

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Community Relations - Social Development
Commission in Milwaukee County
Milwaukee, Wisconsin
Docket No. 79-15
Decision No. 134

DATE: November 28, 1980

DECISION

Introduction

This case is an appeal of a disallowance of \$6399 made by the Office of Human Development Services (OHDS) in the Native American Program (NAP) of the Community Relations-Social Development Commission in Milwaukee County, Wisconsin (CR-SDC). The disallowance is based on an audit of the NAP for the period of January 1 through December 31, 1977, as directed by 45 CFR 1336.50(a)(1). OHDS notified the Grantee of the recommended audit adjustments on June 13, 1978, the Grantee did not reply or respond to the Agency notification, and on January 9, 1979, the Agency disallowed \$6,399 and directed the Grantee to make necessary adjustments.

The Grantee filed an appeal with the Board on March 7, 1979 requesting review in the amount of \$8,415 for fiscal years 1974 through 1977. In response to questions from the Board, the Grantee on May 30, 1979 modified the March 7, 1979 request, accepted the disallowances for fiscal year 1974, 1975 and 1976 and requested review of \$6,399 for fiscal year 1977. The Grantee further stated that it would attempt to resolve the issues pertaining to the disallowance and establish an indirect cost rate for 1977 with the OHDS Regional Office. The Grantee asserted that the rate would generate funds in excess of the amount disallowed in the area of "administration fee charged in excess of budget". It additionally requested that the subgrantee be held liable for costs that were disallowed because of inadequate documentation.

This decision is based on the Grantee's application for review, Audit Report 05-85428, the Agency's notification of disallowance, and the Agency's response to the Grantee's application for review. The Grantee did not respond to the Board's Invitation to Brief dated September 8, 1980.

Background

CR-SDC has received grants for funding of Native American Programs from HEW since 1974. CR-SDC from 1974 through 1977 had a subgrant with the Indian Urban Affairs Council (IUAC) for the operation of the grants. CR-SDC, as grant recipient, budgeted for, received and expended federal funds for the administration of these grants.

CR-SDC stated that personnel turn-over and subgrantee non-responsiveness made administration of the grant extremely difficult. The Grantee stated that it had made numerous attempts to obtain documentation for amounts disallowed but the subgrantee had failed to provide necessary documents or respond to Grantee's requests. The Grantee asserted that it was informed that as of January 1, 1977, the grant would go directly to IUAC. When IUAC could not meet HEW grant requirements, CR-SDC was asked to continue as the grantee, on a month-by-basis, until January 1978 when IUAC became the grantee. The Notice of Grant Awarded for the period in question, however, is for the budget and project period of January 1, 1977 through December 31, 1977 and states that CR-SDC is the grantee organization; there is no indication of a month-to-month agreement. Further CR-SDC suggested that HEW hold IUAC responsible for part of the disallowance.

Discussion

Costs were disallowed due to lack of documentation for employee development, travel, space, and consumable supplies, and for certain administrative fees in excess of the budgeted amount.

With respect to the first issue, CR-SDC does not deny that it has failed to document the costs but contends that (1) it was directed to subgrant the grant; and (2) the necessary documentation is the responsibility of IUAC. The Grantee has failed to provide any documentation in support of its claim that OHDS directed it to subgrant. The Notice of Grant Awarded makes no reference to the alleged requirement. With regard to the second argument, the Notice of Grant Awarded specifically put CR-SDC on notice that the grant was subject to 45 CFR Part 74. In particular, 45 CFR 74.3 states:

"Grantee" means the organization or person to which a grant is made and which is accountable to the Federal Government for the use of the funds provided. The term does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

The legal relationship created by a grant award is between the Agency and the Grantee. The subgrantee is accountable to the Grantee not the Agency (see 45 CFR 74.3, definition of "subgrantee"). The Grantee is, therefore, responsible to the Agency for adequate documentation of expenditures made by the subgrantee.

Because the Board has before it other cases pertaining to CR-SDC, the Board was given notice that an Indirect Cost Negotiation Agreement was executed

by the Grantee and Agency on May 12, 1980. On its face, the Agreement states that a final rate of 9.2% applicable to all programs is in effect for the period January 1, 1977 to December 31, 1977. Repeated efforts by Board staff to get the Agency's reaction as to whether this Agreement did affect this appeal have been fruitless. Therefore, we find that the Agreement on its face applies to this appeal. The parties should determine what effect the rate has on the amount in question.

Conclusion

For the reasons stated above, we find that the disallowance should be upheld on the question of lack of documentation. We also find that an indirect cost rate has been determined for 1977, and the parties should determine what effect the rate has on the disallowed amount pertaining to administrative costs. We suggest that this determination be made within 30 days of the date of this decision. If no agreement can be reached, the case may be reopened with this Board for further review.

/s/ Clarence M. Coster

/s/ Donald G. Przybylinski

/s/ Norval D. (John) Settle, Panel Chair