

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Oregon State Wide Allocation Plan (FY 78-79)
Docket No. 79-57
Decision No. 75

DATE:
JAN. 31, 1980

DECISION

This case involves the January 10, 1979 decision of Mr. Richard D. Hughes, Acting Director, Division of Cost Allocation, Region X, disapproving the State of Oregon's proposed statewide cost allocation plans for the fiscal years ending June 30, 1978 and June 30, 1979. The State requested review of Mr. Hughes' decision by the Principal Regional Official by letter dated January 30, 1979. By letter dated February 22, 1979, Mr. Bernard E. Kelly, Principal Regional Official, Region X, notified the State that he affirmed Mr. Hughes' decision, although, "I am personally persuaded that the Federal policy on disallowing reimbursement of interest costs for acquisition of large capital items should be changed. However, until that change is made by OMB, I have concluded that the Division of Cost Allocation has correctly applied the cost principles in this case."

By requesting review by the Principal Regional Official, apparently acting as successor to the Regional Director for purposes of 45 CFR Part 75, the State has complied with 45 CFR 16.5(b) and 45 CFR Part 75 requiring that disputes arising in the negotiation of cost allocation plans be submitted to informal procedures established by regulation before being brought to the Departmental Grant Appeals Board.

By letter dated March 23, 1979, Michael D. Reynolds, Assistant Attorney General, State of Oregon, sought review by the Board of the Principal Regional Official's determination.

An Order To Show Cause was issued on June 27, 1979 and was addressed to both parties to the appeal. The State of Oregon was directed to respond to the Order within thirty days of the date of the Order. The Principal Regional Official was invited, but not required, to respond to the Order. He was informed that, in any event, he would be afforded an opportunity to respond in the future if substantial issues were to be raised by the State of Oregon's response. The State of Oregon's response to the Order was dated August 1, 1979; the Principal Regional Official has not responded to the Order.

The State of Oregon has had before this Board another case involving the disapproval, by regional officials, of Oregon's state-wide cost allocation plan.

The State maintained with some plausibility that its policy of purchasing computers, rather than renting them, resulted in significant cost savings to all programs using these computers.

On June 25, 1976, the Board issued a decision (Oregon State-wide Cost Allocation Plan, Docket No. 75-7, Decision No. 22), denying the appeal and sustaining the decision of the Regional Director on the grounds that OMB Circular A-87 prohibited the inclusion of interest charges in costs charged to federal grants funded by the Department of Health, Education, and Welfare. (The denial was also based upon additional grounds not relevant to the case at hand). Assistant Attorney General Reynolds stated, in the present application for review before this Board, that by letter, dated November 8, 1978, the State of Oregon requested of the Director, Division of Financial Management Standards and Procedures, in accordance with the provisions of 45 CFR 74.6 permission to deviate from the provisions of 45 CFR Part 74 Subpart Q (which includes the provision prohibiting the recovery of interest payments). The Assistant Attorney General pointed out that, as of the date of the request for review to this Board, no response had been received to Oregon's request for permission to deviate. There seems to be no authority, however, requiring that a response be made to a request for deviation under the provisions of 45 CFR 74.6. We do not know whether the deviation request has simply been rejected or is being held pending possible further consideration.

The case now before the Board involves the same issue of the allowability of interest charges, as was involved in the installment purchase of computers, decided by the Board in June 1976. The Board's Decision No. 22, which stands as the final administrative decision of the Department (45 CFR 16.10(c)), appears to control in the present case. Interest on borrowing for the purchase of computers by State and local governments is unallowable except when authorized by Federal legislation (45 CFR Part 74 Appendix C Part II, D.7, September 1973) or perhaps upon specific prior approval by the Federal grantor agency. (45 CFR Part 74 Appendix C Part II C.1).

The Order to Show Cause in this appeal directed the State of Oregon to show why the appeal should not be denied on the ground that Decision No. 22 is controlling. The State of Oregon, in its response to the Order, agreed that the issue involved in this appeal is identical to the one raised by the State in Decision No. 22. It further stated that if the Board did not wish to reexamine the holding in Decision No. 22 there would be no useful purpose in the State's submitting additional material.

The Office of Management and Budget has given no present indication of an intention to change its policy on this issue. In a notice of proposed rulemaking, dated June 28, 1979, 44 FR 37707, OMB expressed an intention

to revise the provisions of Federal Management Circular 74-4 "Cost Principles applicable to grants and contracts with State and local governments." The purpose of the proposed revision of the Circular is to allow rental charges, including interest, in determining costs related to the use of publicly owned buildings where "rental rate" systems are utilized and based on actual costs. OMB did not propose at that time to change its prohibition-of-interest rule for computer acquisitions although it proposed liberalizing the rule for space acquisition.

The policy and regulation are clear, Oregon, Decision No. 22 supra; State of Wyoming, Docket No. 76-16, Decision No. 53, December 1, 1978. The Principal Regional Official acted within his authority in affirming the decision of the Division of Cost Allocation to refuse approval of a state-wide cost allocation plan including interest incurred in purchasing computer equipment in determining the billing rates for computer services. The appeal is denied.

/s/ Francis D. DeGeorge

/s/ Thomas E. Malone

/s/ Malcolm S. Mason, Panel Chairman