

U.S. Department of Labor

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



In the Appeal

MANAGEMENT & TRAINING CORPORATION,
Appellant,

v.

U.S. DEPARTMENT OF LABOR,
Respondent

CASE NO. 86-BCA-26
CONTRACT NO.
09-5-232-03-370

V. R. Burton, Vice President, Administration
For the Appellant

Robert J. Lesnick, Esquire
For the Respondent

DECISION

Statement of the Case

The Appellant, Management Training Corporation, was awarded a Job Corps contract under the Job Training and Partnership Act, 29 U.S.C. §501 et seq (1982). An audit on the contract numbers 13-1-0002-43, JC-22-2-00033, 13-3-001243, JC-83-001-49, 13-3-0002-43, 37-4-0013-43, 3-JC-206-54, was conducted from October 1, 1982, through July 31, 1984, evaluating the contract period from October 1, 1980 through July 31, 1984 (AF 8). Audit report number 09-5-232-03-370 was issued on February 26, 1985, and recommended disallowance of \$5,777 of imputed interest incurred as a result of a fixed price lease-purchase agreement entered into by the Appellant to acquire equipment under contract number JC-83-001-49. (AF 31)

A preliminary decision was issued by the Contract Officer, Employment Training Administration (ETA) Department of Labor (DOL), on March 25, 1986, finding that \$5,777 of imputed interest was not allowable based on 41 C.F.R. 1-15.205-17 (July 1, 1984) and 41 C.F.R. 1-15.204-34(d)(1) (July 1, 1984). (AF 14-18). After a review of this material, a Final Decision was issued on May 9, 1986, disallowing \$5,777. (AF 5-15) The Appellant appealed this decision on July 17, 1986, and elected at that time to have the action processed as a small claim as provided in Section 9 of the Contracts Dispute Act of 1978, 41 U.S.C. §608 (1978).

The Respondent filed its Answer on October 1, 1986, and its Prehearing Exchange on November 6, 1986. By Order issued December 5, 1986, the parties agreed to waive the time limits required under Section 9, of the Contracts Disputes Act, 41 U.S.C. §601 et seq., to the extent that they affect settlement negotiations. The parties were unable to reach a settlement of their dispute and agreed to submit the case for decision upon the written record.

Findings of Fact and Conclusions of Law

The Appellant claims that it entered into a fixed price lease-purchase agreement in good faith. In support of its position, the Appellant claims that on December 15, 1983, the Contracting Officer (CO), C. Lemar Johnson, Region VIII, granted permission to enter into a contract to acquire equipment necessary to promote the Appellant's vocational training program. Appellant claims that the Contracting Officer's approval justifies the costs incurred, including, specifically, \$5,777 of imputed interest incurred in relation to a contract for lease-purchase of certain needed training equipment. The Appellant states that it entered into the agreement because the Government was unable to otherwise fund the purchase of the equipment. (AF 14-18). Alternatively, the Appellant claims that it was not advised until after the contract was entered into that costs generated would be disallowed because "to Appellant's knowledge" the Government had not made its policy known to the contracting officers. (Appellant's Brief at 3)

The Respondent does not dispute the propriety of using lease-purchase agreements to acquire property, or the knowledge of the Contracting Officer that the Appellant had entered into such an agreement. Rather, the Respondent claims that the regulations clearly prohibit payment of interest on borrowings.

The \$5,777 of imputed interest on the fixed price lease-purchase agreement is not allowable. The contract entered into by the parties provides that "The contractor shall ensure that the procurement of goods, services, and materials are in accordance with 41 C.F.R. Chapters 1 & 29 ..." (AF at 139). The applicable Federal Procurement Regulations at 41 C.F.R. 1-15.205-17 state that "Interest on borrowings (however represented), ...are unallowable "

"Interest is generally considered a return on capital and, as such, a part of profit or fee under government contracts. Procurement regulations do not allow recovery of interest as a cost in order to prevent duplication of reimbursement." [2 Government Contracts Reporter ¶18,225 (1982)]. By analogy, ASPR 15-205.7 provides that interest costs are allowable, because "investment of capital is one of the factors that

used in negotiating profit or fee and that to permit reimbursement of interest would result in double compensation."

Moreover, the Respondent is not estopped from disallowing the payment of interest because of the Contracting Officer's approval of the lease-purchase agreement. In Kicking Horse Job Corp Center, 86-BCA-15, this Board was confronted with a similar claim for reimbursement of interest on a lease-purchase contract for equipment. The Appellant claimed that the Federal Procurement Regulation at 41 C.F.R. 1-15.712.1 allowed payment of rental purchases and that its lease-purchase agreement was entered into with the approval of the Job Corps Director. The Board rejected the notion that an unauthorized contract which is "beneficial" or "reasonable" should be permitted, and stated that "If there was no legal basis for allowing the interest, approval by the contracting officer could not estop the Government from disallowing the item." See Schweiker v. Hansen, 450 U.S. 785 (1981); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). The Board also stated "that approval of the purchase rental agreement does not imply that interest costs in connection therewith are also approved for reimbursement contrary to established principles." These costs were severable and costs properly borne by the Appellant.

Based on the foregoing, this appeal is denied.

EDWARD TERHUNE MILLER
Acting Chairman,
Department of Labor
Board of Contract Appeals

I concur:

Glenn R. Lawrence
Member, Board of Contract Appeals

I concur:

Nahum Litt
Member, Board of Contract Appeals

Date: May 3, 1986

Washington, D.C.