

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Texas Neighborhood Services, Inc.
Docket No. A-14-6
Decision No. 2571
May 9, 2014

DECISION

Texas Neighborhood Services, Inc. (TNS) appeals the decision by the Administration for Children and Families (ACF) disallowing a total of \$1,392,261.09 in federal funding provided to TNS for its Head Start and Early Head Start programs for TNS's fiscal years ending April 30, 2010 through 2012 (FYs 2010, 2011, and 2012). ACF concluded that TNS failed to provide adequate documentation to support amounts awarded as incentive compensation during the fiscal years at issue and that the amounts paid were not reasonable. ACF also concluded that TNS improperly charged to its award for FY 2012 costs that were obligated in the subsequent award period. For the reasons discussed below, we uphold the disallowance in its entirety.

Legal Background

Non-profit organizations like TNS that receive federal grants, including Head Start grants, are subject to the cost principles in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230, and to the uniform administrative requirements at 45 C.F.R. Part 74. 45 C.F.R. §§ 74.1(a)(1), 74.27, 1301.10.

Under the cost principles, a cost is allowable under a federal award if, among other things, it is adequately documented, reasonable for the performance of the award, and allocable thereto. 2 C.F.R. Part 230, App. A ¶ A.2.a, g. The cost principles address the allowability of specific items of cost, including incentive compensation for employees:

Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

2 C.F.R. Part 230, App. B ¶ 8.j. Head Start grantees “must establish and implement written personnel policies for staff, that are approved by the Policy Council or Policy Committee,” including a description of the procedures for conducting staff performance appraisals pursuant to 45 C.F.R. § 1304.52(i). 45 C.F.R. § 1301.31.

The Part 74 regulations require a recipient of federal funding to have in place a financial management system that provides “[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities” and “[e]ffective control over and accountability for all funds, property and other assets.” 45 C.F.R. § 74.21(b)(2), (3). A recipient “shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.” *Id.* § 74.21(b)(3). In addition, “[w]here 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 authorized pre-award costs. *Id.* § 74.28

If a recipient “materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award,” the awarding agency may “[d]isallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.” 45 C.F.R. § 74.62(a)(2).

Under the “applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds.” *Touch of Love Ministries, Inc.*, DAB No. 2393, at 3 (2011). “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).

Factual Background

TNS is a non-profit organization that provides Head Start and Early Head Start services, in addition to other community services, in several counties in Texas. In February 2013, ACF conducted a monitoring review of TNS’s Head Start and Early Head Start programs. In a monitoring report issued in April 2013, ACF determined that TNS was “out of compliance with one or more applicable Head Start Program Performance Standards, laws, regulations, and policy requirements.” TNS Ex. A at 5. Specifically, as relevant here, ACF found that TNS did not ensure that its incentive compensation payments to employees for FYs 2010, 2011, and 2012 – totaling \$1,368,698.09 – were reasonable and that TNS was not able to document the basis for the amounts awarded, in violation of the cost principles at 2 C.F.R. Part 230. *Id.* at 7, 9-10. ACF also found that TNS charged floor repair costs in the amount of \$59,653 to its Head Start/Early Head Start award for FY 2012 but did not obligate the costs until the subsequent award period, in violation of 45 C.F.R. § 74.28. *Id.* at 8.

By letter dated September 19, 2013, ACF notified TNS that, based on the monitoring report findings, ACF was disallowing a total of \$1,392,261.09 in federal funding provided to TNS for its Head Start and Early Head Start programs in FYs 2010, 2011, and 2012.¹ TNS timely appealed ACF's disallowance determination to the Board.

Analysis

1. ACF properly disallowed incentive compensation payments that TNS has not established are reasonable, supported by adequate documentation, and made pursuant to a pre-existing agreement or established plan.

As noted above, incentive compensation payments to employees are allowable under the cost principles if, among other things, the payments are adequately documented, reasonable in amount, and made pursuant to either “an agreement entered into in good faith between the organization and the employees before the services were rendered” or “an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.” 2 C.F.R. Part 230, App. A ¶ A.2.a, g; App. B ¶ 8.j. ACF properly disallowed incentive compensation payments TNS made to its employees during FYs 2010, 2011, and 2012 that TNS failed to support with adequate documentation and did not show were made in accordance with either a pre-existing agreement or an established plan and in reasonable amounts.

- a. TNS failed to follow its policies related to incentive compensation and did not provide adequate documentation to support its incentive compensation awards.*

TNS has had a formal incentive compensation policy since at least August 2007. The policy explains that its purpose is “to allow TNS personnel to receive increases in salary for consistent or exemplary job performance in the form of incentive awards paid to individuals pursuant to an incentive plan approved by the Executive Director of TNS.” TNS Ex. C. The policy contains the following “guidelines”:

1. To be eligible for incentive compensation awards, TNS managerial staff must present to the TNS Executive Director a plan of performance, which defines the measures that must be achieved prior to payment of any incentive award. The specific measures must be achieved prior to

¹ The amounts questioned in the monitoring report totaled \$1,428,351.09 (\$1,368,698.09 + \$59,653). ACF subsequently determined that \$36,000 in incentive compensation payments for FY 2012 was adequately supported. *See* TNS Ex. A, at 2; ACF Response Br. at 8 n.3. Accordingly, it appears that the total disallowance amount could have been up to \$1,392,351.09 (\$1,428,351.09 - \$36,000), but ACF disallowed only \$1,392,261.09. Neither party has noted this \$90 discrepancy, nor has ACF adjusted the amount that it claims TNS must return, so our decision addresses the lesser figure.

- payment of any incentive award. The specific measures may include, but not be limited to, cost reduction, efficient performance, safety awards, or other types of measure identified in the performance plan.
2. Budgeted funds must be available and allowable for the payment of incentive compensation in accordance with contractual requirements and grant awards.
 3. To be eligible to receive incentive compensation, employees must not have received verbal or written performance warnings within 90 days of the payment of the incentive.
 4. For employees that have been with TNS more than one year, a current employee evaluation with a satisfactory evaluation must be on file.
 5. This policy meets the criteria for the establishment of a consistent plan of incentive awards.

Id.

A “Compensation Plan” adopted by TNS in 2009 also addresses incentive compensation. The plan explains that TNS’s Executive Director is to operate TNS’s grants “at approx. 95% of full funding by implementing a system of cost reductions, cost management and efficient purchasing processes.” TNS Ex. D, at 2. “Should the management of TNS be successful in operating the programs efficiently, then all staff will be able to share in an incentive plan to help the agency achieve fair and reasonable compensation for all employees.” *Id.* However, “[n]ot all incentive compensation should be paid at the same percentage of annual salary. Incentives for superior work performance should be higher than for average or below average performers.” *Id.* The plan contains an appendix with a matrix for “determining employee worth to the organization” that TNS “will follow” in determining incentive compensation awards. *Id.* The matrix lists the criteria on which different types of employees are to be rated, assigns both total points and possible score ranges for each criterion, and specifies the letter grade (A-D) that each employee should receive based on his or her total score out of 100 possible points.² *Id.* at 4-5.

² We note that the matrix appears to be inconsistent with TNS’s incentive compensation policy. For example, as noted above, the policy provides that in order to be eligible to receive incentive compensation, employees “must not have received verbal or written performance warnings within 90 days of the payment of the incentive.” TNS Ex. C. Yet, one of the rating criteria in the matrix for every type of employee is the employee’s history of “[d]isciplinary actions and write-up for issues.” TNS Ex. D at 4-5. Employees with no disciplinary actions or write-ups receive 100% of the allotted points for that criterion (10-20 points, depending on the type of employee), employees with one disciplinary action or write-up receive 50% of the allotted points, and employees with two or more disciplinary actions or write-ups receive 0% of the allotted points. *Id.* There is nothing in the matrix indicating that an employee could not qualify for incentive compensation if a performance warning was received within 90 days of the date the compensation would be paid.

TNS contends that its incentive compensation awards are allowable because it has documented that the awards were made pursuant to these policies, with employees' compensation based on the scoring matrix in the Compensation Plan. TNS relies on *Seaford Community Action Agency*, DAB No. 1433 (1993), where the Board partially reversed a disallowance of one-time supplemental salary payments made to Head Start employees on the ground that the payments were allowable incentive compensation awards based on performance evaluations, consistent with the agency's personnel policies and long-standing practice. Here, however, unlike in *Seaford*, the evidence shows that TNS either did not follow its incentive compensation policies when making the awards or failed to provide adequate documentation to support the awards.

According to a memorandum issued by TNS's Executive Director regarding incentive compensation payments for FY 2010, "The amount of the incentive payment was determined by the management group based on individual contributions at the center level (meaning everyone in the center received the same % of incentive compensation)." ACF Ex. 2, at 1. Payroll documentation confirms that every employee – except certain employees in human resources, finance, and administration (which we refer to collectively as "management") and some "floater" or "substitute" employees – received the same rate of incentive compensation, equal to 160 hours of his or her unit pay hourly rate. *See* TNS Ex. E at 1-8. TNS asserts that the payments were made on a "location-by-location basis" in recognition of "organizational savings that resulted from employees' efforts." TNS Reply Br. at 8-9. According to TNS, this organizational efficiency rationale is "reasonably in keeping" with its incentive compensation policies because those policies allow awards to be based on "consistent" job performance and provide that if management successfully operates TNS's programs efficiently, "then all staff will be able to share in an incentive plan" *Id.* at 9, citing TNS Ex. C; TNS Ex. D at 2. TNS also relies on *Washington County Opportunities, Inc.*, DAB No. 1464 (1994), where the Board reversed ACF's disallowance of organization-wide bonus payments and noted that the cost principles do not limit incentive payments to payments recognizing individual achievements.

TNS's reliance on *Washington County* is misplaced as it ignores a key distinction between TNS's policies and the policy at issue in that case. In *Washington County*, the organization's personnel policy "did not require consideration of individual performance evaluations," so awarding organization-wide bonuses based on staff's overall performance was not inconsistent with the policy. DAB No. 1464, at 7. Here, although TNS's Compensation Plan provides that "all staff" will be able to participate in an incentive compensation plan if management operates programs efficiently, this provision simply recognizes that only when programs are run efficiently will there be funding left over to make incentive compensation awards. *See* TNS Ex. D at 2 (directing TNS's Executive Director to operate grants "at approx. 95% of full funding" to allow for incentive compensation). The Plan specifically provides that "[n]ot all incentive compensation should be paid at the same percentage of annual salary" – superior

performance should be rewarded more generously than average or below average performance – and that TNS “will follow a matrix for determining employee worth to the organization.” *Id.* Thus, paying all non-management employees the same level of incentive compensation without taking into account individual employee performance, as TNS did for non-management employees for FY 2010, directly conflicted with TNS’s incentive compensation policies. Those awards, therefore, were not made pursuant to TNS’s “established plan” for incentive compensation, in violation of the cost principles. We also note that, although TNS claims the awards were made on a “location-by-location” (center-by-center) basis, with a few exceptions, all non-management employees at every center received the same rate of incentive compensation (160 hours of their unit pay hourly rate). *See* TNS Ex. E at 1-8.

With respect to management employees, TNS did present some payroll documentation to show that management employees received ratings for FY 2010 based on the criteria in the Compensation Plan matrix. TNS Ex. F at 1. However, some employees received less generous incentive compensation awards, both in terms of actual money awarded and in terms of the award as a percentage of their annual salaries, than did employees with lower or equivalent ratings. *Id.* This outcome calls into question whether TNS actually used the ratings to determine the amount of incentive compensation awarded, as TNS alleges it did and as its Compensation Plan required. Moreover, TNS did not proffer documentation substantiating employees’ ratings. The matrix provides that management employees should receive up to 50 points based on their personnel performance appraisals, up to 30 points based on their disciplinary history, and up to 20 points based on “discretionary input.”³ TNS Ex. D at 5. Although payroll documentation notes management employees’ ratings on each of these criteria, their total scores, and their corresponding letter grades, TNS did not provide any of these employees’ performance appraisals for FY 2010, records about employees’ disciplinary history, or information about what “discretionary input” led to the ratings. With its reply brief, TNS submitted several performance appraisals for a single non-management employee, C.M., that appear to cover the fiscal years at issue and stated that it could provide “performance appraisal

³ It appears from TNS Exhibit F that TNS also used this 50/30/20 matrix for some Head Start Program Administrative staff, even though the Compensation Plan for them called for a different allocation of points and included an additional criterion (self-assessment scores) worth 25 total points. TNS Ex. D at 4-5.

documentation” for 20 other employees at the Board’s request. TNS Ex. J; TNS Reply Br. at 7 n.2.⁴ TNS employs significantly more than 20 employees, but it did not identify the 20 employees for whom it could provide performance appraisals, their positions, or their performance ratings. Thus, we do not know whether the documentation that TNS possesses includes documentation for management employees, the only employees for which there is evidence of ratings based on the Compensation Plan matrix for FY 2010. In any event, TNS admits the proffered documentation relates only to employees’ performance appraisal ratings, so it would not help substantiate management employees’ ratings on the other matrix criteria. As TNS concedes, moreover, its Compensation Plan provides that memoranda will be placed in its employees’ files to document that payment of an incentive compensation award was pursuant to the factors in the plan. TNS Reply Br. at 3; TNS Ex. D at 2. Yet, TNS has not produced even one example of such a memorandum from employees’ files. Accordingly, we conclude that TNS did not adequately document the basis for the incentive compensation payments that it made in FY 2010.

TNS also failed to adequately justify the basis for the incentive compensation awards that it made in FY 2011. A memorandum issued by TNS’s Executive Director regarding incentive compensation payments for FY 2011 explained that “[t]he amount of the incentive payment was determined by the management group based on individual contributions by employee. Employees were scored and grouped into 4 bands, and payments were based on banding.” ACF Ex. 4, at 1. Payroll documentation shows that all employees were assigned a letter grade, and additional documentation for employees in management shows the ratings those employees received on the criteria in the Compensation Plan matrix that led to their assigned grades. TNS Ex. E at 9-14; TNS Ex. F at 2. However, some employees again received less generous incentive compensation awards, both in terms of actual money awarded and in terms of the award as a percentage of their annual salaries, than did employees with lower or equivalent grades. *Id.* Moreover, with the exception of employee C.M., TNS did not provide any employee-specific documentation substantiating the awards and, as we explained above, the documentation that TNS submitted for C.M. (and offered to submit for 20 additional

⁴ TNS also did not explain why it did not submit all of the performance appraisal documentation with its reply brief or sooner. ACF noted in its disallowance letter that “[i]nterviews indicated that the ‘plans of performance’ were missing and unable to be located.” TNS Ex. A, at 1. Similarly, the monitoring report on which the disallowance was based noted: “In terms of providing evidence of Board approval and individual plans of performance to support payments to employees receiving incentive compensation for Fiscal Years 2009-10, 2010-11, and 2011-12, the Chief Financial Officer provided an undated Scoring Matrix for Incentive and stated the plans of performance were missing and unable to be located.” *Id.* at 10. Thus, TNS was on notice as early as April 2013, when the monitoring report was issued, that it needed to provide employee-specific documentation to justify its incentive compensation awards.

employees) relates only to performance appraisal ratings and does not address the other relevant matrix criteria or show that C.M.'s letter grade reflects the appropriate allocation of points under those criteria. For these reasons, we conclude that TNS did not adequately substantiate the basis for the incentive compensation payments that it made in FY 2011.

TNS also failed to substantiate its incentive compensation awards for FY 2012. According to a memorandum issued by TNS's Executive Director regarding incentive compensation payments for FY 2012, "The amount of incentive payments were determined by the Head Start management group based on individual contributions by employee. Employees were scored and grouped into multiple bands to determine efficient performance, and payments were based on available funds." ACF Ex. 6, at 1. Payroll documentation indicates whether each employee "meets [the] qualifications" to receive incentive compensation and the amount of incentive compensation, if any, that each employee received. TNS Ex. E at 15-17. Additional documentation for employees in management shows the ratings those employees received on the criteria in the Compensation Plan matrix and the letter grades that they received as a result of those ratings. TNS Ex. F at 3. However, TNS failed to provide documentation to substantiate the determination that certain non-management employees met the qualifications to receive incentive compensation or to justify the varying amounts that they received as awards. (Again, TNS's documentation regarding employee C.M. related only to her performance appraisal score.) TNS also failed to provide documentation substantiating the ratings given to management employees. In addition, some management employees received less generous incentive compensation awards, both in terms of actual money awarded and in terms of the award as a percentage of their annual salaries, than did employees with lower or equivalent grades and ratings (*see id.*), but TNS has not explained the basis for these discrepancies. We also note that one employee in management who received a "C-/D+" grade nonetheless received an incentive compensation award. TNS Ex. F at 3. This award is difficult to reconcile with TNS's incentive compensation policy to reward "consistent or exemplary performance." *See* TNS Ex. C. Thus, we conclude that TNS did not adequately document the basis for the incentive compensation payments that it made in FY 2012.

In sum, TNS did not adequately document the basis for its incentive compensation payments for FYs 2010, 2011, and 2012, and the documentation it did submit shows it failed to follow its compensation policies in many respects.

b. *TNS failed to show that its incentive compensation awards were reasonable.*

ACF also disallowed TNS's incentive compensation awards on the basis that they were unreasonable in total based on the high percentage of total incentive payments versus total salary costs and unreasonable on an individual basis for some administrative (i.e., management) staff based on the amounts awarded. TNS Ex. A at 1-2. The record supports ACF's findings.

Under the cost principles, a cost is reasonable if, "in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs." 2 C.F.R. Part 230, App. A ¶ A.3. In determining reasonableness, one should consider, among other things, whether "the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award." *Id.* ¶ A.3.a. The Board has stated that, in determining the reasonableness of an organization's incentive compensation awards, ACF may consider such factors as the organization's compensation levels, the compensation levels of comparable workers in the same geographic area, bonuses of similarly situated organizations, and whether the organization paid any other bonuses to its employees. *Washington Co.*, DAB No. 1464, at 11.

ACF asserted, and TNS did not deny, that TNS's incentive compensation payments were 9.35% of its total salary costs for FY 2010, 12.19% of its total salary costs for FY 2011, and 6.99% of its total salary costs for FY 2012. ACF Br. at 14. TNS has not proffered any evidence that such percentages are reasonable.

In terms of individual awards, during the fiscal years at issue one of the employees in management (Director of Children's Services) received incentive payments that amounted to as much as 47.66% of her salary, and in FY 2011, 10 out of 12 management employees received incentive payments in excess of 10% of their salaries. *See* TNS Ex. F at 2, 3. TNS's Executive Director received awards ranging from \$10,867.20 (8.10% of his salary) to \$39,000 (29.49% of his salary). TNS argues that its awards were not unreasonable because employees' total compensation never exceeded the compensation rate for Level II Executives set by the federal government for its employees and was generally in line with a wage comparability study prepared for TNS in 2009.

The fact that TNS's management employees' salaries were below the salary cap for Level II Executives in the federal government does not on its face show that any of the incentive compensation awards received by TNS management employees were

reasonable.⁵ TNS did not provide any evidence that Level II Executive positions were comparable to its management positions in terms of duties and responsibilities and geographic area.

Nor is TNS's allegation that its total compensation was generally in line with the wage comparability study sufficient to establish reasonableness. Although the Board has recognized that the compensation levels of comparable workers in the same geographic area may be a relevant factor in determining the reasonableness of an incentive compensation award, the Board has never held that such a comparison is determinative. The wage comparison study on which TNS relies discusses only base compensation and does not directly address bonuses or other incentive compensation awards. The study sets out suggested salary ranges with minimum/midpoint/maximum rates and anticipates that TNS will hire employees at the minimum rate (unless a higher salary is justified by education and experience) and will award merit increases incrementally up to the maximum rate (although it also contemplates that some adjustments could be made to achieve internal pay equity). TNS Ex. H, "2010 Salary Ranges" at 1-2; "Base Compensation Administrative Guide" at 7. Thus, merely because total compensation in a given year did not exceed the maximum in the wage comparison study does not establish that total amount is reasonable for any particular employee. Nor does it establish the reasonableness of any incentive compensation award received as part of that total amount. Also, as TNS acknowledges, its incentive compensation awards for FY 2012 caused three employees to receive total compensation above the maximum amounts in the study. For example, the \$25,000 incentive compensation award that TNS gave to its Chief Financial Officer (CFO) in FY 2012 brought his total compensation to \$121,116.80, which was \$8,556.80 above the suggested maximum CFO salary of \$112,560 in the study. *See* TNS Ex. F at 3; TNS Ex. H, "2010 Salary Ranges" at 1. TNS suggests that this would not be true if the amounts in the study were "adjusted for the likely increase in comparable salaries" between 2009 (when the study was conducted) and 2012. TNS Reply Br. at 13 n. 6; *see also* TNS Br. at 7. TNS has not submitted any evidence such as inflation rates for the applicable years to support its suggestion, however. Moreover, TNS's Compensation Plan limits employees' total compensation to the maximum compensation for a position "as determined every three years by the agencies [sic] wage comparability study" without any allowance for inflation. TNS Ex. D at 2.

⁵ As noted above, TNS's Compensation Plan provides in part that "No employee compensation will be in excess of the Level II Executive Compensation set by the Federal Government at the time of the payment." TNS Ex. D at 2. TNS refers to the Level II Executive rate as a "statutory" limit. TNS Br. at 2, 7; TNS Reply Br. at 3.

In addition, as we noted above, TNS consistently gave different incentive compensation awards, both in terms of actual money awarded and in terms of the award as a percentage of an employee's annual salary, to employees who received the same ratings, and at times gave more generous awards to employees with lower ratings. TNS also consistently gave larger incentive compensation awards to management employees than to non-management employees. *Compare* TNS Ex. E with TNS Ex. F. In FY 2011, for example, the center manager at one location who received a C rating received a \$3,000 award (9.62% of her salary), the assistant center manager at the same location who also received a C rating received a \$3,500 award (11.26% of her salary), while several Head Start teachers at that location who received B ratings received \$2,000 awards (6.82-6.93% of their salaries). *See* TNS Ex. E at 9. Contrary to what TNS argues in its reply brief (at 15-16), the questions these differences raise about the reasonableness and necessity of the payments amount to more than a "subjective" finding of unreasonableness. A prudent person would not determine incentive awards in what appears to be an arbitrary manner. Without further explanation or evidence supporting such differential treatment, these differences cannot be viewed as consistent with TNS's own Compensation Plan and the Base Compensation Administrative Guide prepared for TNS, which refer to fairness and equity as policy goals. *See* TNS Ex. D at 2 (contemplating "fair and reasonable compensation for all employees"); TNS Ex. H, "Base Compensation Administrative Guide" at 7-8 (discussing pay equity considerations). If employees believe that awards are based on factors such as favoritism, rather than performance, the awards may act as a disincentive rather than an incentive to achieve superior performance.

Therefore, we conclude that TNS's incentive compensation awards were unreasonable.⁶

2. ACF properly disallowed floor repair costs that TNS charged to its award for FY 2012 but did not obligate until FY 2013.

As noted above, section 74.28 provides that "[w]here 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 authorized pre-award costs. ACF properly disallowed \$59,653 in floor repair costs that TNS charged to its Head Start/Early Head Start award for FY 2012 on the ground that the costs were not obligated during that award period. "Obligations" is defined in Part 74 as "the amounts of orders placed,

⁶ ACF also questioned whether it was appropriate for TNS to allocate all of the incentive compensation payments made to its management employees to its Head Start and Early Head Start grants. ACF Br. at 15 n.8. TNS does not dispute that it administers other programs besides Head Start and Early Head Start, so many of its management-level employees engage at times in work unrelated to the Head Start and Early Head Start programs. A cost is allocable to a grant only "in accordance with the relative benefits received." 2 C.F.R. Part 230, App. A ¶ A.4.a. Thus, it appears that part of the costs of those incentive awards should have been charged to different programs.

contracts and grants awarded, services received and similar transactions during a given period that require payment by the [grantee] during the same or a future period.” 45 C.F.R. § 74.2. The award period for FY 2012 ended on April 30, 2012, but the quotes, invoices, purchase orders, check requests, and checks in the record related to the floor repairs are all dated July 2012. *See* ACF Ex. 9. This documentation establishes that the costs were not obligated until FY 2013.

In challenging ACF’s disallowance, TNS relies on a memorandum dated March 1, 2012 from TNS to the contractor who ultimately performed the floor repairs. The memorandum (which is not in the record but is referenced in ACF’s disallowance letter) apparently concerned the contractor’s work on plumbing repairs, but provided in relevant part: “. . . we will also be using your firm to repair the floors [at] Mineral Wells, Stephenville and Granbury HS/ES as discussed . . . please provide a quote for this as soon as you can. We will make the repairs to the floors this summer when the centers can be closed.” TNS Ex. A at 9. Contrary to what TNS suggests, this memorandum did not obligate FY 2012 funds for the floor repairs. While the memorandum indicates that TNS expected to use the contractor for the floor repairs, TNS does not explain how either the memorandum (or the discussions preceding it) constituted a transaction that required payment under state law, especially since the contractor had not even provided a quote for what it would charge, much less received a purchase order signed by an authorized official. As noted above, the quotes and purchase orders for the repairs are dated July 2012, well after the end of FY 2012.

Accordingly, we uphold ACF’s determination that the \$59,653 in floor repair costs are not allocable to TNS’s Head Start/Early Head Start award for FY 2012.⁷

⁷ TNS contends that it incurred unclaimed, allowable, and allocable costs that can be used to offset the \$59,653 disallowed for floor repair costs and submitted some documentation in support of this contention. ACF stated in its brief that it will review TNS’s proposed offset if the Board upholds the disallowed floor repair costs, requesting additional documentation as necessary to determine the reasonableness and allowability of TNS’s expenditures and whether an offset is appropriate. ACF Br. at 17. If ACF issues a final decision disallowing part or all of these costs, nothing in our decision would preclude TNS from appealing that disallowance.

Conclusion

For the reasons discussed above, we uphold ACF's disallowance of \$1,392,261.09.

_____/s/
Sheila Ann Hegy

_____/s/
Leslie A. Sussan

_____/s/
Judith A. Ballard
Presiding Board Member