Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Dr. Arenia C. Mallory Community Health Center, Inc.
Docket No. A-14-100
Decision No. 2659
September 30, 2015

DECISION

Dr. Arenia C. Mallory Community Health Center, Inc. (MCHC) appealed the July 14, 2014 determination of the Health Resources and Services Administration (HRSA) disallowing $740,109.49 of $753,400 MCHC charged to a Capital Improvement Program (CIP) grant for renovation of a building to house its pediatric center. HRSA's July 14 determination failed to clearly articulate the basis for the disallowance. However, HRSA ultimately took the position that the charges were not allowable because MCHC failed to document that grant funds were used for the renovation project or that the funds were obligated during the period for which the grant was awarded, as required by the applicable cost principles.

For the reasons set forth below, we conclude that MCHC documented that $676,000 of grant funds was used for the renovation project during the period for which the grant was awarded. We further conclude that the documentation submitted for the remaining expenditures does not establish that they are allowable costs of the grant. Accordingly, we reverse the disallowance in the amount of $676,000 and uphold the disallowance in the amount of $64,109.49.

Case Background[1]

MCHC is a nonprofit community-based organization located in Lexington, Mississippi that operates a community health center that provides primary health care services to the underserved, low-income and uninsured populations in four counties in central Mississippi. HRSA Ex. 2, at 5. HRSA awarded a CIP grant to MCHC for the period June 29, 2009 through June 28, 2011 (identified as both the grant project period and budget period) using funds made available by title VIII of the American Recovery and

[1] The factual information below appears from the record and is not disputed.

Reinvestment Act of 2009, Public Law No. 111-5 (ARRA).[2] HRSA Ex. 1, at 1. The approved grant budget was comprised of direct costs totaling $1,008,135 for the following line items: Equipment ($274,332), Construction/Alteration and Renovation ($656,000), and Other ($77,803).[3] *Id*. The funds were intended specifically for a "Multi Site HIT [Health Information Technology] Project" and for an "Alteration/Repair/Renovation Project" for the Lexington Pediatric Center. *Id*. at 2 (Grant Specific Condition(s)); *see also* HRSA Ex. 2, at 45. MCHC's grant application represented that MCHC would renovate a building on land it currently owned and move its pediatric services and the finance department into the renovated space to ease overcrowding at its main site. HRSA Ex. 2, at 45; MCHC Br. at 2. On November 3, 2010, MCHC signed a contract with Levy Construction Company to "[r]enovate the Chambers building into …a Pediatric Clinic, WIC Services and Wellness center." The contract contains an itemized list of work to be completed, states that the job "will take about six months depending, on the weather and materials that will be ordered," and continues:

> We hereby furnish material and labor – complete in accordance with above specifications, for the sum of: Cost of Job (<u>$620,000.00</u>). Start-up cost <u>$200,000.00</u>. When foundation is install, rough-in plumbing install and walls are framed. I will need <u>$200,000.00</u>. When top-out plumbing, electrical wiring, central heat and air ducts install and drop ceiling install. I will need <u>$150,000.00</u>. The balance of <u>$70,000.00</u> on completion of job. Acceptance [of] the above prices, specifications and conditions are satisfactory and hereby accepted. You are authorized [by] me to do the work as specified. Payment will be made as outlined above.

MCHC Response to Order to Develop Record, Ex. B, Ex. Levy 1, at 1-3.

From November 26 to December 14, 2014, an independent accountant engaged by HRSA performed a "Limited Scope Review" to determine, among other things, whether the ARRA grant funds for the CIP grant were properly spent. HRSA Ex. 2, at 2-3, 7. The December 14, 2012 report on the review did not question any costs charged to the Health Information Technology project. *Id*. at 47. However, the report questioned "all costs totaling $753,400 related to the renovation of the building . . . for non-compliance with grant terms and regulations," on the following grounds:

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[2] ARRA made funding available for "for grants for construction, renovation and equipment, and for the acquisition of health information technology systems, for health centers…receiving operating grants under section 330 of the [Public Health Service] Act[.]"

[3] According to a review performed at HRSA's request (described below), the grant application (which is not in the record) contained the following breakdown of the costs of the renovation project: Architectural fees - $32,000; Project Inspection fees - $11,000; Site Work - $25,000; Construction - $588,000; Equipment - $41,844; Miscellaneous - $26,156; and Contingencies - $29,400. HRSA Ex. 2, at 45.

> MCHC did not follow federal ARRA guidelines in managing its CIP grant. There was no record of the Board [of Directors] approving the construction contract. MCHC did not ensure that the contractor complied with the requirements of the Davis Bacon Act. There was no documentation in the files showing that certificates of completion were obtained. MCHC appeared to have drawn down funds long before the project was complete. MCHC falsely reported that the project was complete in advance of actual completion.

Id. at 4, 9, 47, 51. In connection with the findings regarding project completion, the review report states that MCHC's quarterly report submitted on October 10, 2011 indicated that the Lexington Pediatric Center was completed in December 2011 (after the end of the grant budget and project period), but that a site visit in April 2012 found that the project was not yet complete.[4] *Id*. at 6. The review also found that MCHC made progress payments totaling $656,000 to the contractor but that there were no invoices to support an additional $90,000 drawn down for the renovation project. *Id*. at 47. The review further found that there were "supporting invoices" for the remaining $7,400 of the total drawdown amount of $753,400 but did not identify these costs as incurred for the renovation.[5] *Id*.

In a July 14, 2014 letter, HRSA repeated the review report findings quoted above and stated: "HRSA has determined that MCHC did not provide sufficient documentation to support expenditures charged to the CIP grant. Additionally, as of February 2014, MCHC had not completed the project for the CIP grant."[6] HRSA Ex. 3, at 4-5. HRSA then stated that it had "determined that MCHC charged the CIP grant with unallowable costs totaling $740,109.49 and is requesting a refund for this amount." *Id*. at 5; *see also id*. at 1. In calculating the disallowance amount, HRSA offset against the $753,400 questioned in the review report $13,290.51 of other allowable expenses MCHC documented after receipt of the review report. *See* HRSA Ex. 5, Summary Appendix A (updated March 31, 2014). The expenses allowed included "moveable equipment" and "non-disposable medical related purchases" apparently intended for use in the Pediatric Center. *Id*.; *see also* HRSA Ex. 5, Submissions 1 and 2.

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[4] It appears that the December 2011 date of completion shown on the October 2011 quarterly report may have been the expected date of completion. A "Project Completion Certification" for the renovation project was signed by MCHC's representatives on September 6, 2012. MCHC Response to Order, Ex. A.

[5] "Most grants are funded through a letter of credit mechanism which authorizes the grantee to draw down federal funds into its own cash account through an electronic transfer, consistent with rules on minimizing the time elapsing between the transfer of funds from the U.S. Treasury and the payment of funds for program purposes by the recipient." *Florence Villa Cmty. Dev. Corp.*, DAB No. 2198, at 12 (2008), citing 45 C.F.R. §§ 74.21(b) (5), 74.22.

[6] HRSA later stated that this date was incorrect and should have been April 2012, as stated in the review report. HRSA Response to Order at 2.

MCHC appealed the disallowance pursuant to 45 C.F.R. Part 16. In its initial brief, MCHC stated that it was unable to locate any source documentation for the renovation project but argued that the disallowance should be reversed because the renovation project had been completed and the pediatric facility is now in use. MCHC also provided documentation including an "outline" of the work performed for the renovation project prepared for this litigation by Levy Construction, which MCHC said "substantiated the requested draws" of federal funds. MCHC Br. at 3-4, and MCHC Ex. 2.[7]

In its response brief, HRSA stated that it "acknowledges the completion of the Pediatric building" but that it "maintains its position that MCHC did not provide sufficient documentation to support charges made to the CIP grant[.]" HRSA Response Br. at 8. In its reply brief, MCHC argued that HRSA did not provide adequate oversight of the grant and that MCHC should therefore not be faulted for its inability to provide contemporaneous documentation. MCHC Reply Br.

The Board then issued an Order to Develop Record. The Order sought clarification of the basis for the disallowance and also gave MCHC an opportunity to submit additional documentation, noting that the "outline" submitted with MCHC's initial brief "does not meet the requirement for source documentation since it does not appear to be a contemporaneous document and contains no indication that the contractor actually performed the work described and billed MCHC for it." Order at 2-3.

In its response to the Order, HRSA gave several different explanations of the basis for the disallowance, each of which HRSA suggested justifies the entire disallowance. HRSA Response to Order at 2. HRSA first indicated that the disallowance was based solely on its review of other expenses MCHC documented after receipt of the review report, of which HRSA determined that only $13,290.51 was allowable. HRSA Response to Order at 2, 1st paragraph (emphasis in original), citing HRSA Ex. 5. HRSA then stated: "MCHC failed to meet grant terms and conditions as shown in the [review report] that stated: 1) MCHC did not provide supporting documentation, 2) did not have documents that would indicate proper project management tracking, and 3) did not have certificates of completion and there were no records ensuring that MCHC complied with the Davis Bacon Act requirements." *Id.*, 2nd paragraph. Next, HRSA stated that the disallowance "was based on the lack of supporting documentation of allowable expenditures charged to the CIP grant." *Id.*, 3rd paragraph, citing the applicable cost principles. Finally, HRSA stated that the basis for the disallowance was "the lack of evidence that MCHC charged the CIP grant with allowable costs as identified in HRSA's additional review[.]" *Id.*, 4th paragraph, citing again to HRSA Ex. 5.

[7] MCHC also provided an estimate by another contractor of what the renovation project would have cost. MCHC Ex. 1. We presume this evidence was intended to demonstrate that the costs incurred were reasonable in amount.

With its response to the Order, MCHC submitted additional documentation that we describe in detail in the Analysis section below. MCHC Response to Order, attachments. The Board gave HRSA an opportunity to review this additional documentation, stating that HRSA should then file a submission that states whether it has determined that there is a basis for reducing or rescinding the disallowance and "clearly explains the basis for any remaining disallowance[.]" Board e-mail dated 7/30/15. In its submission, HRSA stated that it "maintains that its original decision that the questioned costs were unallowable remains valid, based on one or more of the following reasons":

1. No evidence was provided showing that HRSA grant funds were used to pay for the project.
2. No invoice was provided.
3. No proof of payment was provided.
4. If checks were provided, no evidence that they were endorsed or cancelled, showing payment was received by the vendor.
5. Costs were incurred prior to or after the period of performance.
6. No itemized accounting of expenditures was provided.

HRSA letter dated 8/24/15, at 1-2. As authority for the disallowance, HRSA cited to cost principles applicable to the grant which, HRSA stated, provide that "in order to be allowable, costs charged to Federal awards must be reasonable, allocable thereto, adequately documented, and determined in accordance with generally accepted accounting principles." *Id.* at 2.

Applicable Grant Requirements

Nonprofit organizations such as MCHC are bound by the uniform administrative requirements governing HHS awards at 45 C.F.R. Part 74, which incorporates by reference the cost principles in OMB (Office of Management and Budget) Circular A-122, codified at 2 C.F.R. Part 230.[8] 45 C.F.R. §§ 74.1(a), 74.27. In addition, grant award notices set forth terms and conditions with which grantees must comply. The award

[8] In December 2013, the OMB consolidated the content of OMB Circular A-122--which was codified in Appendix A of 2 C.F.R. Part 230--and eight other OMB circulars into one streamlined set of uniform administrative requirements, costs principles, and audit requirements for federal awards, currently published in 2 C.F.R. Part 200. *See* 78 Fed. Reg. 78,590 (Dec. 26, 2013). Effective December 26, 2014, Part 74 of title 45 of the Code of Federal Regulations was superseded by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards" published in 45 C.F.R. Part 75. *See* 79 Fed. Reg. 57,871, 57,889 (Dec. 19, 2014). *See* 70 Fed. Reg. 51,910 (Aug. 31, 2005); 2 C.F.R. Part 230 (Jan. 1, 2013). We cite to the Part 74 regulations and the A-122 provisions in Part 230 because they were in effect when the grant at issue here was awarded.

notice for MCHC's CIP grant informed MCHC that it was required to comply with not only Part 74 but also the HHS Grants Policy Statement (GPS)[9] and with certain terms and conditions for ARRA grants. HRSA Ex. 1.

Part 74 requires that a recipient of federal funds have a financial management system that provides for "[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. § 74.2l(b)(2), (b)(7). The award notice for MCHC's CIP grant similarly states that "in accordance with 45 CFR 74.21. . . , recipients agree to maintain records that identify adequately the source and application of Recovery Act funds." HRSA Ex. 1, at 6. In addition, the GPS provides that recipients must maintain financial management systems that meet the standards in 45 C.F.R. § 74.21 and enable the recipient to "[m]aintain records that adequately identify the . . . purposes for which the award was used," including "[a]counting records [that are] supported by source documentation such as canceled checks, paid bills, payrolls, and time and attendance records." GPS at II-59.

Grantees also are responsible for maintaining documentation "to account for receipt, obligation and expenditure of [grant] funds." 45 C.F.R. § 74.22(i)(1). Section 74.28, titled "Period of availability of funds," 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[.]" The Notice of Award for MCHC's CIP grant included the following term: "HRSA is permitting a grantee to incur pre-award costs up to 90 calendar days prior to the award of a Federal grant with the prior approval of the HRSA Grants Management Officer. . . . If pre-award costs are incurred and the proposed award is issued, these costs may be permitted as long as they are otherwise included in the application, are allowable costs under the authorizing legislation and were not incurred prior to enactment of [ARRA], February 17, 2009." HRSA Ex. 1, at 3.

To be allowable charges to federal grant funds, a grantee's costs must be "reasonable for the performance of the award and be allocable thereto under these principles" as well as be "adequately documented." 2 C.F.R. Part 230, App. A, ¶ A.2.a and g. The Board has consistently held that "under the applicable regulations and cost principles, 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). Similarly, the Board has stated that "[o]nce 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,

[9] The 2007 version of the GPS in effect when the grant was awarded can be accessed from http://www.hhs.gov/grants/grants/policies-regulations/index.htm.

allocable to the grant." *Northstar Youth Servs., Inc.*, DAB No. 1884, at 5 (2003). The Board has also held that a grantee's burden of documenting the existence, allowability and allocability of its expenditures of federal funds means that "the grantee has the burden to document that its expenditures of grant funds were made in support of grant objectives and in compliance with the terms and conditions of the grant." *Tuscarora Tribe of North Carolina*, DAB No. 1835, at 10-11 (2002), citing *New Opportunities for Waterbury, Inc*., DAB No. 1512 (1995).

The Part 74 regulations state that if the recipient of a federal grant award "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 federal awarding agency may, among other remedies, "[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)(3).

Analysis

As indicated above, HRSA gave varying explanations of the basis for the disallowance in its July 14, 2014 determination and in its submissions in the Board proceedings. We rely on the explanation in HRSA's last submission (dated August 24, 2015) because the Board directed HRSA to "clearly explain[] the basis for any remaining disallowance" in that submission and that submission contains no indication that HRSA continues to rely on any previously stated grounds for disallowance not repeated there. Although HRSA lists six "reasons" in that submission, these reasons in effect set out only two grounds for the disallowance: that "[n]o evidence was provided showing that HRSA grant funds were used to pay for the project," and that "[c]osts were incurred prior to or after the period of performance." HRSA submission dated 7/24/15, at 1-2 (reasons 1 and 5). The remaining "reasons" identify the types of documentation that HRSA determined would be necessary to show that grant funds were in fact paid for the renovation project, i.e., invoices, proof of payment such as endorsed or cancelled checks, and an "itemized account of expenditures." *Id*. (reasons 2, 3, 4, and 6).[10]

As discussed in detail below, we conclude that of the $753,400 MCHC drew down for the renovation project, MCHC documented that $676,000 was expended for allowable costs of that project. HRSA disallowed $740,109.49 rather than $753,400 because it offset against the total drawdown amount $13,290.51 that HRSA found MCHC expended for other allowable costs related to the renovation project. Accordingly, we reverse the disallowance in the amount of $676,000 and uphold the disallowance in the amount of $64,109.49.

[10] HRSA listed the applicable "reasons" for each category of cost we discuss below on a spreadsheet included with its August 24, 2015 submission.

We first address the amounts we conclude are allowable, which we find were expended for payments made under MCHC's November 3, 2010 contract with Levy Construction as well as under an April 25, 2011 agreement between the parties for further work on the renovation project. We then address the amounts we conclude are unallowable, comprised of payments MCHC made to Levy Construction under an agreement dated May 15, 2012 for additional work on the project and miscellaneous other payments MCHC claimed were related to the renovation project.

1. Payments to Levy Construction under the November 3, 2010 contract

As already noted, MCHC and Levy Construction entered into a contract for the renovation project on November 3, 2010. That contract provided that MCHC would make four payments to Levy Construction totaling $620,000—an initial payment of $200,000 for start up costs, a progress payment of $200,000, a progress payment of $150,000, and a final payment of $70,000 upon completion of the project. The affidavit of the owner and operator of Levy Construction, which MCHC submitted with its response to the Order, alleges that MCHC made four payments totaling $656,000 to Levy Construction under this contract: check number 7897 for $200,000, dated November 3, 2010; check number 7918 for $200,000, dated December 15, 2010; check number 7919 for $200,000, dated January 6, 2011; and check number 7933 for $56,000, dated February 8, 2011. MCHC Attachment B, Affidavit of Robert Levy dated July 23, 2015 (Levy affidavit), at 1-3. (According to the affidavit, MCHC's CEO requested changes to the project which necessitated an increase in the amount of the third progress payment from $150,000 to $200,000. *Id*. at 2; *see also* Ex. Levy 6, at 3-4.) Copies of the checks are included in the exhibits attached to the affidavit (at Exhibits Levy 3, 4, 5 and 7).[11] In addition, these exhibits include either an invoice or a purchase requisition, or both, for each of the four payments, as follows:

> first payment: invoice from Levy Construction dated October 25, 2010, requesting "first draw of 200,000.00 for start-up";
> second payment: invoice from Levy Construction dated December 6, 2010 for $200,000.00, requesting "second draw of $200,000.00 for start-up" for "Foundation Installment," "Rough-In Plumbing Installment," and "Walls Framed Up"; and MCHC purchase requisition dated December 13, 2010 for $200,000.00 for "2nd draw," for "Pediatric Clinic Rennovation [sic] Project – CIP Building";
> third payment: invoice from Levy Construction dated December 29, 2010 requesting "the Third draw of $200,000.00" for "1. Electrical Wiring Install," "2. Top-out Plumbing Install," "3. Sewer Line Install," "4. Water Line Install," and "5. ducts [sic] work Install for Heat & Air"; and MCHC purchase requisition dated January 6, 2011 for $200,000.00 for "3rd draw – pediatric bldg.., renovation project – CIP bld. Project"; and

[11] Check number 7897 is dated November 5, not November 3 as stated in the Levy affidavit.

fourth payment: MCHC purchase requisition dated February 8, 2011 for $56,000 for "4th Draw – Pediatric Clinic CIP Project."

We conclude that the full amount paid under the November 3, 2010 contract, $656,000, is allowable. All four checks bear dates that are within the grant period of June 29, 2009 through June 28, 2011. HRSA does not explain why checks would need to be "endorsed or cancelled" in order to establish that payment was in fact made, where the checks were submitted by the payee with an affidavit confirming his receipt of the payments. MCHC provided either an invoice, or a purchase requisition based on an invoice, that corresponds to the amount of each check and is dated at most 11 days prior to the check. Since these checks were clearly written to pay the contractor for services he had billed for, it is reasonable to infer that the contractor cashed these checks within a reasonable time of receipt. Thus, we conclude that the $656,000 in grant funds paid under the November 3, 2010 contract was timely obligated in accordance with 45 C.F.R. § 74.28.

In addition, the documentation described above is clearly adequate to establish that $656,000 was expended for the renovation project. HRSA appears to take the position that "an itemized list of expenditures" covered by each payment is necessary to establish that the payments were for costs of the renovation project. However, the record in fact contains information adequately identifying what each payment covered. The invoices, purchase requisitions and checks clearly tie the payments to the November 3, 2010 contract for the renovation project, the contract provides details of what had to be accomplished prior to each payment,[12] and HRSA has not asserted that the amounts paid under the contract were unreasonable.

2. Payments to Levy Construction under the April 25, 2011 agreement

After the four payments were made pursuant to the November 3, 2010 contract, Levy Construction submitted an invoice dated April 18, 2011 for a "fifth draw down of $65,000.00" for additional work on the project. Ex. Levy 8, 2nd page. MCHC and Levy Construction entered into an agreement dated April 25, 2011 covering the three tasks described in the April 18, 2011 invoice and two additional tasks, at a cost of $65,000.[13] *Id.*, 1st page. MCHC paid Levy Construction $20,000 by check dated July 18, 2011, which includes the words "Pediatric Bldg" on the memo line. *Id.*, 3rd page. The Levy affidavit states that this was "a partial payment" for the work specified in the agreement. Levy affidavit at 3.

[12] The contractor's affidavit describes specific tasks covered by the first payment for start-up costs and the fourth payment for job completion. Levy affidavit at 2-3.

[13] The agreement lists the following tasks: "1. Install acoustical ceiling"; "2. Install all interior ceiling lights & meter base"; "3. Paint outside of building"; "Wrought Iron Rails"; "5. Parking Lot Pavement." Ex. Levy 8, 1st page. Only the first three tasks are listed in the invoice. *Id.*, 2nd page.

We conclude that the $20,000 paid under the April 25, 2011 agreement is allowable. The payment was made in July 2011, after the grant period ended on June 28, 2011. However, contrary to what HRSA suggests, there is no requirement that costs be incurred during the grant period to be allowable. Instead, as relevant here, section 74.28 provides that "a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period" (emphasis added). Section 74.2 defines "obligations" to mean "the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period." MCHC entered into the contractual agreement with Levy Construction on April 25, 2011, before the end of the grant period. Moreover, on April 18, 2011, Levy Construction submitted an invoice for three of the five tasks covered by the later agreement. By submitting the invoice, Levy Construction indicated that these three tasks had already been completed. Thus, the $20,000 was obligated within the grant period in the sense that the services for which the payment was made were received by MCHC, and MCHC committed to make payment for them, within the grant period.

We further find that the invoice and the check are adequate to establish that that the $20,000 was expended for the renovation project. As noted, the check indicates that it was for the "Pediatric Building." Although the check is for an amount less than the $65,000 on the April 18, 2011 invoice, MCHC and Levy Construction agreed after the invoice was submitted that the $65,000 should cover two additional tasks. Thus, it is reasonable to infer that the $20,000 relates to the work on the renovation project that is described on the invoice. The fact that the check is dated nearly two months after the date on the invoice does not necessarily undercut this inference since the delay may be attributable to the lack of an agreement on a price for the work at the time the invoice was submitted. In addition, the invoice and check clearly tie the payments to the April 25, 2011 agreement for further work on the renovation project, the agreement provides details of what had to be accomplished prior to payment, and HRSA has not asserted that the $20,000 paid under that agreement on July 18, 2011 was unreasonable.

3. Payments to Levy Construction under the May 15, 2012 agreement

On May 15, 2012, MCHC and Levy Construction "re-signed" the November 3, 2010 agreement, to which they added a list of further work to be done on the renovation project for a total cost of $69,000 (a "first draw" of $30,000 and the balance of $39,000 upon completion). Ex. Levy 9, 2nd – 4th pages. MCHC paid Levy Construction $30,000.00 by check dated May 29, 2012 with the words "1st draw down" on the memo line. *Id.*, 5th page. A second payment of $39,000 is documented by a purchase requisition dated July 24, 2012 in that amount, described as "Final Payment for Completion of Pediatrics Building." Ex. Levy 10, 1st page.

We conclude that the $69,000 paid under the May 15, 2012 agreement is unallowable. As already noted, section 74.28 provides, as relevant here, that "a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period[.]" The agreement pursuant to which the $69,000 was paid to Levy Construction was dated nearly eleven months after the end of the grant period on June 28, 2011, and the two payments were made even later. Thus, in light of the definition of the term "obligation" in section 74.2, the funds were not timely obligated in accordance with section 74.28. Accordingly, although it appears that the funds were expended for the renovation project, they were not expended for allowable costs of the grant.

4. Miscellaneous payments

In its response to the Order, MCHC identified five additional payments it made that it said "were related to renovation of the Pediatric Building at MCHC" and provided documentation for each payment. MCHC Response to Order at 3-4 and MCHC Exs. C-G. Below, we explain below why we conclude that the documentation does not establish that any of these payments are allowable.

A payment of $337.05 is documented by a September 22, 2010 purchase requisition for a payment in that amount to Levy Construction for "Construction Images Printing, LLC". MCHC Ex. C, 1st page. Although this payment was made within the grant period, MCHC provided no basis for concluding that the payment was in fact related to the renovation project.[14] Accordingly, we conclude that this amount is not an allowable cost of the grant.

A payment of $5,243.00 is documented by a September 26, 2011 invoice for that amount from Construction & Renovation, Inc. DBA Jerome Myers for "Roof Repair for Pediatric Clinic Project," stamped "Paid Oct 5, 2011," and by check #21650 dated October 5, 2011 for $5,243.00 payable to Construction & Renovation, Inc. with "Pediatric Bldg. Roofing" on the memo line. MCHC Ex. D, 1st and 2nd pages. These documents show that the payment was not made until after the grant period ended on June 28, 2011. In addition, it is reasonable to infer from the September 26, 2011 date on the invoice that the work was contracted for after the grant period ended. Thus, in light of the definition of the term "obligation" in section 74.2, the funds were not timely obligated in accordance with section 74.28. Accordingly, we conclude that these expenditures were not allowable costs of the grant.

[14] We therefore need not address HRSA's argument that this cost is unallowable on other grounds. HRSA submission dated 8/24/15, 3rd page.

A payment of $15,180.36 is documented by an October 15, 2008 invoice for that amount from CiVil Tech, Inc. for "MCHC Lexington-Chamber Building Renovation, Additional Architectural Engineering Services," stamped "PAID 07/17/2009"; a document captioned "Time by Job Detail June 15 through October 15, 2008" listing "Engineer Services" for "MCHC Lexington"; and an April 23, 2009 letter from CiVil Tech, Inc.'s Vice President to MCHC's CEO providing a further description of the services invoiced. MCHC Ex. E, 1st and 2nd pages. These documents show that the work was performed in 2008, long before the grant period began on June 29, 2009, although payment was not made until shortly after that date. Section 74.28 states that "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" (emphasis added). The costs at issue here were pre-award costs because the funds were obligated when the work was performed, if not earlier. Under the grant terms, pre-award costs incurred prior to February 17, 2009 are unallowable. HRSA Ex. 1, at 3. Accordingly, we conclude that these expenditures were not allowable costs of the grant.

A payment of $6,521.01 is documented by an October 8, 2009 invoice for that amount from Magnolia Engineering Group for "Lexington, MS site Peds [project engineering and design]" that further describes the work as "assist in the preparations of HRSA Grant Application and associated documentation"; an October 27, 2009 purchase requisition, stamped "PAID Dec 8 2009," for a payment in that amount to Magnolia Engineering Group for "Lexington, MS Site Peds"; and check #19103 dated December 2, 2009 for $6,521.01 payable to Magnolia Engineering and Design with "Lex site peds" on the memo line. MCHC Ex. F.[15] Although all of the documents are dated several months after the grant period began on June 29, 2009, the fact that the work is described as relating to preparation of the grant application indicates that the work may have been performed before the beginning of the grant period. Thus, it is possible that the costs were pre-award costs that are not allowable in the absence of HRSA authorization to use grant funds for this purpose. MCHC does not allege that these costs were included in its approved grant application or that HRSA otherwise authorized it to use grant funds for these costs. Accordingly, we conclude that MCHC has not established that these costs are allowable costs of the grant.

A payment of $1,500 is documented by a January 28, 2010 purchase requisition for a payment of $1,500 to Eddie Stuckey, Real Estate Appraiser, for "Appraisal Report: Commercial Property," stamped "PAID FEB 15, 2010"; a January 25, 2010 "Statement" from Mr. Stuckey for a fee of $1,500 for "Appraisal Report, Commercial Property, 300 Yazoo Street, Lexington, Holmes County, MS," also stamped "PAID FEB 15, 2010"; a January 28, 2010 purchase order for a shipment to MCHC of an "Appraisal Report:

[15] This exhibit also includes an October 8, 2009 purchase order for a shipment from Magnolia to MCHC described in part as "preparations of HRSA grant application – Lex Pediatric," but the document is partly illegible.

Commercial Property 300 Yazoo Street Lexington, MS (Harkness Bldg.)" for a payment of $1,500 to Mr. Stuckey; and check #19404 dated February 15, 2010 for $1,500 payable to Mr. Stuckey with "Appraisal Commer[ci]al P[ro]perty" on the memo line. All of the documents bear dates that are well within the grant period. Notwithstanding the reference to the "Harkness Building" rather than the Chambers Building referred to in MCHC's November 3, 2010 contract with Levy Construction, it appears that the property appraised was the site of the renovation project, since the address on Mr. Stuckey's Statement and on the purchase order is the same as the address on the Project Completion Certification at MCHC Exhibit A. We nevertheless find that MCHC did not provide adequate documentation to establish that the appraisal cost was an allowable cost of the grant because MCHC does not explain why an appraisal was required for the renovation project.[16]

Conclusion

For the reasons stated above, we reverse the disallowance in the amount of $676,000 and uphold the disallowance in the amount of $64,109.49.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Stephen M. Godek
Presiding Board Member

[16] We therefore need not address HRSA's argument that the appraisal cost is unallowable on other grounds. HRSA submission dated 8/24/15, 3rd page.