

The grantee obtained from RCA major price and other concessions for the installation of the 70/55, later supplemented by a 70/46, on a conditional sale basis. The installation involved a list price of nearly \$2 million. RCA made a contribution of \$1 million, and the services of an experienced systems analyst, availability of a customer engineer, training courses for grantee personnel and a 20% educational discount. The balance of the cost was to be paid partly out of University funds with grant support for the acquisition of the equipment and for operation limited to under \$500,000 over a three year period.

The grantee sought and obtained approval of this arrangement, disclosing both the change in its proposed equipment configuration and the financing charges involved. Approval was conditioned on a limitation of grant support to the amount that would have been furnished for rental of 70/45 equipment. This arrangement served both the program purposes and the grantee's own long-term growth plans. The amount of grant support remained subject to negotiation in the light of actual and projected health-related usage. On the basis of a history of 90% health-related use, but contemplating an increased use by the University for training and other uses, the grantee proposed that the percentage of support, in addition to being limited to the maximum approved level (based on rental of the approved 70/45) be further limited to 66 2/3% the first year, 60% the second year and 50% the third year of the net operating budget. After negotiation, specific levels of support based on those percentages were worked out.

The program authorization did not require any specific level of non-federal share, although some cost participation was required. The grantee in fact furnished a substantial non-federal share in excess of the amount of the interest component.

The grantee asserts that the interest component was fully absorbed by the grantee and the program appears to agree. Had a doubt of the propriety of the interest component been raised in advance, the grant terms could have been and clearly would have been rearranged so that the interest element would have been explicitly absorbed by the grantee while other charges which the grantee in fact absorbed would have been, as they properly could be, charged to the federal share of the grant.

The amount of support granted by the program was negotiated in the light of the rental cost of the approved configuration and of the percentage of health-related usage based upon detailed past usage data and projections for the future. Decreasing ceilings were set so as to shift to the grantee full responsibility for supporting the project by stages. For the budget period 5/15/68 through 4/30/69, the program agreed to support \$170,019 computed as 66% of the total net operating budget after deducting income.

Similarly, for budget year 5/1/69 through 4/30/70, the program indicated support at \$157,683 computed as 60% of the total operating budget of \$262,805 after reducing actual computer acquisition costs to the maximum recommended level and net after income. For a third year of the renewed grant, 5/1/70 through 4/30/71, support was indicated at \$129,577 computed as 50% of \$259,154 after reduction of computer acquisition cost to maximum recommended level and net after projected income from service charges. The three periods provided in total \$457,279 of SRR support. These three periods with their approved budgets and level of supports were packaged into two grant awards totalling \$457,279 covering the same period.

The grantee has performed the grant in good faith with evident concern to meet all requirements and to the satisfaction of the program.

LAW

Public Health Service Grants for Research Projects Policy Statement (revised July 1, 1967) makes OMB Circular A-21 applicable (p. 16).

OMB Circular A-21 provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from the Federal Government. These principles are confined to the subject of cost determination and make no attempt to dictate the extent of agency and institutional participation in the financing of a particular project. The arrangements for agency and institutional participation in the financing of

a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such government-wide criteria as may be applicable.

Sections J.1 through J.46 of A-21 provide standards to be applied in establishing the allowability of certain items involved in determining cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

J.13 provides that the cost of equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

J.16 provides that costs incurred on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

DISCUSSION

The auditors questioned the interest component, being evidently unaware of the express approval by the program and unpersuaded of the relevance of the large non-federal contribution and of the savings to the grantee and the government resulting from the arrangement. The program accepted the over-narrow reading of A-21, while noting that the grantee had performed acceptably and in good faith and that the arrangement made economic sense for the University and cost the government nothing or saved the government money.

The program was explicitly on notice of the terms of the proposed acquisition, saying to the grantee in effect, we think you are buying this equipment sooner than is justified by need, but you may do so provided the charge to the grant is limited to the amount we would be willing to grant for rental of the approved 70/45. The grantee did so limit the charge, absorbing the additional cost itself.

Full allowance of the challenged cost item carries out an agreement plainly made by the program, relied on in good faith by the grantee, which served the best interests of both the government and the grantee, and which does not violate the letter of A-21 and does not violate any rational purpose underlying the A-21 cost principles.

We are not required to celebrate a portion of A-21 in disregard of its full terms, its purpose, the purpose of the grant program and recognition of mutual good faith between grantor and grantee.

DECISION

The appeal is allowed in full. See University of California, Docket #6.

/s/ Francis D. DeGeorge

/s/ David V. Dukes

/s/ Malcolm S. Mason, Panel Chairman

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