U.S. Department of Transportation
Office of the Secretary of Transportation

ORDER

DOT 4600.14
9-18-84

Subject: PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS, CONTRACTS, AND OTHER AGREEMENTS WITH NONPROFIT ORGANIZATIONS

1. PURPOSE. This Order provides instructions for implementing the requirements of Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations of June 27, 1980, and OMB's Lobbying cost principle revision of April 27, 1984. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law.

2. REFERENCES. OMB Circular A-122 and Publication No. OASMB-5, A Guide for Nonprofit Organizations: Cost Principles and Procedures for Establishing Indirect Cost and Other Rates for Grants and Contracts. This brochure is designed to assist nonprofits and Federal funding agencies in determining indirect costs. The Department of Health and Human Services issued the publication which reflects Government-wide principles.

3. APPLICABILITY. The provisions of Circular A-122 shall be used in determining the costs of work performed by nonprofit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. Direct contracts with nonprofits are subject to Subpart 31.7, Contracts with Nonprofit Organizations, of the Federal Acquisition Regulation (FAR); and, contracts which refer to Subpart 31.7 shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with the revision of OMB Circular A-122 in effect on the date of the contract. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a cost reimbursement subaward is to a nonprofit organization, Circular A-122 shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply.

4. BACKGROUND.

   a. OMB Circular A-122 instructs agencies to implement the provisions of the Circular, defines nonprofit organizations, and provides principles and related policy guidance for recognizing costs incurred by nonprofit organizations.

   b. Circular A-122 lists specific methods for allocating indirect costs and computing indirect cost rates, along with the conditions under which each method should be used.

c. Circular A-122 provides, unless different arrangements are agreed to by the agencies involved, that the Federal agency with the largest dollar value of awards with an organization will serve as the cognizant agency for the negotiation and approval of indirect cost rates and, where necessary, other rates such as those for fringe benefits and computer charges. All involved Federal agencies shall be given the opportunity to participate in the negotiation process, but after a rate has been agreed upon, all Federal agencies will accept it.

d. The Lobbying cost revision provides that costs associated with most kinds of lobbying and political activities are unallowable for Federal reimbursement. The principal effect of this general disallowance is to ensure that Federal funds are used for the purposes for which they were intended, and not to facilitate lobbying activities. The Lobbying revision requires a certification in the annual indirect cost-rate proposal that the organization complies with the requirements and standards of Subparagraph C on the identification and treatment of lobbying costs. The revision is applicable to grants, contracts, and other agreements with nonprofit organizations entered into after May 29, 1984. In addition, the lobbying cost principle for commercial organizations listed under Subsection 31.205-22 of the FAR, has been revised to make it conform to the Circular A-122 standards.

5. POLICY. The costs of DOT awards to nonprofit organizations will be determined in accordance with the principles in Circular A-122. For direct contracts, the FAR should be referenced. No administrative restrictions (i.e., those restrictions not statutorily prescribed) concerning the allowability of costs shall be applied which conflict with the provisions of Circular A-122.

6. RESPONSIBILITIES.

a. Each Operating Administration and Secretarial Office administering awards to nonprofits shall incorporate the principles of Circular A-122, as amended, fully or by reference in the terms and conditions of its agreements, appropriate agency directives, circulars, handbooks and manuals. Statutory restrictions which preclude full compliance with these principles should be identified and explained. Requests for exceptions to Circular A-122 by the operating elements shall be submitted through the Assistant Secretary for Administration, and will be forwarded to OMB only when accompanied by sufficient justification to warrant an exemption.

b. In accordance with Circular A-122, DOT operating elements must ensure that Federal funds that are subsequently passed from direct recipients through to nonprofit organizations are properly spent and accounted for according to Circular A-122 if the funds are passed through under cost reimbursement agreements.

c. The operating elements shall accept indirect cost rates negotiated by the Federal cognizant agency for use under DOT awards. This involves accepting rates negotiated by other Federal agencies when DOT does not have the preponderance of awards to a recipient. Where DOT is the Federal agency with the largest dollar value of annual awards with a nonprofit organization, the operating element within DOT with the largest dollar value (unless another DOT element will assume responsibility based on its resources) shall act as the cognizant agency for the negotiation and approval of indirect costs rates. Appendicies C through F of OASMB-5 provide guidance on procedures to follow for establishing indirect rates and have examples of indirect cost proposals. The cognizant agency is responsible for requesting necessary audits, approving the recipient's indirect cost rates, and preparing the negotiation agreement. When audit of the recipient's indirect cost proposal is necessary, the Office of Inspector General will arrange for the audit. The negotiation agreement should be forwarded to the Office of Installations and Logistics for distribution within DOT and to other Federal departments.

d. In the administration of DOT awards and the negotiation of indirect cost rates, operating elements shall ensure that allowable costs will be determined in accordance with the principles in Circular A-122, as amended.

7. IMPLEMENTATION. The policy and procedures contained in this Order are effective immediately. Implementing directives on the administration of assistance programs should be submitted to the Office of Installations and Logistics within 60 days following publication of this Order.

Robert L. Fairman
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Administration