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

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FILE: B-185886 DATE: July 15, 1976

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MATTER OF: National Council on Crime and Delinquency

DIGEST:

Contractor's pension costs which were accrued but not funded are not allowable for reimbursement under applicable FPR cost principle. While unliquidated (unfunded) pension costs may be allowable costs under general accounting principles, FPR cost principle governs allowability under Government contracts. As general matter, costs which are not funded are unallowable since reimbursement for such costs would be in nature of advance payment.

The Law Enforcement Assistance Administration (LEAA) has requested an advance decision regarding the allowability of pension costs under the Federal Procurement Regulations (FPR).

LEAA reports that in 1972 it assumed audit authority over the National Council on Crime and Delinquency (NCCD), a non-profit corporation. Prior to LEAA assuming audit cognizance, no audit of NCCD's overhead rates was made. During the course of LEAA's audit of the 1972 and 1973 overhead rates (we are informed that the cost principles set forth in FPR 1-15.2 were applicable to all of NCCD's contracts and grants) it was discovered that pension costs for NCCD had been accrued but that not all of these expenses had been liquidated (funded). LEAA questioned the allowance of these unfunded amounts for 1972 and 1973 citing FPR 1-15.205-6(f)(2)(iii) (March 1975) which provides as follows:

> "(iii) Pension costs of previous years which have not been funded as of the effective date of this paragraph are allowable to the extent they are systematically funded over not less than 10 years, provided the contractor can demonstrate that pension costs are allocated to Government contracts on a funding rather than an accrual basis in the accounting periods previous to the effective date of this paragraph and also provided that the systematic funding starts no later than the contractor's first full fiscal year after the effective date of this paragraph."

(The effective date of the paragraph is May 26, 1975).

NCCD objects to LEAA's position and insists that:

> "NCCD's books reflect recording of actual pension expense in the year incurred which is in direct conformance with Accounting Principles Board Opinion # 8. To record a significantly smaller expense would be in violation of that opinion and therefore in violation of generally accepted accounting principles. The fact that accrued pension expenses remained unliquidated for a time has no bearing on the requirement that the actual expense be recognized in the period in which the expense was incurred. Accordingly we disagree with the auditor's opinion."

LEAA requests our determination as to whether the 1975 FPR revision is applicable to the periods under audit and whether its exception is in conformance with the FPR.

In our opinion the March 1975 regulation is not pertinent to the question of the allowability of pension costs claimed under the 1972 and 1973 NCCD contracts. This provision was intended to permit a contractor to claim under its post-May 1975 contracts previously unfunded pension costs, provided certain conditions were met. Rather, the allowability of pension costs for the subject 1972 and 1973 contracts is governed by FPR section 1-15.205-6(f) (1968). Subsection (2) of this section provides as follows:

> "(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the Regulations of the Internal Revenue Service. * * *"

This regulation is not as specific as the current one, which provides that pension costs are allowable if, among other criteria not relevant here, they are deductible for Federal income tax purposes in the fiscal year claimed [FPR 1-15.205-6(f)(2)(ii)(1) and 1-15.205-6(f)(2)(vii)(2) (March 1975)]. In this connection, there is no indication in the record that NCCD's accrued pension costs were deductible for income tax purposes in 1972 and 1973.

As a general matter, costs which are accrued but not funded are not allowable under Federal contract cost principles until funded, since reimbursement for an accrued cost that is not due and payable for a number of years would be in the nature of an interest-free, advance payment. General Dynamics Corporation, ASBCA No. 8867, June 12, 1964, 1964 BCA 4270. Therefore, even if the current regulation is regarded as a clarification of the prior one, the unfunded pension costs are not allowable.

With regard to NCCD's contention that its unliquidated pension costs are allowable in accordance with Accounting Principles Board Opinion # 8, we note that a somewhat similar contention was made in Chrysler Corporation, ASBCA No. 14385, March 17, 1971, 71-1 BCA 8779, and rejected. The Board held there that Chrysler's fringe benefits costs were allowable only to the extent they were allowable under the applicable ASPR regulations (ASPR section XV). Here, too, we believe the applicable FPR regulation (FPR 1-15.205-6(f)) governs the question of allowability. In accordance with that regulation, we believe that LEAA's action was proper.

R. F. Keller

Deputy Comptroller General
of the United States