Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

East Chicago Community Health Center
Docket No. A-12-127
Decision No. 2494
February 1, 2013

DECISION

East Chicago Community Health Center (East Chicago) appeals the July 31, 2012 decision of the Health Resources and Services Administration (HRSA) disallowing $507,779 in federal funding. The funds were awarded to East Chicago pursuant to a grant under the Capital Improvement Program (CIP), as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5. The disallowance was based on HRSA's determination that East Chicago used CIP funds for unallowable costs and failed to provide adequate documentation to support drawdowns and disbursements of federal funds.

For the reasons discussed below, we uphold the disallowance in its entirety.

Legal Background

Non-profit organizations that receive federal grants, such as East Chicago, 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.

Under the cost principles, a cost is allowable under a federal award if, among other things, it is "reasonable for the performance of the award and . . . allocable thereto." 2 C.F.R. Part 230, App. A ¶ A.2.a. 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." *Id.* ¶ A.3. A cost is allocable to a grant "in accordance with the relative benefits received." *Id.* ¶ A.4.a.

In order to be allowable, costs also must be "adequately documented." 2 C.F.R. Part 230, App. A ¶ A.2.g. The Part 74 regulations require a grantee to have in place a financial management system that provides "[e]ffective control over and accountability for all funds, property and other assets." 45 C.F.R. § 74.21(b)(3). A grantee's financial management system also must provide "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities" and "[a]ccounting records, including cost accounting records, that are supported by source documentation." *Id.* § 74.21(b)(2), (7). Acceptable source documentation includes documents such as cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. *Cf.* 45 C.F.R. § 92.20(b)(6).

Part 74 further provides that non-profit grantees are subject to the audit requirements in the Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) and revised OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). 45 C.F.R. § 74.26(a). Under those provisions, non-federal entities that expend $500,000 or more in a year in federal awards must have a single, comprehensive financial and compliance audit of their programs for that year. 31 U.S.C. § 7502(a)(1)(A); 68 Fed. Reg. 38,401 (June 27, 2003) (revising the threshold amount from $300,000 to $500,000).

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).

The Board is "bound by all applicable laws and regulations" when reviewing a disallowance. 45 C.F.R. § 16.14. Accordingly, where a disallowance is authorized by law and the grantee has not disproved its factual basis, the Board must affirm the disallowance. *Touch of Love Ministries, Inc.*, at 3.

Factual Background

East Chicago is a non-profit corporation located in East Chicago, Indiana that provides primary care and other health services. On June 25, 2009, HRSA awarded East Chicago a CIP grant in the amount of $661,181 to support the renovation and expansion of East Chicago's OB/GYN suite and the purchase of laboratory and dental equipment. Both the project period and the budget period were June 29, 2009 to June 28, 2011. HRSA Ex. 3. East Chicago amended its grant proposal in July 2010 to change one of the intended uses of grant funds from the purchase of laboratory and dental equipment to an "HIT-equipment only project" to replace its telephone system. HRSA Ex. 1, at 2; EC Ex. D. HRSA subsequently issued a new Notice of Grant Award to reflect this change.[1] EC Ex. D. In both the June 2009 and July 2010 Notices of Grant Award, the approved budget

[1] The record indicates that a new Notice of Grant Award was also issued in October 2009. *See* EC Ex. D at 1 (Notice of Grant Award dated 7/29/2010 provides that it supersedes an award notice dated 10/14/2009). East Chicago does not contend, however, that the disallowed costs were allowable under the terms of the October 2009 award notice, or that those terms remained in effect following the issuance of the July 2010 award notice.

allocated $248,999 to “Equipment,” $401,922 to “Construction/Alteration and Renovation,” and $10,260 to “Other.” HRSA Ex. 3; EC Ex. D. The budget did not provide any funds for other categories, such as “Salaries and Wages” and “Consultant Costs.” *Id.*

East Chicago was independently audited for calendar year 2010 in accordance with OMB Circular A-133. In October 2011 the auditor issued a report that questioned costs totaling $507,779 that East Chicago had charged to the CIP grant. First, the auditor questioned costs in the amount of $370,988 on the ground that those costs appeared to have been incurred to cover monthly IT maintenance and related services, to pay East Chicago’s interim CEO, and to pay East Chicago employees for overseeing construction projects. HRSA Ex. 4, at 34. The auditor noted that “none of these costs appear to have been explicitly outlined or approved in the original or modified grant document.” *Id.* Next, the auditor questioned three drawdowns of federal funds totaling $129,071 on the ground that there was inadequate documentation establishing that the drawdowns were used in furtherance of the grant. *Id.* at 34-35. Finally, the auditor questioned seven disbursements of grant funds totaling $7,720 on the ground that there was inadequate documentation establishing that the expenditures represented allowable costs allocable to the grant. *Id.* at 38.

Based on the audit findings, by letter dated July 31, 2012, HRSA disallowed $507,779 in federal funding provided to East Chicago under the CIP grant. HRSA Ex. 1, at 4. East Chicago timely appealed the disallowance to the Board.

Analysis

HRSA disallowed the funds on the ground that East Chicago charged the CIP grant with unallowable costs and failed to provide adequate documentation to support specified drawdowns and disbursements of federal funds. HRSA Ex. 1, at 4. In support of its appeal of the disallowance, East Chicago submitted a binder filled with payment records, invoices, and other documents alleged to document its expenditures. East Chicago contends that these documents provide “legitimate support for expenditures/charges made under” the CIP grant. EC Reply Br. at 1. Below we discuss the disallowed costs and why we conclude that the evidence East Chicago proffered is insufficient to reverse the disallowance.

1. **HRSA properly disallowed costs that East Chicago has not established are allowable and allocable to the CIP grant.**

HRSA disallowed $370,988 that East Chicago had not shown was used for purposes specified by the terms of the CIP grant. HRSA Ex. 1, at 2. According to East Chicago’s approved grant proposal, as modified in July 2010, and the amended Notice of Grant Award, CIP funds were supposed to be used solely to expand East Chicago’s OB/GYN clinic and to replace East Chicago's telephone system. *Id.*; EC Ex. D at 2. Yet, as discussed above, the auditor concluded that East Chicago instead spent $370,988 in grant funds to cover the cost of monthly IT maintenance and related services, to pay the salary of East Chicago's interim CEO, and to make unallowable payments to East Chicago employees for overseeing construction projects. HRSA Ex. 4, at 34. East Chicago has not shown that these costs were allowable.

A. <u>Expenditures for IT maintenance and related services</u>

East Chicago does not dispute that it charged the costs of IT maintenance and related services to the CIP grant, even though such costs were not provided for in its grant proposals and the Notices of Grant Award. East Chicago appears to contend that the costs should nevertheless be allowed, regardless of the grant's terms, because in its view IT support is the sort of project that ARRA and CIP were designed to fund. EC Reply Br. at 3-4.

East Chicago's argument is based on a false premise. Even if HRSA could have awarded CIP funds for the IT costs East Chicago charged to its CIP grant, that does not mean those costs are allowable regardless of the terms of the actual grant award. "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). Under the cost principles, costs "are allowable only if they are allocable, i.e., are of benefit to the activities *for which the grant was awarded*." *Id.* at 7-8 (emphasis in original). Furthermore, these grants, like those in the cited case, do not extend to allowing the grantee "to make any use of the funds it thought desirable to serve the general purposes" of the relevant grant program, "but rather specified the programs and activities for which the funds were to be expended." *Id.* at 10. HRSA awarded the grant to allow East Chicago to renovate its OB/GYN suite and, beginning in July 2010, replace its telephone system; the grant awards never indicated that East Chicago could use CIP funds for IT maintenance and related services. HRSA Ex. 3; EC Ex. D. East Chicago also did not establish that any of the IT costs it charged to the CIP grant were allocable to it, that is, that those costs somehow benefitted either the OB/GYN suite renovation or the telephone system replacement. Costs that are not allocable are not allowable. *Ne. La. Delta Cmty. Dev. Corp.*, at 7-8; 2 C.F.R. Part 230, App. A ¶ A.2.a.

In addition, while grantees are permitted to make changes "in the scope or the objective" of a nonconstruction project, a grantee must obtain prior approval of such changes. 45 C.F.R. § 74.25(c)(1). In the corrective action plan that East Chicago prepared in response to the auditor's report, however, East Chicago admitted that it had used CIP funds to "purchase hardware and software to upgrade [its] IT infrastructure" but had not filed a revision to its grant proposal "to include this initiative." HRSA Ex. 12 at 2nd page (unnumbered). Since East Chicago acknowledges that the upgrading and maintenance of its computer IT infrastructure was not included in its grant proposal or specified in the grant awards, and it did not obtain prior (or any) approval to use CIP funds for such a project, the costs incurred for that purpose are unallowable.

B. Expenditures related to East Chicago's interim CEO

In support of its appeal, East Chicago submitted documentation related to 51 expenditures. Twenty-seven pieces of documentation are related to expenditures made to Nevaeh Healthcare Revenue Management, the company that East Chicago engaged to provide interim CEO management support. *See* HRSA Ex. 7, at 1st page (unnumbered); HRSA Ex. 8, at 2. The documentation consists mainly of itemized invoices from Nevaeh and itemized "payment records" that appear to record East Chicago's payments to Nevaeh. *See* EC Exs. G1-G27a. The documentation also includes copies of two checks – though not cancelled checks – from East Chicago to Nevaeh. EC Exs. G6 & G7. East Chicago argues that the itemization in the payment records "clearly shows a distinction between allowable grant expenditures for design construction management, architectural consulting and move management and . . . services provided by [Nevaeh] as [East Chicago's] interim CEO." EC Reply Br. at 5. It asserts that "[e]xpenditures for services provided by [Nevaeh], as [East Chicago's] interim CEO, are not being claimed under this award." *Id.* East Chicago further argues that the documentation shows it charged the CIP grant only with the costs of "design construction management, architectural consulting and move management," which it claims are "all allowable [costs] under the award." *Id.*

The documentation that East Chicago submitted related to its payments to Nevaeh is insufficient to overturn or reduce the disallowance. First, East Chicago has not substantiated the assertion in its brief that it did not charge the costs of its interim CEO's salary to the grant. Although many of the payment records submitted by East Chicago list "Consulting: Interim CEO" as a separate line item, distinct from other items like "Consulting: Design Construction Management Services" or "Consulting: Move Mgmt & Architect Charges," the records suggest East Chicago wrote checks to Nevaeh that included reimbursement for the interim CEO's salary along with other expenditures. For example, the payment record in East Chicago Exhibit G2 itemizes two categories of expenditures – $5,000 for "Consulting: Move Mgmt & Architect Charges" and $3,892.63 for "Consulting: Interim CEO" – but appears to show that East Chicago wrote a single check for $8,892.63 to Nevaeh to cover the cost of both items. Likewise, East Chicago Exhibit G7 is a copy of a check East Chicago wrote to Nevaeh. The memo part of the check reads: "For Consulting: Interim CEO Move Mgmt & Architectural." East Chicago has not provided any documentation showing that it used non-CIP funds for the portion of its payments to Nevaeh earmarked for Nevaeh's interim CEO services.

East Chicago also has not shown that the payments to Nevaeh it says it did charge to the grant are for projects included in the grant award. The documentation that East Chicago submitted appears to show that, as East Chicago asserts, it charged to the grant design construction management, architectural consulting, and move management fees paid to Nevaeh. However, East Chicago has not established that these costs were incurred for either of the two projects that were within the scope of the grant – renovation of the OB/GYN suite and replacement of the telephone system. To the contrary, the invoices from Nevaeh suggest that the costs were related to moving some of East Chicago's operations from a leased space at 100 West Chicago Avenue in East Chicago to a facility it owned at 1313 West Chicago Avenue.[2] All of Nevaeh's invoices in the record contain the line item "Move Management and Architectural Consulting for ECCHC – Move from 100 W to 1313." *See, e.g.,* EC Exs. G2-G4. The corresponding payment records show payment for "Move Mgmt & Architect Charges." *See id.* East Chicago does not explain how costs budgeted for renovation of existing space could properly be used for moving costs. Some of the invoices also contain the line item "Management of Move and Building Renovation Project," but the invoices do not break down renovation-related costs. Thus, East Chicago failed to show the costs related to Nevaeh's services were incurred for projects covered in the grant and, therefore, allowable.

C. Expenditures for employee supervision of construction projects

East Chicago does not address the audit finding that it used CIP funds to pay employees for supervising construction projects. East Chicago submitted no evidence that, in fact, its employees spent any time overseeing the project for alteration/renovation of the OB/GYN suite, much less any evidence that time spent for that purpose warranted charging the CIP award the employee salary costs the auditors questioned.

East Chicago did submit documentation regarding other costs that it says it paid with CIP funds, but its submission of documentation of other expenditures does not establish that it did not also use grant funds to pay employees to supervise construction projects. Indeed, it is unclear why East Chicago submitted the documentation it did and what the documents are supposed to show. The expenditures documented in its submissions total approximately $560,000, more than the amount disallowed by HRSA but less than the total amount of the CIP grant. *See* EC Ex. G at 2; HRSA Ex. 7, at 2. Yet, East Chicago does not explain this discrepancy or articulate how particular documents provide a basis

[2] HRSA submitted an exhibit which states that in September 2009 East Chicago "moved its operations to its owned facility at 1313 W. Chicago Avenue and cancelled the lease for their 100 W. Chicago Avenue location." HRSA Ex. 4, at 12.

for reversing part or all of the disallowance. Nor did East Chicago even demonstrate that the documentation it presented relates to the disallowed costs, as opposed to costs that were already allowed by the auditors. Accordingly, there is no basis for overturning or reducing this part of the disallowance.

2. HRSA properly disallowed drawdowns that lack supporting documentation.

HRSA's disallowance also was based on its determination that East Chicago failed to provide documentation supporting three drawdowns of federal funds totaling $129,071:

1) A cash draw request dated 10/28/2010, with a cash draw settlement date of 10/29/2010, in the amount of $26,071.42;
2) A cash draw request dated 11/19/2010, with a cash draw settlement date of 11/22/2010, in the amount of $63,000; and
3) A cash draw request dated 12/17/2010, with a cash draw settlement date of 12/20/2010, in the amount of $40,000.

HRSA Ex. 1, at 2-3. The auditor found that East Chicago had not provided documentation establishing that the drawdowns were made for allowable expenditures under the CIP grant. *Id.*; HRSA Ex. 4, at 35. In response to the audit report, East Chicago implemented a cash disbursement and accounts receivable policy that requires the paperwork and signatures supporting cash draws to be obtained before funds are disbursed. HRSA Ex. 12, at 3rd page (unnumbered). East Chicago did not, however, submit to HRSA any documentation supporting the questioned drawdowns.

On appeal, East Chicago submitted numerous documents about various expenditures that it claims it incurred for purposes related to the CIP grant. The documents that East Chicago submitted on appeal are dated from January 8, 2009 (significantly earlier than the period of time, January 1, 2010 to December 31, 2010, covered by the audit) to May 12, 2011 (significantly later than the period of time covered by the audit). East Chicago makes conclusory statements about certain documents, asserting, for example, that "[e]xpenditure exhibit G32 shows allowable equipment costs incurred within the project period." EC Reply Br. at 5. But East Chicago does not explain how any of the documentation substantiates the disallowed drawdowns, and the exhibits themselves do not shed light on whether they represent allowable costs. For example, the cited exhibit does not provide specifics about what equipment was purchased or how that equipment related to either of the approved grant projects (the renovation or the telephone system).

Only two pieces of documentation even appear to relate to expenditures incurred around the time period – October to December 2010 – when the disallowed drawdowns were requested and made. First, there is an invoice for $1,150 stamped with a "posted" date of October 20, 2010 from Tri Electronics that pertains to unidentified material and labor, and a payment record dated October 21, 2010 for payment to Tri Electronics in the amount of $1,150 for "IT service." EC Exs. G37 & G37a. Second, there is an invoice for $13,750 stamped with a "posted" date of November 4, 2010 from Geminus Corporation "to provide support for Vision CHC Management and Desktop Support for the month of November," and a payment record dated December 2, 2010 for payment to Geminus Corporation in the amount of $13,750 for "Vision Practice Mgmt and Support." EC Exs. G41 & G41a.

This documentation does not help substantiate the disallowed drawdowns. The two payments total only $14,900, significantly less than the total amount of the disallowed drawdowns. Moreover, there is no evidence that the expenditures were allowable and allocable to the CIP grant. According to East Chicago's brief, the payment to Tri Electronics was for "allowable site renovation costs," but nothing in the record backs up this assertion. EC Reply Br. at 5. Conclusory assertions in a brief do not constitute evidence, much less substitute for adequate source documentation. There is no evidence tying Tri Electronics' services to either of the projects that were within the scope of the grant – the renovation of East Chicago's OB/GYN suite and the replacement of East Chicago's telephone equipment. Instead, the payment record shows the payment was for IT services, which, as discussed above, were not within the scope of the grant. Likewise, nothing in the record supports East Chicago's contention that the payment to Geminus Corporation was an "allowable expenditure[] under the grant award for health information technology." *Id.* at 6. To the contrary, the Geminus invoice says that the charges were incurred for monthly "desktop support," but again, such computer IT costs were not within the scope of the grant. In any event, the grant award did not cover IT services.

Thus, we uphold the disallowance of drawdowns in the total amount of $129,071.

3. HRSA properly disallowed disbursements that lack supporting documentation.

HRSA also based the disallowance on seven disbursements of CIP grant funds by East Chicago totaling $7,720 that HRSA concluded lacked documentation establishing that they were made for allowable costs under the grant:

1) A disbursement dated 1/5/2010 to Moneris Solutions in the amount of $46;
2) A disbursement dated 3/12/201 to Medical Arts Press in the amount of $413.88;
3) A disbursement dated 3/15/2010 to Cardinal Health Medical Products and Services in the amount of $322.78;
4) A disbursement dated 3/25/2010 to Rajaraman Iyer, MD in the amount of $1,767.42;

5) A disbursement dated 5/2/2010 to Intuit in the amount of $169.98;
6) A disbursement dated 8/19/2010 to Medical Systems, Inc. in the amount of $4,823.20; and
7) A disbursement dated 10/21/2010 to Minute Man in the amount of $177.

HRSA Ex. 1, at 3. None of the documentation East Chicago submitted on appeal shows that payments were in fact made on the dates in question to the vendors or for the amounts at issue, nor has East Chicago identified the goods or services for which any of the disbursements were made or how those goods or services supported the grant projects. Accordingly, we uphold the disallowance of $7,720 that represents the total amount of the seven disbursements.

Conclusion

For the reasons explained above, we uphold HRSA's disallowance in the full amount of $507,779.

/s/
Judith A. Ballard

/s/
Sheila Ann Hegy

/s/
Leslie A. Sussan
Presiding Board Member