

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185016

DATE: July 8, 1976

MATTER OF: Hassidic Corporation for Urban Concerns

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98333**DIGEST:**

Nonprofit institution may be reimbursed for interest cost incurred in financing its participation in Special Food Service Program for Children since applicable regulations and contract do not specifically preclude reimbursement. Matter is returned to agency to determine extent of expenditures incurred.

Counsel for Hassidic Corporation for Urban Concerns (Hassidic Corporation) has claimed the sum of \$48,811.61, representing interest charges paid by the claimant in financing its participation in the Special Summer Food Service Program for Children administered by the Food and Nutrition Service of the Department of Agriculture.

The Special Summer Food Service Program for Children was authorized by the National School Lunch Act, 42 U.S.C. § 1761 (1970) which provides for the Secretary of Agriculture to assist states through grants-in-aid and other means to carry out nonprofit food service programs for children in service institutions. Paragraph (a)(1) of 42 U.S.C. § 1761 defines service institutions as private, nonprofit or public institutions which provide child care for children from areas in which poor economic conditions exist and where there are high concentrations of working mothers. The term also includes public or private nonprofit institutions that develop special summer programs providing food services similar to that available to children under the National School Lunch or School Breakfast Programs during the school year. 42 U.S.C. § 1761 (a)(2). Hassidic Corporation is a private nonprofit corporation which had developed a food service program similar to that provided under the National School Lunch Act.

Paragraph (a) of 42 U.S.C. § 1761 provides for direct disbursement of funds to service institutions by the Secretary of Agriculture. It appears that Agriculture contracted directly with Hassidic Corporation under authority of the above cited statute.

Agriculture has promulgated regulations governing the administration of the program which are published in 6 C.F.R. 225 (1974). Part 225 authorizes financial assistance to a service institution, in lieu of reimbursement for meals, in an amount not to exceed 80 percent of the operating cost of its food service or 100 percent of the cash expenditure for such operating cost, less cash income to the program, whichever is the lesser. The regulations also set a ceiling on the cost of each meal. In no event may administrative costs exceed 6 cents per regular meal. Administrative costs are defined by the regulations as those operating costs directly related to planning, organizing and supervising the program. The above provisions have been incorporated into the agreement between Agriculture and Hassidic Corporation.

Hassidic Corporation allegedly obtained loans prior to its direct participation in the program in order to finance necessary advance preparations for the program. The interest payable on these loans totals \$48,811.61, which Hassidic Corporation included in its submission for reimbursement as an administrative cost. Although the administrative costs, including the interest, were less than the 6 cents allowable by statute, the amount representing interest was disallowed by Agriculture on the basis of its policy not to reimburse sponsors of the program for interest expenses incurred. Agriculture relies on Federal Management Circular (FMC) 74-4 to support this policy. This circular provides that interest costs incurred by state and local governments may not be reimbursed.

Since the agreement is between Agriculture and Hassidic Corporation, FMC 74-4, applicable to grants and contracts with state and local governments, is not for consideration here. The rights and liabilities of the parties must be determined from the contract itself and from those regulations published pursuant to the National School Lunch Act which are applicable to the program.

Both the contract and applicable regulations are silent as to whether interest costs are reimbursable. Moreover, Agriculture has informed us that there is no record of any communications, prior to audit, between Agriculture and Hassidic Corporation on the subject of interest reimbursement.

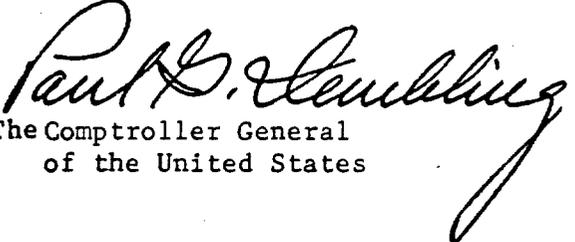
We recognize there is a long-standing rule against allowing interest as a reimbursable cost under a Government contract. This is based upon the policy of encouraging

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contractors to finance the performance of Government contracts with their working capital rather than with borrowed capital. However, Hassidic Corporation, a nonprofit corporation, apparently found it necessary to finance this project through borrowed capital.

Under the regulations applicable to this program, the Government may authorize "financial assistance" in lieu of reimbursement for meals where, as here, "all or nearly all the attending children are in need of free meals and the service institution is financially unable to meet this need * * *." 6 C.F.R. 225.10(3). Administrative costs are defined in both the regulations and the contract as those operating costs directly related to planning, organizing and supervising the program. In our opinion, interest charges incurred for necessary advance preparations, i.e., planning and organizing, by Hassidic Corporation for its participation in the program may be treated as reimbursable operating costs.

However, the record before us does not contain sufficient evidence to support the interest charges allocated to this program. We, therefore, are referring this matter to Agriculture for further development and direct settlement, provided Hassidic produces satisfactory evidence to support its claim.


For The Comptroller General
of the United States