



OFFICE OF LEGAL AFFAIRS

**ADVISORY OPINION
AO-2013-01**

SUBJ: Whether the acquisition cost(s) of *services* must be aggregated with the acquisition cost(s) of related *personal property* for purposes of the prior approval requirement of Part 1630 or the PAMM

DATE: January 17, 2013

QUESTION PRESENTED

Whether 45 CFR Part 1630 (LSC's regulations on cost standards and procedures) or the LSC Property Acquisition and Management Manual ("PAMM") require LSC's prior approval for a recipient's purchase of 1) accounting software, 2) training, set up, data transfer, and remote consulting (collectively "installation"), and 3) maintenance.

BRIEF ANSWER

Part 1630 and the PAMM apply to the acquisition of real and personal property, but not to services. Both the regulation and the PAMM explicitly require recipients to receive LSC prior approval for the purchase of personal property when the cost of an individual item exceeds \$10,000. There is no indication that acquisition of *services* is within the scope of the LSC prior approval requirement, or that recipients are required to aggregate service costs with the cost of personal property for purposes of prior approval.

BACKGROUND

An LSC recipient entered into three agreements: the first agreement was for certain software modules and maintenance; the second agreement was for additional software modules and maintenance; and the third agreement was for installation services. The maintenance costs were broken out separately in the first and second agreements. During the course of an audit of the recipient, the three agreements were reviewed. The audit report concluded that, pursuant to 45 C.F.R. § 1630.5(b)(2) and §§ 2(a) and 3(d) of the PAMM, the recipient's purchase of accounting software (\$8,530.04), training, set up, data transfer, and remote consulting ("installation") (\$6,689.00), and maintenance (\$2,132.51), totaling \$17,351 in LSC grant funds, required LSC's prior approval. Although the total cost of the accounting software, installation, and maintenance was \$23,220.50, only \$17,351.00 was charged to LSC funds.

The recipient disagreed that LSC prior approval was required, and maintained that this was not a single purchase, but three separate purchases of individual items: the accounting software, the installation, and the maintenance, each of which was acquired at a cost of less than \$10,000. As a result, we were asked whether the combined cost of \$17,351 charged to LSC funds for the purchase of accounting software, installation of the software, and maintenance of the software, required LSC's prior approval.

ANALYSIS

Section 2(a) of the PAMM defines "acquisition" as "a purchase of real property or purchase or lease of personal property made in whole or in part with LSC funds" and instructs recipients to "treat [the] purchase or lease of related property as a single acquisition when the property can be readily obtained through a single contract with a single source. Relying on 45 C.F.R. § 1630.5(b)(2) (which requires prior approval if the current purchase price of any individual item of property exceeds \$10,000) and § 3(d) of the PAMM (which requires prior approval if the recipient uses more than \$10,000 of LSC funds to acquire an individual item of personal property), the audit report concluded that that the recipient's acquisition of accounting software was a purchase of an individual item – an accounting system – and that the software, installation, and maintenance were more than related items, but components necessary for the system to work properly.

Under Part 1630 and the PAMM, recipients are required to obtain prior approval for certain purchases with LSC funds. 45 C.F.R. § 1630.5 specifically provides that "no cost attributable to [p]urchases and leases of equipment, furniture, or other personal, non- expendable property [may be charged to LSC funds without prior written approval from LSC,] if the current purchase price of any individual item of property exceeds \$10,000." 45 C.F.R. §1635.5(b)(2). The prior approval language of Part 1630 expressly addresses only purchases of *real* or *personal* property, but not the acquisition of *services*. See 45 C.F.R. § 1630.5(b). The PAMM governs recipients' use of LSC funds to acquire personal property and, because the question presented involves the purchase of personal property, should be considered as well.

The PAMM provides that "[a] recipient using more than \$10,000 of LSC funds to acquire *an individual item of personal property* must request and receive LSC's prior approval pursuant to 45 CFR § 1630.5(b)(2) . . . before making the expenditure." LSC PAMM, § 3(d) (2001) (emphasis added). Like Part 1630, the prior approval language in the PAMM expressly addresses only purchases of *personal property* and not the acquisition of services.¹ The PAMM defines "acquisition" as

a purchase or lease of *personal property* made in whole or in part with LSC funds. For the purposes of [the] PAMM, recipients should treat a purchase or lease of related *property* as a single acquisition when the property can be readily obtained through a single contract with a single source.

¹ The stated purpose of the PAMM is to set forth standards governing, among other things, the acquisition of *real and personal property* – not services. LSC PAMM, § 1.

LSC PAMM, § 2(a) (emphasis added). It is this definition which the audit report relies upon in concluding that the recipient's purchase of software, installation, and maintenance amounted to the purchase of an individual item costing over \$10,000, and required prior approval by LSC.

The recipient entered into a service agreement for the vendor to perform installation services, including training, set up, data transfer, and remote consulting. Since this agreement was for a service rather than personal property, it does not appear to be covered by Part 1630 or the PAMM. Accordingly, the recipient's installation purchase did not require LSC prior approval.

The recipient entered into two agreements for software and maintenance on the same date. Agreement #1 included certain accounting software modules and maintenance, and Agreement #2 included additional accounting software modules and maintenance. In accordance with § 2(a) of the PAMM, the recipient should have treated the purchases of accounting software as a single acquisition since it is "related property . . . readily obtain[able] through a single contract with a single source."

While the maintenance component appears in the same two agreements as the software purchase (possibly because it is a recurring annual fee based on a percentage of the software cost), that would not alter its status as a service, rather than property. Neither Part 1630 nor the PAMM suggests that service costs and personal property costs must be aggregated when the service component and the personal property are contracted for jointly. Absent some clear indication that LSC meant to require the aggregation of service costs with personal property costs, we cannot conclude that recipients have been put on notice to aggregate such costs, even when contracted for jointly.

CONCLUSION

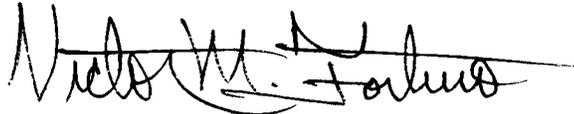
The prior approval requirements of Part 1630 and the PAMM apply to the acquisition of real and personal property, but not to the cost of services. Therefore, it appears that the separate professional services agreement for installation did not require prior approval from LSC. The recipient should have treated the purchase of accounting software modules as a single acquisition, since they are related property readily obtainable through a single contract with a single source, but the total cost for all of the modules was less than the threshold of \$10,000 necessary to require prior approval by LSC. Moreover, notwithstanding that the maintenance was contracted for jointly with the software, there is no requirement that the maintenance costs be aggregated with the software costs. Given that Part 1630 and the PAMM apply only to acquisitions of property, and not services, there is no reason to conclude that joint contracting versus separate contracting is material to the outcome.

In conclusion, it is our opinion that the recipient was obligated to aggregate the software costs from the two agreements, but not required to aggregate them with installation costs or maintenance costs. Since the total of the aggregated software costs was below the

\$10,000 threshold, the recipient was not required to obtain LSC's prior approval in this instance.



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