

DEPARTMENTAL GRANT APPEALS BOARD
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DATE: July 26, 1974

Re: University of California, Los Angeles
Docket No. 6, Grant No. RR-00003 under Section 301,
of the Public Health Service Act - Decision No. 4

This is an appeal pursuant to 45 CFR Part 16 from the action of the National Institutes of Health on August 1, 1973 in disallowing \$77,975 of interest cost charged to grant RR-00003. This decision is made on the basis of the documents submitted to the Board. The undersigned members of the Grant Appeals Board have been designated as a panel of three for the disposition of the instant case.

BACKGROUND

The University of California, Los Angeles (UCLA) entered into a lease/purchase agreement in July 1968 for the purchase of an IBM 360 Model 91 Central Processor Unit (CPU). Certain costs associated with the lease/purchase agreement were interest costs, which were apparently unallowable under the applicable cost principles, BOB Circular A-21. Section J.16.a. of the Circular specified "costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable." (Exhibit I, grantee's appeal document) Accordingly, the Office of Contracts and Grants, NIH, notified the grantee that NIH would recover \$77,975 of interest costs incurred as part of the lease/purchase and identified and challenged by the government auditors.

FACTS

On June 4, 1968, Dr. William F. Raub, who since 1967 has had authority to sign grant award notices on behalf of NIH, (Exhibit II) wrote UCLA a letter which in attachment II thereof, authorized UCLA to enter into the lease/purchase agreement with IBM covering the CPU. Furthermore by memorandum of November 26, 1973, addressed to Herbert C. Frederick, (Exhibit III) Dr. Raub confirms that he authorized the lease purchase agreement and states further:

- "1. The BRB staff discussed the procurement plans fully with UCLA representatives and concurred in the acquisition of the equipment 'overtime,' including the payment of charges now designated as 'interest.'"
- "2. This concurrence was given because purchasing the equipment rather than renting it seemed almost certain to produce substantial cost savings to the government over the life of the grant (an expectation that has in fact come to be)."

Finally the applicable cost principles, issued as BOB Circular A-21, (now called Federal Management Circular 73-8) and which are published as Appendix D to 45 CFR Part 74, specify in Section J., General Standards for Selected Items of Cost, that "...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."

DISCUSSION

The panel finds that the grantee was authorized by Dr. William F. Raub to enter into a lease/purchase agreement with IBM for the purchase, that such authorization, in effect, became part of the research agreement, and that Dr. Raub was acting within his authority.

Therefore, since the lease/purchase agreement, including interest, was authorized by the research agreement and since the applicable cost principles specify that in case of discrepancy between the cost principles and the provisions of the research agreement the provisions of the research agreement will govern, the panel finds that there was no violation by the grantee of the cost principles and that the challenged costs are allowable.

DECISION

The appeal is allowed in full.

/s/ Francis D. DeGeorge, Panel Chairman

/s/ Charles B. Saunders, Jr.

/s/ William Van Orman