Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Galveston County Community Action Council, Inc.
Docket No. A-13-35
Decision No. 2514
May 31, 2013

DECISION

Galveston County Community Action Council, Inc. (Galveston) appeals the December 2012 determination by the Administration for Children and Families (ACF) disallowing $34,700 in consultant costs that ACF found Galveston charged to its Head Start grant for the period December 1, 2009 to November 30, 2010. Based on an audit conducted by the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS), ACF concluded that Galveston had not provided adequate documentation to support the costs.

For the reasons discussed below, we uphold the entire disallowance.

Legal Background

Head Start grantees must comply with regulations specific to the Head Start program and with regulations at 45 C.F.R. Part 74 that apply to all HHS grants to non-profit organizations. 45 C.F.R § 1301.10(a). The Part 74 regulations, in turn, incorporate the principles for determining allowable costs under awards to non-profit grantees in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230. 45 C.F.R § 74.27(a). Under the cost principles, to be "allowable" under an award costs must be, among other things, reasonable for the performance of the award, allocable to the award, and adequately documented. 2 C.F.R. Part 230, App. A, ¶ A.2.a, g. A recipient of federal funds must have in place a financial management system that provides "[r]ecords that identify adequately the source and application" of funds for grant activities, as well as "[a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. § 74.21(b)(2), (7).

When a recipient of federal funds contracts with an outside organization or individual to procure supplies, property, equipment, or other services with federal funds, the recipient must maintain a system for contract administration "to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases." 45 C.F.R. § 74.47. The recipient also must "evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract." *Id.*

The cost principles specifically address the allowability of selected items of cost, including the costs of professional and consultant services. 2 C.F.R. Part 230, App. B, ¶ 37. In order to be allowable, consultant costs must be "reasonable in relation to the services rendered." *Id.* ¶ 37.a. Several factors are "relevant" for determining the allowability of consultant costs in a particular case, including the "nature and scope of the service rendered in relation to the service required," the "necessity of contracting for the service, considering the non-profit organization's capability in the particular area," the "qualifications of the individual or concern rendering the service and the customary fee charged," 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.* ¶ 37.b(1), (2), (7), (8).

The Board has repeatedly held that, "under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds." *Suitland Family & Life Dev. Corp.*, DAB No. 2326, at 2 (2010) (citation omitted). "Once 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 Youth Servs., Inc.*, DAB No. 1884, at 5 (2003).

Case Background

Galveston is a non-profit agency that operates a Head Start program serving children and families at various locations in Galveston County, Texas. For the program year December 1, 2009 to November 30, 2010, which coincided with Galveston's fiscal year (FY 2010), Galveston received approximately $3.1 million in Head Start funds. ACF Ex. A at 6. Galveston also received approximately $200,000 in funding for its Head Start program from the American Recovery and Reinvestment Act of 2009. *Id.*

At ACF's request, in 2011 OIG conducted a recipient capability audit (RCA) of Galveston's Head Start program for FY 2010. Among other findings, OIG concluded that Galveston had charged to its Head Start grant for FY 2010 unallowable consultant costs totaling $34,700. ACF Ex. A at 12. OIG concluded that the costs "were not

supported by adequate contractual agreements and did not always have adequate documentation, such as invoices, to support the services provided." *Id.* OIG explained that, without supporting documentation, it was unable to verify whether the costs were reasonable for the services provided. *Id.* at 18.

Based on OIG's findings, by letter dated December 17, 2012, ACF disallowed $34,700 in Head Start funding provided to Galveston. Galveston (G.) Ex. 1. Specifically, ACF disallowed $20,000 that Galveston had paid to another Head Start agency for technical training and assistance; $7,500 that Galveston had paid to the Executive Director of the same agency for assistance with preparing a facilities acquisition application; and $7,200 that Galveston had paid to a local vendor for monthly information technology (IT) support. Galveston timely appealed the disallowance to the Board.

Analysis

We uphold the disallowance because we conclude that Galveston did not produce documentation establishing that the disallowed consultant costs were allowable. Below, we first discuss each of the disallowed costs in turn, explaining why we conclude that the evidence Galveston proffered is insufficient to reverse the disallowance. We then address Galveston's arguments that OIG lacked authority to conduct the RCA and that ACF had an improper motive for asking OIG to audit Galveston. Finally, we address Galveston's contention that ACF violated the regulations governing the time for submitting documents to the Board, so that we should "rescind" the disallowance.

1. Galveston did not produce adequate documentation to support its $20,000 payment for technical training and assistance.

ACF disallowed $20,000 in costs that Galveston paid to another Head Start agency for technical training and assistance. In its initial brief, Galveston argued that the disallowed costs were reasonable and supported by adequate documentation. G. Br. at 3-5. In its reply brief, Galveston says that it "did not charge . . . to the federal government" the disallowed $20,000 in costs for technical training and assistance or the disallowed $7,500 in costs for assistance with preparing a facilities acquisition application, which is discussed in the next section. G. Reply Br. at 3-4. It is unclear whether Galveston meant that it did not charge the costs to its Head Start grant award for FY 2010, or rather that it did not charge the costs to the federal government at all. However, other statements in the reply brief and Galveston's initial brief suggest that Galveston meant that it charged the costs to its Head Start award for FY 2009. *See* G. Br. at 1-2; G. Reply Br. at 3-4. Galveston also did not submit any evidence to show that it did not charge the disallowed costs to federal funds. Thus, we assume for purposes of this decision that Galveston

intended to argue that it charged these two costs to its Head Start grant award for FY 2009 rather than FY 2010, so those costs could not be disallowed based on an audit of FY 2010[1]. As we explain below, Galveston's arguments lack merit.

It is unclear when Galveston incurred the $20,000 in costs and whether Galveston charged the costs to its Heard Start grant award for FY 2009 or FY 2010. Under the contract between Galveston and the other Head Start agency, the agency was to provide technical training and assistance during the fiscal year ending on November 30, 2009. G. Ex. 3, at 2. This suggests that Galveston planned to incur the costs during FY 2009 rather than FY 2010 and so presumably to charge them to the earlier grant award.

However, Galveston provided no documentation showing the costs it charged to the FY 2009 grant award. Instead, Galveston provided documentation relating only to its FY 2010 expenditures and that documentation does not rule out the possibility that it charged the $20,000 to that grant award. A chart listing Galveston's Head Start expenditures for FY 2010 that Galveston submitted to HHS as part of its annual financial status report does not list any $20,000 payments or any expenditure for the category "Trainings." G. Ex. 9, at 2. But Galveston stated in the report accompanying the chart that it spent $31,871 for "T & TA," which appears to refer to training and technical assistance, and the chart lists a very similar amount, $31,720.76, as an expenditure for "Professional Development." *Id.* at 1, 3. Thus, the $31,720.76 expenditure listed in the chart might include the $20,000 payment to the Head Start agency. An excerpt from Galveston's general ledger also appears to show that it spent $20,000 for trainings in March 2010 and charged those costs to its Head Start grant for FY 2010.

Regardless of whether Galveston charged the costs to the FY 2009 or FY 2010 grant award, however, Galveston had a responsibility to document that the costs are allowable. *See* 2 C.F.R. Part 230, App. A, ¶ A.2.g (providing that to be allowable under an award, costs must be "adequately documented"). Once OIG questioned the costs as lacking documentation, Galveston was on notice that it needed to produce supporting documentation for the costs. It is immaterial that the RCA that led OIG to question the costs was supposed to cover FY 2010. OIG's authority to conduct an audit extends beyond a single program year, and OIG explained in the audit report that it reviewed not only Galveston's unaudited financial statements for FY 2010 but also Galveston's audited financial statements for FYs 2006, 2008, and 2009. ACF Ex. A at 11. The HHS Inspector General has "the right of timely and unrestricted access to any books,

[1] Our decision does not preclude ACF from considering any documentation Galveston might provide to show that the costs were not charged to federal funds.

documents, papers, or other records of recipients that are pertinent to [grant] awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents." 42 C.F.R. § 74.60(e). This right of access lasts "as long as the records are maintained." *Id.*

Galveston did not produce adequate documentation to support the costs. Galveston's contract with the other Head Start agency provided that the agency would supply technical training and assistance in a number of areas, including program governance and fiscal management, on an "ongoing, as needed basis," but required Galveston to pay the agency a "nonrefundable fixed fee" of $20,000 for that assistance. G. Ex. 3, at 1-2. As OIG explained in the audit report, "[t]o determine the reasonableness of costs for contracts without detailed descriptions of services or time requirements, additional documentation, e.g., an invoice, is needed to compare services provided with the amount paid." ACF Ex. A at 18. Galveston apparently provided OIG with sign-in sheets that Galveston argued showed the Head Start agency had conducted some trainings, but OIG determined that the sheets did not contain "sufficient detail to show the amount and type of training" that the agency provided. *Id.* at 17-18. Galveston did not submit copies of the sign-in sheets to the Board, so it has not shown that OIG's assessment of the sheets is flawed.

Because Galveston did not provide any documentation detailing the specific trainings that the agency conducted or any technical assistance that it provided, let alone information about why it was necessary to contract for the services and the customary fees charged for such services, Galveston has not shown that its $20,000 payment was reasonable and allowable. *See* 2 C.F.R. Part 230, App. B, ¶ 37.a, b. Galveston also has failed to show that it would have been reasonable to pay some lesser amount. Accordingly, we have no basis on the record before us for overturning or reducing this part of the disallowance.

2. Galveston did not produce adequate documentation to support its $7,500 payment for assistance with preparing a facilities acquisition application.

ACF disallowed $7,500 in costs that Galveston paid to the Executive Director of the same Head Start agency with which it contracted for technical training and assistance. Galveston says it paid the Executive Director to help it prepare a facilities acquisition application. Galveston asserts that its records show it charged the $7,500 payment to a previous Head Start grant award, not the award for FY 2010, so those costs are allowable. G. Br. at 2-3. Galveston's argument lacks merit.

It appears from the documentation Galveston submitted that it indeed incurred the costs during FY 2009 and charged them to its Head Start grant award for that year, not FY 2010. Under Galveston's contract with the Executive Director, she was supposed to assist with the application between January 15, 2009 and November 30, 2009. G. Ex. 2, at 1, 3. An excerpt from Galveston's general ledger also shows that it paid the Executive

Director $7,500 on November 1, 2009. In the ledger, the payment was categorized as "Contractual – Other." According to the chart of Galveston's Head Start expenditures for FY 2010, it only expended $5,387.50 for the category "Contractual - Other" during that period, which does not correspond to the amount in question here.

Nonetheless, even if Galveston charged the $7,500 in costs to its Head Start grant for FY 2009, once OIG questioned the costs Galveston had a responsibility to produce supporting documentation for them, as discussed above. Galveston did not fulfill this responsibility.

Like Galveston's contract with the Head Start agency, Galveston's contract with the Executive Director stated that she would assist with preparing the facilities application "on an as needed basis." G. Ex. 2, at 1. According to the audit report, Galveston submitted the completed facilities application to OIG as proof that the Executive Director provided the assistance required by the contract, but did not provide any documentation showing the "type or amount of work" that she provided. ACF Ex. A at 18. On appeal, the only two documents Galveston submitted to the Board that pertain to the costs are the contract and the ledger excerpt. Neither document contains any information about what, if any, specific assistance the Executive Director provided related to the application or how many hours she provided assistance. Without that information, there is no way to verify if $7,500 was a reasonable fee for her services, and so Galveston has not shown that the costs are allowable. *See* 2 C.F.R. Part 230, App. B, ¶ 37.a. Accordingly, we uphold this part of the disallowance.

3. Galveston did not produce adequate documentation to support its payments totaling $7,200 for monthly IT maintenance and support.

Galveston contracted with an IT services vendor to provide monthly IT maintenance and support to several office locations. Galveston's contract with the vendor estimated that the total cost of providing support would be $4,519 per month, but provided that the vendor would donate $2,334 per month towards this cost, leaving Galveston to pay $2,185 per month. G. Ex. 4, at 1. Galveston charged $600 of this monthly payment to the Head Start grant for each month of FY 2010. ACF disallowed all of these costs, which totaled $7,200, on the ground that they were not supported by adequate documentation. G. Ex. 1, at 1.

Galveston asserts that it is "undisputed" that $600 per month was a reasonable amount to charge to the Head Start grant for IT services. G. Br. at 3. To the contrary, OIG found that it was impossible to determine whether $600 per month was a reasonable charge because Galveston agreed to pay the vendor the same amount each month, regardless of the number of hours worked, and did not provide OIG with any documentation that detailed the services the vendor actually provided to the Head Start program. ACF Ex. A at 13, 18. ACF clearly relied on that finding.

Galveston argues that the disallowed costs were "properly documented in the records" and "necessary as a charge to the Head Start program." G. Br. at 3. Galveston also asserts that the costs should be allowed because it had a contract with the vendor (though it argues a contract was not required) and received monthly invoices for the vendor's services.[2] G. Reply Br. at 3-4.

The costs are not allowable simply because they were incurred pursuant to a written contract and invoices. The content of those documents, not just their existence, is relevant to whether the costs are adequately documented, as required by the applicable cost principles. Indeed, Galveston provided one of the vendor's invoices to OIG, but OIG concluded that the invoice did not help establish that the costs were allowable because it "did not provide a detailed monthly listing of the services rendered." ACF Ex. A at 13.

In support of the costs, Galveston submitted to the Board an excerpt from its general ledger regarding its use of Head Start funds for IT support and a copy of its contract with the vendor. Galveston did not submit the vendor's invoices. Neither the ledger excerpt nor the contract provides a basis for overturning this part of the disallowance.

The ledger excerpt shows only that Galveston used $600 per month of its Head Start funding for IT support services, which is undisputed. The contract details the office locations and IT-related systems (servers, routers, etc.) the vendor agreed to support, the projected average number of hours the vendor would need to work to support those locations and systems, and the projected average cost per month for the vendor's work. G. Ex. 4. However, it is not clear from the contract which of the listed office locations engaged in Head Start-related activities, as opposed to other programs operated by Galveston, and Galveston has not explained how it decided to allocate $600 of the $2,185 it owed for monthly IT services to the Head Start grant. Moreover, while the contract lists hourly rates for various IT services, Galveston provided no information about the vendor's qualifications or customary fees charged for the IT services.

[2] Galveston also asserts that the regulations do not require a contract for services below the small purchase threshold (also known as the simplified acquisition threshold), which is currently $100,000, and that this provides a basis for allowing the $7,200. G. Reply Br. at 4; *see* 41 U.S.C. § 403(11) (providing for simplified acquisition threshold). The regulations set forth particular contract provisions that every procurement contract awarded by a recipient of federal funds, including contracts for amounts below the simplified acquisition threshold, must contain, as well as additional provisions that contracts in excess of the threshold must contain. *See* 45 C.F.R. § 74.48; 45 C.F.R. Part 74, App. A. Nothing in the regulations sets a threshold amount for when a contract is required. In any event, Galveston did have a contract with the IT services vendor.

In addition, the contract based the monthly rate for the vendor's services on projections about Galveston's need for support from the vendor. Since Galveston did not submit documentation showing what services the vendor actually provided or the number of hours per month the vendor provided services, it is impossible to know whether the contracted monthly rate was reasonable "in relation to the services rendered, " as required by 2 C.F.R. Part 230, App. B, ¶ 37.a. Thus, Galveston has not established that the costs are allowable.

We also note that several amounts in the contract appear to be incorrectly calculated. For example, the contract provides that the vendor's rate for supporting "Misc" (miscellaneous) IT-related systems is $35 per hour and estimates that the vendor will need to spend an average of 3.5 hours per month supporting those systems at one particular office location. The contract then specifies that the average cost per month for supporting those systems at that location will be $93. G. Ex. 4, at 1-2. But 35 multiplied by 3.5 equals 122.5, not 93. Using these and other calculations, the contract specifies that the total average cost per month for providing IT support to all of Galveston's office locations will be $4,453. *Id.* at 2. Yet the contract also provides that "the monthly proposed value" to provide IT support services is $4,519 and does not explain the basis for the inconsistency between the two figures. *Id.* at 1. ACF did not rely on these discrepancies as a basis for the disallowance, but the discrepancies call into question the adequacy of the contract under the criteria in 2 C.F.R. Part 230, App. B, ¶ 37.b(8).

4. OIG had the authority to audit Galveston.

Galveston also argues that OIG lacked the authority to request its records and conduct a RCA. G. Br. at 1-2; G. Reply Br. at 1-3. According to Galveston, by conducting the audit OIG violated the Inspector General Act of 1978 (IGA), the Head Start Act, and the Single Audit Act Amendments of 1996 (Single Audit Act). As explained below, Galveston's argument has no merit.

a. The audit was authorized under the IGA.

In arguing that OIG did not have authority under the IGA to conduct the audit, Galveston relies on a provision it says precludes transfer of "program operating responsibilities" to an Inspector General. G. Br. at 1, citing 5 U.S.C. App. 3, § 9(a)(2). Galveston asserts that "[a]ll of the activities in the RCA represented programmatic duties" of ACF. G. Br. at 2.

Title II of Public Law 94-505 established within HHS (then the Department of Health, Education, and Welfare) "an independent and objective unit . . . to conduct and supervise audits and investigations relating to programs and operations of the Department . . . ." The unit was called the Office of Inspector General. Paragraph (1) of section 9(a) of the IGA provides, among other things, for transfer of the Office of Inspector General

established by Title II to the new Office of Inspector General of HHS established under the IGA. 5 U.S.C. App. 3, § 9(a)(1). Paragraph (2) of section 9(a) of the IGA provides for transfer –

> to the Office of the Inspector General, such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

Id. § 9(a)(2) (emphasis added). Thus, the IGA's prohibition on transferring "program operating responsibilities" to an OIG does not apply to the transfer of functions under paragraph (1), including the transfer of the conduct of "audits and investigations relating to" HHS programs. Instead, the prohibition applies only to transfers, under paragraph (2), of other functions the Secretary of HHS determines are properly related to OIG's functions.

In addition, the IGA explains that it is the "duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established," to "conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment." 5 U.S.C. App. 3, § 4(a)(1). Each Inspector General also has the duty to "conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations." *Id.* § (4)(a)(3). As one court remarked, an Inspector General could not fulfill these and other responsibilities delineated in the IGA "without investigating fraud, abuse and waste by both the agency administering and financing the program and the participants in the program." *Adair v. Rose Law Firm*, 867 F. Supp. 1111, 1116 (D.D.C. 1994) (emphasis in original). The same court explained that the legislative history of the IGA also makes clear that Congress intended an Inspector General's "investigatory authority to extend to the investigation of recipients of government funding as well as to government agencies themselves." *Id.*, citing 1978 U.S.C.C.A.N. 2676, 2679, 2683. Accordingly, the text and the legislative history of the IGA show that OIG has the authority to conduct audits of recipients of federal funds like Galveston.

In support of its contention that OIG usurped ACF's programmatic duties by conducting the audit, Galveston relies on *Burlington N. R.R. Co. v. Office of Inspector General*, 983 F.2d 631 (5th Cir. 1993). G. Reply Br. at 2. In that case, the Inspector General of the Railroad Retirement Board (RRB) believed the RRB was not adequately exercising its authority to examine whether railroad employers were accurately reporting tax

information and paying the taxes that fund benefits distributed by the RRB. *Id.* at 633-35. The court determined that the Inspector General had exceeded his statutory authority and usurped the RRB's program operating responsibilities by deciding to systematically investigate the accuracy of railroad employers' tax reporting.

The *Burlington* decision is clearly distinguishable. Unlike Galveston, the railroad that challenged the Inspector General's actions in *Burlington* was not a recipient of federal funds. Also, rather than engaging in a one-time audit rooted in OIG's oversight responsibilities, the Inspector General's testimony indicated that he had planned "to assume a regular auditing function to detect tax noncompliance and to perhaps assume a tax collecting function." 983 F.2d at 639. Here, in contrast, the OIG audit report explained that the purpose of the RCA was to assess Galveston's "financial viability and capacity to manage and account for Federal funds and to operate a Head Start program in accordance with Federal requirements." ACF Ex. A at 6. The report also explained generally that OIG audits "are intended to provide independent assessments of HHS programs and operations" and "help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS." *Id.* at 2. Although Galveston contends that RCAs "do not involve waste, fraud and abuse" (G. Reply Br. at 2-3), OIG's description of the purpose of the RCA makes clear that such audits help prevent waste, fraud, and abuse by ensuring that grantees are following the federal requirements for managing federal funds and can account for their use of those funds. *See* ACF Ex. A at 6.

In sum, the RCA was well within OIG's authority under the IGA and did not involve any transfer of ACF's program operating responsibilities.

b. The audit was authorized under the Head Start Act.

Galveston also argues that OIG did not have the authority to conduct the audit under the Head Start Act, 42 U.S.C. §§ 9801-9852. Galveston relies on paragraph (c)(1) of section 9836a, which describes the monitoring reviews that ACF must conduct of Head Start agencies and programs to determine whether they are meeting program performance standards. G. Reply Br. at 1-2. Galveston emphasizes that paragraph (c)(1) does not give OIG the authority to conduct RCAs and argues that they are "illegal creatures of the Head Start Program." *Id.* at 2.

Galveston is correct that paragraph (c)(1) does not provide OIG with the authority to conduct audits. However, that does not mean OIG is precluded from conducting audits of a grantee's Head Start program. As discussed above, the IGA gives the HHS OIG the power to investigate HHS agencies and recipients of HHS funding. Moreover, another section of the Head Start Act provides that the Secretary of HHS, the Comptroller General, "or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the

recipients that are pertinent to the financial assistance received under this subchapter." 42 U.S.C. § 9842(b). Given the auditing authority delegated to OIG under the IGA, it is evident that OIG is among the "duly authorized representatives" included in the statute. The Part 74 regulations reinforce this interpretation. We also note that the applicable regulations similarly provide that the HHS Inspector General has "the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to [grant] awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents." 45 C.F.R. § 74.60(e).

c. The audit did not violate the Single Audit Act.

Galveston also contends that the Single Audit Act requires only a single audit of all non-federal entities that expend federal financial assistance, so ACF should have accepted the audit of Galveston for FY 2010 that was conducted by an independent auditor in accordance with that Act rather than asking OIG to conduct a RCA. G. Br. at 1-2. Unlike OIG's audit report, the independent auditor's report did not question any costs charged to Head Start.

The Single Audit Act does not preclude OIG from conducting its own audits but instead expressly recognizes that other audits may be conducted. The Act explains that it does not "limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards" or "limit the authority of any Federal agency Inspector General or other Federal official." 31 U.S.C. § 7503(c). Thus, despite the fact that an independent auditor audited Galveston for FY 2010 and determined that Galveston had complied with the federal regulations, ACF was free to ask OIG to audit Galveston.

5. We do not have the authority to review ACF's basis for requesting that OIG audit Galveston.

Galveston maintains that ACF asked OIG to audit Galveston because Galveston employed a woman named T.J. as its accountant. G. Reply Br. at 4-5. Galveston submitted copies of emails that appear to show that ACF asked OIG to audit all Head Start grantees for which T.J. conducted an independent audit or otherwise reviewed the grantees' finances. *See* G. Exs. 10 & 11. Galveston alleges that T.J. is a black female and the only female head of an accounting firm in the region with clients who are Head Start grantees. G. Reply Br. at 4. According to Galveston, ACF's decision to have OIG audit T.J.'s clients was illegal and "paramount to harassment." *Id.*

As an initial matter, we note that Galveston has not provided evidence establishing that it was improper for ACF to ask OIG to audit T.J.'s clients. If ACF had reason to suspect that T.J. was not appropriately reviewing her clients' finances, that could provide a permissible basis for OIG to audit T.J.'s clients. Indeed, one court has held that OIG

"may initiate an audit or investigation of a federal recipient without particularized suspicion since '[a]n administrative agency . . . can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'" *U.S. v. Hunton & Williams*, 952 F. Supp. 843, 849 (D.D.C. 1997), quoting *U.S. v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950).

In any event, we do not have the authority to review the decision to audit Galveston. Instead, the Board's authority in this case is limited to reviewing ACF's determination to disallow Head Start funds provided to Galveston. *See* 45 C.F.R. Part 16, App. A, ¶ C(a) (describing the types of "final written decisions" involving "direct, discretionary project grants" that are appealable to the Board).

6. Galveston has not shown that ACF violated the regulations governing the time for submitting documents to the Board, and even if it did, the violation would not provide a basis for overturning the disallowance.

At the same time that it filed its reply brief, Galveston filed a motion asking the Board to "rescind" the disallowance on the ground that ACF violated the regulations that govern the time for submitting documents to the Board. Galveston contends that ACF untimely filed both (1) the notice providing the contact information for ACF's representative for the appeal and (2) the response brief. Galveston points out that under the regulations, if the respondent fails to meet any filing deadlines, the Board has the discretion to "issue a decision based on the record submitted to that point" or to "take such other measures as the Board considers appropriate." 45 C.F.R. § 16.15(c).

We deny Galveston's motion. First, Galveston has not shown that ACF filed its submissions late. The regulations provide that the respondent should provide the contact information for its representative in "its first submission to the Board and the appellant," 45 C.F.R. §16.6, and ACF's first submission – a Notice of Appearance filed by a Regional Attorney from the Office of General Counsel (OGC) on March 22, 2013 – contained its representative's contact information. The regulations also provide that the respondent must file its response brief within 30 days after receiving the appellant's brief. *Id.* § 16.8(b). ACF's representative responded to Galveston's motion by stating that he did not receive a copy of Galveston's brief until April 17, 2013 (when Galveston emailed it to him), and by attaching an email indicating that OGC's central office had not received Galveston's brief as of April 16, 2013. There is no support for Galveston's argument that the applicable date of receipt should be the date that the Board received Galveston's brief. Galveston did provide a certificate indicating it had served a copy of its brief on OGC's central office, but no information indicating that office actually received the brief prior to April 16. Assuming an ACF representative first received Galveston's brief on April 17, then ACF's response brief filed on April 26, 2013 was well within the 30-day deadline.

Even if ACF had filed its response brief after the 30-day deadline in section 16.8(b), however, we would not consider overturning the disallowance to be an appropriate measure to address the delay. Assuming ACF received Galveston's brief on March 22, as the Board did, ACF's brief was only a few days late, and Galveston has not explained how it was prejudiced by any delay. Moreover, even if we exercised our power under section 16.8(b) to issue a decision based on the record submitted before ACF filed its brief, we would still find that Galveston did not meet its burden of documenting that the disallowed costs were allowable.

Conclusion

For the reasons explained above, we uphold ACF's disallowance in the full amount of $34,700.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Judith A. Ballard
Presiding Board Member