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Use of Credit Earned on One Contract to Offset Cost of Another. A-51604. May 31, 1977. 3 pp.

Decision by Robert F. Keller, Deputy Comptroller General.

Issue Area: Intergovernmental Relations and Revenue Sharing: Federal, State, Area-wide, and Local Coordination (403).
Contact: Office of the General Counsel: General Government Matters.
Budget Function: General Government: Central Fiscal Operations (803).
Organization Concerned: Food and Nutrition Service.
Authority: 12 U.S.C. 371a. 12 U.S.C. 1828(g). 31 U.S.C. 484.

Clement F. Nunno, Contracting Officer, Department of Agriculture, requested a decision on the legality of using credits accrued from food stamp sales receipts deposited in commercial "concentration" banks under contracts with Food and Nutrition Service (FNS) to offset cost of another FNS contract for data collection. Credit on one contract may not be applied to offset cost of another contract, even though both contracts are necessary to same FNS program objective. (Author/DJM)

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Susan Gerling
GGM

DECISION

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

FILE: A-51604 **DATE:** May 31, 1977

MATTER OF: Use of Credit Earned on One Contract to Offset Cost of Another

DIGEST:

Deposits of food stamp sales receipts in "concentration" banks, under contracts with Department of Agriculture, Food and Nutrition Service (FNS), may result in reduced costs or "credit," for FNS. Credit may not be applied by FNS to offset cost of another FNS contract for data collection even though data collection contract and bank contract are both necessary to same FNS program objective.

By a letter dated February 1, 1977, Mr. Clement F. Munno, a contracting officer of the United States Department of Agriculture, Food and Nutrition Service (FNS), requested our opinion concerning the legality of using credits accrued on Government funds deposited in commercial "concentration" banks to offset some of the cost of a commercial data collection service which is to collect financial data concerning the deposits for FNS.

Sales receipts from the sale of food stamps throughout the United States and its territories are deposited in local banks by local sales agents. According to the submission, FNS has developed a request for proposals to procure the services of several commercial banks. These banks would serve as "concentration" banks to collect sales receipts from the local banks and deposit these receipts in the Treasury to the credit of the FNS account through the use of an Electronic Funds Transfer System.

FNS has also prepared a request for proposals to procure the services of a nationwide commercial data collection service. The service would collect financial data generated by the concentration banks as well as reports furnished by sale deposit points (local sales agents), and report this information to FNS. The concentration banks would not be parties to the data collection contract but, according to the contracting officer, "the entire system cannot operate without one or the other."

FNS estimates that the concentration banks will handle approximately $4 billion annually, and that daily deposits will flow through a concentration bank over a period of 2 days. The availability of these funds to the concentration banks can, under certain conditions, generate additional income for the concentration banks. The concentration banks, in turn, may be willing to credit this income against the contract price, and this "credit," as FNS terms it, may be sufficient to more than offset that price. FNS proposes to use this "credit" (presumably to the extent it exceeds the concentration bank contract price for a given period) to offset the cost of its separate contract with the commercial service.

The precise nature of the "credit" which FNS proposes to set-off against the costs of another contract service is not clear from the submission. From the description of the arrangement, it would appear that the Government funds would be temporarily placed in the contractor concentration bank in a demand-deposit type of account. Payment of interest by Federally regulated banks on demand-deposit accounts is prohibited by 12 U.S.C. §§ 371a and 1828(g)(1970), subject to certain exceptions made by the Board of Governors of the Federal Reserve System for member banks, not applicable here.

We have been informally advised that the contemplated "credit" could take the form of reduced service costs, depending on the volume of funds flowing to the contractor bank under the arrangement. The United States would benefit--i.e., have a measurable credit--only so long as its deposits in the bank's facilities remained at or exceeded the agreed upon level. If the volume of its deposits dropped, on the other hand, the United States might suffer a financial detriment in the form of higher service charges. This form of "soft credit" is similar to the arrangement offered by many commercial banks to private depositors in which "free" checking service is provided so long as a stated minimum balance is maintained.

We have no objection to this type of credit arrangement and commend FNS' efforts to minimize the costs to the Government of the services provided by the contractor concentration bank. However, use of funds "saved" on one contract cannot be used to reduce the costs of another contractor's services, even though the program objectives of the two contracts are closely related.

We are not aware of any legal authority, nor does the submission cite any, permitting Federal departments and agencies to use credit earned on one contract for payment of or offset against costs incurred on other contracts. If the "credit" were actually refunded to the United States, it would clearly be "moneys received * * * for the use of the United States," and therefore required by 31 U.S.C. § 484 (1970) to be paid into the Treasury. If it was retained and applied to reduce the cost of the commercial service contract, it could be regarded as an augmentation of the applicable appropriation. Accordingly, any credit accrued on the concentration bank contracts may not be applied to the commercial data collection service contract, or to other FNS expenses, without specific legislative authority.

R. F. Keller

Deputy Comptroller General
of the United States