavit concerning travel expenses. Thus, the affidavit submitted by OSORO standing alone, without any primary documentation to support it, is insufficient to allow these travel expenses. Accordingly, the Contracting Officer's decision to disallow \$11,090 for travel costs must be affirmed.

2. The Contracting Officer disallowed \$744 in costs under Contract No. 134 which resulted from OSORO charging the DOL twice for "employee leave time." (AF, Tab A, p. 16). OSORO charged these costs as salary expenses and again as one of five factors used to determine the fringe benefits rate. (See Note 3 *supra* and OSORO's submission of December 6, 1984). Accordingly, since the same contract expense may not be charged twice the Contracting Officer's decision to disallow the \$774 in costs at issue here must be affirmed.

⁴ The documentation submitted by OSORO on December 6, 1984 consisted of an affidavit, two indirect cost agreements, letters relating to the appeal of the Final Decisions and a letter responding to the Final Decision regarding Contract No. 134. The Contracting Officer disallowed, among other things, \$1,935 in costs under Contract No. 134 because OSORO charged the DOL twice for employee leave time. Employee leave time was charged once as "salaries and wages" and again as a factor in determining "fringe benefits." According to the indirect cost agreements submitted by OSORO "employee leave time" was one of the five factors affecting the fringe benefits rate during the first 5.4 months of the Contract period (August 17, 1976 through October 1, 1977). During the last eight months (February 1977 through October 1, 1977) "employee leave time" was not a factor which affected the fringe benefits rate. Thus, "employee leave time" was a factor which affected the fringe benefits rate during 40% of the Contract period, and it was during this period that OSORO charged the DOL for "employee leave time" as a cost item under both "fringe benefits" and "wages and salaries." Therefore, \$744 (40% X \$1,935) represents the costs charged twice and remains disallowed by the Contracting Officer.

3. Under Contract No. 134 OSORO charged the DOL as a direct cost rather than an indirect cost \$203 for supplies in violation of 41 C.F.R. 1-15.202(a) (AF, Tab A, p. 16). On December 21, 1981 OSORO remitted to DOL its check in the amount of \$203 (see Exhibit E attached to OSORO's submission of December 6, 1984). Although OSORO presently seeks reimbursement of the \$203 in costs at issue here it has failed to provide any accounting documentation to show that the incorrect charge has been correct on its book. Accordingly, the Contracting Officer's decision to disallow \$203 was correct and said amount should not be returned to the Contractor.

CONCLUSIONS OF LAW

In contract accounting cases, recordkeeping, as contemplated by the contract and applicable regulations, may not always be accomplished in the manner prescribed. In the absence of the specific documentation, testimony or secondary documentation may be used by a contractor to show that a particular cost can be properly allocated to the contract. Harris County Employment and Training Administration, Texas, 80 BCA/CETA 116.

In the absence of the required documentation, the contractor must however submit convincing secondary evidence which clearly establishes the nature and justification for the expenditure. National Association for the Southern Poor, 83-BCA-2.

A contractor's mere assertion that the expenditure of the disputed funds was legitimate under the contract or that the government benefited from the expenditures is not sufficient to allow otherwise properly disallowed contract costs. National Association for the Southern Poor, supra.

Thus, in the absence of documentation contemplated by the contract and applicable regulations or convincing secondary evidence which clearly establish the nature and justification for the expenditures the Contracting Officer's decision to disallow costs must be affirmed.

Final Conclusion and Order

In this case, OSORO has failed to demonstrate by providing adequate documentation that the Contracting Officer's decision to disallow \$12,067 in costs under the contracts was improper. Accordingly, the appeal in this case is denied, and OSORO is ordered to pay the Government the total \$12,067 in costs disallowed less the \$203 it previously remitted, together with interest thereon.

GLENN ROBERT LAWRENCE
Member of the U.S. Department of
Labor Board of Contract Appeals

I concur:

E. EARL THOMAS

Vice Chair U.S. Department of Labor
Board of Contract Appeals

I concur:

SAMUEL GRONER
Member of the U.S. Department of Labor
Board of Contract Appeals

Dated: FEB 27 1987
Washington, D.C.
GRL:crg