Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

The Research Foundation for The State University of New York
Docket No. A-13-63
Decision No. 2544
November 22, 2013

DECISION

The Research Foundation for The State University of New York (RF) appealed a determination by the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing $35,176 in costs that RF charged to a SAMHSA grant award for a campus suicide prevention project. Based on an audit report, SAMHSA determined that the costs were incurred, either in the last three weeks of the budget period for the award or after that budget period had ended on September 29, 2008, for computers, information technology (IT) supplies, and related indirect costs that did not benefit the grant project. RF agreed to refund $396 of the questioned costs, but argues that it properly charged the remaining costs to the SAMHSA award because SAMHSA had extended the suicide prevention project for an additional three years beyond September 29, 2008 and because the costs benefited the project.

For the reasons stated below, we uphold the disallowance. The record shows that both the budget period and the project period for the relevant grant ended on September 29, 2008. The computers and other IT supplies were mostly purchased after September 29, 2008, when unobligated funds from the budget period were no longer available. In addition, RF provided no documentation adequate to show that any of the supplies, even those purchased in September before the relevant project ended, provided any cognizable benefit to that project, much less that the costs were reasonable costs, properly charged to the award in their entirety.

Background

On or around May 31, 2005, RF applied for funding to enhance and expand one of its campus suicide prevention programs, called "STEPS." SAMHSA Ex. 1. On September 1, 2005, SAMHSA issued a Notice of Grant Award to RF providing funding for Grant

No. 1U79SM57502, for the budget period September 30, 2005 through September 29, 2006. SAMHSA Ex. 2. The notice also approved a three-year project period, ending September 29, 2008. *Id.*

RF subsequently received continuation awards for the second and third budget periods. SAMHSA Exs. 3, 4. The Notice of Grant Award for the budget period ending September 29, 2008 specified that the "grant is in the final budget period of the project" and that "[u]nless an application for competitive renewal is funded, grant closeout documents must be submitted within 90 days of the end of the current budget period." SAMHSA Ex. 4, at 3. The grant closeout process is addressed at 45 C.F.R. § 74. 71.

On January 28, 2008, RF requested approval to "carry over," into the third budget period, grant funds that had been awarded for the second budget period but had remained unobligated at the end of that period. SAMHSA Ex. 8. SAMHSA granted that request and issued a revised Notice of Grant Award for the budget period September 30, 2007 to September 29, 2008. SAMHSA Ex. 9.

Each of the award notices stated that, among other things, the award was subject to the Public Health Service (PHS) Grants Policy Statement and to terms and conditions incorporated either directly or by reference into the regulations at 45 C.F.R. Part 74 or Part 92, as applicable. Part 74 contains uniform administrative requirements for grant awards from subagencies of the federal Department of Health and Human Services (HHS), such as SAMHSA, to various entities, including institutions of higher education. 45 C.F.R. § 74.1. Part 74 incorporates by reference the cost principles from Office of Management and Budget (OMB) Circular A-21, that apply to educational institutions and are now codified at 2 C.F.R. Part 220. 45 C.F.R. § 74.27. Section 74.28 provides:

> Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the HHS awarding agency pursuant to § 74.25(d)(1).

The term "project period" means the "period established in the award document during which HHS awarding agency sponsorship begins and ends." 45 C.F.R. § 74.2. Under the project period system of funding, an agency approves funding for a project period (usually 3 to 5 years), but awards funds for a shorter budget period (usually a year), with future funding within the project period subject to availability of funds and to other factors. PHS Grants Policy Statement (1994). The effect of the approval of the project period is that a grantee need submit only a noncompeting continuation application to apply for funding for later budget periods within the approved project period, rather than competing with other entities for funding. *Id.*

"Project costs" are "all allowable costs, as set forth in the applicable Federal cost principles (see § 74.27), incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period." 45 C.F.R. § 74.2. To be allowable under an award to an educational institution, costs must, among other things, be reasonable and allocable to the award. OMB Circular A-21, 2 C.F.R. Part 220, Appendix (App.) A, § C. A cost is "allocable to a particular cost objective (*i.e*., a specific function, project, sponsored agreement, department, or the like) if the goods or services are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship." *Id.*, § C.4.a. "Any costs allocable to a particular sponsored agreement . . . may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations . . . ." *Id.*, § C.4.c. The term "sponsored agreement" includes a grant. *Id.*, § B.2.

The cost principles apply both to direct costs – expenses that can be identified with a particular sponsored project or other activity – and to facilities and administrative (F&A) costs – indirect costs that are incurred for common or joint objectives of the institution and cannot be readily and specifically identified with a particular sponsored project or other activity. *Id.*, §§ D.1., E.1. To charge F&A costs to an award, an institution must have an approved F&A rate or rates. *Id.*, § G.11.

A recipient institution is responsible for ensuring that costs are allowable, reasonable, and allocable under the costs principles and that they are documented pursuant to the uniform administrative requirements for grants. *Id.*, § C.4. Those requirements, codified in 45 C.F.R. Part 74, require a recipient of federal funds to have 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). Based on such requirements, the Board has repeatedly held that a "grantee has 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).

An audit of RF performed in 2011 by the HHS Office of Inspector General (OIG) found, among other things, that--

> [RF] could not document that $45,089 in administrative expenditures for information technology supplies (e.g., computers, monitors, printers, warranties, and digital cameras) were used solely to advance the work under the sponsored

> agreements. For example, [OIG] found that [RF] purchased $23,335 of computers during the last week of – or after the end of – the associated project period. These purchases could not solely benefit the research project. [RF] also improperly claimed $14,415 for F&A costs applicable to these expenditures.

SAMHSA Ex. 10, at 4. The OIG also found that RF was charging as direct costs some costs that should have been treated as administrative costs and included in calculating RF's F&A rate. *Id.* After the OIG issued its audit report, SAMHSA sent two letters to RF to follow up on the OIG audit. SAMHSA first asked RF to provide additional information to support its position with respect to the $35,176 in questioned expenditures that were charged to SAMHSA awards. SAMHSA Ex. 11. Subsequently, SAMHSA specified that RF should provide "a copy of the following: purchase requisitions, property inventory records and cancelled checks," as well as documentation to support the methodology used to allocate the costs to the SAMHSA grant awards. SAMHSA Ex. 13.

In response to the first letter, RF argued that, under OMB Circular A-21, "[i]dentification with the sponsored work rather than the nature of the goods involved is the determining factor in distinguishing direct from F&A costs of sponsored agreements," and that costs that "can be specifically identified with a particular project relatively easily with a high degree of accuracy" should be treated as direct costs. RF Br. at 1.[1] In response to the second letter, RF submitted to SAMHSA some purchase requisitions and invoices, as well as spreadsheets that summarize the information on the requisitions and identify other information from RF's records regarding the costs. *Id.*; SAMHSA Ex. 14.

On April 1, 2013, SAMHSA issued its determination, disallowing $35,176 in costs RF charged to its suicide prevention award for the budget period ending September 29, 2008, including $27,863.51 in direct costs for computers and other IT supplies and associated F&A costs of $7,311.71. SAMHSA determined that RF had not documented that the costs were incurred during the period of availability of funds and benefited the SAMHSA grant ending on September 29, 2008.

RF appealed. RF agreed to refund $396 of the questioned costs, but argues that it properly charged the remaining costs to the SAMHSA award because SAMHSA had approved an extension of the suicide prevention project for an additional three years beyond September 29, 2008 and because the costs were not for general administration, but provided a specific benefit to the suicide prevention project.

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[1] RF says it cited section D.1 of Appendix A to the Circular in support of this proposition; SAMHSA says RF cited section J.31.c. The first part of the quote is from section D.2. and the second part is from section D.1. Section J.31.c. states that "[o]nly materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs."

Analysis

The project period and the budget period for the award in question ended on September 29, 2008.

RF acknowledges that the costs at issue were charged to the SAMHSA award for the budget period ending on September 29, 2008. RF Notice of Appeal at 2. RF argues, however, that it does not matter that the project period for the suicide prevention project first approved in 2005 was approved at the time for only three years. According to RF, it applied for another award, which was approved in 2008 and which extended funding for its STEPS campus suicide prevention project for an additional three years, for a total of six years. RF Br. at 2.

The relevant documents, however, support SAMHSA's position that the award to which RF charged the costs was for the final budget period of the project approved in 2005, and that SAMHSA did not extend either the budget period or the project period associated with that project. Instead, the award for the budget period September 30, 2008 to September 29, 2009 was for a new project, with a new project period of three years.

As noted above, the Notice of Grant Award for the budget period ending September 29, 2008, informed RF that, unless an application for competitive renewal was funded, the grant had to be closed out within 90 days of the end of the current budget period, which was the final budget period of the project. The application RF submitted in January 2008 does not identify it as an application for a competitive renewal of the project previously funded. Instead, RF checked the box for "New" under "Type of Application" on both the OMB application form and on the Checklist at page 25 of the PHS application form. SAMHSA Ex. 7. Although the PHS form had a box for identifying an application as a "Competing Continuation" application, RF did not check that box. *Id.* In addition, RF included in the new application a "Project Timeline Chart for Years 1, 2, and 3 of this project," and (as part of its justification for the proposed budget) identified costs to year 1, year 2, or year 3 of the proposed project. SAMHSA Ex. 7, at 13 and Section F. Had RF intended to apply for renewal of the existing project and extension of the project period for that project, it would have identified the budget years as 4-6, rather than as 1-3.

Contrary to what RF argues, language in the 2008 application referring to the STEPS program, to enhancement of the "current project," and to the need for continued SAMHSA funding to sustain the "project gains" cannot transform RF's 2008 application for a new project into an application for a competitive renewal of the existing project. Notice of Appeal at 3. Nor can that language suffice to transform the award actually made in 2008 in response to that application into an approval to extend the earlier project period for an additional three years. The Notice of Grant Award SAMHSA issued in response to the new, 2008 application identified the project period for the new grant as September 30, 2008 through September 29, 2011, and assigned a grant number to the award different from the grant number assigned to the awards for the earlier project. SAMHSA Ex. 6.

In addition, as SAMHSA points out, the application submitted in 2005 was in response to program announcement (Request for Applications) RFA SM-05-015, which contemplated that project funds would be available for only three years. SAMHSA Exs. 1, at 1; 15, at 8. The application submitted in 2008 was in response to RFA SM-08-002. SAMHSA Ex. 16. While both projects sought to enhance and expand RF's STEPS program, RF presented no evidence based on which we could conclude that RF had any authority to expend funds from the award at issue for costs for which it incurred no obligation until after the end of the first project or which did not benefit that project. Moreover, some of the activities proposed for the new project approved in 2008, such as a media outreach campaign, are different from the activities funded as part of the original project. SAMHSA Ex. 7.

Finally, we note that, even if SAMHSA had extended the initial **project period** for an additional three years (which it did not), RF's use of funds awarded for the **budget period** ending September 29, 2008 (that is, the funding period) to liquidate obligations incurred after that date still constituted a use of the funds that violated the provision at section 74.28 regarding availability of funds.[2] As we discuss next, moreover, RF did not provide documentation adequate to show that any of the costs were allocable to that award.

RF did not provide documentation adequate to show any benefit to the relevant award from the costs at issue.

As noted above, section 74.28 restricts federal funding to obligations incurred during the funding period (or to pre-award costs, where approved). Here, the relevant funding period ended on September 29, 2008. Moreover, the applicable cost principles require that costs be "allocable" and preclude a recipient from shifting costs from one award to another to avoid funding restrictions. The Board has consistently interpreted these provisions as meaning not only that costs must benefit the project to which they are allocated, but also that the costs must be allocable to the budget period for which the funds were awarded, not to a different period. *Cent. Piedmont Action Council, Inc.*, DAB No. 1916, at 3-4 (2004); *Delta Foundation, Inc*., DAB No. 1710, at 41 (1999); *Bedford Stuyvesant Restoration Corporation*, DAB No. 1404, at 15 (1993).

[2] In apparent recognition of this funding limitation, RF indicated in correspondence to the Board that, rather than submitting a reply brief, it was requesting a no cost extension of the budget period. As the Board informed RF, however, the Board has no authority to grant such an extension.

The spreadsheets at SAMHSA Exhibit 14, which RF submitted to SAMHSA with information about the disallowed costs (listed as cost items 1 to 12), do not support RF's position that the costs were allocable as direct costs to the award to which they were charged. Specifically, the first spreadsheet shows that—

- RF itself identified item 1 (Canon Pixma MX860 Printers) with an RF award number (43464) different from the number of the SAMHSA suicide prevention award (44654) to which RF charged the costs (according to the numbers identified on the last page of SAMHSA Exhibit 14 and on page 2 of RF's notice of appeal);
- item 12 included the Staples purchase that RF concedes was not allowable, as well as the purchase of "[v]arious computer supplies" that RF identified to its award number 48200, that is, the award for the first budget period of the second project;
- RF identified the category for all of the cost items as "Administrative," which undercuts its position that the costs are properly treated as direct costs of the project, rather than as F&A costs.

We also find the spreadsheets inadequate to support allocating the costs in their entirety to the award at issue because:

- While the first spreadsheet indicates that end users of the supplies included the Co-Project Director for Paraprofessional Training (initials M.D.C.) and the Middle Earth Peer Assistance Program, both of which were associated with the project, the 2005 grant application indicated that M.D.C. would spend only 20% of her effort on the project and identified the Middle Earth Peer Assistance Program as operating a hotline service, with less than 10% of the contacts involving risk of suicide. SAMHSA Ex. 7, at 9, 26. Nothing in the record associates even part of the time and effort of the other end users identified on the spreadsheet with the suicide prevention project at issue.

- The first spreadsheet identifies M.D.C. as the end user for a Dell desktop computer, an iMac, and a MacBook. Yet, RF provided no explanation of why it would be reasonable to use grant funds to purchase all of these items for her use.

- The second spreadsheet shows that the invoice date for the printers was as late as June 15, 2009, and that most of the other invoices have dates after the end of the relevant budget period.[3] While the invoice dates for the MacBooks and associated

[3] The spreadsheets do not show the dates on the requisition orders, but RF did not argue that those orders would show it obligated the funds prior to the end of the funding period, nor did it submit copies of the orders to us. We also note that, as SAMHSA found and the spreadsheets indicate, RF had no requisition order for the $336 identified under item 12 as being for various computer supplies. For the other items, we accept for purposes of this decision the description of the items at issue on the spreadsheets, apparently taken from the requisitions.

> protection plans are listed as September 11, 2008, that date is only a few weeks before the end of the project. RF provided no contemporaneous documentation specifically linking the MacBooks with activities of the relevant project.

While the notes at the end of the spreadsheets state that, per the purchase requisition, the computers "will be located at 400 Patron Creek Blvd., Suite 400" (the off campus location for the university's Counseling Center), the first spreadsheet identifies some other rooms or suite numbers with the end users of the supplies. Moreover, no end users or locations are identified for item 2 on the spreadsheets, which is identified as a payment of $12,111.00 for 11 desktop computers.

The notes at the end of the spreadsheets also assert generally that the "equipment is used exclusively to provide space and back up training documents and databases containing information on training participants and data collected as required by the sponsored agreement." SAMHSA Ex. 14, 3rd page. In the absence of supporting evidence, this assertion is clearly unreliable and insufficient to meet RF's burden to document that the costs were allocable to the SAMHSA award to which they were charged. Moreover, the assertion is contradicted by the information on the spreadsheets identifying some of the purchases to other projects or to users or locations that have no apparent connection to that SAMHSA award. Indeed, given the amount of computer supplies purchased and the timing of the purchases, the assertion that they were used "exclusively" to meet requirements of the award is simply not credible.

RF also contended in response to the audit report that the disallowed items were included in its first proposal and the original project budgets approved by SAMHSA. This contention is unsupported. The only budget in the record that specifically mentions a computer is the proposed budget for the period beginning September 30, 2005, which contains a $1500 line item for a "Desk Top Computer." SAMHSA Ex. 1, at 36. The Notice of Grant Award for the second budget period lists $0 for supplies. SAMHSA Ex. 3, at 1. The original Notice of Grant Award for the third budget period lists only $1000 total for supplies, and the relevant application requested only $250, with the justification that the money was needed for "general supplies." SAMHSA Exs. 4, at 1; 5, at 36. Moreover, in requesting carryover of funds from the second to the third budget period of the original project, RF explained how it intended to use the funds and did not identify purchase of computers or IT supplies as an intended use. SAMHSA Ex. 8. Although the request resulted in a revised Notice of Grant Award, the amount budgeted for supplies for the entire budget period was increased only up to $2,302. SAMHSA Ex. 9, at 1.

Accordingly, we conclude that the supply costs at issue were not allocable to the grant award to which they were charged. Since the supply costs were not allocable to the grant, the associated F&A costs were also unallowable.

Conclusion

For the reasons stated above, we uphold the disallowance.

/s/
Sheila Ann Hegy

/s/
Leslie A. Susssan

/s/
Judith A. Ballard
Presiding Board Member