DEPARTMENTAL GRANT APPEALS BOARD
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Subject: Community Action Agency of Memphis and Shelby County
Docket No. 76-9
Decision No. 38 (as modified by Supplement to Decision, October 6, 1977)

Date: July 5, 1977

(The following summary is prepared on the responsibility of the Executive Secretary of the Board as a convenience to the interested public. It is not an official part of the decision and has not been reviewed by the Panel. Similar official summaries of earlier cases appear in 45 CFR Part 16 Appendix.)

Grantee appealed the Office of the Human Development's disallowance of $28,008 which was based upon audit findings. In addition, Grantee was found to have exceeded authorized expenditures under the grant by $23,315. The Board sustained the disallowance in the amount of the excess expenditures. It rejected grantee's request that consideration be given to using an unused fund balance in another grant account to offset the excess expenditures on the basis that the Board will not engage in grant administration. Further, the Board rejected Grantee's inadequately supported allegation that the grant authorization was exceeded only because of record-keeping errors, holding that a Grantee which seeks to question the accuracy of its own records has a greater responsibility to provide documentation than was met in this case. The Board found, however, that at least $2,693 ($28,008 minus $25,315) of the disallowance based on the audit was allowable. If found that $2,353 expended for fencing complied with requirements for two bids and award to the lowest bidder. Although the contractor did not comply with the Davis-Bacon Act, which was made applicable to the grant by OEO CAP Memo 64, the Board held that this should not result in a disallowance where only a small amount was involved. The Board held in addition that it was an abuse of discretion to disallow other costs for lack of an invoice from the vendor where purchase orders and a voucher were supplied and that while failure to document the approval of an expenditure of $214 in advance of the purchase was a management deficiency, the expenditure for this relatively small amount should not be disallowed since the approval was given in advance by telephone.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

September 16, 1977

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Community Action Agency of Memphis and Shelby County
Docket No. 76-9

DATE: OCT 06 1977

SUPPLEMENT TO DECISION NO. 38

Our decision of July 5, 1977 sought to dispose of this matter on the basis that expenditures charged by the grantee against the federal grant were some $25,000 in excess of the maximum authorized and that in such a situation the disallowance of an equivalent amount of the questioned expenditures would make it impossible to provide relief to the grantee. We then concluded that the item for excessive salary payments was properly disallowed and, without considering other questioned items, denied relief.

While the parties have not responded to this decision, upon further reflection the Panel concluded that it was in error in that the disallowances which formed the basis for appeal resulted in recognition of less than the full grant maximum. Accordingly, if any of the questioned expenditures are allowable the grantee should receive credit for them up to the grant maximum as evidenced by the approved budget. Prior to the disallowances of $28,008, the grantee's claim was $25,315 in excess of the approved budget. The disallowances thus caused recognized expenditures to fall $2,693 below that budget. Although this is a small amount, we decided to take the initiative of considering this matter further. The Executive Secretary of the Board advised the parties in a letter dated July 22, 1977 of this reconsideration and informed them that no further information or argument would be required unless specifically requested by the Panel. The opportunity of the parties to comment to the agency head as provided by 45 CFR 16.80 was extended indefinitely.

We now proceed to determine whether an amount at least equivalent to the difference between that which has been recognized by the agency and the amount originally awarded can properly be allowed.

Among the questioned items were the following which we believe should have been allowed:

1.	Fencing at the Program Housed in Calvary Longview Church	$2,353.10
2.	Purchase of Air Conditioners	195.00
3.	Purchase of Relaxation Chair-tray	214.70
	TOTAL	$2,762.80

Fencing

The fencing expenditure was questioned on the auditor's assertion that the grantee failed to comply with the requirements which were imposed when the grantee was authorized to use not to exceed $10,000 (or $2,000 per classroom) for renovations. These requirements are described in the audit report as:

1. Renovations must be in compliance with Community Action Memo #64, dated June 22, 1967.

2. Prior to taking any action please refer to No. 4 "Rebudgeting of Funds" of the Terms and Conditions of your grant.

3. Within 10 days after receipt of this letter (dated October 4, 1974) this office must be in receipt of all supporting documentation.

Page 28 of the audit report states that there was no documentation to indicate "that any of the three special conditions stated in the letter had been complied with." There is no more specific discussion of the nature of the requirements or of the defect in documentation. The grantee denies that the expenditure was made pursuant to the renovation authorization. The record contains no basis for resolving this conflict but such resolution is unnecessary in light of the following discussion.

Community Action Memo No. 64, as applicable here, would require the grantee to obtain at least two bids, award to the lowest bidder in the absenc of approval for a deviation, and require that the contractor comply with the Davis-Bacon Act. The grantee has submitted documentation which satisfies us that it obtained two bids. There is some variance in the offers of performance but the grantee seems to have made the award to the lowest bidder and the agency makes no claim to the contrary.

The condition for a prevailing wage clause in construction contracts implemented 42 U.S.C. 2947, which required that in construction financed with Economic Opportunity Act grants, contractors and subcontractors must pay prevailing wages as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. 276a. The administrative condition adopted the Davis-Bacon method of using a clause in the construction contract to provide for payment of the required wage rates, rather than only relying on the mandate of 42 U.S.C. 2947 that contractors and subcontractors shall

pay such rates. We believe this was a proper implementation and that the grantee failed to comply with it.

This Board has not previously considered the question whether failure to comply with such a requirement mandates or warrants a disallowance. The item before us, involving only $2,353.10 including materials, does not present an appropriate vehicle for establishing a precedent. For the purpose of disposition of this item only, we hold that failure to comply with the Davis-Bacon condition in the erection of the fence should not result in a disallowance.

We are unable to ascertain how the instruction to the grantee to "please refer to No. 4 'Rebudgeting of Funds' of the Terms and Conditions of your grant" imposes any new condition with respect to the renovation. The grantee did obtain agency approval for the rebudgeting and we are unaware of how it failed to comply with the "please refer to the Terms and Conditions."

Finally, the grantee was expected within 10 days after receipt of the authorization to make the renovation expenditures to supply the Regional Office with "all supporting documentation." The authorization was contained in a letter dated October 4, 1974, and the renovations were made after that date. The "documentation" expected within 10 days of the authorization to renovate could not have been of bids, awards or expenditures. The record is devoid of any indication of what documentation was expected or how the grantee was in default of that condition. We then are unable to support disallowance based on failure to supply documentation within 10 days. Moreover, the record contains documentation of the bids and expenditures and if the only defect is failure to supply them timely, disallowance is not warranted.

We make special note here that our Order to Clarify the Record, dated March 7, 1977, asked: "8) What specific requirement does the Regional Office contend the grantee violated with respect to the installation of the fence at Calvary Longview Church?" The response was: "8. Our position was in support of the auditor's findings, lack of documentation and poor management procedures. Even though the CPA noted that work had been recently completed on the church, no information was provided to identify the payments made was for that particular work (sic)."

In other words, the Regional Office simply referred us to what already was in the record. Obviously, we felt the record needed more clarification than the agency supplied.

ir Conditioners

The auditor intended to disallow expenditures of $255.00 for he purchase of four used air conditioners because of the absence of vendor's invoice. Through error the auditor listed the amount as

$200 and the agency decided not to make a correction in light of the small amount involved.

The grantee asserts that the air conditioners were purchased from a small businessman who is proficient in acquiring and overhauling air conditioners in a reliable and economical manner but rather deficient in his paperwork. It submits documentation in the form of a purchase order for three air conditioners of 12,300, 12,000 and 18,000 BTU's for a total of $195.00, and a voucher showing payment. We are persuaded that it was an abuse of discretion to consider an invoice from the vendor to be a sine qua non of an allowance in this situation. Apparently $60 was expended for a fourth air conditioner but the record does not contain documentation.

Relaxation Chair - Tray

The expenditure of $214.70 for the Relaxation Chair-tray was disallowed because the purchase order was not approved until after the purchase was made. We accept the grantee's explanation that the approval was given in advance by telephone. While the failure to document this approval in writing in advance of the purchase was a management deficiency, we think the expenditure for this relatively small amount should be allowed.

Because the above allowances exceed the $2,693 which can be recognized within the approved budget we do not consider the other questioned items. In light of the disposition here, we withdraw the discussion under individual disallowances in our decision of July 5, 1977, including the underlying assumption there that allowance of certain expenditures is controlled by OEO Instruction No. 6900.

Our decision of July 5, 1977 is modified to the extent indicated above. The Executive Secretary of the Board will notify the parties of the time limit for submitting written comments to the head of the constituent agency.

/s/ Bernice L. Bernstein

/s/ Thomas Malone

/s/ Edwin H. Yourman, Panel Chairman