

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Medical Care Center of Louisiana, Inc.
Docket No. 77-16
Decision No. 95

DATE: May 1, 1980

DECISION

On September 22, 1977, the grantee, Medical Care Center of Louisiana, Inc. (MCCLI), a private non-profit corporation, appealed the August 22, 1977 decision by the Public Health Service (PHS) Grant Appeals Committee to uphold the May 3, 1977 disallowance by the PHS Regional Office of \$8,375. The disallowance was based upon an audit of the grantee's Family Health Center grant for the period July 1, 1973 through June 30, 1976.

The grants were made under the authority of Sections 314(e) and 330 of the Public Health Service Act for a project period from July 1, 1973 through June 30, 1977 divided into four one-year budget periods. The awards for the various budget years were made subject to requirements that prior Agency approval be obtained for most contractual services. The specific language of the conditions was changed somewhat from one year to another.

This decision is based on the grantee's application for review, PHS's response to the appeal, and both parties' responses to an Order to Show Cause issued by the Board Chairman. Each cost item in dispute will be examined separately and evaluated in light of the specific applicable terms and conditions.

Board Training

The auditors questioned and PHS disallowed \$2,250 in expenses for a FY 75 Board of Directors' training program because funds for such training were not specifically included in the FY 75 budget and because the grantee had violated special grant condition #3 of the award for FY 75 which stated that "all contracts involving grant funds must be submitted to the Project Officer for approval prior to the commitment of funds." MCCLI argued that it had requested and received written approval from the Regional Health Administrator in a letter dated March 29, 1974 to expend \$3,000 for training to be provided by a specific individual in FY 74, but that the designated individual ultimately declined the contract and the grantee instead obtained the services in FY 75 from another individual. MCCLI further stated that it notified the Project Officer by telephone of the change and was advised that only approval of

the new contractor by its Board of Directors was required in light of the unchanged dollar amount. Grantee's Board did approve the change of contractor, and this approval is documented in minutes of a Board of Directors' meeting provided by the grantee.

The Order to Show Cause observed that, under the circumstances, the grantee may have been justified in relying on its FY 74 approval. In its response to the Order, PHS stated that it concurred that the training costs should be allowed. Therefore, the Grant Appeals Committee's decision to uphold the \$2,250 disallowance for Board training costs is overturned.

Radiological Services

The auditors questioned, and the Regional Office subsequently disallowed, \$2,858 out of the grant for FY 75. This represented the cost of radiological services provided without the prior approval of the Project Officer as required by special grant condition #3, cited above under Board Training. An individual employed by the grantee as a field worker soliciting applicants for the program but who was a registered X-ray technician terminated regular employment on July 31, 1974 and for approximately 4-1/2 months performed services under a contractual agreement with MCCLI, involving preparation of a manual and protocol and "operational set-up for delivery and evaluation of radiological services" (Audit Report, Appendix I, p.2). The auditors noted that at the end of the contract the individual was reinstated as a regular MCCLI employee and that the payments made to the individual during the period of the contract were \$650 per month although the employee's regular salary, both before and after the contract, was \$400 per month. In its response to the audit report, the grantee submitted no justification concerning this item other than a statement that the work performed by the individual was available for inspection. Grantee also pointed out that special grant condition #4 allowed it to expend up to \$1,500 for goods or services without prior regional office approval.

The Order issued by the Board Chairman asked PHS to respond to the argument that at least part of the payments would be allowable under special grant condition #4 and asked MCCLI why special grant condition #3 would not apply. Neither party answered satisfactorily. Since we are presented with a record showing a contract which resulted in payments of a total of more than \$1,500, however, we conclude that special grant condition #4 is superseded by special grant condition #3 which more directly applies to the services in question and that the disallowance of \$2,858 should be upheld since the grantee did not obtain prior approval as required by special grant condition #3.

Architectural Services

MCCLI expended \$3,267 for architectural services during FY 74 and FY 75 in connection with renovation of MCCLI office space; nothing in the record

indicates how much was spent in each year. PHS has characterized the costs as "alteration and renovation", and the grantee has not objected to this characterization. Special grant condition #6 applicable to the FY 74 grant provided that the "Regional Health Director reserves the right to review and approve before the fact any contracts involving grant funds of \$1,500 or above." The 1975 award was subject to special condition #3 cited in the section on Board Training and special condition #4 cited in the section on Radiological Services above. The auditors contended, and the Regional Office determined, that the required approval was not obtained and that funds for architectural services were not provided for in the budget. MCCLI argued that the Project Officer was kept fully informed of the grantee's intentions and arrangements with respect to the architectural services, and that an understanding had been reached between the parties that the grantee hire the architect at the rate prescribed by the American Institute of Architects. MCCLI further contended that details of its negotiations with the architect were given to the Project Officer and that there were numerous telephone conversations between the parties concerning the matter. The grantee does not assert that funds for the architect's services were specifically included in the budgets or grant awards. The Grant Appeals Committee stated in its decision on this cost item that it found no evidence that funds for such services were included in the project budget, and there was no record of prior approval by the Project Officer as required by the special grant conditions or, in fact, of approval by the Regional Office at all.

The grantee was specifically asked by the Board to provide a copy of the contract between it and the architectural firm in order to determine whether the grantee had been put on notice that the contract cost was greater than \$1500. A copy of the contract has not been provided; it therefore must be assumed that the figure specified in the contract was greater than \$1500 in light of the fact that the total amount disallowed for two years was greater than \$3000. Therefore, in FY 74, special grant condition #6 applied, and the grantee was obligated to submit the contract to the Regional Health Director for his review and approval before the contract was entered into. The grantee merely has asserted that it talked with the Project Officer about the project; it supplied no contemporaneous documentation of these conversations.

In FY 75, the transaction was governed by special grant condition #3 requiring approval of all contracts by the Project Officer prior to the commitment of funds. Although "prior approval" is not defined in the grant document itself, the PHS Grants Policy Statement makes it clear that prior approval means prior written approval.

The Glossary of the PHS Grants Policy Statement (1972), which, in part, defines terms commonly used in PHS grants, states that prior approval means:

Written permission to use grant funds for certain purposes not included in the approved budget, or to change certain aspects of the program in a way not originally planned. Such permission must be obtained from the PHS awarding component from which the grant was received or, when speci-

ficably prescribed, from the designated institutional official, prior to the performance of the act requiring such approval. Failure to obtain prior approval, when required, is at the grantee's risk. PHS makes no commitment to approve such expenditures on a retroactive basis.

The grant award document put the grantee on notice generally that its grant was subject to the "policy standards applicable to the ... grant program."

MCCLI was therefore on notice that it had to submit the contract to PHS before it was signed and that in FY 75, it had to receive prior written approval. Since it did not follow these procedures, the disallowance of \$3,267 was proper.

Conclusion

Accordingly, we affirm the determination by PHS to disallow funds for radiological and architectural services and grant the appeal on the issue of Board of Directors' training.

/s/ Clarence M. Coster

/s/ Donald G. Przybylinski

/s/ Frank Dell'Acqua, Panel Chairman