

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

National Alliance on Mental Illness
Docket No. A-14-69
Decision No. 2612
December 24, 2014

DECISION

The National Alliance on Mental Illness (NAMI) appealed the April 4, 2014 determination by the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing \$195,037 in costs that NAMI charged from September 30, 2007, through March 31, 2013, to grants awarded under section 520A of the Public Health Service Act, codified at 42 U.S.C. § 290bb-31, *et seq.* During these proceedings, NAMI withdrew its appeal of \$106,453 of the disallowed charges, and SAMHSA determined that \$4,725 of the charges were allowable. The charges that remain in dispute are: 1) payments to Westover Consultants, Inc. (Westover) for scholarships and subcontractor services (\$45,000); 2) a mini-grant to Our Place D.C. (Our Place) (\$25,900); and 3) payments for printing and professional services (\$12,959).

For the reasons discussed below, we sustain the disallowances of the Westover payments, mini-grant, and printing and professional services charges in the total amount of \$83,859. We also summarily affirm the uncontested disallowance of \$106,453.

I. Legal Background

Non-profit organizations that receive grants from SAMHSA must comply with the administrative requirements in 45 C.F.R. Part 74 and with Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations, codified at 2 C.F.R. Part 230 (2005-2013). 45 C.F.R. §§ 74.1, 74.27(a).

Grantees are “responsible for managing and monitoring each project, program, subaward, function or activity supported by the award.” *Id.* § 74.51(a). A grantee must have a financial management system that provides for “[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities”; “[e]ffective control over and accountability for all funds”; and “[a]ccounting records, including cost accounting records, that are supported by source documentation.” *Id.* §§ 74.21(b)(2), (b)(3), (b)(7). A grantee must maintain documentation “to account for the receipt, obligation and expenditure of [grant] funds.” *Id.* § 74.22(i)(1). The cost principles require grantee costs to be “adequately documented.” 2 C.F.R. Part 230, App. A, ¶ A.2.g.

The regulations in Part 74 apply to “all subawards received by . . . other nonprofit organizations, and commercial organizations from any recipient of an HHS award” 45 C.F.R. § 74.5. A “subaward” is “an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.” *Id.* The term, “subaward,” “includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services” *Id.* Section 74.2 defines “subrecipient” as “the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.”

Section 74.43, “Competition,” provides that all “procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.” Section 74.45 requires “[s]ome form of cost or price analysis [to] be made and documented in the procurement files in connection with every procurement action.” Under the governing cost principles, the costs of “professional and consultant services rendered by persons who are members of a particular profession or possess a special skill” generally are allowable “when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.” 2 C.F.R. Part 230, App. B, ¶ 37.a.

Award notices list additional terms and conditions with which grantees must comply. The award notices here stated that NAMI was “legally and financially responsible for all aspects of this grant, including funds provided to sub-recipients.” NAMI Exs. A-2, A-14, A-41, A-46. The notices specified that NAMI and its sub-recipients must maintain records identifying the “application of funds provided for financially assisted activities” and information pertaining to expenditures. *Id.* The notices also advised NAMI that “[t]he awardee and all its sub-recipients, should expect that SAMHSA, or its designee may conduct a financial compliance audit and on-site program review annually on grants with significant amounts of Federal funding.” *Id.*

NAMI’s awards also were subject to the HHS Grants Policy Statement (GPS). NAMI Ex. A. The GPS requires award recipients to use financial systems that enable the recipient to “[m]aintain records that adequately identify the sources of funds for federally assisted activities and the purposes for which the award was used” SAMHSA Ex. 13, at 68 (available at <http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf>). The GPS provides that accounting records must “be supported by source documentation such as canceled checks, paid bills, payrolls, and time and attendance records.” *Id.*

If the recipient of an award “materially fails to comply with the terms and conditions of [the] award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award,” the grantor agency may, among other remedies, “[d]isallow . . . all or part of the cost of the activity or action not in compliance.” 45 C.F.R. § 74.62(a)(2).

Based on provisions such as those cited above, the Board has “consistently held that it is a fundamental principle of grants management that a grantee is required to document its costs, and that the burden of demonstrating the allowability . . . of costs for which funding was received rests with the grantee.” *Rincon San Luiseno Band of Mission Indians*, DAB No. 1826 (2002); *see also Benaroya Research Institute*, DAB No. 2197, at 3 (2008) (citing cases).

II. Case Background

NAMI is the largest national grassroots organization dedicated to helping individuals affected by mental illness. NAMI supports hundreds of state organizations, affiliates and volunteer leaders who work in communities “to raise awareness and provide free education, advocacy and support group programs.” NAMI Ex. C-5. NAMI’s affiliate, NAMI Support, Technical Assistance and Resources Center (STAR Center), provides technical assistance services “to assist consumer and consumer-supported organizations particularly in underserved populations.” NAMI Br. at 2.

NAMI received federal funds for the STAR Center under the following SAMHSA grants:

Grant Number	Project Period	Amount Per Budget Period	Total Amount Awarded
SM056675	9/30/04 - 9/29/07	\$350,000	\$1,050,000
SM056675 ¹	9/30/04 - 12/31/10	\$340,000	\$1,020,000
SM059959	9/30/10 - 9/29/15	\$330,000	\$1,650,000 ²

NAMI Exs. C-5, A.

SAMHSA conducted a fiscal site visit review of NAMI from February 26, 2013, through March 1, 2013, in response to allegations from the STAR Center’s former Program Director that NAMI had mismanaged grant funds. NAMI Ex. B-1.³ Based on the visit

¹ This award “was a completing renewal award under the same grant number as the first award.” NAMI Ex. C-5, n.4.

² Projected total awards for the project period as of April 4, 2014. NAMI Ex. C-5, n.5.

³ According to NAMI, the former Program Director, S.K., “oversaw all aspects of the STAR Center activities, including overall program implementation, monitoring and evaluation of all STAR Center initiatives” during the September 30, 2007 through March 31, 2013 period. NAMI Br. at 3. NAMI says that S.K.’s termination, followed by that of the former Project Coordinator, “made it difficult for the remaining” personnel “to locate documents responsive to the auditor’s requests.” *Id.* at 4. NAMI did not argue that this was a basis for overturning the disallowance, and in any event, the Board has held that a grantee is responsible for the proper administration of its grant program and accounting for the use of grant funds, despite any problems it asserts it had with staff. *Action for Youth Christian Council, Inc.*, DAB No. 1651, at 15 (1998).

and supplemental documentation provided by NAMI on March 29, 2013, SAMHSA identified multiple concerns about NAMI's financial management system and costs charged to its grants. SAMHSA classified NAMI's current grant as "high risk" in May 2013. NAMI Exs. A-61; B-2; C-110 – 112.

By letter dated June 25, 2013, SAMHSA notified NAMI that as a result of the fiscal review, SAMHSA had found that NAMI improperly administered grant funds. NAMI Ex. B-7. SAMHSA specifically questioned \$206,467 of the costs that NAMI charged to its grants from September 30, 2007, through March 31, 2013. *Id.* SAMHSA also concluded that NAMI's accounting and personnel policies and procedures were inadequate and its "fiscal controls either needed to be developed and implemented or strengthened" in numerous areas, including: cash management, annual audits, accounting system, disbursements and procurements, consultants and contractors, expenditures analysis, and allowability of costs. NAMI Ex. B-8.

On July 29, 2013, NAMI provided SAMHSA with additional documentation to support the questioned costs. NAMI stated that it did "not dispute that certain transactions uncovered by [SAMHSA's] audit failed to comply with federal requirements as we now understand them." NAMI Ex. D-1. "Nonetheless," NAMI stated, "because we can provide documentation in most instances showing grant funds were used as intended, to further the grant's objectives and program goals . . . NAMI is entitled to some, if not all, of the expended funds in question." *Id.*

After reviewing NAMI's July 29, 2013 submission, SAMHSA issued the April 4, 2014, final determination now on appeal, concluding that NAMI charged to its grants \$195,037 in unallowable costs related to personal and professional services, printing, mini-grants, scholarships, and honoraria/speaker fees. NAMI Ex. C. NAMI timely appealed the determination to the Board.⁴ During the Board proceedings, NAMI withdrew its appeal of \$106,453 of the disallowed costs and provided additional documentation to support the remaining disputed costs. NAMI Br. at 4-5; SAMHSA Br. at 1-2. Upon review of that documentation, SAMHSA determined that \$4,725 of the disputed costs were allowable. SAMHSA Br. at 2.

We address below the three categories of costs that remain in dispute.

⁴ NAMI requested an in-person hearing in its notice of appeal. The Board advised the parties of the criteria for granting a hearing request and told NAMI to identify the specific grounds for its request, identify the potential witnesses, and summarize the nature of their expected testimony. Acknowledgment of Notice of Appeal at 3-4, citing 45 C.F.R. § 16.11(a). NAMI's subsequent submissions did not contain this information or reiterate the hearing request, however, and the Board has determined that there are no material facts in dispute the resolution of which would be significantly aided by a hearing.

II. Analysis

A. *Payments to Westover*

NAMI charged \$45,000 to its grants for payments to Westover, identifying them as costs associated with scholarships for individuals to attend mental health Alternatives Conferences. NAMI characterized the September 30, 2009 payment of \$30,000 as scholarship costs and the August 9, 2010 payment of \$15,000 as subcontractor costs. NAMI Exs. B-17, B-18, C-15, C-17. SAMHSA disallowed the charges on the ground that NAMI did not provide adequate documentation to support the costs. NAMI Exs. C-15, C-17.

In an August 2014 affidavit, NAMI's Chief Operating Officer states that a SAMHSA grants officer instructed NAMI in 2009 "to use any surplus funds to provide scholarships through [Westover] to allow mental health consumers to attend SAMHSA's annual Alternatives Conference." NAMI Ex. F at ¶ 10. Referencing a 2010 Alternatives Conference brochure and websites containing scholarship application forms and information, NAMI asserts that the Alternatives Conferences were sponsored by SAMHSA and that SAMHSA, Westover, and AFYA, Inc. exclusively controlled the scholarship process. NAMI Br. at 6; NAMI Reply at 2-3, 6; NAMI Ex. E. Because Westover was SAMHSA's contractor and agent for administering conference scholarships, NAMI argues, NAMI's "responsibility was only to document that it provided the funds, as directed by SAMHSA, to a SAMHSA vendor to sponsor scholarships to a SAMHSA sponsored event." NAMI Br. at 6-8; NAMI Reply at 2-3.

The documentation that NAMI initially proffered to support the Westover costs includes e-mail correspondence, check requests, purchase orders, invoices, check stubs, and cancelled checks showing that NAMI paid Westover the lump sums of \$30,000 in 2009, and \$15,000 in 2010; these documents describe the funds provided as payments for scholarships to the 2009 and 2010 Alternatives Conferences. SAMHSA Ex. 1. Several documents include the phrase "on the SAMHSA OD Logistics" to describe the payments. *Id.*

NAMI's Chief Operating Officer also states that during the 2013 audit and in the course of this appeal, NAMI contacted Westover to ask it to provide additional documentation to support the claimed charges. NAMI Ex. F at ¶¶ 11, 12. The supplemental documentation included:

- A March 25, 2013 e-mail from Westover to NAMI listing the names of 63 individuals described as "the 2009 and 2010 [scholarship] recipients." SAMHSA Ex. 6, at 7-8, 17-18;
- A brochure and blank registration form for the 2010 Alternatives Conference. SAMHSA Ex. 6, at 19-24;

- An undated chart listing the names of 24 individuals described as the 2009 and 2010 Alternatives Conference scholarship recipients with breakdowns of their costs under the categories registration, hotel, per diem, ground, and travel. NAMI Ex. P; and
- Alternatives Conference attendee evaluation forms characterized by NAMI as “a series of post-conference reports and evaluations completed by [the scholarship] recipients to document that these individuals actually attended the Alternatives Conference[s]. . . .” NAMI Ex. F at ¶ 12; Ex. Q.

NAMI argues that “it cannot be held responsible for maintaining documentation” relating to the scholarship application and selection process or how the funds it transferred specifically were used because it “had no involvement in the selection of the . . . scholarship recipients and no participation in program costs” NAMI Br. at 7. Moreover, NAMI asserts, “the source documentation . . . is solely in the possession, custody and control of SAMHSA and its contractor, Westover.” NAMI Reply at 6-7.

As noted above, under the governing regulations, NAMI was “responsible for managing and monitoring each project, program, subaward, function or activity supported by the award,” and was required to maintain “[e]ffective control over and accountability for all funds. . . .” 45 C.F.R. §§ 74.51(a), 74.21(b)(3). Consistent with these responsibilities, NAMI had to ensure that the financial management systems of any subrecipient provided for records identifying “the source and application of funds for HHS-sponsored activities” and “[a]ccounting records, including cost accounting records . . . supported by source documentation.” *Id.* §§ 74.21(b)(2), (b)(7). NAMI’s award notices further specified that the responsibility to maintain reliable accounting records applied to all of the expenditures and outlays NAMI charged to its grants. NAMI Ex. A-2, A-14, A-41, A-46. NAMI was thus responsible for ensuring that all award outlays, expenditures and subawards were supported by auditable documentation, including expenditures by subrecipients to carry out grant activities and functions. *Cf. Northstar Youth Services, Inc.*, DAB No. 1884, at 4 (2003)(holding that the grantee is “responsible for documenting that all of the funding was properly expended for grant objectives and was otherwise allowable even though [it] hired a consultant . . . to perform grant functions”).

In addition, the Board has repeatedly held that “[o]nce a cost is questioned as lacking documentation, the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant.” *Northstar* at 5. “Being able to account for the expenditure of federal funds,” the Board has stated, “is a central responsibility of any grantee.” *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007).

Applying the governing regulations and award terms here, we conclude that NAMI did not meet its burden of documenting that the Westover charges represent allowable costs, allocable to NAMI’s grants. NAMI has not produced accounting records or reliable

source documentation to support its claim that the funds it paid Westover were used for Alternatives Conferences scholarship expenditures and related, allowable costs. Indeed, discrepancies in the evidence that NAMI did submit underscore the lack of reliable documentation substantiating the Westover charges. Most notably, NAMI provided SAMHSA with two inconsistent lists (one in the March 25, 2013 e-mail listing 63 names, and another in the undated chart listing 24 names) of individuals represented as the NAMI-funded scholarship recipients. SAMHSA Ex. 6, at 17-18; NAMI Ex. P. When SAMHSA pointed out the discrepancy, NAMI asserted that the March 25, 2013 list was a compilation of “potential” recipients, while the undated chart identified the “accepted invitees.” NAMI Reply at 5. Although the conference evaluation forms NAMI provided indicate that the individuals whose names appear on the undated chart did attend the conferences, NAMI failed to provide any reliable evidence showing that those individuals’ scholarship costs were in fact financed by the NAMI payments rather than by some other funding source.

Furthermore, while the undated chart includes summary break-downs of each individual’s alleged scholarship costs according to expense categories, NAMI provided no accounting records or source documentation to validate the amounts represented in the chart; nor did it even describe what, if any, records or source documents were examined to compile the information on the chart. Moreover, the sum of expenditures in the chart accounts for only \$33,998; NAMI has failed to explain how the balance of the \$45,000 it paid Westover was spent.

The Board generally will not rely on non-contemporaneous documentation as evidence to support claimed costs, holding that such documentation must be closely scrutinized. *See, e.g., Suitland Family & Life Development Corp.*, DAB No. 2326, at 10 (2010) (relating to non-contemporaneous documentation of personnel costs). Here, we cannot reasonably consider the undated, summary chart to be adequate support for the claimed scholarship and related costs because it lacks sufficient indicia of reliability on its face, and NAMI has not produced or even identified what records or source documents underlie the expenditure amounts represented.

In addition, we reject NAMI’s contentions that it was not responsible for ensuring that the funds it paid Westover were used for allowable costs or sufficiently documented because SAMHSA told NAMI to provide funds to Westover for scholarships and because Westover was SAMHSA’s agent for administering conference scholarships. We note that SAMHSA refuses to stipulate that it directed the payments to Westover and disputes many of NAMI’s characterizations of SAMHSA’s contractual relationship with Westover. SAMHSA Br. at 14; SAMHSA Surreply at 1-4. Among other things, SAMHSA asserts that the National Mental Health Consumers’ Self-Help Clearinghouse

and the National Empowerment Center, which are “national technical assistance centers,” “were the respective hosts for the 2009 and 2010 Alternatives Conferences,” and that “Westover and AFYA were engaged as logistics contractors for the 2010 conference.” SAMHSA Surreply at 4, citing SAMHSA Exs. 14-15.⁵

Even if we were to find that the evidence on which NAMI relies substantiated its characterizations of Westover’s role in administering Alternatives Conference scholarships and established that SAMHSA told NAMI to use “surplus” award funds for conference scholarships through Westover (which it does not), this would not relieve NAMI of its stewardship responsibilities or its burden to document that the claimed costs were actually incurred, allowable, and allocable to NAMI’s grants. As explained above, it was NAMI’s duty to ensure that any subrecipient has financial management systems and controls in place and reliable accounting records supported by source documents, so that NAMI can meet its obligation to have effective control over and accountability for all funds. NAMI Ex. A-2, A-14, A-41, A-46; 45 C.F.R. §§ 74.21(b)(2), 74.21(b)(3), 74.21(b)(7), 74.22(i)(1), 74.51(a). Here, Westover was a subrecipient to the extent it was engaging in grant activities. Moreover, to the extent that Westover was providing professional services, those services should have been “adequately documented,” as required by the applicable cost principles. 2 C.F.R. Part 230, App. A, ¶ A.2.g; App. B, ¶ 37. NAMI points to no regulation or policy that creates an exception to these requirements, and we know of none. Accordingly, NAMI’s failure to ensure that such systems and controls were in place, and consequent inability to produce reliable documentation to support the claimed costs, cannot be excused on the basis of Westover’s responsibilities under any contract Westover had with SAMHSA.

We therefore sustain the disallowance of \$45,000 for payments to Westover.

B. *Our Place “Mini-Grant”*

NAMI charged \$25,900 to its SAMHSA award for a “mini-grant” that the STAR Center provided to Our Place. During and after the 2013 site visit, NAMI provided SAMHSA with the following documentation to support the charge:

⁵ The “Alternatives 2009 Conference, Center for Mental Health Services, Application for Financial Support” states that the 2009 conference was hosted by the National Mental Health Consumers’ Self-Help Clearinghouse and that SAMHSA and the STAR Center “plan[ned] to provide financial support to consumers of mental health services who wish[ed] to participate” in the conference. SAMHSA Ex. 14, at 1. The 2010 Alternatives Conference brochure shows that the 2010 conference was hosted by the National Empowerment Center and states that the “conference was made possible in part by Grant No. SM56680 from [SAMHSA]” but that the “views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services. . . .” NAMI Exs. E-4, E-6.

- A check stub, check request and purchase order showing that NAMI paid Our Place \$25,900 in December 2010 as a “grant for consumer mental health activities.” SAMHSA Ex. 2, at 1-2, 24;
- Our Place’s December 2010 STAR Center Mini-Grant Application for funding to support a “therapeutic writing group.” *Id.* at 5. The one-page application budget lists six general categories of expenses (Project Coordinator; Literacy Training Facilitator; Peer Facilitators; Food & Snacks for Workshops; Tokens; and Journals, Books and Supplies) in typeface, which total \$8,490. *Id.* at 14. That typeface total amount is crossed out by hand, however, and handwritten notations show \$1,510 added to “Peer Facilitators” expenses and a seventh cost category, “OTHER/TO BE DETERMINED: \$2,950” to produce a handwritten “Total: \$12,950.” *Id.*;
- A signed, December 28, 2010 Memorandum of Understanding (MOU) between Our Place and the STAR Center stating that the award was for \$24,900. SAMHSA Ex. 7, at 1-3; and
- A December 2011 “Year-end Report” describing the results of the Our Place mini-grant project. *Id.* at 31-36.

After reviewing this evidence, SAMHSA disallowed the Our Place mini-grant charge on the grounds that NAMI failed to provide documentation supporting the allowability and allocability of the claimed costs or documentation showing that NAMI awarded the mini-grant on a competitive basis.⁶ NAMI Ex. C-14.

In its appeal to the Board, NAMI additionally proffered:

- The August 2014 affidavit of NAMI’s Chief Operating Officer describing, among other things, the STAR Center’s mini-grant program objectives, general protocols for funding applicants and monitoring practices (NAMI Ex. F);
- The August 2014 Affidavit of the former Executive Director of Our Place (NAMI Ex. GG); and
- An undated, single-page list of “Revenue” and “Expenses” described by the former Executive Director and NAMI as the Our Place mini-grant “final budget” or “Revised Budget” (NAMI Exs. GG-6, II; NAMI Br. at 18).

⁶ We do not address the issue whether NAMI awarded the Our Place mini-grant on a competitive basis because, as we explain below, NAMI’s failure to properly account for and document the claimed expenditures is sufficient to support the disallowance.

NAMI argues that the documents that it produced constitute “substantial evidence” showing “that the grant money was spent in accordance with the budgeted proposal” and that NAMI “was able to account for the money provided” through Our Place’s “detailed budget” and “the regular monitoring of program expenditures through periodic reports.” NAMI Br. at 16-20.

As discussed above, the regulations and award terms required NAMI to maintain a financial management system that provided for “[e]ffective control over and accountability for all funds” and all subrecipients to have cost accounting records and source documentation that adequately identified the purposes for which the award was used. 45 C.F.R. §§ 74.5, 74.21(b)(2), 74.21(b)(3), 74.21(b)(7); NAMI Ex. A-2, A-14, A-41, A-46. In addition, the MOU between the STAR Center and Our Place held Our Place accountable to NAMI “for all grant money received and spent” and required the sub-recipient “to include documentation of grant spending in the final report, if requested, for auditing purposes.” NAMI Ex. HH-2. The MOU also provided that Our Place “should be able to account for all spending at all times through either receipts or memorandums of understanding with individuals or organizations.” *Id.*

NAMI failed to meet its burden to produce reliable accounting records and source documentation to show that the funds it awarded Our Place were used for allowable costs, allocable to the SAMHSA grants, even though the very terms of the MOU between the STAR Center and Our Place recognized the necessity of maintaining such documentation. Rather, discrepancies and omissions in the documents that NAMI did produce highlight the absence of auditable evidence to substantiate the mini-grant charge. For example, while the check stub, check request and purchase order show that NAMI made a lump sum payment of \$25,900 to Our Place, and NAMI charged \$25,900 to its SAMHSA award for the mini-grant, that amount is inconsistent with the funding amount originally requested in the application (\$8,490), the revised amount shown on the application (\$12,950) and the amount in the MOU (\$24,900). NAMI Exs. FF, HH, JJ. In addition, the “Budget” in the MOU simply states “\$24,900.00 See separate application for details”; yet, the sum of the proposed expenses in the application plainly conflicts with that amount. NAMI Exs. FF-12, HH-2.

To explain the discrepancies in the documents, the former Executive Director of Our Place states in her August 2014 affidavit that Our Place “originally applied to NAMI for \$8,000 for our writing/therapeutic group, but [was] awarded a grant from NAMI in the amount of \$25,900. . . .” NAMI Ex. GG-3. NAMI’s brief provides the alternative explanation that Our Place’s “initial application requested \$12,950,” but “[w]hen it learned that additional grant funding was available, it revised its budget.” NAMI Br. at 18. Neither the former Executive Director nor NAMI, however, cite any budget documentation from the December 2010 application and award period justifying or explaining NAMI’s decision to provide Our Place more than three times the amount of funds originally requested, according to the former Executive Director.

Instead, to justify the amount of funding NAMI provided to Our Place, and to support the assertion that it was able to account for all of the mini-grant expenditures, NAMI relies on the August 2014 Affidavit of the former Executive Director; the one-page, undated, summary list of revenue and expenses that NAMI first proffered with its brief on appeal and characterizes as the Our Place “Revised Budget” or “final budget;” and the December 2011 Our Place “Year-end Report.” NAMI Exs. EE, GG, II.

These documents do not substantiate NAMI’s claims, however. The former Executive Director’s affidavit describes Our Place’s mission and programs, as well as the STAR Center’s invitation to Our Place to apply for grant money. With respect to the mini-grant expenditures, the former Executive Director makes statements that include general references to some costs. For example, she says, “The Mini-Grant supported the further development and expansion of Our Place DC’s ‘our voices’ therapeutic writing program . . . to ensure staff availability, to bring in an outside literary training facilitation, to purchase additional supplies for the program as well as a computer, [etc.]” NAMI Ex. GG-3. The former Executive Director does not point to any accounting records or source documents relating to any of these very generally described costs.

The former Executive Director also states that the “specific budget that we furnished to NAMI and which we followed in spending the grant funds consisted of” the expenses listed in the “Revised Budget.” NAMI Exs. GG-3, GG-4; II. The undated “Revised Budget,” in turn, shows “Total Revenue” of \$25,900 attributable to “NAMI/STAR” and the following nine “[E]xpenses”:

Project Coordinator	\$2,700
(\$15.00 per hour @ 15 hours per month)	
Rape Crisis Counselor/Research Analysis.....	\$7,800
(\$15.00 per hour @ 10 hours each week)	
Literacy Training Facilitator.....	\$1,500
(\$25.00 per hour @ 5 hours each month)	
Peer Facilitators	\$900
(\$25.00 per facilitation @ 3x per month)	
Food & Snacks for Workshops.....	\$1,260
(\$35 per workshop @ 3x per month)	
Tokens.....	\$630
(3 packs of tokens per month)	
Journals, Books and Supplies.....	\$1,500
Rent.....	\$9,010
Desktop computer.....	\$600

Id. While the former Executive Director states that “Our Place DC used the money provided by the Mini-Grant in accordance with the Revised Budget,” she does not indicate when the “Revised Budget” was created, nor does she identify what records

substantiate her claim that Our Place's expenditures were consistent with the budget, let alone describe how Our Place accounted for its expenditures during the project period (e.g., through payroll records, invoices, receipts or rental agreements). NAMI Ex. GG-4. Similarly, NAMI's briefs and other exhibits do not explain how or when the "Revised Budget" was created, or why it was not provided earlier to SAMHSA. Instead, NAMI states only that the "final budget submitted by Our Place DC to NAMI showed that the \$25,900 would be spent on programmatic costs such as hiring a project coordinator, a rape crisis counselor, a litera[c]y training facilitator and peer facilitators." NAMI Br. at 18-19.

As explained above, the Board generally will not find non-contemporaneous documentation sufficient to satisfy the requirement that costs be substantiated with auditable accounting records and source documentation. In this case, absent any explanation of when the summary "Revised Budget" was created or any primary source documentation demonstrating that Our Place's expenditures were consistent with the "Revised Budget," we cannot reasonably consider it to be a suitable proxy for the types of documentation required to support the claimed mini-grant charge.

In addition, the December 2011 Our Place "Year-end Report," which is among the exhibits NAMI cites to support its representation that "grant funds were spent in accordance with the purposes of the grant," contains no financial information. NAMI Reply at 9; NAMI Ex. EE. The Report describes the activities allegedly funded by the mini-grant and the project outcomes. The Report is some evidence that Our Place engaged in some activities consistent with the purposes of the subaward, but it is not the type of evidence required to establish what costs Our Place incurred and charged to mini-grant funds, much less to show that Our Place spent \$25,900 to cover costs that were allowable and allocable to the award.

We also reject NAMI's assertion that the evidence it provided should be considered "adequate documentation within the requirements of federal regulations" because Our Place "did not have the sophisticated financial systems and record keeping practices of a larger, more established and professionally-operated organization." NAMI Reply at 9. The terms of the MOU between NAMI and Our Place show that NAMI understood its responsibility for ensuring that Our Place kept auditable records and that Our Place did not need complex financial systems or practices, but merely had to "be able to account for all spending at all times through either receipts or memorandums of understanding with individuals or organizations." NAMI Ex. HH-2. NAMI's decision to execute the MOU shows, moreover, that NAMI believed Our Place had sufficient policies and systems to account for its spending. Furthermore, NAMI's tacit acknowledgment that the documentation it provided generally would be considered inadequate undercuts its simultaneous, sweeping claim that it "was able to account for the money provided to Our Place DC through the detailed budget submitted by Our Place DC and the regular monitoring of program expenditures through periodic reports." NAMI Br. at 19-20.

Accordingly, we sustain SAMHSA's disallowance of the Our Place mini-grant charge.

C. C.S. Printing and Professional Services

NAMI charged \$12,959 to its grants for payments to C.S. for printing and graphic design services relating to STAR Center publications, including newsletters and pamphlets. Specifically, NAMI charged \$1,381 for printing and \$550 for subcontractor costs on August 12, 2009; \$1,152 for printing costs on December 29, 2009; \$5,139 for printing costs on December 1, 2010; \$611 for printing costs on September 1, 2011; \$1,094 for subcontractor services costs on February 24, 2011; and \$3,032 for subcontractor services costs on November 26, 2011. NAMI Exs. C-10, C-16, C-20, C-22, C-23. NAMI argues that the STAR Center properly evaluated C.S.'s charges and that the design and printing costs "were properly authorized, reasonable, [and] documented" NAMI Br. at 12. SAMHSA asserts that the charges were properly disallowed because NAMI provided no evidence that the printing and professional services "were properly procured through free and open competition, no documented price analysis or cost analysis, and no documented contractual agreement." SAMHSA Br. at 28.

The applicable regulations provide that all "procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition." 45 C.F.R. § 74.43. Section 74.45 requires "[s]ome form of cost or price analysis [to] be made and documented in the procurement files in connection with every procurement action." Further, under the governing cost principles, the costs of "professional and consultant services rendered by persons who are members of a particular profession or possess a special skill" generally are allowable "when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government." 2 C.F.R. Part 230, App. B, ¶ 37.a. In determining the allowability of costs in a particular case, no single factor is necessarily determinative. *Id.* at ¶ 37.b. However, the relevant factors include the nature and scope of the service rendered in relation to the service required and the "[a]dequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions)." *Id.*

NAMI argues that while the STAR Center did not have a written contract with C.S. "for her periodic services, there were sufficient correspondence and communications between [C.S.], NAMI and the STAR Center detailing her rates and the scope of work for each project to allow NAMI and the STAR Center to identify and evaluate her charges." NAMI Br. at 12. NAMI also argues that it had "extensive dealings" with C.S. and other vendors and therefore understood the market for comparable graphic design and printing services. *Id.* citing NAMI Ex. U, ¶ 6. According to NAMI, C.S.'s "printing projects

were small and the deadlines were short enough to make requests for proposals impracticable.” *Id.* at 12.⁷ Moreover, NAMI contends, the Star Center required C.S. to obtain “printing quotes from at least three different vendors for all larger printing projects.” *Id.* at 13, citing NAMI Ex. V, at ¶¶ 9, 12.

To support these assertions, NAMI proffered a January 1, 2007 e-mail from C.S. to NAMI stating C.S.’s hourly rate range for design services and cost estimate process; invoices, purchase orders, approvals and copies of the printed materials associated with each project; and an April 2013 contract between NAMI and C.S. NAMI Exs. W, X, Y, Z, AA, BB, CC, DD. In addition, NAMI provided in this appeal affidavits by C.S. and NAMI’s current Chief Financial Officer (CFO), who was appointed after the grant funds were spent. NAMI Br. at 12; NAMI Reply at 10-11; NAMI Exs. U, V. According to NAMI, the evidence it submitted “shows that the STAR Center did do a price analysis and determined that [C.S.’s] costs were commercially reasonable.” NAMI Br. at 13.

Applying the procurement provisions from Part 74 to the evidence in the record here, we conclude that NAMI has not demonstrated that it conducted either the cost analyses or price analyses required for the graphic design and printing services charges. As noted, section 74.45 requires “[s]ome form of cost or price analysis” to be made and documented “in connection with *every* procurement action.” (Emphasis added.) The regulation defines “cost analysis” to mean “the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.” *Id.* A “[p]rice analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.” *Id.*

The evidence does not show that NAMI performed and documented cost analyses within the meaning of section 74.45, by reviewing and evaluating each element of project costs to determine whether they were reasonable. While the January 1, 2007 e-mail from C.S. gave NAMI general information about the range of C.S.’s design rates, it stated that the rate for any particular job would depend on the complexity of the design work involved. NAMI Ex. V-6. Furthermore, the e-mail stated that C.S. “prefer[ed] to quote on a project

⁷ NAMI asserts that federal regulations “explicitly authorize governmental agencies to make purchases for under \$2,500 without soliciting competitive quotes.” NAMI Br. at 12, citing 48 C.F.R. §§ 13.201-02. Those regulations are included in the Federal Acquisition Regulations System policies and procedures for acquisition by executive agencies and do not apply here. We note that 45 C.F.R. § 74.44(e)(2) requires grant recipients to “make available for the HHS awarding agency, pre-award review, procurement documents such as requests for proposals or invitations for bids, independent cost estimates, etc.,” when, among other conditions, “[t]he procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.” That threshold restriction does not appear in section 74.43, which applies simply to “[a]ll procurement transactions,” or section 74.45, which requires some form of cost or price analysis for “every procurement action.”

basis. . . [a]fter detailed discussions with [NAMI] on the scope of work that is required for a job. . . .” *Id.* The e-mail concludes, “Printing will always be a se[pa]rate estimate. Stock photography, stock graphics and proofs are additional.” *Id.* The e-mail thus describes the various elements that would comprise the total amount of the charges for each project, but it fails to indicate how the amount of each element would be determined, with the exception of design services. For that element, the document provides only a range of rates. The e-mail thus lacks the specificity required for NAMI to have performed a prospective cost analysis to determine the reasonableness of C.S.’s charges for future projects.

Furthermore, while the invoices that C.S. later submitted for each project broke down the elements of the total charges by “Design,” “Layout,” “Printing,” and “Shipping” costs, the invoices do not show how the amounts were derived. The invoices do not indicate what hourly rates were used, the number of hours charged to each project, or the bases for the printing and shipping charges (for example, they do not show whether C.S.’s charges passed through the charges of the subcontracted printers and shippers or whether they included a mark-up). Although C.S.’s 2014 affidavit states, “Generally, when NAMI and the STAR Center would submit a printing job, they would request that I provide at least three quotes from printers for the cost of the work,” NAMI provided no documentation that C.S. obtained such quotes for the printing jobs charged to the grants at issue here, much less that NAMI reviewed these quotes or how C.S. factored them into her costs for the projects she did for NAMI. NAMI Ex. V-4. In addition, while C.S.’s 2014 affidavit states the approximate amounts of time associated with C.S.’s layout work and edits for each job and states that she worked closely with and had several conversations with STAR Center personnel so that they would be aware of the final costs of the projects, NAMI submitted no contemporaneous documentation substantiating these claims. Most importantly, NAMI has not provided any documentation from the period when the projects were commissioned or testimony from individuals with first-hand knowledge of the projects showing that NAMI evaluated each element of the project costs and determined them to be reasonable.

Nor does the evidence show that NAMI undertook and documented some form of price analysis for the projects. NAMI relies on the affidavit of its current CFO to support its contention that NAMI and the STAR Center knew C.S.’s charges to be consistent with other vendors in the market and reasonable. NAMI Br. at 12 ; NAMI Reply at 10-11. The CFO attests that prior to working at NAMI, he “held various executive financial management positions” and that he bases his opinions on his “knowledge and experience as CFO” during the 2013 audit and his “review of the documents and information produced in this case.” NAMI Ex. U. With respect to the design and printing costs charged by C.S., the CFO states that to his “knowledge she has not raised her rates charged to NAMI since 2007;” that he “believe[s] [C.S.’s] graphic design rates are reasonable because they are comparable to the rates charged by other, similar graphic

designers who do work for NAMI”; and that he “believe[s] that [C.S.]’s rates for printing projects are reasonable and comparable to work being charged by her peers.” *Id.* The CFO provides no cost data to support his “beliefs,” however, and NAMI fails to proffer any other evidence that it ascertained the market prices of equivalent services and therefore knew C.S.’s rates and charges to be reasonable. Accordingly, we conclude that NAMI did not undertake and document any form of price analysis for the design and printing projects within the meaning of the regulations.

We further note that NAMI’s failure to document that it considered other graphic designers for some of the design and printing projects also violated NAMI’s own procedures for ensuring that it procured these services on a competitive basis. NAMI asserted that the projects billed by C.S., which included the 2010 invoice for \$5,139.50 for Annual Report printing, were so “small” that requests for proposals were unwarranted. But that assertion is inconsistent with NAMI’s statement during the 2013 audit and review process that it was not its practice to go through a bidding process if the anticipated expense was less than \$1,500. NAMI Ex. C-16. The 2010 payment for \$5,139.50 clearly exceeded that threshold amount, but the records for that payment do not include any documentation of competing bids. Similarly, while C.S.’s professional design fees over the course of the three-year period greatly exceeded the threshold amount, none of the records include documentation of competing bids for these services. In sum, NAMI appears to have permitted no competition for the projects and not to have considered any other company or individual for the work.

Finally, NAMI argues that prior Board decisions support the allowability of the graphic design and printing services charged here. NAMI Reply at 12-13. Referring to the Board’s decision in *Marie Detty Youth and Family Servs. Ctr.*, DAB No. 1643 (1998), NAMI asserts that the Board reversed a disallowance of payments to a consulting company that helped a grantee develop its manual of policies and procedures and other materials based on documents submitted on appeal, which established that the services benefited the grant program. *Id.* NAMI’s reliance on the Board’s decision in *Marie Detty* to support the printing and professional services charges here is without merit. The federal agency that took the disallowance in that case, unlike the agency here, did not rely on any failure by the grantee to comply with the requirements applicable to procurements as a basis for the disallowance. The case is therefore inapposite.

Accordingly, we sustain SAMHSA’s disallowance of the charges relating to C.S.’s design and printing services.

Conclusion

For the reasons discussed above, we sustain the disallowances of the Westover payments, mini-grant, and printing and professional services charges. We also summarily affirm the uncontested disallowance of \$106,453.

_____/s/
Judith A. Ballard

_____/s/
Sheila Ann Hegy

_____/s/
Stephen M. Godek
Presiding Board Member