

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Action for Boston Community Development, Inc. (ABCD)  
Docket No. 76-4  
Decision No. 32

DATE: January 31, 1977

DECISION

Action for Boston Community Development, Inc., ("ABCD") is a Community Action agency which for many years has received grants from the Office of Economic Opportunity and its successor the Community Services Administration, from the Department of Health, Education, and Welfare (HEW) and from other Government agencies. HEW is the lead agency for the determination of indirect cost rates for this grantee.

This is an appeal from such an indirect cost rate determination made by the Regional Office and affirmed by the Regional Director. The Board sustains the Regional Director.

For several years (1966-1973) indirect cost rates which excluded from consideration the value of donated services and space were approved. For the annual periods beginning September 1, 1973 and 1974 however, the Department representatives took the position that the indirect cost rate to be determined must reflect the value of donated services and space. This view was sustained by the Regional Director, Region I, in a decision dated December 3, 1975. ABCD appealed to this Board, and requested an informal conference to clarify the facts and the issues.

The Panel of the Board assigned to the case set the matter down for informal conference. The parties were invited to be prepared to discuss at the conference a number of specific issues which appeared to have an important bearing on the result to be reached and to supply certain information. The parties also were invited to submit preconference briefs. The conference was held on October 12, 1976 and was transcribed. The panel has considered the statement of the appeal and its attachments

reflecting the prior negotiations, the Regional Office response, the preconference briefs, the information and arguments supplied at the conference, and the postconference brief submitted by grantee (the Regional Office advised that it did not consider a formal brief necessary). The facts and issues of law have been clarified.

### THE ISSUES

The grantee administers programs of at least three Government agencies totalling approximately \$20,000,000 annually. It receives donated services and donated space valued at over \$2,700,000 annually. It expends for undistributed indirect cost approximately \$1,400,000. An indirect cost recovery is generally the product of a base times a rate. The rate is itself a quotient. In determining its indirect cost rate, grantee proposed to determine the rate as it had in the past as a quotient of indirect cost over direct costs.

The Regional Office view is that the rate should be determined as a quotient of indirect cost over the sum of the direct costs and the value of the donated services and space. This results, of course, in a lower rate but would have substantially the same impact on the grantee if the rate were then applied to the donated services and space as well as to the direct cost activity and fully recovered. That is not the case, however. A clear rule provides that costs may not be recovered with respect to donated services or goods and, at the same time, directs that a portion of the indirect cost shall be allocated to the fair market value of donated services or goods (45 CFR Part 74, App. F, Section G.9.b; the term "goods" clearly includes space. See 45 CFR §74.53). The effect of this rule is that the rate is decreased by including the value of donated services and space in the divisor under one part of the rule, while the recovery is limited by excluding the value of donated services and space in determining the base to which the rate is applied.

Grantee argues that this creates an inequitable distortion, all the more objectionable because it claims to have been orally informed by some of the agencies involved that limitations on their available funding may cause them to make awards which will not be adjusted by the amount that this shift of computation would attribute to their programs

as an additional indirect cost burden. (Grantee's Prehearing Brief, pp. 9, 17 and 23; Transcript, pp. 69 and 87.)

#### DISCUSSION

It is, of course, clear that the Federal Government does not in general undertake to reimburse grantees for all expenses. (See 45 CFR Part 74, App. F ¶A.1; cf. App. E, ¶I.A; cf. also FMC 73-8, 34 CFR §254.3, and FMC 74-4, 34 CFR §255.3, now again administered by OMB as Circulars A-21 and A-87). OASC-5, p. 5, serves notice on Community Action Agencies such as grantee that a shift from OEO to HEW supervision may give them problems precisely in this area, and that the general policy of reimbursing full indirect costs on even HEW awards may have to yield to appropriation restraints or exceptions to the general policy for special programs or in given situations. Unlike federal procurement contracts which generally reimburse the contractor for all costs plus, in most cases, a profit, federal grants in general reimburse the grantee for all costs less, in most cases, an element of cost sharing or local share. Accordingly, there is little weight to an argument that the grantee will fail to recover its full costs. The imposition of some share of the burden (generally a minority share) is normal and expected and the equitable results to be achieved in the indirect cost case means fair and even treatment as compared with other grantees in comparable situations. That the rules impose a burden on the grantee does not make the result inequitable provided the burden is consistent with the intent of the program and the stated rules.

Grantee is required to furnish a local matching share in various amounts towards the expenses of its programs and has counted the donated services and space as part of that matching share. It may count towards that local share only those expenses which would have been acceptable as a reimbursable item had they been paid for. (45 CFR 74.52(b)(3) and (4)). Thus, the contributed items are an integral part of the program.

Three methods of calculating indirect cost rates are available. One is the direct allocation method which may be disregarded here, as the parties have agreed (Transcript, page 16). Another is the multiple distribution base method which involves establishing appropriate

functional categories or pools of expenses which are then distributed to direct institutional activities by means of a base which best measures the relative degree of benefit which each activity derives from that pool. A third method is the simplified method which is used where all of an institution's direct program activities receive services from all of its indirect or administrative activities in approximately the same degree (or where the amount of federal funds is not material or where the institution has only a single direct function or activity; neither is relevant here). The multiple distribution base method is, of course, more sophisticated and more expensive to apply since it requires much more detailed information and analysis, as the grantee has noted (Transcript, p. 44.) The simplified method is a deliberately rough and ready approximation which disregards many refinements and may therefore be more or less inequitable in its results. If the inequities are substantial, then the multiple base method becomes appropriate notwithstanding its increased cost and complexity. If the inequities are small enough, the simplified method is advantageous notwithstanding minor inequities.

Grantee has sought to use the simplified method but argues that requiring it to add contributed services and space to direct costs in the divisor leads to inequities because under the circumstances of its organization, its administrative activities have little or no application to the contributed items. This argument is unacceptable since the contributed items are an integral part of the grant supported activities (and, if they were not, they could not properly be counted as part of the grantee's matching share). The premise for the use of the simplified method is that these contributed items receive services from all of the grantee's indirect or administrative activities in approximately the same degree as the federally funded items. Grantee must either concede that that is so, or acknowledge that the simplified method is not available to it and it must then resort to the multiple distribution base method. By using the multiple distribution base method, grantee will be afforded the opportunity to claim methods of distribution which best measure the relative degree of benefit which each activity derives from a particular pool of activities. Notwithstanding the argument implied by its rhetorical question, "Does a distribution base under the multiple distribution method include or exclude the volunteer in the absence of any signif-

icant benefit?" (Appellant's postconference brief, p. 6; cf. Tr. 54 and preconference brief p. 20), this does resolve the issue of the appeal. Under the multiple distribution base method, appellant will be guided by certain normally used distribution methods -- number of people in certain cases, square feet in others, dollar amounts in others, but it remains free to advance any alternative method that it believes it can show will more fairly and consistently reflect actual benefits. (OASC-5 p. 17, Section IV.D.2, p. 18, E.2; cf. Exhibit B-1, Explanation, last paragraph.) It will thus obtain the benefit of its argument, to the extent that it may prove factually supportable, that the donated activities do not benefit at all, or to a substantial degree, from the administrative activities.

Grantee contends that this disposition does not resolve the difficulty because it reads the underlying rule for the treatment of donations as requiring only that the value of donated services or goods "shall be considered in the determination" of the rate and as not mandating that they shall be a part of the calculation base. (E.g. Transcript, p. 23). This contention is also unacceptable. It puts on the word "considered" a meaning which might be acceptable in ordinary usage but is clearly contrary to the intent expressed by the rule. That the value of contributions shall be considered in the determination of the rate does not mean that they shall be talked about and then disregarded. As applied to items of cost computation, it means that they shall enter into the computation. Grantee was asked at the conference whether it knew of any instance in which such an expression was used in the permissive sense it was giving the term and to cite accounting standards or similar professional usage and grantee undertook to supply such instances (Transcript, pages 37, 38, 40, 40-41). In its postconference brief, it acknowledged that it had not found any such instances (p. 4). The term "consider" as used in the cost principles (OASC 5 "A Guide for Nonprofit Institutions," page 23; 45 CFR Part 74 Appendix F Section G.9.b.) clearly means "must be taken into account, must be an element in the computation of the base." (Cf. OASC-5, p. 6: "recognized for computation purposes.")

This interpretation of the expression "shall be considered" in the determination of the indirect cost rate is put beyond doubt by the rest of the sentence which grantee has in its argument slurred over. The fair market value of donated services or goods are to be considered in the determination of the rate "and, accordingly, shall be allocated a proportionate share of indirect cost." This latter clause is mandatory in its terms, and incidentally makes clear that this is regarded as a consequence flowing from the requirement that they "shall be considered." Donated services and goods are not allowable costs. Neither are indirect costs allowable to the extent that they relate to such donated services and goods. To determine the amount of indirect costs which relate to donated services and goods, the rule envisages that in setting the rate, donated services and goods shall be considered, that is shall be reflected along with federally funded activities in the divisor that determines the rate, but that the donated services and goods shall be allocated a proportionate share of indirect cost, that is, the rate shall be applied only to the federally funded activities in determining the dollar amount claimable.

If grantee believes that the applicability of its administrative costs to contributed items is sufficiently different from their applicability to federally funded items so that it cannot say that the contributed activities benefit "in approximately the same degree," then it must resort to the more sophisticated multiple base distribution method. If the differences, while they exist, are not significantly great in amount as to warrant the added cost of the multiple base method, it may be permitted to utilize the simplified method and accept the incidental but minor inequities inherent in that method. Alternatively the possibility of application for a deviation from the publicly stated rule has been discussed (letter 3/4/75 from Coard, grantee's Executive Director to Fulton, Regional Director, letter 8/8/75 from Regional Director to grantee's Executive Director.) Procedures for seeking a deviation with respect to the determination of an indirect cost rate and with respect to the base to which the rate shall be applied, are set forth in 45 CFR 74.6 and Grants Administration Manual Chapter 1-20-80 and 6-150-30.

CONCLUSION

The decision appealed from is sustained. The applicable cost principles clearly mandate that the value of donated services and goods (including space) be included with direct costs for purposes of determining indirect cost rates and that a share of the indirect costs shall be allocated to such donated services and goods and thus not recovered by the grantee from the granting agency. To the extent that this results in less than a full recovery of all costs, that is consistent with the Federal intent that the grantee contribute to the costs of the program. As the grantee has chosen to use the simplified method of calculating indirect cost rates, it cannot be heard to complain that the full value of the donated services and space is assigned a pro rata share of the total indirect costs. To the extent that it claims that substantially different measures of benefit for contributed activities and others are involved, it may resort to the multiple base system.

/s/ Thomas Malone

/s/ Edward York

/s/ Malcolm S. Mason, Panel Chairman