

U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATED: December 22, 1986

Case No. 85-BCA-53

In the Matter of

ASSOCIATED MINORITY CONTRACTORS
OF AMERICA, INC. (AMC),
Appellant

V.

U. S. DEPARTMENT OF LABOR,
Respondents

DECISION AND ORDER

This case arises out of the Comprehensive Employment and Training Act (hereinafter "CETA"), as amended, 29 U.S.C. § 801 et seq. (repealed 1982), and its implementing regulations.

On May 30, 1985, the Contract Officer for the Department of Labor issued an Initial Determination disallowing a total of \$185,060.00 in costs incurred under Contract Number 99-0-2659-08-79. The costs were disallowed after Audit Report Number 11-4-134-03-350. The Department held that various costs incurred by Appellant, a government contractor, were either unauthorized or inadequately documented.

On July 23, 1985, the Contract Officer issued a Final Determination, which disallowed \$35,579.00 in costs and allowed the rest of the money previously disallowed. The costs disallowed under the Final Determination included subcontractor costs, phone bills, supplies, computer and publicity costs, and travel costs.

On August 22, 1985, Appellant appealed the Contract Officer's decision. A hearing was set for May 16, 1986. On May 15, 1986, this Office received a motion for a continuance from the Appellant; however, Appellant did not appear at the hearing to argue either on its motion or on its substantive appeal. At the hearing, I gave the parties until July 1, 1986 to enter post-hearing briefs and proposed orders; the Department entered a proposed order, but Appellant failed to do so.

The alleged violations of CETA are as follows: a) \$1,042.00 for four separate instances of improper documentation of travel costs (which, based on what documentation exists, were respectively: 1)

incurred prior to the contract, 2) advances never recovered, 3) for the purchase of a first-class airline ticket, and 4) unauthorized purchases of a ticket for a federal employee); b) \$24,000.00 spent on computer and publication costs which were neither budgeted nor approved as contract expenditures, and which were, without documentation, claimed as both direct and overhead costs; c) \$153.00 for materials and supplies which were not adequately documented; d) \$10,384.00 in other inadequately documented costs. Appellant has provided no documentation to refute the Contract officer's figures.

It is well-settled law that the party requesting a hearing has the burden of proving error, 20 C.F.R. § 676.90(b). Here, Appellant has made no case beyond filing an appeal; therefore, the Department's allegations of fact are deemed admitted.

Nearly all of the disallowed expenditures involve Appellant's failure to provide adequate documentation. Therefore, if expenditures may be disallowed for inadequate documentation, those of the Appellant shall be.

I find Montgomery County, Maryland v. U.S. Department of Labor, 757 F.2d 1510 (4th Cir. 1985), particularly instructive on this point. In Montgomery County, the Court found that in accepting federal funds to conduct a CETA program, a grantee agrees to comply with CETA and its regulations relating to record keeping and other administrative matters. The Court argued that:

Only by requiring documentation to support expenditures is the Department of Labor able to verify that billions of federal grant dollars are spent for the purposes intended by Congress. Unless the burden of producing the required documentation is based on receipts, federal grantees would be free to spend funds in whatever way they wished and obtain virtual immunity from wrongdoing by failing to keep required records. Neither CETA nor the regulations permit such anomalous results.

Id. at 1512. The Court therefore decided that even an otherwise blameless grantee whose records were inadequate could be held to have "misspent" CETA funds, Id. at 1513. In City of Oakland v. Donovan, 703 F.2d 1104, 1106-07 (4th Cir. 1983) the Fourth Circuit held that a grantee whose records were imperfect thereby violated CETA and could therefore be required to disgorge the relevant funds or file grant termination.

For the foregoing reasons I find the Contract Officer's Final Determination fully justified and it is hereby AFFIRMED.

Accordingly, it is ORDERED that AMC shall repay the sum of \$35,579.00 in disallowed costs, and Appellant's motion for a continuance is hereby DENIED.

E. EARL THOMAS
Vice Chairman, DOL BCA
Deputy Chief Judge

I concur.

GLENN ROBERT LAWRENCE
Member, DOL BCA

I concur.

EDWARD TERHUNE MILLER
Member, DOL BCA

Washington, D.C.
EET/tt