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S. Kramer  
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**DECISION**



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

FILE: B-192334

DATE: September 28, 1978

MATTER OF: James Chestnut - Payment of Incentive Award

- DIGEST:
1. Employer may be given incentive award under 5 U.S.C. §§ 4501 et seq. (1976) for contribution to "efficiency, economy, or other improvement of Government operations," or for "special act or service in the public interest" in connection with his employment, 5 U.S.C. § 4503. Employee achievement which results in saving to his agency but not to Government (because other agencies' expenditures increase as a result) is not contribution to economy of Government but may be contribution to efficiency or improved operations, or may be special act or service warranting award if agency head so determines.
  2. Civil Service Commission optional guidelines for incentive awards program authorized by 5 U.S.C. § 4501 et seq. (1976) provide for determination of amount of award based on tangible benefit to Government. Agency choosing to follow guidelines may not compute award based on tangible benefit where benefit is to agency but not to Government as a whole (because other agencies' expenditures correspondingly increase). Agency may follow intangible benefits guidelines or any system of its own consistent with law and regulations.

An authorized certifying officer of the Small Business Administration (SBA), requests our decision concerning the propriety of certifying for payment a voucher for \$3,805. representing an incentive award to an employee.

The proposed recipient of the award, Mr. James Chestnut, a Business Development Specialist for the SBA, questioned the method the Defense Fuel Supply Center (DFSC) and Defense Logistics Agency (DLA) were using in computing the amount they would pay for fuel oil under Small Business Act set-aside contracts. According to the

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submission, Mr. Chestnut was able to convince those agencies that their basis for computation of weighted average cost was unfair to small business contractors and those agencies agreed to pay a higher price for the oil supplied. As a result, SEA will save approximately \$2.7 million, which would have had to be expended as Business Development Expense. The money saved by SBA, however, will be paid to the small business contractors by DFSC and DPA.

The agency incentive awards officer found that Mr. Chestnut was eligible for an award of \$3,805, based on the saving to SBA of \$2.7 million. Because of some doubt about whether the award is proper under the Government Employee's Incentive Awards Program and governing regulations, the question has been submitted to us.

Payment of incentive awards is governed by 5 U.S.C. §§ 4501 et seq. (1976). Section 4503 of title 5, United States Code, provides in pertinent part, as follows:

"The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who--

"(1) by his suggestion, invention, superior accomplishment, or other personal effort contributed to the efficiency, economy, or other improvement of Government operations; or

"(2) performs a special act or service in the public interest in connection with or related to his official employment.

Cash awards under section 4503 by the head of an agency may not exceed \$5,000. 5 U.S.C. § 4502(a). The Civil Service Commission (CSC) is given authority to prescribe regulations and instructions for the incentive award programs in the various Federal agencies. 5 U.S.C. § 4506.

Under CSC regulations, agencies have been given optional guidelines to follow in establishing the amount of awards. One such guideline is a distinction between achievements which yield tangible benefits to the Government and those which yield intangible benefits. Although these guidelines are optional and agency heads may establish different categories or scales, provided they meet

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the requirements of law and regulation, SBA has apparently followed the CSC guideline applicable to tangible benefits in arriving at the amount of the award proposed to be given to Mr. Chestnut. Under that guideline (FPM § 451.3-3(d)), awards for tangible benefits of \$100,001 or more may be based on a formula of \$1,200 for the first \$100,000 and \$5 for each additional \$5,000. Application of that formula to a tangible benefit of \$2.7 million yields an award of \$3,805, the amount on the voucher here presented for certification.

This situation presents two questions. First, may any incentive award be made where the saving to SBA corresponds to additional costs elsewhere in the Government? Second, assuming that an award is proper, is it proper to compute its amount based on a tangible benefit to SBA of \$2.7 million?

Awards may be given to an employee for achievements which result in no measurable saving to the Government as a whole. As the Associate General Counsel, SBA, points out, Mr. Chestnut's suggestion may be regarded as having contributed to the efficiency or improvement of Government operations or as a special act or service in the public interest in connection with his employment. See 5 U.S.C. § 4503, *supra*. It is for the head of the agency (or his delegate) to determine whether an award is justified in a particular case. Contributions to the efficiency or improvement of operations do not necessarily have to save money. Similarly, an employee may be given an award for exemplary performance of his duties without regard to whether any economy results. There appears to be sufficient evidence in the record to support a finding by the SBA that Mr. Chestnut's action has improved Government operations by achieving a more accurate allocation of costs of the small business set-aside program. Hence we believe that SBA in its discretion may make an award to Mr. Chestnut under 5 U.S.C. § 4503.

With regard to the amount of the award, applicability and interpretation of the CSC guidelines is, at least in the first instance, a matter for the Commission. However, we do not believe that the \$2.7 million saving to SBA should be regarded as a tangible benefit, within the meaning of the Civil Service guidelines in this instance since, admittedly, that amount is not saved by the Government.

An earlier version of the incentive awards statute, 5 U.S.C. § 1151 et seq. (1952) referred to awards based on suggestions

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resulting in improvements or economy in the operations of the employee's department. The change from "department" to "Government" does not alone resolve the question whether increased costs to one agency may be ignored in computing tangible benefits to another. The change in the statutory language was apparently intended to allocate awards on the basis of Government-wide savings and of savings in an agency other than the one employing the winner of the award. See letter from Chairman, Civil Service Commission, to Chairman, Senate, Post Office and Civil Service Committee, reprinted in S. Rep. No. 1292, 83rd Cong., U.S. Code Cong. & Adm. News 3835 (1954). Thus, while the legislative history of the incentive awards statute supports the general conclusion that effects on more than one agency of a suggestion should be taken into account, it cannot be said to resolve definitively the question, which was apparently not specifically considered, whether Government-wide costs should be balanced against Government-wide savings.


CSC regulations and guidelines do not directly address this issue. However, they do make it clear that, at least within an agency, tangible benefit is to be based on the net monetary benefit to the agency (FPM 451.3-3b(1)(b)). Moreover, CSC regulations provide that in the case of an employee achievement benefitting more than one agency, the Commission will upon request determine the amount of a tangible benefits award, based on the total interagency net measurable benefits. FPM 451.3-9a(2).

Under the foregoing authorities, it is clear that costs associated with an employee achievement are to be taken into account, at least when they occur within the agency or agencies receiving a tangible benefit. It would be anomalous, in our view, not to do the same in the circumstances of this case, merely because the costs occur in an agency not receiving a benefit. To take Government-wide costs into account is consistent with the language of 5 U.S.C. § 4503(1), supra, which speaks of awards for contributions to the economy of "Government operations."

Accordingly, assuming that SBA intends to follow the CSC guidelines which distinguish between tangible and intangible benefits, it should determine whether there has been any tangible benefit to the agency or the Government, other than the \$2.7 million. If not, SBA may base the amount of the award on a finding that an intangible benefit exists and may of course follow the CSC guidelines for determining the amount of awards for intangible benefits.

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Because the voucher amount has been computed based on the assumption of a tangible benefit of \$2.7 million, it may not be certified for payment. However, this decision is not to be construed as limiting in any way the Administrator's discretion to make a cash award to Mr. Chestnut in any amount up to \$5,000 on his determination, consistent with the requirements of law and regulations, that such an award is justified.

  
Acting Comptroller General  
of the United States