

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: GLEAMS Human Resource Commission, Inc. DATE: April 28, 1981
Docket Nos. 79-63 and 79-64
Decision No. 162

DECISION

GLEAMS Human Resource Commission, Inc. (Grantee) by letters dated May 8, 1979 submitted applications for review of two February 9, 1979 determinations by the Acting Director, Grants Administration Division, Office of Human Development Services (OHDS, Agency), Region IV, disallowing \$30,784 and \$43,538 in unauthorized expenditures and costs in excess of the authorized budgets for, respectively, its program year J and program year K Head Start grants. A separate docket number was assigned to each of the disallowance determinations.

The record on which this decision is based includes Grantee's applications for review, the Agency's response thereto, the Agency's response to an April 18, 1980 inquiry from the Board seeking clarification of the amounts of the disallowances, and the parties' responses to an Order to Show Cause issued by the Board on March 2, 1981.

I. Statement of the Case

Neither notification of disallowance sets forth the reasons for the disallowances but merely refers Grantee to the audit reports.

The audit report for program year J (Audit Control No. 04-86012) shows that the OHDS Office of Child Development's (OCD) share of Grantee's approved budget was \$658,977, but that Grantee had incurred expenses of \$663,242, resulting in an overexpenditure of \$4,265. Included in the calculations that resulted in these totals was an entry under the line "Equipment" that Grantee was authorized to spend \$13,750 on equipment, but had actual expenditures of \$40,269, for a deficit of \$26,519.

The notification of disallowance concerning program year J (April 1, 1976 through March 31, 1977) stated that Grantee had expended \$26,519 on equipment for which no Agency approval had been obtained and had unallowable costs in excess of its approved budget of \$4,265 for a total disallowance figure for program year J of \$30,784. The notification of disallowance stated that Grantee's subsequent period federal funds would be reduced by \$26,519 and that Grantee must repay \$4,265 with cash from non-federal sources.

The revised audit report for program year K (Audit Control No. 04-86263) shows that OCD's share of Grantee's approved budget for its full-year/part-day Head Start program was \$681,400, but that Grantee had adjusted actual expenses of \$711,696, resulting in an overexpenditure of \$30,296. Included in the calculations that resulted in these totals was an entry under the line item "Equipment" that Grantee was authorized to spend \$30,000 on equipment, but had actual expenses of \$35,313, for a deficit of \$5,313. In addition, the audit report shows that Grantee had \$7,928 in adjusted actual expenses in excess of its approved budget for its Handicapped Services program grant for the period April 1, 1977 through August 30, 1977.

The notification of disallowance concerning program year K (April 1, 1977 through March 31, 1978) stated that Grantee had expended \$5,313 on equipment for which no Agency approval had been obtained and had unallowable costs in excess of its approved budget of \$38,225 (our own calculations indicate this amount should be \$38,224, a figure which we will use throughout this decision), for a total disallowance figure for program year K of \$43,538. The disallowance for excess unallowable costs for program year K was arrived at by adding \$7,928 to \$30,296. The notification of disallowance stated that Grantee's subsequent period federal funds would be reduced by \$5,313 and that Grantee must repay \$38,224 with cash from non-federal sources.

In its applications for review Grantee has admitted that expenditures in excess of its authorized budgets may have occurred, but has argued that the expenditures were "valid and necessary" and that any deviation from federal guidelines "was done unknowingly without any negligent, fraudulent, or malicious intent." (Grantee's letter of May 8, 1979, p.3.) Grantee has submitted separate lists of its equipment purchases for program years J and K. The equipment purchases that caused Grantee to exceed its budgets were primarily due to the purchase of vans to be used for the transportation of children participating in Grantee's Head Start program. Grantee has also submitted a letter dated May 7, 1979 from its project director in which he claims to have interpreted a July 28, 1976 letter from the OCD's deputy director as a mandate for improving Grantee's transportation system; on this basis Grantee's project director purchased vans without any explicit approval from the Agency.

In its response to Grantee's application the Agency has argued that Grantee is seeking the retroactive award of a supplemental grant for the years in question, an act the Agency asserts is beyond the Board's jurisdiction. The Agency has also cited federal regulations and the OHDS Grants Administration Manual as requiring a grantee to request prior written approval for budget revisions whenever the revisions indicate a need for additional Federal funding. The Agency further has

denied that the July 20, 1976 letter from the OCD deputy director was an authorization for Grantee to purchase the vans. In summary, the Agency has stated, "while OHDS recognizes that there may have been a need for the equipment, [Grantee] having failed to request, and thus to secure, permission, the purchases were unauthorized and must be disallowed." (Agency's August 24, 1979 response to the appeal, p.3.)

II. Discussion

The preliminary question that must be addressed in these cases concerns the correct amounts of the disallowances at issue. An initial examination by the Board of the audit reports on which the disallowances were based revealed the possibility that in both program years J and K certain items were, in effect, being disallowed twice. Expenditures for equipment purchases for which, it was alleged, no Agency approval had been obtained were disallowed and were also apparently used to calculate the total disallowed amount by which Grantee had exceeded its budget in each program year.

On two occasions, in an April 18, 1980 letter and in a March 2, 1981 Order, the Board sought clarification of the disallowance amounts from the Agency. Each time the Agency agreed with the Board's analysis of the audit reports and admitted the equipment purchases were in essence disallowed twice and suggested alternative methods of determining a disallowance amount. If the equipment purchases were held to be allowable, the Agency has asserted, there still would be a resulting cost over budget of \$4,265 for program year J and \$38,224 for program year K; alternatively, if the equipment purchases were held to be unallowable, the total disallowances would be \$26,519 for program year J and \$38,224 for program year K.

Equipment Purchases

Grantee has claimed that it believed it had Agency authorization to purchase vans to transport Head Start children. The July 28, 1976 letter from the OCD deputy director, cited by Grantee as this authorization, reads in part:

Mainly because of lack of funds, the grantee is facing problems in the areas of transportation, The buses are crowded, in need of constant maintenance due to their age, and must make several trips in some cases to transport children because of the inadequate number of buses available. This problem must be corrected not only because it impairs the program programmatically, but more importantly, because of the safety implications. We cannot compromise on safety. The program must have enough buses to prevent overcrowding; the buses must be mechanically in good shape and displayed appropriately with lettering and lights....

At the applicable time, Grantee has asserted, 46% of its buses had mileage in excess of 80,000 miles, and 8% in excess of 100,000 miles. The average age of the buses was six years.

In its response to Grantee's appeals, the Agency has argued that the letter did not grant authority to purchase the vans. It is the Agency's contention that any purchase by Grantee that would have resulted in a budget revision requiring additional federal funding needed prior written approval by the Agency. The Agency has cited the provisions of 45 CFR Part 74, Subpart L, and the OHD Grants Administration Manual as requiring prior Agency approval for budget revisions.

In its Order the Board pointed out that apparently neither Subpart L of 45 CFR Part 74 nor the OHD Grants Administration Manual on budget revision procedures was binding on Grantee for its program years J and K. The version of 45 CFR Part 74 which governed during program years J and K provided that Subpart L was applicable only to state and local government grantees, 45 CFR 74.1(a) (38 FR 26274, September 19, 1973), unless, according to 45 CFR 74.4(a), it was specifically made applicable to other grantees in a duly published policy statement. The Agency has not provided us with such a policy statement. The OHD Grants Administration Manual is dated 1/1/77, after the program year J grant was awarded. The Manual, moreover, was not published in the Federal Register until April 22, 1977 (42 FR 21047); 42 U.S.C. 2928f(d) requires that all rules, regulations, guidelines, and instructions applicable to the Head Start program be published in the Federal Register 30 days prior to their effective date. Therefore the effective binding date of the guidelines set forth in the Grants Administration Manual was May 22, 1977, after program year K had begun. In its Order the Board asked the Agency for further support for its contention that Grantee needed prior approval to purchase the vans.

In its response the Agency again cited a provision of 45 CFR Part 74, Subpart L, without demonstrating Part 74's applicability, and a proposed regulation, 45 CFR 1301.2-5, that was never formally adopted. The Agency has thus failed to provide us with any applicable regulations requiring prior Agency approval of Grantee's van purchases.

In any event, we find that Grantee acted reasonably to purchase the vans in light of the Agency's July 28, 1976 letter. The letter was from a responsible Agency official with supervision over Grantee's Head Start program. While this letter does not direct Grantee to purchase new buses, the tenor of the letter is that Grantee should do something about the current state of its transportation system. The letter refers to the age of Grantee's buses and their inadequate number. It contains such imperative phrases as "this problem must be corrected," "we cannot compromise on safety," and "the program must have enough buses." The Agency has

pointed out in its response to the Board's Order that the letter continued to state that Grantee must obtain prior Agency approval of its plans to comply with a Regional OHDS instruction regarding the transportation of its children. That instruction, however, dealt with the need for Agency approval of a Head Start grantee's overall transportation plan for its children, and not with the need for Agency approval of purchases of equipment a grantee might use in its transportation system.

The Board has, in several previous decisions, construed prior approval requirements in favor of a grantee on grounds that advance approval requirements not plainly warranted by the case should not be read into ambiguous situations. St. Landry Parish School Board, Decision No. 17, May 28, 1976; See, also, Point Park College, Decision No. 16, May 20, 1976, and University of California--General Purpose Equipment, Decision No. 118, September 29, 1980. Furthermore, we note that the Agency has conceded a need on Grantee's part for the vans, thus leading us to surmise that if Grantee had formally sought Agency approval, it would likely have been given. We therefore find the equipment purchases to be allowable to the extent that the purchases did not result in budget overexpenditures.

Neither party has substantively addressed the issue of the allowability of the questioned \$5,313 for equipment purchases in program year K. We believe there is no necessity to decide whether these costs are allowable since, regardless of the finding on this issue, the disallowance, as shown by the Agency's revised calculations, would remain the same, \$38,224. We do note, however, that the problems we found in the alleged prior approval requirements for the program year J purchases are also applicable to program year K.

Budget Overexpenditures

The disallowances remaining in dispute are \$4,265 for program year J and \$38,224 for program year K, representing expenditures in excess of approved budgets. In its Order, the Board asked Grantee to show cause why the disallowances representing budget overexpenditures should not be sustained on the grounds that the Board has no authority to forgive a budget overexpenditure or issue a supplemental grant. See, e.g., Pinellas Opportunity Council, Inc., Decision No. 80, February 6, 1980; Anderson-Ocone Headstart Project, Inc., Decision No. 90, April 28, 1980. In its response Grantee did not address this question. Accordingly, based on our prior decisions and Grantee's failure to offer grounds why these decisions should not be controlling for the appeals now before us, we sustain the disallowances representing budget overexpenditures.

We note that of the \$38,224 disallowed for program year K, \$7,928 represents an alleged overexpenditure by Grantee in its Handicapped Services grant. In its Order to Show Cause the Board asked the Agency to explain its calculation of the alleged overexpenditure in Grantee's Handicapped Services grant. In its response the Agency explained that the terms of the Head Start and Handicapped Services grants were not coterminous, the Head Start grant running from April through March, the Handicapped Services grant from September through August. When the audit for program year K was conducted, the Handicapped Services grant year was not completed. The Agency stated that the audit actually examined the previous year's Handicapped Services grant from September 1, 1976 through August 31, 1977, and found an overexpenditure of \$7,928. We accept this explanation. The Board notes, however, that the audit report for program year J (Audit Control No. 04-86012) states that during program year J Grantee had a fund balance from prior Handicapped Service grants of \$17,032. The \$17,032 fund balance from prior grant years could be used to offset the \$7,928 deficit with Agency permission, but we will not order such an offset unilaterally as this is a grant administration matter. If Grantee should request such an offset, we would urge the Agency to give the request due consideration.

III. Conclusion

For the reasons stated above, we sustain the disallowance for program year J in the reduced amount of \$4,265 and the disallowance for program year K in the reduced amount of \$38,224.

/s/ Cecilia Sparks Ford

/s/ Donald F. Garrett

/s/ Alexander G. Teitz, Panel Chair