Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Bright Beginnings for Kittitas County
Docket No. A-16-92
Decision No. 2770
February 9, 2017

DECISION

Bright Beginnings for Kittitas County (Bright Beginnings), a Head Start and Early Head Start grantee, appeals a decision by the Administration for Children and Families (ACF) to disallow $70,274 charged to a Head Start Early Learning Mentor Coaches award funded through the American Recovery and Reinvestment Act of 2009. ACF determined that Bright Beginnings used the funds for construction without obtaining ACF's prior approval and in violation of federal regulations and cost principles. Bright Beginnings asserts that it obtained ACF's prior approval for the expenditures and that the funds were not used for construction of a new building or major renovation of an existing building, but for enhancements to a property that it was renovating and expanding for a new Head Start and Early Head Start center.

As explained below, we sustain the disallowance because Bright Beginnings used funding awarded for training and technical assistance activities for unauthorized capital expenditures without ACF's prior approval and in violation of federal regulations, cost principles, and the terms of its grant.

Legal Background

The Head Start Act authorizes funding for the Head Start and Early Head Start programs, which provide comprehensive developmental services to preschool children, toddlers, and infants. 42 U.S.C. § 9831 *et seq*. Head Start and Early Head Start grantees must (with some exceptions not relevant here) comply with the administrative requirements in Part 74 of title 45 of the Code of Federal Regulations. 45 C.F.R. § 1301.10(a).[1]

[1] Effective December 26, 2014, Part 74 of title 45 of the Code of Federal Regulations was removed and reserved and a new Part 75 was added. *See* 79 Fed. Reg. 75,871, 75,889 (Dec. 19, 2014). We cite to the Part 74 regulations in effect during the award period at issue.

Section 74.21(b) requires grantees to provide for effective control over and accountability for all funds, property and other assets, to safeguard those assets and to assure that they are used solely for authorized purposes. 45 C.F.R. § 74.21(b)(3). A grantee must maintain "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities[,] . . . [w]ritten procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award . . . and [a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. § 74.21(b)(2), (6), (7). Section 74.25(b) requires grantees to report deviations from budget and program plans, and to request prior approval for certain budget and program plan revisions.

Head Start grantees must also comply with Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations." *See* 2 C.F.R. Part 230 (2005-2013) (codifying OMB A-122); 45 C.F.R. § 74.27(a) (making OMB A-122 applicable to Head Start grants).[2] To be allowable charges to a grant, costs must be reasonable for the performance of the award and allocable to it. OMB A-122, Attachment (Att.) A, ¶ A.2.a. Grantees must adequately document costs charged to an award. *Id.* ¶ A.2.g. The cost principles further provide that capital expenditures for general purpose equipment, buildings, and land, and for improvements to such properties that materially increase their value, are unallowable as direct charges, except where approved in advance by the awarding agency. OMB A-122, Att. B, ¶ 15.b.(1), (3).

It is a fundamental principle of grants management that a grantee is required to document its costs. *Northstar Youth Services*, DAB No. 1884, at 5 (2003) ("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."); 45 C.F.R. § 74.21(b)(2), (7).

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[2] Until 2014, OMB Circular A-122 was codified — in its entirety and format — in Appendix A of 2 C.F.R. Part 230. *See* 70 Fed. Reg. 51,927 (Aug. 31, 2005). In December 2013, OMB consolidated the content of OMB Circular A-122 and seven other OMB circulars into one streamlined set of uniform administrative requirements, cost 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).

Case Background

A. ACF's Funding Announcement, Bright Beginnings' Application, and Notice of Award

In June 2010, ACF issued an announcement of the availability of funds for the Head Start Early Learning Mentor Coaches Program. ACF Ex. 3. The funding for the grants was appropriated under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (ARRA) and authorized by sections 648 and 645A(g) of the Improving Head Start for School Readiness Act of 2007, 42 U.S.C. § 9843, which provides for training and technical assistance activities. *Id.* The purpose of the program was to use the ARRA funds to hire coaches to provide on-the-job guidance, coaching, training, and technical assistance to Head Start and Early Head Start staff. *Id.* at 3. The central goal of the initiative was to improve the quality of teaching in Head Start and Early Head Start programs. *Id.*

Bright Beginnings applied for an Early Learning Mentor Coaches award in the amount of $224,999 for the proposed budget and project period, September 1, 2010 through January 1, 2012. Bright Beginnings (BB) Ex. A. Bright Beginnings proposed to use award funds to meet staff professional development needs "through contracted services with an Early Learning Mentor Coach who will provide intensive, supportive and consistent on-the-job guidance, coaching, training and technical assistance for our Head Start and Early Head Start teaching and home visiting staff." BB Ex. A, at A-16. Bright Beginnings also proposed to use award funds for "staff to acquire the education necessary [to meet] the Head Start Performance standards for classroom staff credentialing." *Id.* at A-2.

On September 16, 2010, ACF awarded Bright Beginnings $224,999 for Mentor Coaches training and technical assistance activities for the budget and project period September 29, 2010 through February 28, 2012 (grant number 90ST0059). BB Ex. B. The award notice specified that the award was subject to any applicable statutory or regulatory requirements, including 45 C.F.R. Part 74, and the requirements of the HHS Grants Policy Statement. *Id.* at 2-3.

B. The Audit Findings and Disallowance

On September 24, 2012, a public accounting firm issued a report on its independent audit of Bright Beginnings' financial statements for the years ended December 31, 2010 and December 31, 2011.[3] ACF Ex. 2. As relevant here, the auditors found that Bright Beginnings drew down $70,274 in ARRA Early Learning Mentor Coaches Program "operating funds for construction of a training room and could not provide any support that substantiated the budget revision approval by the Office of Grants Management," as required under federal cost principles. *Id.* at 21 (audit finding 11-03).[4] The Department of Health and Human Services, Office of Inspector General reviewed the audit report, concurred in the auditors' finding, and recommended that ACF disallow the questioned expenditures. ACF Ex. 5, at 3.

On April 20, 2016, ACF issued a Notice of Determination disallowing $70,274 on the ground that "the organization used the ARRA Early Learning Coach Mentor funds for facility construction costs without approval." ACF Ex. 7, at 2. ACF cited as the basis for the disallowance: 1) OMB Circular A-122, Attachment B, Paragraph 15.b.(1), providing that capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency; 2) the regulation governing grantees' financial management systems at 45 C.F.R. § 74.21(b)(2), (3), (6), (7); and 3) the regulation requiring grantees to report deviations from budget and program plans and request prior approvals for revisions at 45 C.F.R. § 74.25(b).

The Board has explained the burden of proof for Head Start disallowance cases in prior decisions as follows:

> "In an appeal of a federal agency's disallowance determination, the federal agency has the initial burden to provide sufficient detail about the basis for its determination to enable the grantee to respond." *Me. Dep't of Health & Human Servs.*, DAB No. 2292, at 9 (2009), *aff'd, Me. Dep't of Human Servs. v. U.S. Dep't of Health & Human Servs.*, 766 F. Supp. 2d 288 (D. Me. 2011). If the agency

[3] Under the Single Audit Act, a non-profit grantee whose expenditure of federal funds in any fiscal year exceeds a certain threshold must undergo a single, comprehensive financial and compliance audit for that year that meets the standards in OMB Circular A-133 (titled "Audits of States, Local Governments, and Non-Profit Organizations"). 31 U.S.C. § 7502(a)(1)(A); 45 C.F.R. § 74.26(a).

[4] Audit finding 11-03 additionally questioned Bright Beginnings' use of $126,398 in Early Head Start operating funds to pay construction costs associated with the building expansion project. ACF Ex. 2, at 21. ACF issued a disallowance of those costs on August 19, 2014, and in DAB No. 2623 (2015), the Board sustained that disallowance.

> carries this burden, which the Board has called "minimal," then the nonfederal party (the grantee, in this case) must demonstrate that the costs are, in fact, allowable. *Mass. Exec. Office of Health & Human Servs*., DAB No. 2218, at 11 (2008), *aff'd, Mass. v. Sebelius,* 701 F. Supp. 2d 182 (D. Mass. 2010). "When a disallowance is supported by audit findings, the grantee typically has the burden of showing that those findings are legally or factually unjustified." *Id.*

E Center, DAB No. 2657, at 5 (2015).

Analysis

A. The expenditures at issue were made for types of costs that are unallowable under the authorizing legislation and the terms of the award, including the approved budget.

Bright Beginnings argues on appeal that ACF authorized the questioned expenditures. Bright Beginnings asserts that its grant application "included a request for funds in the amount of $1,026 and $2,467 for the development of an office space that would double as a training/resource room" in the space it was then leasing from the Kittitas School District. BB Br. at 2, citing BB Ex. A, at A-6, A-7, A-33. During the same period, Bright Beginnings states, it "had purchased property and was in the process of renovating an existing structure and constructing additional space to develop a new Head Start/Early Head Start center in Ellensburg …." BB Br. at 2. After receiving the Early Learning Mentor Coaches award, Bright Beginnings explains, it decided to retain the funds previously budgeted for the training/resource room "to use in the development of the multipurpose room at the new facility." *Id.* "During the course of renovation and design" of that project, however, it "determined that sufficient funds were not budgeted for the enhancements necessary to support the training needs within the multipurpose room." *Id.* at 2-3. Consequently, Bright Beginnings asserts, it sought and received ACF's approval to revise its Early Learning Mentor Coaches award budget to allow for the questioned expenditures. *Id.* at 3. However, we find that Bright Beginnings did not request and obtain ACF's prior approval to charge the expenditures at issue to the Early Learning Mentor Coaches award. We discuss this below in Section B of our analysis.

As noted above, section 74.21(b)(3) of the regulations requires nonprofit grantees to ensure that award funds are used solely for authorized purposes. Under the applicable cost principles, costs are allowable only if they are allocable, that is, are of benefit to the activities for which the grant was awarded. Based on these principles, the Board has previously explained, "Grantees are . . . permitted to use federal funds only for the allowable costs of performing the activities for which the grant was awarded." *Ne. La. Delta Cmty. Dev. Corp.*, DAB No. 2165, at 7 (2008). A grantee may not "make any use of the funds it thought desirable to serve the general purposes" of the relevant grant program, but must make expenditures for the "programs and activities for which the funds were to be expended." *Id*. at 9.

Applying the regulations and cost principles in this appeal, we conclude that Bright Beginnings charged to its award expenditures for types of costs that are unallowable under the authorizing legislation for the Mentor Coaches award and the terms of the award. ACF's announcement of the availability of funding for the Head Start Mentor Coaches Program unambiguously notified grant applicants: "Construction is not an allowable activity or expenditure under this grant award." ACF Ex. 3, at 19. Rather, the announcement provided that the funding for the program was "authorized by Sections 648 and 645A(g) of The Improving Head Start for School Readiness Act of 2007, 42 U.S.C. § 9843," which provides for training and technical assistance activities. *Id.* at 3. At the outset of the announcement, ACF made clear that "the goal of the Coaching initiative [was] to improve the quality of teaching; assist programs to promote positive, significant and sustained outcomes for children; and promote career development for teaching staff working in Head Start programs." *Id*. The award funds were to be used to "support Early Learning Mentor Coaches" to "provide on-the-job guidance, coaching, training, and technical assistance to classroom teaching staff, home visitors and family child care providers," not to build or renovate facilities. *Id*.

Consistent with the notice of funding availability, Bright Beginnings' grant application represented that it sought funding to "address staff professional development needs … through contracted services with an Early Learning Mentor Coach [to] provide intensive, supportive and consistent on-the-job guidance coaching, training and technical assistance" for Bright Beginnings' staff. BB Ex. A, at A-16. Bright Beginnings proposed to use the majority of its award budget to pay a coach mentor; wages and fringe benefits for staff to participate in training; travel costs for staff to visit other Early Head Start and Head Start programs; and tuition and books for 116 members of its staff to obtain Child Development Associate credentials. *Id.* at A-4, A-6, A-7, A-29, A-30. Furthermore, while Bright Beginnings' application budgeted $2,467 for the first 12 months and $1,028 for the last five months of the project period for "1/4 Room for Office space," it did not propose to use the funds for the "development" of a training room. *Id.* at A-4, A-6, A-7, A-29, A-34; BB Br. at 2. Furthermore, contrary to Bright Beginnings' characterization on appeal, the approved budget in the Notice of Award did not authorize Bright Beginnings to charge any "facilities/construction" cost to the award. BB Ex. B, at B-2.

Accordingly, we conclude that the expenditures at issue were made for types of costs that were unallowable under the authorizing legislation and the terms of Bright Beginnings' Early Learning Mentor Coaches award, including the approved budget.

B. Bright Beginnings did not obtain ACF's prior approval to use grant funds for the expenditures at issue.

As indicated above, Bright Beginnings argues that regardless of whether its originally approved Early Learning Mentor Coaches award and budget authorized the expenditures at issue, it requested and obtained ACF's prior approval to revise that award and budget in order to charge the expenditures at issue to the award. As described above, Bright Beginnings asserts that after receiving the award, it sought and received ACF's approval to spend $3,495 originally budgeted "for the development of office/training space at the Kittitas site" and more than $65,000 in additional award funds for "the development of the multipurpose room" at the Ellensberg property that it was renovating and expanding to serve as a new Head Start and Early Head Start center. BB Br. at 2-3, citing BB Exs. C, D. We reject that argument.

Under 45 C.F.R. §§ 74.25(b) and 74.25(c)(5) and the applicable cost principles, Bright Beginnings was required to obtain ACF's advance approval to use award funds for capital expenditures for general purpose equipment, buildings, and land, or for any improvements that materially increased the value of such properties. OMB A-122, Att. B, ¶ 15.b.(1), (3). Furthermore, as a recipient of federal funds, Bright Beginnings was responsible for maintaining a financial management system that provided for accurate, current, and complete disclosure of the source and application of grant funds. 45 C.F.R. § 74.21(b)(1). Bright Beginnings was therefore responsible for providing budget documentation to ACF that accurately and sufficiently disclosed its award expenditures.

Based on the content of Bright Beginnings' December 16, 2010 request to revise its budget, we could not reasonably conclude that ACF would have known that Bright Beginnings intended to use its Mentor Coaches award funds for the renovation and expansion of its new Head Start and Early Head Start center. Bright Beginnings' December 16, 2010 email and cover letters transmitting its request to revise its award budget describe the proposed revisions as merely refinements, intended to use award funds more efficiently and effectively. BB Ex. C, at C-1 ("our agency has had an opportunity to refine the budget for a more efficient program"); *Id.* at C-2 ("we have fine tuned our budget to be more effective in our project"); BB Ex. C-5 ("Our staff has refined the budget numbers to give maximum efficiency of the grant dollars."). Furthermore, the line-item charts that Bright Beginnings attached to its request are titled "Budget Information – Non Construction Programs" and show $0 allocated to

"Facility/Construction." *Id.* at C-8. The charts show $114,247 allocated to the category "Other," including $49,895 labelled "Training room; Technological install; Network all computers." *Id.* at C-8, C-10, C-11, C-27. The budget narrative describes the costs included in the "Other" category as follows:

> This line item captures the remainder of our training needs and consists of; various trainers that we plan to bring on site, on-line CDA courses (registration, application packets, assessment fees, etc.), leadership and supervisory trainings, CLASS trainings, and the establishment of an on-site training room for present and on-going staff training needs that will occur beyond the project period.

Id. at C-20. Thus, Bright Beginnings did not indicate in any part of its request to revise the grant budget that it intended to use funds that had been appropriated for training and advancing the professional development of its staff to instead pay for costs associated with the renovation and expansion of the Ellensberg property.

Furthermore, nothing in the record shows that ACF understood this to be Bright Beginnings' intent. Instead, while ACF issued an amendment to Bright Beginnings Mentor Coaches award on January 11, 2011, with an approved budget that included the full amount of "Other" costs proposed under Bright Beginnings' revised budget request, the only remark on the amendment that related to the budget provided: "This action approves grantee's request dated December 16, 2010 to rebudget $10,345 budgeted under 'equipment' for the purchase of computers, Cameras, server upgrade and large video screen to supplies.'" BB Ex. D. Accordingly, we conclude that Bright Beginnings did not request or obtain ACF's prior approval to augment its new facility renovation and expansion project with expenditures charged to the Mentor Coaches training and technical assistance award.

C. Bright Beginnings' argument that the expenditures are allowable is inconsistent with its representations to the auditors.

We further conclude that Bright Beginnings' argument on appeal is inconsistent with its prior representations. As reflected in the audit report, on review of Bright Beginnings' financial statements for the project period, the auditors found that the "Organization drew down ARRA operating funds for construction of a training room . . . ." ACF Ex. 2, at 21. When the auditors presented this finding to "Responsible Officials" of Bright Beginnings, the Bright Beginnings officials "acknowledge[d] an oversight with regard to the approximately $70,000 that was deemed to be a misappropriation from the ARRA Early Learning Coach Mentor grant" and "used these funds to help build the socialization room where staff trainings take place" in its "building expansion project." *Id.* Bright

Beginnings officials' acknowledgment that it was "an oversight" that Bright Beginnings used the funds to help construct a room at its new Head Start and Early Head Start center undercuts Bright Beginnings' representation on appeal that the expenditures were made for allowable costs.

D. Bright Beginnings has not met its burden to document that the expenditures at issue were otherwise allowable grant costs.

Bright Beginnings also contends that the expenditures at issue were not made for "construction" or a "major renovation," as those terms are defined in the Head Start Performance Standards at 45 C.F.R. § 1309.3.[5] Rather, Bright Beginnings asserts, the expenditures were for "enhancements" to its new Head Start and Early Head Start center multipurpose room. BB Br. at 3. Under the performance standards, "construction" means "new buildings," and "major renovation" includes "extensive alteration of an existing facility, such as to significantly change its function and purpose." 45 C.F.R. § 1309.3. It appears from Bright Beginnings' characterization of the expenditures as made for "enhancements" rather than construction or renovation as defined in the performance standards that Bright Beginnings takes the position that the expenditures were not for "facility construction costs" as stated in the disallowance letter, or unallowable under the terms of the Early Learning Mentor Coaches award and did not require ACF's prior approval under OMB Circular A-122.

Bright Beginnings' characterization of the expenditures at issue on appeal is inconsistent with what it told the auditors at the time of the audit. As discussed above, Bright Beginnings officials acknowledged to the auditors that the funds were used "to help build the socialization room . . ." in its "building expansion project." ACF Ex. 2, at 21.

Moreover, the disallowance was based on Bright Beginnings' failure to obtain the prior approval required under 45 C.F.R. § 74.25(b), not on the requirement to obtain prior approval for construction and major renovation in 45 C.F.R. Part 1309. Bright Beginnings has not met its burden to document, through records supported by source documentation, that grant funds were not used for unapproved capital expenditures within the meaning of OMB A-122, Attachment B, Paragraph 15, as ACF determined. That is, Bright Beginnings has not proffered any invoices, purchase orders, receipts, or other source documentation to disprove the auditors' and ACF's determinations regarding the

[5] During the period at issue, Part 1309 implemented sections 644(c), (f) and (g) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9801 *et seq*., and prescribed the procedures for applying for Head Start funds to purchase, construct, or make major renovations to facilities used to operate Head Start programs. ACF published a final rule on September 6, 2016 revising the Head Start Program Performance Standards effective November 7, 2016. 81 Fed. Reg. 61,293.

nature of the expenditures at issue. Bright Beginnings has had multiple opportunities to provide such documentation. For example, the auditors gave Bright Beginnings an opportunity to provide records to refute the preliminary audit finding that it had drawn down ARRA operating funds for construction of the multipurpose room; the Board's acknowledgment of Bright Beginnings' notice of appeal explained that Bright Beginnings' brief should include "copies of the documents on which its arguments were based," and Bright Beginnings could have supplemented its appeal file in response to ACF's argument in this appeal that Bright Beginnings failed "to present source documentation show[ing] how the funds were actually used." ACF Ex. 2, at 21; Acknowledgment of Notice of Appeal at 2; ACF Br. at 10. Because Bright Beginnings has not provided any such documentation to refute the auditors' finding and ACF's determination, we sustain ACF's conclusion that the expenditures at issue are unallowable.

Conclusion

For the reasons stated above, we sustain the disallowance.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Christopher S. Randolph
Presiding Board Member