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In the Matter of :

NATIONAL CHILD LABOR COMMITTEE :  
Contract Nos. 99-0-2412-33-2 :  
99-0-2727-33-74 :

Case No. 84-BCA-42

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Appearances:

On behalf of the Appellant:

DORIANNE BEYER, ESQ.  
1501 Broadway, Suite 1111  
New York, New York 10036

On behalf of the Respondent

WILLIAM H. WALKER, ESQ.  
Office of the Solicitor  
United States Department of Labor (DOL)  
Room N-2101  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

DECISION OF THE BOARD

Statement of Case

This case arises as the result of a final decision of a (DOL) contracting officer (CO) that disallowed some \$4,399 in costs. The contractor timely appealed the decision and the case was heard on April 1, 1985 in the District of Columbia. Proposed findings of fact and conclusions of law have been received from the parties. The matter is ready for decision.

Findings of Fact

Introductory

1. The National Child Labor Committee (NCLC), is a non-profit group based in New York City whose primary purpose is to design and implement programs that help train and teach youth basic work skills so that they can enter the work force.

2. In late 1979, the NCLC received two cost reimbursement contracts totalling over \$1 million under Title IV of the Comprehensive Employment and Training Act (CETA). In December 1981, DOL, at its convenience, terminated one of these contracts approximately a month before it was due to terminate by its own terms.

3. In January 1984, a final audit report concerning these contracts was issued by a private auditing firm. These auditors questioned over \$25,000 in costs incurred by the NCLC.

4. In May, 1974, the CO issued a preliminary decision in which he allowed over \$20,000 in costs and disallowed slightly less than \$5,000. After an informal resolution period, and on July 3, 1984, the CO issued a final decision in which he allowed \$21,152 and disallowed \$4,399<sup>1</sup>.

5. Of the disallowances the NCLC conceded \$162 in salary expenses. It appeals the net final determination of \$3,337.

### Issues

6. The issues in this case relate to two findings: 1) that the contractor exceeded the budget; 2) and improperly charged certain costs to various cost categories. The Appellant has largely argued that these disallowed costs were incurred as a result of the precipitous contract closeout in early 1982.

7. Respondent argues: that there was no evidence in the record showing any relationship between the specific costs disallowed to the contract closeout; that \$20,000 was allowed by the contracting officer, relative to contract closeout costs and that this demonstrates full consideration of NCLC's additional costs stemming from an early contract termination.

### Claim One

8. The DOL contracting officer disallowed \$431 in personnel costs charged to contract number 99-0-2412-33-2 on the ground that NCLC exceeded contract budget restrictions (Exhibit G-1, Tab A, p. 10).

9. Contract number 99-0-2412-33-2 provides that flexibility of direct costs will be allowed within the prime contract budget, provided no single line item of cost shall be increased in excess of 20% and provided further that no increase shall be made in any of the wages, salaries or fringe benefits and that the total estimated cost of the contract is not exceeded (Exhibit G-1, Tab C, p. 73).

10. Under the provisions of contract number 99-0-2412-33-2, the maximum personnel costs allowable, including the 20% flexibility factor, were \$188,912 (Exhibit G-1, Tab A, p. 10).

11. Appellant claimed personnel costs totalling \$189,505. (Exhibit G-1, Tab A, p. 10).

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<sup>1</sup> DOL by letter to this Office, dated June 25, 1985, conceded \$900 thereby reducing the total disallowance to \$3,499.

12. After making an adjustment accounting for an uncontested unallowable cost of \$162, the net costs claimed in excess of the contract personnel budget are \$431 (Exhibit G-1, Tab A, p. 11).

13. The record of this case does not establish to whom this money was paid or how its payment related to the purposes of the contract.

#### Discussion and Conclusion

14. Appellant argues: that (1) the costs were attributable to an early contract termination; (2) the Chief of Contract closeout, one Richard Murphy, authorized these expenditures. No proofs have been filed in support of those contentions. Assuming arguendo that appellant could show Mr. Murphy's approval, it is a nullity unless it is in writing and in full compliance with the Limitation of Cost clause (AF<sup>2</sup> Par. 3, p. 123). Such a writing has not been supplied. The disallowance is therefore affirmed.

#### Claim Two

15. The final determination of the CO disallowed \$50 charged to contract number 99-0-2774-33-74 on the ground that the appellant exceeded the budget restrictions for the category of "consultants" (Exhibit G-1, Tab A, p. 12).

16. The contract provides that the flexibility for direct costs will be allowable within the prime contract budget, provided no single line item of cost shall be increased in excess of 20% and provided further that no increase shall be made in any of the wages, salaries or fringe benefits or that the total estimated cost of the contract is not exceeded (Exhibit G-1, Tab C, p. 212).

17. Under the provisions of contract number 99-0-2772-33-74, the maximum professional consultant costs allowable, including the 20% flexibility factor, were \$9,000 (Exhibit G-1, Tab B, p. 40).

18. Appellant claimed professional consultant costs totalling \$9,050 (Exhibit G-1, Tab B, p. 40).

19. The net costs claimed in excess of the "consultant budget" is \$50 (Exhibit G-1, Tab B, p. 40).

20. The record does not establish to whom this money was paid or how its payment related to the purposes of the contract.

### Discussion and Conclusion

21. The contractor's argument is again predicated on claimed approval. However, such approval must be in writing by the CO to comply with the Limitation of Cost clause. Accordingly the \$50 disallowance is affirmed.

### Claim Three

22. The CO disallowed \$2,856 in indirect costs charged to contract number 99-0-2772-33-74 on the ground that NCLC included lump sum payments to temporary employment agencies as "salaries and wages" (Exhibit G-1, Tab A, p. 13).

23. The negotiated indirect cost agreement provides that salaries, wages and fringe benefits are the base on which indirect costs are to be calculated.

24. NCLC paid temporary employment agencies a total of \$2,856 for the services of several temporary employees (Exhibit G-1, Tab B, p. 37.)

25. NCLC charged \$2,856 of indirect costs under contract number 99-9-2774-33-74 on payments made to temporary employment agencies and included these payments in the base of salaries and wages on which indirect costs are calculated (Exhibit G-1, Tab B, p. 37).

26. The record of this case does not establish that DOL agreed to pay for the services of temporary employees.

27. The contractor argues that use of temporaries was "lawful". However no authority is provided for such expenditure. The contract was issued to appellant predicated on appellant's staff performing the work, not subcontracting it out. To conclude otherwise would invalidate the award process that qualifies a prospective contractor based on the abilities of its current staff to do a job. To permit sub-contracting without CO approval would allow a contractor to bring in new staff or organization on a subcontract to perform the contract. This was not contemplated by the parties and written approval from the CO was required for such subcontracts (par 9 AF P. 128). Where in rare instances such expenses have been allowed, notwithstanding a lack of written approval, the CO asks the contractor to subcontract and stands by without complaint while the subcontract is performed. General Dynamics Corp., ASBCA 7650, 1963 BCA §3685. No such oral approval and acquiescence has been proved here.

The disallowance is affirmed.

28. Based on the foregoing, the appeal of \$3,337 disallowances is denied.

GLENN ROBERT LAWRENCE, Member  
U.S. Department of Labor  
Board of Contract Appeals,  
Administrative Law Judge

I concur:

E. EARL THOMAS, Vice Chairman  
U.S. Department of Labor Board of  
Contract Appeals

I concur:

SAMUEL B. GRONER, Member  
U.S. Department of Labor Board of  
Contract Appeals, Administrative  
Law Judge

Dated: January 10, 1986  
Washington, D.C.