

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Alaska Federation of Natives, Inc.      DATE: May 2, 1980  
Docket No. 78-1  
Decision No. 97

DECISION

On June 25, 1974 the Office of Education awarded Grant No. OEG-X-74-0062 in the amount of \$508,865 for the period July 1, 1974 through June 30, 1975, to the Alaska Federation of Natives, Inc.(AFN), a non-profit organization. The grant was funded through Upward Bound (\$300,000), Special Services for Disadvantaged Students (\$162,085), and Talent Search (\$46,780). The purpose of the grant was to provide counseling and other services to lower income and educationally disadvantaged students. The services were to be distributed at four institutions of higher learning in Alaska--Sheldon Jackson College, the University of Alaska, Fairbanks, the University of Alaska, Anchorage, and the Alaska Methodist University.

On June 24, 1975, Alaska Federation of Natives, Inc., was notified by the Office of Education that its grant would be extended until August 31, 1975 with no increase in the funding. The Alaska Federation of Natives, Inc., submitted a claim for expenditures totalling \$498,462 for this grant. Pursuant to recommendations contained in Audit Report No. 10-75302, the Acting Regional Commissioner for Educational Programs made the following disallowances in his letter of November 4, 1977:

- (1) \$884 for fringe benefits paid on tutor salaries at the University of Alaska, Anchorage, because these tutors were not eligible for fringe benefits under the contract;
- (2) \$3740 from the funds expended at Sheldon Jackson College because the federal share of program costs was overstated by that amount (as shown below, this disallowance was based on an agency determination that grantee had improperly subtracted budget underages from budget overages); and
- (3) \$731 for salaries paid to employees of the grantee's central office in Anchorage in excess of authorized rates.

On November 30, 1977, the Alaska Federation of Natives, Inc., filed an application for review with the Board which did not meet the requirements of 45 CFR 16.6. On December 28, 1977 the Alaska Federation of Natives, Inc., requested, and later received, an extension of time to submit its application to the Board.

On January 20, 1978 an application for review by Alaska Federation of Natives, Inc., was transmitted to the Board asking review of items (2) and (3) above. The finding in item (1) was accepted by the grantee; the item was removed from the final OE Form 1227, which shows funds approved, funds expended, and budget line overages and underages, and was not a part of the \$498,462 claimed for the grant, and as such is not subject to this appeal.

On August 30, 1979 the Board issued an Order to Develop the Record addressed to both parties. Grantee's response to the Order was received October 2, 1979. The agency's response to the Order was dated January 24, 1980.

#### Sheldon Jackson College

According to the original budget for the project, Federal funds totaling \$87,033 (\$60,966 from Upward Bound and \$26,067 from Special Services to Disadvantaged Students) were allocated to the Sheldon Jackson College operation. A revised budget for Sheldon Jackson College submitted May 21, 1975, providing for an increase of \$601 in Upward Bound funds taken from an excess of funds at the University of Alaska, Fairbanks, was approved by the agency.

The final schedule of expenditures submitted by the Alaska Federation of Natives, Inc., showed that Sheldon Jackson College had expended a total of \$90,499.

The OE 1227 Forms for Sheldon Jackson College, totalled only \$90,436 in expenditures. There is a \$63 difference.

The difference arises from the figure for funds expended for personnel expenses for the special services for disadvantaged students, on the schedule of expenditures where it is given as \$25,990 in contrast with the OE Form 1227 (\$25,927). Figures were used interchangeably from both forms by the agency and the grantee in calculating the appropriate recovery from Sheldon Jackson College.

In both parties' responses to the Order to Develop the Record, they acknowledged that the correct figure was \$25,990.

### Disallowance

The grantee recovered \$2802 from Sheldon Jackson College. This figure was reached by adding the net budget line overages (total overages - total underages) from the OE Form 1227 for Upward Bound and Special Services for Disadvantaged Students ( $\$285 + \$2517 = \$2802$ ).

The agency contended that the grantee should have collected the sum of the budget line overages - - \$6542 ( $\$682 + 1,806 + \$501 + \$3553 = \$6542$ ). The agency disallowed the difference between what it maintained should have been recovered (\$6542) and what actually was recovered (\$2802)—\$3740.

The grantee's method gives the College the benefit of the budget line under-expenditures as credit against the gross budget line overexpenditures while the agency's method did not give the College the same benefit.

As the figures on the OE Form 1227 have been found to be \$63 too little, Alaska Federation of Natives, Inc., meant to recover from Sheldon Jackson College \$2865 instead of \$2802. Similarly, the agency, in attempting to disallow the gross budget overages, should have stated the amount to be recovered as \$6605 instead of \$6542. The \$63 is not in dispute and should be returned to the agency.

### Contentions of the Parties

The disallowance letter from the Office of Education upheld the findings contained in Audit Report No. 10-75302 which stated, "AFN paid on the subcontract based upon total costs reported versus total budget, however, which was a net average of only \$2802 and resulted in an overpayment to Sheldon Jackson College of  $\$6542 - \$2802 = \$3740$ ..."

In its answer to the appeal, the Office of Education stated, "Overages of federal funds have to be considered non-federal contributions. Sheldon Jackson reported the total cost of the program including federal and non-federal funds which AFN paid. There was no approval by the grantee, AFN, to the contractor, SJC, in their contractual agreement which authorized the overages. It can be assumed that once approval by the OE Grants Officer of the May 21 budget revision was given, AFN, Inc., reflected the increase in the modification to the SJC contract."

Section 3.1 of the contract, which the agency cites as being the basis of the statement that there "was no approval by the grantee, AFN, to the contractor, SJC, in their contractual agreement which authorized the overages", does not deal with the question of the transfer of funds among budget lines.

Section 3.2 of the contract does deal with the subject and states:

The subcontractor may not transfer funds among the various costs categories (OE Form 1227) in the negotiated budget, unless prior written approval of the project director is given and, no transfer(s) may be made, which alter the approved project (parenthetical information provided by the contract).

The project director, referred to in this section of the contract, is the project director of the grantee.

The grantee maintained, in its application to the Board, "This situation resulted in line item overruns only and was not an overpayment of the total approved budget. We feel the expenses were justifiable and necessary to the operation and success of this program. Other federal agencies past and present have allowed line item flexibility as long as we remained within the approved budget. In this instance our line item overages total less 4.5%."

#### Regulations

The general provisions for Office of Education Programs appear in 45 CFR Part 100. Specifically, 45 CFR 100a.28 provides:

The grant or contract must be appropriately amended prior to any material change in the administration of an approved project, or in organization, policies, or operations affecting an approved project.

45 CFR 100a.29(b) provides:

Recipients other than State and local governments. Minor deviations from the project of a recipient other than a State or local government (as defined in §100.1 of this subchapter) are permitted without the necessity for an approved amendment or revision where (1) they do not result in expenditures in excess of the total amount granted, (2) there is not any material change in the content or the administration of the approved project, and (c) expenditures are otherwise made in accordance with, and for kinds of expenditures authorized in the approved application.

Section 3.2 of the contract between Alaska Federation of Natives, Inc., and Sheldon Jackson College provides for prior written approval before transferring funds among budget categories. In its response to the Board's Order to Develop the Record, the grantee has stated that it

had in operation a check request system for expending funds whereby the project director had to approve all expenditures, and that this system provided the prior written approval required by the contract. The agency in its response to the Order has stated that grantee did not have a system for obtaining prior written approval for the transfer of funds among budget categories. We do not reach the question of whether the check request system constituted a mechanism for prior written approval because the agency has not demonstrated that Section 3.2 was insisted upon by the agency or that the agency had a right to require the enforcement of Section 3.2 of the contract.

The Board has been shown no reason for not allowing grantee to give approval after the expenditures are incurred, as long as they fall within the provisions of 45 CFR 100a.29 (b), and are expenditures that would have been given prior approval had approval been sought before making the expenditures. The agency has engaged in this same practice by granting approval to grantee for the purchase of a typewriter after the fact. In the absence of any agency claim that the budget changes violated the provisions of 45 CFR 100a.29(b) or any agency showing that it had an interest in having the contract provision enforced, the Board finds that grantee was within its authority to accept these budget changes.

#### Central Office

Audit Report No. 10-75302 stated that salary payments were made to two employees, in the grantee's central office in Anchorage, in excess of their authorized pay rates. It stated that one individual was paid a total of \$481.32 over his authorized pay and another was paid a total of \$250.02 over his authorized pay. The report recommended that the sum of these two overpayments, \$731, be disallowed. The Office of Education followed that recommendation.

#### Contentions of the Parties

The Office of Education in its response to the appeal maintained, "It is inherent that the government does not reimburse grantees for errors. 45 CFR Part 100, Appendix D - Cost Principles for Non-Profit Institutions, Item G.6, Compensation for Personal Services, sets forth the basis under which compensation for employee services may be paid. The overage of the two individuals involved were caused by institutional errors and reimbursement thereto from Government funds can not be supported."

The grantee admitted that the overpayments were caused by institutional error. The grantee maintained that it should not have to return the salary overpayments to the federal government. In its application for

review it said, "We feel that OE is being unjustifiably harsh in their determination to sustain this questioned cost. This amount represents a calculation error and was not in violation of any Federal regulation. Since the payroll clerk was acting in good faith and no fraudulent intentions were implied by the auditors and it represents only 1% of the total Anchorage office salaries, we are requesting that this mistake be allowed" (emphasis provided by grantee).

#### Regulations

45 CFR 100, Appendix D contains the cost principles used to determine costs applicable to activities, and the allowability of costs, sustained by non-profit organizations under grants awarded, and administered, by the Office of Education.

45 CFR Part 100, Appendix D Item G.6(b), cited in OE's response to the Order to Develop the Record as the basis for this part of the disallowance, provides, with respect to the allowability of compensation for personal services:

Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

- (1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively related compensation paid within the organization to that paid for similar services outside the organization;
- (2) Total compensation of individual employees is reasonable for the services rendered; and
- (3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

The Board will accept as conforming to the regulations the salary rates for these employees since they were agreed to by both the grantee and the agency. However, overpayments of salary are violative of 45 CFR Part 100, Appendix D Item G.6 (b)(1) and as such the agency was acting within its authority when it disallowed the overpayments.

According to the information provided the Board, the salary overpayments were the result of one time retroactive pay increases rather than regular salary payments. Figures submitted by grantee indicate that one of the overpaid employees was paid at a rate of \$96.06 per month more than the retroactive pay rate he was supposed to receive. In comparing that monthly overpayment with any likely total monthly adjustment, we find that grantee, failing to find an error of that magnitude, had not exercised due care.

Conclusions

For the reasons set forth above: (1) grantee's appeal is sustained with respect to \$3677 (\$3740 - \$63 not in dispute) disallowed for budget line overages; (2) the decision of the Office of Education to disallow \$731 in salary overpayments is upheld.

/s/ Clarence M. Coster

/s/ Donald G. Przybylinski

/s/ Frank Dell'Acqua, Panel Chairman