

19054

DECISION



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

FILE: B-203677

DATE: August 6, 1981

MATTER OF: National Guard Bureau

DIGEST:

National Guard agency's failure to record obligation resulting from contract for arbitration services which came into effect after agency technician, acting for Adjutant General, did all that was required to commit agency to use of arbitrator and to pay fee, does not prevent payment of fee provided funds are currently available for such payment.

An authorized certifying and contracting officer of the National Guard Bureau, Departments of the Army and Air Force, requests our decision regarding the propriety of paying an invoice submitted by Ezra S. Krendel in the amount of \$552.70 for arbitration services.

The record indicates that the Association of Civilian Technicians filed a grievance for the interpretation of its contract with the National Guard Bureau. Such grievances, if not locally resolved, are required to be settled by the Federal Mediation and Conciliation Service (FMCS). Consequently, FMCS provided to the National Guard Bureau and the union a list containing the names of five arbitrators including Ezra S. Krendel. A technician personnel officer of the Bureau subsequently informed FMCS that the Bureau and the union had agreed upon Mr. Krendel as arbitrator. FMCS appointed Mr. Krendel, who performed the required arbitration services for the Bureau and the union during December 1980. Pursuant to the union contract, the cost of the arbitrator was to be borne equally by the National Guard Bureau and the union.

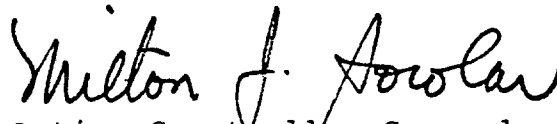
[Propriety of Payment for Arbitration Services]

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The selection and appointment of Mr. Krendel was in accordance with the procedures delineated in the FMCS regulations, 29 C.F.R. 1404 (1980), which were promulgated pursuant to 29 U.S.C. 172 et seq. (1976). The technician personnel officer who secured the services of Mr. Krendel, however, did not follow pertinent National Guard procurement procedures, which required him to request preparation of a miscellaneous obligation document by which the Bureau's funds would be officially obligated. Thus, the Bureau is concerned about the propriety of paying the invoice.

We see no impediment to payment. Although the Bureau apparently did not follow its own procedures for having the necessary funds obligated on the Bureau's books, we think a valid contract came into existence when the arbitrator was appointed after the technician personnel officer, acting on behalf of the Adjutant General, notified the FMCS of the acceptability of Mr. Krendel. Under the existing authority of the Bureau and the applicable regulations and procedures of the FMCS, nothing more was required for the Bureau to be legally obligated to pay Mr. Krendel once he rendered his services. Thus, while there was a failure to record the obligation resulting from the contract that was effected by the actions of the parties here, that failure does not prevent payment provided that funds are available at this time.



Acting Comptroller General
of the United States