

00344

DECISION



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

R. Parker

COM

FILE: B-136318

DATE: January 21, 1977

MATTER OF: Commerce Department - inclusion of Departmental overhead under 31 U.S.C. § 686 (1970).

- DIGEST:
1. Administrative overhead applicable to supervision by Department of Commerce of service provided to other Federal agency is required to be included as part of "actual cost" under section 601 of Economy Act, 31 U.S.C. § 686 (1970), and must therefore be paid by agency to which service is rendered.
 2. Above is applicable whether amounts collected for Departmental overhead are deposited to miscellaneous receipts in General Fund of Treasury or credited to Department of Commerce General Administration appropriation.

The Assistant Secretary for Administration, Department of Commerce, requested our decision whether the Department is required to include administrative overhead applicable to Departmental supervision (Departmental overhead) as part of actual cost, to be recovered from another agency for which the Department performs services under the authority of section 501 of the Economy Act of June 30, 1932, as amended (31 U.S.C. § 686 (1970)). He also asks if our decision would be the same regardless of whether amounts collected for Departmental overhead are deposited to miscellaneous receipts in the General Fund of the Treasury or credited to the Department of Commerce General Administration appropriation. Finally, the Assistant Secretary asks whether the Department would be improperly augmenting the appropriations of agencies for which it performs service if it did not charge for Departmental overhead.

The rendering of services by one executive department or independent establishment to another is governed by 31 U.S.C. § 686(a) (1970) which provides in pertinent part:

"Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check

to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned * * *"

We have held that "actual cost" as used in the statute includes overhead and other indirect expenses. In 32 Comp. Gen. 479, at 480, (1953) we said:

"This language [of section 686(a)] was discussed in 22 Comp. Gen. 74 and it was there held that the statute required reimbursement to be made 'on the basis of the actual cost of performing the service "as may be agreed upon" by the agencies concerned.' Such cost was construed in the said decision to include overhead or indirect costs—'items which commonly are recognized as elements of cost, notwithstanding such items may not have resulted in direct expenditures * * *.' Also, it was stated therein that 'the question as to the "proper adjustments" to be made as reimbursement for services rendered under the terms of the applicable statute is one primarily for administrative consideration, to be determined by agreement between the agencies concerned.'

"The statute as thus construed clearly establishes the principle that payment for the services shall be upon a cost basis and such principle is binding upon both the procuring and requisitioned agency in fixing the charges to be billed and paid. * * *"

The question now presented arises because, according to the Assistant Secretary, while a headnote to 38 Comp. Gen. 734 (1959)

"* * * seems to indicate that agencies have discretion in determining which, if any, items of indirect cost should be included in the price billed to another agency for services furnished under the Economy Act, neither that opinion nor any other that we could find, would seem to justify that statement * * *."

Language in a headnote is of course only a paraphrase or digest, and cannot be relied upon in preference to the text of a decision. The decision in 38 Comp. Gen. 734 does say that depreciation expense in interagency transactions under section 601 is "* * * an element of cost which properly may be included in billings and recovered. * * *" (At 739, emphasis supplied.) This language, standing alone, might be understood to make recovery of indirect expenses such as depreciation permissive rather than mandatory, but it should be considered in the proper context. The question then before this Office was whether a proposal by the Department of Commerce to bill other agencies for depreciation associated with services provided under the Economy Act was proper, and the answer, couched in narrow terms, was that the proposal was proper. That is, the question now before us—whether the charge for indirect expenses was mandatory—was not expressly raised and was not answered by 38 Comp. Gen. 734.

Similarly, in 22 Comp. Gen. 74 (1942), the narrow question was whether a voucher for payment of another agency's bill for services provided under section 601 of the Economy Act could properly be certified for payment where the amount to be certified included indirect costs, not associated with direct expenditures by the billing agency. We held that "* * * the performing agency properly may be reimbursed * * *," without expressing any opinion as to whether the charge for the indirect costs was mandatory or not. Compare, in this connection, the language of 32 Comp. Gen. 479, quoted supra.

We now take this opportunity to resolve any doubt which may exist as a result of the language of our earlier decisions and of the headnote to 38 Comp. Gen. 734. Effective compliance with the reimbursement provision of 31 U.S.C. § 686(a) is only achieved when all significant elements of cost are recognized and recovered in any transaction under that section. If overhead expense is significant, then like other elements of cost it should be recognized and recovered. The recognition of these costs is necessary so that the performing agency and the ordering agency will know the costs of their operations. Also, the requirement that prices of the performing agency be based on full costs affords the ordering agency a financial measurement for determining whether to deal with one or another Government agency, procure the services elsewhere, or forego the undertaking entirely. Prior decisions are overruled to the extent they are inconsistent with this conclusion. Moreover, as noted in the submission, this would make the Federal reimbursement procedures under the Economy Act consistent with the practices and policies applicable to provision of goods and services to non-government recipients

B-136318

under the user charge statute, 31 U.S.C. § 482, which specifically requires the provider agency to take into account both direct and indirect costs in prescribing fees and charges.

Unless exempted by law, agencies which heretofore have excluded significant indirect costs from their billings under section 601 of the Economy Act and similar laws should revise their practices with respect to any agreements entered into hereafter under such law. However, in recognition of the fact that this will represent a departure from existing, previously acceptable, practice, this decision will operate prospectively. That is to say, reimbursement may be made, with respect to agreements entered into prior to this decision, according to the terms thereof and present agency policies, whether or not indirect costs will be recovered.

In view of our conclusion that the overhead cost is required to be recovered, the determination of whether a failure to charge for overhead cost represents an augmentation of the appropriation of a user agency, is unnecessary.

Finally, we have been asked whether our decision concerning recovery of indirect overhead costs is affected by the choice of the Department of Commerce to deposit funds collected for Departmental overhead to miscellaneous receipts in the General Fund of the Treasury rather than crediting them to the General Administration appropriation.

31 U.S.C. § 656(b) provides in pertinent part as follows:

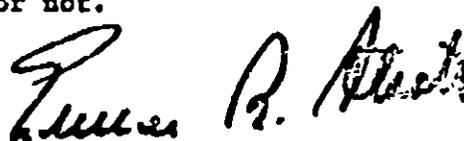
"Amounts paid as provided in subsection (a) of this section shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations or funds against which charges have been made pursuant to any such order, except as hereinafter provided. * * * Such amounts paid shall be available for expenditure in furnishing the materials, supplies, or equipment, or in performing the work or services, or for the objects specified in such appropriations or funds. Where materials, supplies, or equipment are furnished from stocks on hand, the amounts received in payment therefor shall be credited to appropriations or funds, as may be authorized by other law, or, if not so authorized, so as to be available to replace the materials, supplies, or equipment, except that where the head of any such department, establishment, bureau, or office determines that such replacement is not necessary the amounts paid shall be covered into the Treasury as miscellaneous receipts."

B-136318

The statute thus represents an exception to the rule of 31 U.S.C. § 484 (1970) which requires generally that all moneys received for the use of the United States be paid into the Treasury. The purpose of the exception is to allow agencies to perform services for one another without, in effect, suffering a financial penalty.

It is not clear why the Department has chosen to deposit amounts received for departmental overhead in the Treasury as miscellaneous receipts, rather than to credit these amounts to the appropriation for general administration of the Department, as it formerly did. The Assistant Secretary says only that the latter procedure was found more practicable, "for budgetary considerations." We note, however, that, since the cost of departmental overhead does not result in direct expenditures or identifiable charges against the appropriation for general administration, the Department's ability to perform work for other agencies without diminishing the funds available to it for its own activities is not impaired by depositing the departmental overhead charges in miscellaneous receipts.

Accordingly, although the procedure adopted by the Department--depositing amounts received in reimbursement for Departmental overhead in miscellaneous receipts--is not expressly authorized by 31 U.S.C. § 686(b), we cannot say that the Department has acted improperly in adopting it. In any event, in response to the third question, our decision concerning whether the requirement to collect actual costs includes indirect costs is not affected by whether the amounts collected are deposited in the Treasury or not.



Comptroller General
of the United States