

DECISION



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

FILE: ✓
B-183678 - B-185480 ✓

DATE:

AUG 10 1976

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MATTER OF:
Department of the Interior - State of Montana -
Relocation Administrative Expenses

DIGEST:

Bureau of Reclamation did not act improperly in providing by contract for reimbursement by the State of actual costs incurred in relocating Federal facilities at State request to accommodate highway construction, including its actual indirect expenses incurred in using the services of contractors employed by the Bureau for this purpose, but its indirect expenses charged to the State should be correctly stated and documented in accordance with the contract.

Reference is made to inquiries from the Manager, Internal Review Unit, Montana State Department of Highways, concerning payments or refunds due under a March 7, 1972, contract between the United States of America and the State of Montana providing for Bureau of Reclamation relocation of certain Federal electric power transmission lines at the request and expense of the State in order to accommodate construction of Interstate Highway No. I-94, State costs incurred thereby to be eligible for Federal Highway Trust Fund assistance.

The contract provides, in Article 1, that "The United States, with its own forces or through a responsible contractor employed by it, at the expense of the State, shall * * *" carry out specified relocation functions.

Article 3 provides in part that:

"The United States shall maintain an itemized account of expenditures incurred in the performance of this contract in accordance with the established billing and collection procedures of the Bureau of Reclamation, and submit to the State an itemized statement of expenditures incurred by the United States in the performance of this contract."

Article 4 provides in part that:

"* * * Upon completion of the work, the United States shall furnish the State a statement of the

B-183678

B-185480

actual costs incurred, including, without limitation by reason of this enumeration, right-of-way, surveys, design per diem, materials, labor, equipment costs, and indirect costs, which shall not exceed 15 percent of all direct costs. The salvage credit shall be deducted from the resultant."

Contract costing estimates incorporated by Article 1(c) appear to be predicated upon an allowance of actual indirect costs not to exceed 15 percent of direct costs, including contract services, and upon the deduction of salvage from total direct and indirect costs rather than from direct costs before the computation of indirect costs.

Article 4 of the contract, as drafted, provides that indirect costs would be reimbursable only in an amount not to exceed 15 percent of direct costs, neither direct nor indirect costs being otherwise defined. Montana contends that this provision is to be read as requiring the Bureau to accumulate indirect costs on an actual cost basis for purposes of computing maximum allowable reimbursement as a function of direct Bureau costs. Montana's position is strengthened by the fact that the estimates for this project, which were prepared by the Bureau and supplied to the State, were based on the assumption that the billing for indirect costs would be less than 15 percent. The Bureau, in its February and August, 1974, Statements of Completion, did not accumulate indirect costs on an actual cost basis. Rather it applied a 15 percent factor to direct costs, including both force account and contract services. In substance, Montana takes the position that it has no basis for approving payment of a percentage fee under a contract which calls for actual costs reimbursement. The Bureau replies, in substance, that its actual indirect costs exceeded its maximum allowable recovery of 15 percent of direct costs so that billing Montana at the 15 percent rate was appropriate under its established procedures without further documentation.

It is noted that the Bureau's administrative practices, as set forth in Regional Letter No. 131, September 9, 1970, on the Application of Administrative Overhead Work Performed for Others, provide for a 15 percent surcharge subject to case by case reductions where appropriate to avoid charges in excess of actual expenses incurred in completing the project. This is to be distinguished from a claimed reimbursement based upon an accumulation of actual indirect costs as provided in Article 4. It is also noted that the Bureau's accounting system design, as approved June 26, 1974, paragraph 484.2.5 series 480 Accounting Procedures, provides, consistent with prior Bureau practice, for a 15 percent administrative expense surcharge.

B-183678

B-185480

However, this contract recognizes a distinction between reimbursement of actual costs not to exceed a defined percentage ceiling and a fixed percentage reimbursement. Article 7, permitting State termination of the contract for impracticability of performance, would have required reimbursement of the Bureau's indirect costs in an amount equal to 15 percent of its direct costs while Article 4, providing for reimbursement of actual costs upon project completion, authorized the Bureau to recover from Montana the amount of its actual indirect costs incurred not to exceed 15 percent of its direct costs. It is, of course, the contract, and not the Bureau's normal administrative practice, which is controlling.

We conclude that the Bureau would be entitled to recover its actual indirect costs not to exceed 15 percent of its direct costs incurred in the completion of this project if accumulated and set forth in Statements of Completion supplied to Montana as required under Article 4 of this contract.

However, it appears that the accumulation and substantiation of the Bureau's indirect costs are not at the center of Montana's most strongly pressed contention, that is its view that direct costs for purposes of determining allowable indirect costs should include only the Bureau's direct labor costs and that, while the Bureau's direct costs for contractor services would be reimbursable, it should not also be compensated for indirect costs attributable to those services.

The contract between the Bureau and Montana expressly provided that the Bureau could relocate the transmission lines using, at its election, either its force account resources or the services of contractors at the expense of the State. In carrying out these services by using contractors, the Bureau would expect to incur substantial administrative expenses including preparation of specifications, bid or proposal solicitation, contract award, and monitoring and inspection of construction in progress. These administrative expenses are clearly compensable as provided in this contract.

As a result of the Article 4 limitation on reimbursable indirect costs to 15 percent of direct costs, the Bureau must absorb any excess indirect project costs at the expense of its primary program resources. The effect of the State's contention, by excluding contract costs from direct costs for purposes of computing reimbursable indirect costs, would be that the State might have to reimburse the Bureau for less of the Bureau's actual indirect costs than it would if direct costs include, for this purpose, contract services procured by the Bureau.

B-183678
B-185480

Montana refers to a variety of Federal grant and procurement rules and practices in support of its view that contract services in federally funded undertakings carried out by non Federal instrumentalities are generally not a basis for reimbursable overhead and urges that this should also be the rule when a Federal entity performs services reimbursable by State governments. It also places reliance on Bureau regulations, including Regional Letter 131 pertaining to work done for others, which provide, in the case of certain large projects to be carried out by contractors, for an appropriate reduction of formula-derived reimbursable indirect costs to a lower amount corresponding more nearly to the Bureau's actual incurred indirect costs.

Notwithstanding such grant and procurement rules pertaining to federally assisted activities or to Federal requirements for goods and services provided by others, it was not inappropriate for the Bureau, in undertaking an activity at the request and for the benefit of Montana, to require a more complete reimbursement of its actual costs. This would conserve resources needed to meet primary Bureau responsibilities while promoting intergovernmental cooperation in the achievement of other relevant State or State and Federal program objectives.

We conclude that the contract, both as provided in Article 4 and as reflected in the incorporated cost estimates, validly included contractor services costs in direct costs for purposes of computing reimbursable indirect costs.

Montana next points out that the salvage credit should be taken against total direct and indirect costs rather than, as shown in the Statements of Completion actually supplied to Montana, against direct costs as an adjustment before the determination of allowable indirect costs. The Bureau, possibly inadvertently, took the salvage credit against direct costs only, which benefitted Montana.

While the Bureau and the State Highway Department might have provided otherwise for the application of the salvage credit, Article 4 unambiguously provides that the salvage credit is an offset against resulting total direct and, as limited, indirect costs incurred by the Bureau in connection with this relocation of its electric power transmission lines.

In summary we conclude that the Bureau is entitled to recover from the State of Montana its actual net project costs incurred in the performance of this contract, consisting of both its direct costs and its actual indirect costs not to exceed 15 percent of its direct costs, including contract services, as reduced by the amount of the credit for salvage.

B-183678

B-185480

The Bureau is further directed to assure that its contract forms are consistent with its administrative practices under its approved accounting system design and that its financial transactions are carried out in accordance with contractual terms and conditions.

R. F. KELLER

Deputy) Comptroller General
of the United States