Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Family Voices of the District of Columbia
Docket No. A-11-18
Decision No. 2409
August 30, 2011

DECISION

Family Voices of the District of Columbia (FVDC)) appeals a decision by the Health Resources and Services Administration (HRSA) terminating its grant under the Family-to-Family Health Information Center program (F2F HIC). HRSA terminated the grant on the ground that FVDC had failed to materially comply with grant terms and conditions related to financial management and program oversight and reporting.

For the reasons discussed below, we uphold this termination.

Legal Background

The F2F HIC program is authorized by Title V, section 501(c) of the Social Security Act (42 U.S.C. 701(c)). The purpose of the F2F HIC program is to establish statewide information centers that help families of children with disabilities or special health care needs.

Non-profit organizations, such as FVDC, that receive federal grants are subject to the uniform administrative requirements at 45 C.F.R. Part 74 and the cost principles in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230. Section 74.21 sets forth “standards for financial managements systems” with which grantees must comply. *See also* HHS Grants Policy Statement (GPS), II-61 (made applicable by the terms and conditions of the grant and providing that the grantee must maintain financial management systems that are adequate to account for the expenditures of grant funds and to ensure that such funds are handled responsibly).[1] The cost principle at issue here, made applicable by 45 C.F.R. §§ 74.1 and 74.27, requires that costs be "adequately documented." 2 C.F.R. Part 230 at ¶ A.2.g.

Section 74.51 sets forth requirements related to "monitoring and reporting program performance." Section 74.52 sets for requirements for “financial reporting.”

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[1] The GPS currently available was published January 1, 2007 and can be found at http:// www.hhs.gov/grantsnet/docs/HHSGPS107.doc.

Under section 74.61(a)(1), an awarding agency may terminate a grant when a recipient "materially fails to comply with the terms and conditions of an award." *See also* GPS, II-93 (providing for termination where a recipient "has failed to materially comply with the terms and conditions of an award"). Part 74 does not require an awarding agency to offer a grantee an opportunity to correct its noncompliance before terminating an award. *See National Aids Education & Services for Minorities, Inc.*, DAB No. 2401, at 17 (2011); *Renaissance III*, DAB No. 2034, at 11-12 (2006). The GPS provides that the awarding agency may terminate without opportunity for correction when "the deficiency is so serious as to warrant immediate termination." *Id.* at II-94. Previously, the Board concluded that immediate termination is warranted in situations in which the "noncompliance was or is material and of sufficient magnitude to constitute a present threat to federal interests." *Metro Community Health Centers,* DAB No. 1098, at 4 (1989).

In reviewing this termination, the Board is "bound by all applicable laws and regulations." 45 C.F.R. § 16.14. Therefore, the Board must uphold an agency determination where it is authorized by law and the grantee has not disproved the factual basis for the determination. *Northwest Tennessee Economic Development Council*, DAB No. 2200 (2008); *Arlington Community Action Program, Inc.*, DAB No. 2141 (2008), *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404 (1993); *Huron Potawatomi, Inc.*, DAB No. 1889, at 9 (2003); *Harambee Child Development Council, Inc.*, DAB No. 1697 (1999).

Analysis

On August 23, 2007, July 29, 2008, and June 9, 2009, HRSA issued Notices of Awards (NoA) awarding F2F HIC funds to FVDC. The project period for this grant was September 1, 2007 through May 31, 2010. HRSA Ex. 1. Doreen Hodges was the executive director of FVDC during the relevant period and was listed as program director in NoAs for this grant. *Id.*

On October 5, 2010, HRSA sent FVDC a letter terminating FVDC's continued funding as a F2F HIC grantee on the ground that "FVDC has been unable to document that it has complied with the statutory and regulatory requirements for the F2F HIC Program as outlined in the relevant Uniform Administrative Requirements for Awards (45 CFR Part

74)."[2] HRSA Ex. 19, at 1. HRSA cited requirements related to financial management systems (section 74.21) and reporting (sections 74.51, 74.52). *Id.*, Att. at 1, 2. Below we discuss those requirements and explain why we conclude that FVDC has failed to show that it materially complied with them.

1. Lack of financial management systems and internal controls

Section 74.21(b) of 45 C.F.R. sets out requirements for recipient financial management systems. As relevant here, such a system must "provide for":

> (1) Accurate, current and complete disclosure of the financial results of each HHS-sponsored project or program in accordance with the reporting requirements set forth in Sec. 74.52 . . . .
> (2) Records that identify adequately the source and application of funds for HHS-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
> (3) Effective control over and accountability for all funds, property and other assets . . . .
> (4) Comparison of outlays with budget amounts for each award . . . .
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> (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
> (7) Accounting records, including cost accounting records, that are supported by source documentation.

On September 13, 2010, personnel from the HRSA Division of Financial Integrity conducted an onsite review of FVDC's financial management system and expenditures of federal funds under its F2F HIC grant. HRSA Ex. 11. The fiscal review was prompted in part by a HRSA finding in its February 2010 FVDC operational assessment review that, as of March 2010, FVDC had drawn down "all program funds . . . in December 2009, five months prior to the actual end of the official project period." HRSA Ex. 2, at 1.

[2] The termination occurred after the end of the original grant project period, which was May 31, 2010. HRSA provided the following explanation for why it issued a termination in this case even though it had not issued a NoA to FVDC for the 2010-2011 budget year.

> Under typical circumstances, FVDC would have participated in a competitive application process for [June 1, 2010 to May 31, 2011 funding]. However, the F2F HIC program received a DHHS waiver from competition, which was provided to DC and 29 other State-based F2F HICs.

HRSA Ex. 19, at 1. Under the waiver, grantees in the third year of a F2F HIC project period could receive a no-cost extension "to carry the project period over for an additional 12 months." HRSA Ex. 6, at 1.

Also, HRSA stated that as of March 2010, FVDC had not reported on its expenditure of these funds but informed HRSA that it had only $2,000 remaining, which raised concerns about how FVDC would fund grant work for the remainder of the project period, i.e., until May 31, 2010. *Id.* at 1, 6.

Prior to the review, HRSA requested budget and expenditure information from FVDC (HRSA Exs. 10, 14) and described to FVDC the information and documentation that it would be requested to produce at the review (HRSA Ex. 10). On September 13, HRSA personnel "met with the FVDC [the program director] and several Board members . . . to review the financial documents provided, and discuss FVDC's accounting practices and policies and procedures." HRSA Ex. 11, at 1.

In a letter dated October 5, 2010, HRSA terminated FVDC's grant. In the termination letter, HRSA stated that, based on the September 13 review, it had determined that FVDC's accounting and financial management system did not comply with the standards of 45 C.F.R. § 74.21. HRSA Ex. 19, Att. at 1. HRSA attached to the termination letter a summary of its review findings and stated that it was "preparing a final report for distribution to FVDC." *Id.* at 2. HRSA issued the final report on January 28, 2011. HRSA Ex. 11. FVDC timely appealed the October termination before the final report was issued. The Board extended the time for filing FVDC's opening brief until after HRSA had issued the final report.

HRSA's final report stated that (1) "FVDC does not have an adequate accounting system" and (2) that "FVDC does not maintain an adequate financial management system" as required by 45 C.F.R. § 74.21(b). HRSA Ex. 11, at 2, 3. Specifically, HRSA found that FVDC "did not have 1) accounting books (general ledger, subsidiary account, etc.); 2) a chart of accounts; and 3) written policies and procedures manual in place regarding account administration and business practices." *Id.* at 3. HRSA stated that this failure constituted –

> a complete absence of any kind of accounting structure that could accurately and timely record and report grant expenditures. The absence of any kind of accounting structure led to the grantee not making journal entries for assets purchased, expenditures paid or owed, and revenue earned and collected (draw downs). The Grantee also did not maintain a general ledger for tracking journal entries into individual accounts.

Id. at 4. HRSA concluded the absence of an accounting structure meant that FVDC failed to "maintain books and records in a manner that would allow [HRSA] to determine if grant funds were spent properly." *Id.* at 2. Examples of FVDC's failures included the following:

- FVDC provided the reviewers with "three piles of supporting documentation that was not sorted by budget categories within the budget period." *Id.* HRSA was "unable to reconcile the source documents . . . to the grantee's accounting records because the grantee did not have a system to record transactions from source documentation to an accounting record, such as a general ledger." *Id.*

- During the review, HRSA staff attempted to match some supporting documentation to budget categories. "This process was inefficient, slow and did not provide any assurance that the grantee was spending to [i.e., within] the approved budget funding [levels]." *Id.* at 2-3. For example, the approved fiscal year (FY) 2010 budget for supplies was $1,400 but HRSA "identified supporting documentation totaling $7,360.48 for this category." *Id.* at 3; *see also* HRSA Ex. 14 (FVDC report on budgeted and actual expenses). Similarly, the FY 2009 cellular phone budget was $1,680 but the documents provided as to such costs totaled $3,533.25. *Id.* The FY 2008 family support budget was $4,282; FVDC reported that its actual costs were $24,391.19; HRSA found documents supporting costs of only $570.11. *Id.*

Based on these findings, HRSA concluded that "if the grantee cannot determine at any given time when it has spent past an approved budget line item, the grantee may be in violation of 45 CFR 75.51(f)," which requires prior approval before a grantee may spend past a certain limit on some budgeted line items. *Id.* Indeed, in addition to the examples of non-budgeted expenses described above, HRSA represented that, in FY 2010, FVDC drew down $7,500 in grant funds to pay for the installation of a security system that was not in the grant budget without requesting approval for modifying the budget. HRSA Ex. 19, Att. at 1.

HRSA determined that FVDC's lack of a financial management system posed "an unacceptable level of risk for mismanagement and misuse [of grant funds]." HRSA Ex. 11, at 3. As an example of this risk, HRSA alleged that FVDC "checks written by the [project director] are not reviewed by the Board of Directors or any other member of the organization" and that "[a] sound Financial Management System would have controls in place that would require, at a minimum, two signatures on checks and [, past] a certain purchase amount[,] Board approval." *Id.* HRSA also stated that the project director did not understand "rules and regulations regarding the use of federal grant funds," and FVDC did not have a staff person who "handles FVDC financial operations." *Id.*

FVDC concedes that, prior to and at the time of the September 2010 review, it had no "standard financial ledgers [or] journals" but asserts that "financial records were maintained to support all expenditures and disbursement of funds." FVDC Reply at 2. FVDC also asserts that (1) it has now "adopted a financial documentation (Quick Books) and reporting system that incorporates a general ledger for tracking and monitoring expenditures"; (2) in August 2010, its Board adopted a "Fiscal Policies and Procedures

Manual" (Manual), attached as FVDC Exhibit 11; (3) it has now implemented these policies; and (4) it has "secured the services of an accountant to oversee all compliance with Federal financial rules and regulations." FVDC Br. at 4-5. Finally, FVDC alleges that it "conducted itself in a responsible and ethical manner in all financial matters." FVDC Reply at 2.

For the following reasons, FVDC's assertions do not establish a basis for setting aside this termination.

- While FVDC asserts that "financial records were maintained to support all expenditures and disbursement of funds," it does not explain how this was accomplished without "standard" financial accounting tools such as ledgers, journals, or a chart of accounts. Though FVDC did have receipts for many expenses, unorganized miscellaneous receipts by themselves do not constitute records "containing information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest" (section 74.21(b)(2)) or "accounting records, including cost accounting records, that are supported by source documentation" (section 74.21(b)(7)). While receipts are a type of source documentation that must be maintained to support accounting records, by themselves they do not constitute a financial management system as required by section 74.21(b).

- FVDC asserts that it was "ill prepared" for the September 2010 site visit (FVDC Reply at 3) and blames a prior disgruntled employee who allegedly misclassified expenses or tampered with records, an office move requiring it to pack up computers and records, and the unexpected nonattendance of a pro bono accountant whom FVDC had allegedly engaged to participate in the site visit.[3] The basis for the termination was that FVDC had no "standard" accounting system. FVDC had ample opportunity in this proceeding to explain how, absent such a system, it was in compliance with section 74.21(b) prior to or in September 2010. The fact that FVDC was allegedly unprepared at the time of the site visit is immaterial.

[3] We note that FVDC's statements in its reply brief of its lack of preparedness differ completely from its depiction of its preparedness in its appeal letter, where it asserted that "FVDC provided HRSA with access to information and key people fully qualified to answer lingering questions. The assembled team demonstrated the proper skill and commitment to address and/or correct any outstanding issues." Appeal Letter of November 5, 2010, at 3 (Appeal Letter). FVDC also asserted that its "new bookkeeper had already put into place the appropriate systems to address these issues moving forward." *Id.* at 3. We find the assertions in the appeal letter unpersuasive because they are inconsistent with FVDC's subsequent statements, are not supported by documentation or more complete description, and are inconsistent with HRSA's description of what it found during the site visit.

- FVDC asserts that "there may have been some expenses that were not categorized correctly . . . and those expenses were corrected and communicated to the HRSA financial team." Appeal Letter at 3. Again, the alleged fact that FVDC recategorized expenses upon HRSA's advice does not address the basis for the termination – FVDC's lack of accounting and financial management systems.

- As to FVDC's assertion that it acted ethically and responsibly "in all financial matters," we note that whether grant funds were actually misspent is not at issue here. At issue is the risk posed to those funds by the fact that FVDC had no adequate accounting system. Moreover, a grantee's failure to maintain an accounting system cannot be reasonably characterized as "responsible."

- While FVDC represents that its Board adopted the Manual in August 2010, HRSA denies that this Manual was presented to the reviewers at the September site visit. HRSA Response at 19, 20. FVDC did not submit any evidence (such as meeting minutes) to support its assertion that the Board had adopted the manual in August 2010, nor did FVDC assert that it showed such a manual to the HRSA reviewers. Thus, we have no basis for concluding that the policies set forth in the Manual were actually in effect as of the site visit.

- FVDC's representations that it is now using accounting software and has implemented the Manual policies are irrelevant and merely reinforce HRSA's finding that FVDC was not complying with section 74.21(b) as of September 2010. *See, e.g., Vance Warren Comprehensive Health Plan*, DAB No. 2180 (2108) (stating "[a]ctions that [grantee] took to improve its program after HRSA's determination are not relevant).[4] Moreover, HRSA could reasonably conclude that FVDC's longstanding material noncompliance with fiscal requirements is a more reliable predictor of future conduct than its present assertions of reformed intent. As HRSA stated, "[w]hile FVDC has made plans to track . . . financial status in the future, performance over the last three (3) years of the grant and past non-compliance provides no assurance that such policies, procedures, or guidelines will be implemented." HRSA Ex. 19, Att. at 2.

HRSA correctly determined that FVDC's noncompliance with section 75.21(b) posed "an unacceptable level of risk for mismanagement and misuse [of grant funds]" and

[4] Much of FVDC's argument and many of its exhibits go to improvements it has allegedly made since the termination in October 2010 – such as improvements in staffing, fiscal management, Board composition and operation, administrative oversight (Appeal Br. at 2-5), changes to policies, pro bono development, and training (FVDC Reply Br. at 1, 2). As stated above, these alleged measures are not relevant the issue before us, which is whether HRSA had grounds to terminate this grant in October 2010.

constituted material noncompliance that is, in itself, a sufficient ground for termination of this grant.

2. Failure to comply with reporting requirements

Section 74.51(a) provides that "[r]ecipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award." Section 74.51(b) provides that the awarding agency is to "prescribe the frequency with which the performance reports shall be submitted." Section 74.51(d) discusses standards for performance reports. Section 74.52 addresses financial reporting requirements for grantees.

In the attachment to the termination letter, HRSA made the following assertions about F2F HIC reporting requirements under section 74.51:

> Performance reporting is conducted for each grant year of the project period. Grantees are required to complete the program specific forms, within 120 days of the Notice of Award. This requirement includes providing expenditure data, finalizing the abstract and grant summary data as well as finalizing indicators/scores for the performance measures. Additionally, on a bi-annual basis, F2F HICs report Performance Measure #70 data and "impact" data to the HRSA-funded National Center for Family/Professional Partnerships (NCFPP). This data is later reported to HRSA, in aggregate form, for reporting in accordance with the Government Performance and Results Act (GPRA) of 1993 (Public Law 103-62). Additionally, grantees are required to report financial status within 90 days of the project period end (45 C.F.R. § 74.52).

HRSA Ex. 19, Att. at 2. In addition to using the performance data for GPRA reporting, HRSA also uses such data "to evaluate whether or not grantees are accomplishing project goals." HRSA Response at 11.

As to FVDC's compliance with these reporting requirements, HRSA stated:

> FVDC's non-compliance with the statutory and regulatory requirements of the F2F HIC Program is exemplified by the numerous late or omitted performance data submissions. Specifically, (1) project progress is not currently tracked by a system that allows for sufficient program reporting to HRSA and the NCFPP; (2) to date, FVDC has not submitted finalized data to the NCFPP for the FY 2009 reporting period; and (3) despite the technical assistance provided by HRSA and the NCFPP, and numerous opportunities provide to submit timely and accurate Federal Financial Reports (FFR), the last FFRs submitted by FVDC show inaccurate data.

Id. HRSA also represents that FVDC did not report GPRA data for 2010. HRSA Response at 11.

FVDC does not deny HRSA's allegations. Rather it makes the following assertions, which are either not fully responsive to HRSA's allegations or irrelevant to the issues before us. Below we discuss FVDC's assertions and why we conclude that HRSA correctly determined that FVDC's noncompliance with reporting requirements constituted material noncompliance with the terms and conditions of the grant.

HRSA submitted a chart summarizing FVDC's financial and performance reporting history; the chart represented that FVDC failed to file seven out of 11 reports on time. HRSA Ex. 18. FVDC does not argue that any of the information on the chart is inaccurate. Rather, in its Appeal Brief, FVDC states that it "has submitted timely Program Performance Reports" and cites three such reports by "tracking number." FVDC Br. at 6. In its Reply Brief, FVDC "acknowledges that we have not submitted our reports in a timely manner on numerous occasions . . . ." FVDC Reply Br. at 3. FVDC's first statement is not inconsistent with information on HRSA's chart, while the second statement supports the information on the chart, i.e, that FVDC failed to submit timely reports on "numerous occasions."

FVDC specifically concedes that it failed to file complete GPRA data reports on time. FVDC Reply Br. at 3-4. The record documents both this failure and HRSA's numerous efforts to obtain the data from FVDC, including offers of assistance. *See* HRSA Exs. 16 (data printouts reflecting the absence of GPRA data from the District of Columbia); 17 (copies of emails repeatedly discussing and requesting the data from FVDC).

The GPRA data tracks services delivered by individual F2F HICs such as total families served, how they were served (i.e., through one-on-one assistance, trainings, listserves, newsletters), the families' evaluations of the services, and demographic data on families. The fact that FVDC repeatedly failed to supply this data supports HRSA's allegation that FVDC's services were not being "tracked by a system that allows for sufficient program reporting to HRSA and the NCFPP." HRSA Ex. 19, Att. at 2.

Based on FVDC's failure to report performance data, HRSA stated that the "overall success in program implementation [by FVDC] could not be determined due to inadequate documentation and reporting." HRSA Ex. 2, at 4. In response, FVDC extols the caliber of its program performance and capacity -- representing that it was doing a "stellar job in our provision of services to families" (Appeal Letter at 1), was "recognized, in the District of Columbia, as the only trusted resource" (*id.*); had "fulfilled the scope of the project" for which it has been funded (*id.* at 3); provided "seamless services to families" (*id.* at 4); and "successfully delivered services time and again" (*id.*). It objects that HRSA "never cited any issues with our delivery of services to clients" but "instead HRSA attempts to manage the infrastructure of FVDC which is inappropriate." Appeal Letter at 4.

These assertions reflect a misunderstanding of federal requirements, of HRSA's role in monitoring grants, and of what is at issue here. HRSA is responsible for monitoring whether federal funds are spent in accordance with federal requirements as well as whether the grantee provides the services called for by the grant. HRSA terminated FVDC because FVDC's financial management system and performance reporting were wholly inadequate to enable HRSA to fulfill its grant monitoring responsibilities. HRSA's insistence that FVDC comply with financial and performance reporting requirements was not only appropriate but essential to assuring compliance with grant terms.

With respect to its failure to report performance data, FVDC argues that HRSA could have determined whether FVDC had "fulfilled the scope of the project [for which it had been funded]" because HRSA had "ongoing invitations to attend [its events] and participate to assist with any unanswered concerns and questions about the ability to fulfill the scope of the project." Appeal Letter at 3,4. If FVDC is arguing that such "invitations" excuse FVDC's failure to meet reporting requirements, we reject this argument. HRSA has many F2F HIC grantees across the country; HRSA necessarily relies on uniform reporting standards and data elements in monitoring these grantees.

While FVDC states that "HRSA's assistance and guidance to FVDC was appreciated" (FVDC Reply Br. at 4), FVDC also states that it "would benefit from assistance obtained from . . . HRSA, which could help to ensure that each report is properly formatted and timely submitted as per [its] requirements" (*id.* at 6); that it "made attempts to contact HRSA for assistance" in submitting the GPRA data (*id.* at 3); and that it "sought assistance and guidance from HRSA representatives" (*id.* at 4). To the extent that FVDC is arguing that its reporting failures should be excused because HRSA did not provide technical assistance or other support, we reject this argument. First, neither Part 74 nor any other authority of which we are aware requires HRSA to provided individualized technical assistance about a particular grant requirement prior to terminating a section 502(c) grant for failure to comply with that requirement. Second, the record indicates that HRSA did provide repeated technical assistance to FVDC, including assistance to help it address "operational issues" such as its failure to maintain a "functional data collection and data reporting system."[5] HRSA Ex. 2, at 1, 2. Finally, "the fact that a federal agency exercises oversight over federal funds or provides technical assistance to a grantee does not relieve the grantee of its obligation to administer its grant in compliance with all federal laws and grant conditions . . . ." *Puerto Rico Dept. of Health Services,* DAB No. 2185, at 27 (2011). Here FVDC had notice of the reporting requirements and of its continued failure to meet those requirements. FVDC cannot shift responsibility for that failure to HRSA.

Conclusion

For the preceding reasons, we uphold HRSA's termination of FVDC's F2F HIC grant.

/s/
Judith A. Ballard

/s/
Sheila Ann Hegy

/s/
Stephen M. Godek
Presiding Board Member

[5] For example, in February 2011, after the prior technical assistance did not enable FVDC to "perform[] at a level expected of a grantee in the third year of the project period," HRSA conducted a "Targeted Technical Assistance/Operation Assessment" site visit. HRSA Ex. 2, at 2. Thereafter, HRSA and FVDC adopted a monitoring plan with nine "action items." HRSA Ex. 4. HRSA represents that FVDC failed to timely accomplish four of these items. HRSA Ex. 19, at 1. FVDC appears to dispute HRSA's assertion, at least in part. FVDC Appeal Letter at 2. Because HRSA did not expressly rely on this alleged failure as a basis for termination, the record on this dispute was not fully developed. We see no need to resolve the parties' conflicting assertions on this matter, however, because HRSA had ample grounds for termination apart from whether FVDC accomplished these action items.