

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Suitland Family and Life Development Corporation
Docket No. A-10-20
Decision No. 2326
August 5, 2010

DECISION

The Suitland Family and Life Development Corporation (SFLDC) appeals the October 29, 2009 decision of the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing \$164,237 in federal funds paid to SFLDC under two SAMHSA grants during fiscal years 2006 and 2007 (FY06, FY07). The grants at issue are a Drug Free Communities Support Program grant (DFC grant) and a Drug Free Communities Mentoring Program grant (DFC-Mentor grant).

For the reasons discussed below, we uphold in part and reverse in part SAMHSA's determination. We conclude that SFLDC failed to meet applicable documentation and conflict of interest requirements, and, therefore, uphold SAMHSA's disallowance of \$143,836 in federal reimbursement paid to SFLDC in FY06 and FY07 and SAMHSA's determination related to a non-federal share contribution of \$5,401 for Project Manager services under the DFC grant in FY06. SFLDC is not required to return the disallowed non-federal share funds, however, because SFLDC met the non-federal share requirement for FY06 without regard to this \$5,401. Finally, we reverse SAMHSA's determination related to a non-federal share contribution of \$15,000 for training services allegedly provided under the DFC-Mentor grant in FY06.

Legal Background

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

Under the cost principles, a cost is allowable 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) and "adequately documented" (*id.* at ¶ A.2.g). As for documentation, the regulations require a grantee to have in place a financial management system that provides "[r]ecords that identify adequately the source and application of federal funds" as well as "[a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. §§ 74.21(b)(2), (b)(7).

Under the terms of its award, SFLDC also was required to comply with the requirements in the HHS Grants Policy Statement (GPS). *See, e.g.*, SAMHSA Atts. D, E. The GPS requires, among other things, that grantees maintain financial management systems that are adequate to account for the expenditures of grant funds and to ensure that such funds are handled responsibly. GPS at II-61.

In addition to disallowing costs that are not allowable under the applicable cost principles, an awarding agency may, “[i]f a recipient materially fails to comply with the terms and conditions of an award, . . . [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).

The Board has repeatedly held that, under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. *Benaroya Research Institute*, DAB No. 2197 (2008) (citing cases). The Board has also held that “[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee,” and 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, allocable to the grant.” *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007); *see also Northstar Youth Services*, DAB No. 1844, at 5 (2003).

Factual Background¹

SFLDC is a non-profit corporation operating in the low-income community of Suitland, Maryland. During the time period at issue, it administered multiple federal grants and engaged in development projects involving a technology center and residential housing. *See, e.g.*, SAMHSA Atts. SS; QQ; RR; SFLDC Exs. H; U.

In 2003, SAMHSA awarded SFLDC a multi-year DFC grant (Grant No. SP12377). The goals of the DFC program are, primarily, to “reduce substance abuse among youth” and to “establish and strengthen collaboration among communities, public and private nonprofit agencies, and [governments] to support the efforts of community coalitions to prevent and reduce substance abuse among youth.” SAMHSA Ex. JJ at 1. SFLDC served as the “fiscal agent” for the community coalition supported by this grant. SAMHSA Att. LL. The community coalition that the grant supported was known as the

¹ The background is drawn from the record in this case, which includes briefs by the parties, Exhibits A through X filed by SFLDC, Attachments A-XX filed by SAMHSA; and a transcript of an informal conference conducted on June 3, 2010 pursuant to 45 C.F.R. § 16.10.

Substance Abuse Treatment, Education and Prevention (STEP) Network. SFLDC Ex. R at 5.

In 2005, SAMHSA awarded SFLDC a multi-year DFC-Mentor grant (Grant No. SP13561). Under this grant, the grantee serves as a mentor to other organizations “to support and encourage the development of new, self-supporting community anti-drug coalitions to meet the goals of the DFC.” SAMHSA Ex. KK at 1.

For both of these grants, Sylvia Quinton, who was also the Executive Director of SFLDC, was identified as the “Project Director.” SAMHSA Exs. D, at 1; E, at 1.

In July 2006, at SAMHSA’s request, the Department of Health and Human Services Office of Inspector General (OIG) conducted a recipient capability audit (RCA) of SFLDC. The purpose of a RCA is to evaluate an organization’s “general capability to satisfactorily manage and account for Federal financial assistance.” SFLDC Ex. B at 1. The OIG audit identified numerous serious deficiencies with SFLDC’s financial management practices. SAMHSA Att. C. These included lack of written procedures for “determining the reasonableness, allocability and allowability of costs in accordance with . . . Federal cost principles and the terms and conditions of the award” (*id.* at 3); failure to base accounting records on “supporting documentation for the underlying transactions” (*id.* at 4); “lack of segregation of duties” resulting in the Executive Director’s being responsible for “requesting the expenditure, approving the expenditure, and preparing and signing the checks” (*id.*); “apparent conflict of interest and related-party transactions” (*id.*); and “no segregation of costs, revenues, and assets by project” (*id.* at 6). In January 2007, SAMHSA notified SFLDC of “corrective actions . . . required by your organization to resolve the [OIG’s] recommendations made as a result of its [RCA] of your organization.” SFLDC Ex. D at 1.

In the course of SAMHSA’s dealings with SFLDC to ensure that such deficiencies were corrected, SAMHSA questioned the allowability of a range of costs claimed by SFLDC under these grants. After several discussions with SFLDC, SAMHSA issued a “Preliminary Final Decision” identifying specific unallowable costs and asking SFLDC to refund the costs or “provide documentation that adequately supports” the costs. SFLDC Ex. N at 4, *see also id.* at 8.

SAMHSA found SFLDC’s subsequent response inadequate and, on October 29, 2009, issued a “Final Decision” disallowing \$164,237 in allegedly unallowable costs claimed by SFLDC under these grants for the period October 2005 through August 2007. SAMHSA Att. B at 11. In the letter, SAMHSA disallowed costs for services allegedly provided by Ms. Quinton on the ground that SFLDC had failed to adequately document such costs and services. *Id.* at 1-5. Additionally, SAMHSA disallowed other costs on the ground that the transactions associated with those costs involved conflicts of interest. *Id.* at 5-9.

Analysis

1. We uphold SAMHSA's disallowance of costs related to Ms. Quinton's compensation.

SAMHSA disallowed two types of costs related to Ms. Quinton's compensation. The first type was costs claimed as compensation allegedly paid to her under the DFC-Mentor grant. The second type was costs claimed as non-federal share for services she allegedly provided under the DFC grant.

a. Compensation allegedly paid to Ms. Quinton under the DFC-Mentor grant

While Ms. Quinton was the Project Director for the DFC-Mentor grant (and also Executive Director of SFLDC), SFLDC hired her for both positions as a consultant rather than as an employee.² SFLDC Exs. K at 1; O at 3; P at 2; SAMHSA Att. Q at 4. SAMHSA disallowed \$69,000 in costs that SFLDC claimed as payments to Ms. Quinton for her services as the Project Director for the DFC-Mentor grant in FY06 and FY07 (SAMHSA Atts. Q, R, T-W) because: (1) SFLDC did not pay this money to Ms. Quinton; (2) SFLDC did not have an adequate consulting contract with Ms. Quinton for her services as a Project Director; and (3) SFLDC did not adequately document the services Ms. Quinton allegedly provided as Project Director. Below we discuss the facts underlying this reimbursement and why we uphold this portion of the disallowance.

(1) Nonpayment of the funds

SAMHSA disbursed grant funds to SFLDC on a reimbursement basis pursuant to Standard Form-270s (SF-270). *Id.* (SF-270s showing that, in response to the question about the "TYPE OF PAYMENT REQUESTED," SFLDC checked "REIMBURSEMENT" rather than "ADVANCE"); TR at 38-40. SFLDC operated on a "cash" as opposed to an "accrual" accounting basis.³ Thus, in filing the SF-270s seeking

² The cost principles authorize the use of consultants where there is a "necessity . . . considering the non-profit organization's capability in the particular area." 2 C.F.R. Part 230, Att. B, ¶ 37.b.2. The cost principles also limit the hiring of consultants to people who "are members of a particular profession or possess a special skill, and who are not officers or employees of the non-profit organization." *Id.* ¶ 37.a. We do not consider whether the cost principles would allow for the consulting relationship formed by SFLDC and Ms. Quinton for the administration of these grants because SAMHSA did not raise this issue.

³ Ms. Quinton asserted at the informal conference that SFLDC operated on an accrual basis (TR at 38-40). However, on the majority of the SF-270s, SFLDC identified its accounting methodology as "Cash" rather than "Accrual" and on the remainder did not check either choice. SAMHSA Atts. Q, R, S, T, U, V, W. Additionally, SFLDC's 2006 and 2007 income tax returns, which were signed by Ms. Quinton, state that its "Accounting Method" was "Cash." SAMHSA Atts. VV, WW. Moreover, even if SFLDC was operating on an accrual basis, its SF-270s represented that it had actually incurred obligations to pay Ms. Quinton and, under 45 C.F.R. § 74.22, it was

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reimbursement of costs, SFLDC was representing to SAMHSA that it had incurred obligations and made payments in satisfaction of those obligations.

SFLDC submitted six SF-270s seeking reimbursement totaling \$69,000 for Ms. Quinton's compensation. *See* SAMHSA Atts. Q, R, T-W. SFLDC attached to each SF-270 a "budget" chart setting forth the components of the amount claimed on the SF-270. *Id.* On those charts, SFLDC identified Ms. Quinton's compensation at issue here as a "CONTRACT Federal Request (Consultant)" for payments for the "service" of the "Project Director." *Id.* Based on SFLDC's representations, SAMHSA disbursed the claimed \$69,000 during FY06 and FY07 to reimburse SFLDC for payments that it represented that it had made to Ms. Quinton for such services.

SAMHSA asserted and SFLDC did not dispute that it failed to provide any documentation to show that it actually paid this \$69,000 to Ms. Quinton. SFLDC Ex. N; SAMHSA Atts. B; F. Moreover, at the informal conference, Ms. Quinton stated that the money was never paid to her (TR at 37) and characterized the \$69,000 as having been a "donation" to SFLDC (*id.* at 40). Under these circumstances, SAMHSA properly disallowed these funds for the following reasons.

- SFLDC drew down these funds on the basis of its representations to SAMHSA that it had paid them to Ms. Quinton. Not only had SFLDC not done so at the time that it filed the SF-270, but, in fact, it never paid them to her. This constituted a misrepresentation to SAMHSA about SFLDC's use of these grant funds.
- If SFLDC had had an understanding with Ms. Quinton that it was not obligated to pay this money to her, SAMHSA would have had no authority to disburse these funds under the grant because the funds would not constitute an obligation under 45 C.F.R. § 74.2.⁴ Moreover, if SFLDC was not obligated to pay Ms. Quinton for these services, the services should have been reported on the SF-270 attachment as donated in-kind services, as were other in-kind consultant services. *See, e.g.,* SAMHSA Att. Q at "Detailed Budget" at 2. We raise this consideration because the February 20, 2007 "Board-Staff Meeting" minutes reflect that, at least when she began working for SFLDC, Ms. Quinton agreed to serve as its "unpaid Executive Director, in exchange for a portion of equity in the community development project which was the central focus of the organization." SFLDC Ex. R at 27. In addition, SFLDC's ongoing community development activities

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obligated to minimize the time between the subsequent receipt of federal funds and disbursement of those funds, which it did not do here.

⁴ Section 74.2 defines "obligations" as "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."

(SAMHSA Att. S) coupled with (as discussed below) Ms. Quinton's ongoing management of a number of other grants and projects for SFLDC, indicate that she had financial arrangements with SFLDC that are not fully reflected in the record and that might account for SFLDC's failure to disburse these particular funds to her.

- On the other hand, if SFLDC was obligated to pay Ms. Quinton these funds, the record should include documentation of such payment. Furthermore, if she made a bona fide cash contribution to SFLDC, the record should include documentation that she actually made such a contribution. Failure to have taken these steps would circumvent SFLDC's internal controls over expenditures, as well as potentially result in a misrepresentation to the federal government as to the true amount of Ms. Quinton's earned income.

In either case, SFLDC's treatment of these grant funds was not accurately reported to SAMHSA, and SFLDC has failed to show that it expended these funds for allowable costs.

(2) Lack of an adequate consulting contract

Under 2 C.F.R. Part 230, App. B, ¶ 37, the allowability of consultant fees depends on a number of factors including the "[a]dequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions)." 2 C.F.R. Part 230, Att. B, ¶ 37.b.8. As SAMHSA alleges, we agree that SFLDC failed to comply with this standard because it did not document that it had an adequate consulting contract for these services. SAMHSA Att. F at 5.

While Ms. Quinton represented that she had an oral consulting contract with SFLDC during this period (SFLDC Ex. K at 1), SFLDC did not submit evidence as to the terms of any such contract. As for written contracts, SFLDC provided SAMHSA copies of consultant contracts executed on March 25, 2007 effective March 26, 2007 (SAMHSA Att. CC) and on December 21, 2007 effective July 1, 2005 (SAMHSA Att. BB).

Regardless of whether or not oral agreements could be ratified by subsequent written contracts under OMB Circular A-122, neither contract's terms satisfied the requirements of 2 C.F.R. Part 230, Att. B, ¶ 37.b.8. In the March 2007 contract, Ms. Quinton agreed to serve as SFLDC's "executive director" on a consultant basis. SAMHSA Att. CC at 2. The attached list of "responsibilities and duties" states only, insofar as is relevant here, that as executive director she will "monitor grants and program activities compliance" and "supervise program managers." *Id.* at 3. The December contract calls only for her to "provide organizational and technical management service including . . . program development and project management for SFLDC projects and activities." SAMHSA Att. BB at 2. Thus, the description of services to be provided under these contracts is overly broad and not specifically tied to the grant. Nor do the contracts contain estimates of the time required to perform the services.

(3) Inadequate documentation of services

Finally, SAMHSA disallowed these costs on the ground that they were not supported by adequate documentation of Ms. Quinton's work under the grant. SFLDC Ex. N at 4; SAMHSA Att. B at 5. We agree that the documentation in the record is inadequate, particularly in light of Ms. Quinton's multiple roles in SFLDC and other organizations. Much of the documentation on which SFLDC relied did not describe with sufficient specificity the services rendered by Ms. Quinton. For example, in the SF-270 filed for the period October 1, 2005 to March 31, 2006, SFLDC claimed \$18,000 for Ms. Quinton's services based on an "invoice" that listed two events and three activities (i.e. "preplanning" for a meeting; "coalition development" for mentees; and "needs assessment" for mentees) but failed to identify the time and cost attributable to each event or activity. SAMHAS Att. Q at 7.

Moreover, the documentation does not provide a sound basis for allocating all of these costs to the DFC-Mentor grant. We base this determination on the following considerations.

- Ms. Quinton worked for SFLDC as consultant under multiple federal grants, including these two SAMHSA grants and was also, on a consultant basis, SFLDC's Executive Director and involved in SFLDC's multiple redevelopment projects.⁵
- Additionally, Ms. Quinton was the executive director of Strategic Community Services, Inc. (SCSI). SAMHSA Att. FF. SCSI was "a management and technical assistance firm" (SAMHSA Att. LL at 12; *see also*, SFLDC Exs. I, at 5-6; S, at 2) that was founded by Ms. Quinton and provided assistance to groups such as SFLDC. SFLDC Ex. I at 5-6. SCSI had its own federal grants and other clients for which Ms. Quinton also worked as a consultant. *See, e.g., id.*; TR at 53, 80; SFLDC Ex. H at 2-3 (in which Ms. Quinton, as of June 2007, clarified to SAMHSA her current "level of effort" under these grants and stated that "[a]fter October 1, once we see [] how many new federal awards my clients received, we intend to notify SAMHSA of changes to my level of effort"). Indeed, SAMHSA

⁵ *See, e.g.*, SAMHSA Atts. SS (July 2004 Board minutes referring to work on the SFLDC Technology Center project and the fact that SFLDC was about to receive more than \$500,000 in federal funds); QQ (March 2005 Board minutes referring to the fact that SFLDC had assets of over \$1 million, that it has been asked to act as fiscal agent for Community Impact Funds for \$90,000, that it had been awarded a Youthbuild Grant for \$400,000, and that it was engaged in community economic development projects involving housing and the Technology Center); RR (December 2005 Board minutes referring to progress on the Technology Center, Youthbuild, and Community Housing Development Organization applications for housing development projects); SFLDC Ex. H, at 3-5 ("Monthly Progress Reports" submitted by Ms. Quinton for March – May 2007 discussing the DFC, DFC-Mentoring, Youthbuild, and Board Mentoring grants and work on the Technology Center and a "SFLDC Manor" project).

initially restricted the FY06 DFC-Mentoring grant because Ms. Quinton had represented her “level of effort” on that grant and her other SAMHSA grants to be 125%. SAMHSA Att. JJ at 2.

- To ensure that grantees accurately allocate employees’ work under multiple funding sources, OMB Circular A-122 requires, among other things, that grantees maintain “personnel activity reports . . . reflecting the distribution of activity of each employee . . . [and] account[ing] for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization” 2 C.F.R. Part 230, Att. B, ¶ 8.m.

Leaving aside the question of whether Ms. Quinton should have been required as a Project Director consultant to have kept records that met the requirements of 2 C.F.R. Part 230, Att. B, ¶ 8.m, the documentation she did maintain did not remotely contain the type of information OMB considers necessary to safeguard federal funds when a person is working under multiple funding sources.⁶ In light of these circumstances, the documentation submitted by SFLDC is inadequate to support the allocation of these costs to this grant.

b. Compensation claimed as non-federal share for services allegedly rendered by Ms. Quinton under the DFC grant

DFC grants require grantees to match 100% of federal grant funds, i.e., to contribute a “non-federal share” equal to the amount of federal funds received under the grant. 21 U.S.C. § 1532(b)(1)(A)(ii). Where a grantee fails to provide required non-federal share, SAMHSA may, in these circumstances, disallow a corresponding amount of federal funds. Here, SAMHSA determined that \$5,401 that SFLDC claimed as non-federal share for in-kind services allegedly provided by Ms. Quinton under the DFC grant in FY06 was, among other things, not adequately documented. We agree that the in-kind services were not adequately documented and, therefore, may not be counted towards SFLDC’s non-federal share requirements. As we explain below, however, SAMHSA is not entitled to require SFLDC to refund \$5,401 in federal funds on this ground.

The in-kind costs at issue were reported by SFLDC on SF-270s. SAMHSA Atts. I, J, K. In the budgets attached to the SF-270s, SFLDC described the amounts comprising this \$5,401 as “Contract,” “Non-Federal Request (Consultant)” costs for the services of Ms. Quinton as the “Project Director” for the DFC Grant. *Id.*

⁶ Hiring consultants to perform basic grant activities compromises the federal government’s ability to ensure that grant funds are properly charged and allocated unless those consultants are also required to maintain comprehensive documentation of their activities, such as the type of documentation required for employees. *See* 2 C.F.R. Part 230, Att. B, ¶ 8.m.

In a letter of November 21, 2007, SAMHSA asked SFLDC to support these costs with documentation. SFLDC Ex. N. In that letter, SAMHSA explained that: (1) the costs must be supported by “accounting records and source documentation, such as consultant agreements and invoices” (citing OMB Circular A-122, Att. A, ¶ A.2); (2) consultant services must be documented by “a contractual agreement that should include a description of the service, estimate of time required, rate of compensation, and termination provisions” (citing *id.* at Att. B, ¶ 37.b.8); and (3) “all cost sharing or matching contributions, including cash and third party in-kind, must be verifiable from the recipient’s records” (citing OMB Circular A-110, subpart C, ¶ 23(a)(1) and (4)). *Id.* at 2. SAMHSA informed SFLDC that it must either return the \$5,401 or “provide documentation that adequately supports [Quinton’s] compensation per OMB Circulars A-110 and 122.” *Id.* at 4.

In the disallowance letter dated October 29, 2009, SAMHSA stated that it was disallowing the value of these in-kind services because SFLDC had failed to provide “proper source documentation needed to validate [Quinton’s] compensation.” SAMHSA Att. B at 3. In addition to the authorities noted above, SAMHSA cited to 45 C.F.R. § 74.21, which requires grantees to have accounting records supported by source documentation, and section 74.23(a), which requires that in-kind matching contributions must be, among other things, “verifiable from the recipient’s records.” SAMHSA Att. B at 3.

Also relevant here, although not cited by SAMHSA, is 2 C.F.R. Part 230, Att. B, ¶ 8.m.4, which provides: “Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.” See also 45 C.F.R. § 74.23(c), (d), (e).

SFLDC provided no such documentation to SAMHSA prior to its appeal to the Board or, initially, in its appeal to the Board. TR at 19, 24. After the informal conference in which panel members asked Ms. Quinton about source documentation for these services (TR at 25-26), SFLDC submitted “in-kind service log[s]” (logs) purporting to document Ms. Quinton’s activities. SFLDC Ex. W.⁷ The logs purport to document a total of \$5,750 in in-kind services received from Ms. Quinton under the DFC grant in FY06. SFLDC Ex. W.

For the following reasons, we conclude that SFLDC has failed to adequately document these in-kind contributions.

⁷ SFLDC Exhibit W also contains in-kind service logs for 2007, but SAMHSA did not disallow costs for Ms. Quinton’s in-kind services during this period.

First, while SFLDC repeatedly complained that SAMHSA failed to clearly explain what would constitute adequate documentation (*see, e.g.*, TR at 7, 16,; SFLDC Br., at 5-8; SFLDC Reply Br., at 2-4), SFLDC could not have reasonably misunderstood (until June 2010) the type of documentation that it needed to give to SAMSHA to support these services. The grant award called for SFLDC to match 100% of the federal grant award. SAMHSA Att. E. As a grantee, SFLDC was responsible for knowing and fulfilling applicable documentation requirements, which include the documentation requirements for in-kind contributions. Moreover, as of November 2007, SAMHSA had specifically told SFLDC that it should provide “source documentation” for the claims.

Second, while the logs SFLDC finally produced in June 2010 are a type of source documentation for contributions of in-kind services, SFLDC made no representations about when the information on the logs was recorded, and Ms. Quinton’s signatures on the logs are undated. Given these factors and SFLDC’s delay in producing the logs, we find SFLDC has failed to show that the logs were completed contemporaneously with the services that they purport to document. The Board is generally reluctant to find that non-contemporaneous documentation of personnel services meets applicable record keeping requirements, holding that such documentation must be closely scrutinized.⁸

Philadelphia Parent Child Center, Inc., DAB No. 2297, at 6 (2009); *Camden County Council on Economic Opportunity, Inc.*, at 5, citing *North Dakota Children's Services Coordinating Committee*, DAB No. 1399 (1993) and *Second Street Youth Center Foundation, Inc.*, DAB No. 1270, at 5 (1991).

Third, the information recorded is inconsistent with other information submitted by SFLDC. Examples of such inconsistencies include the following.

- The level of effort reported on the logs does not correspond to the costs reported on SFLDC’s SF-270s. For example, the logs for October and November/December 2005 reflect four and a half days of service provided by Ms. Quinton during this period with a value of \$2,250 (\$500 per day). SFLDC Ex. W at 1, 3. However, on the SF-270 for the period October to December 2005, SFLDC reported only \$400 in in-kind services received from Ms. Quinton, which reflects less than a day of service. SAMHSA Att. I at 2. The other SF-270s reflect similar discrepancies when compared to the logs. SAMHSA Atts. I, K.
- The entries on the logs are inconsistent with other documents submitted in support of the logs. For example, the October 2005 log records eight hours for a Youth Development training on October 24. The attached agenda for the training reflects that it ran from 9 A.M. to 12 P.M., three hours rather than

⁸ We recognize that these costs were paid to Ms. Quinton on a consultant basis. However, she was acting as the Project Director for this grant and the costs are therefore in the nature of personal services costs.

eight hours. SFLDC Ex. W at 1-2. The November log records eight hours for a STEP Network meeting, but the attached agenda reflects that the meeting started at 1 P.M. and the last event for the meeting (“Next Steps/Wrap Up”) started at 3:15 P.M. *Id.* at 3-4. The February service log records 8 hours for a meeting on March 28, but the attached agenda states that the meeting was from 6:30 P.M. to 8:30 P.M. *Id.* at 6-7.

Finally, other factors in SFLDC’s arrangement with and compensation of Ms. Quinton dissuade us from treating the logs as credible source documentation of the reasonableness and allocability of these services. These include, as discussed in the previous section, the fact that Ms. Quinton had no written contract for the provision of services as the Project Director of the grant and that she has submitted no records that would support some means of allocating her services between SFLDC’s multiple funding sources and her outside work.

Although we uphold SAMHSA’s determination that these services do not qualify as non-federal share, we also hold that SAMHSA cannot require SFLDC to refund the value of the services. As the Board has pointed out, “disallowance of unallowable cost items charged to federal funds may affect calculation of a disallowance for failure to meet a non-federal share requirement. . . . In other words, if the total allowable costs are reduced, then the Grantee’s percentage share is also reduced.” *See infra* at section 2; *Seminole Nation of Oklahoma*, DAB No. 1385, at 2 n.2 (1993) (citations omitted); *see also, Philadelphia Parent Child Center, Inc.*, DAB No. 2297 (2009). Elsewhere in this decision, we uphold SAMHSA’s disallowance of \$29,876 in federal reimbursement under the FY06 DFC grant and, therefore, SFLDC’s non-federal share requirement for that year must be reduced by \$29,876. SAMHSA alleged that SFLDC failed to meet its non-federal share requirement by \$5,401. The disallowance of \$29,876 has reduced SFLDC’s non-federal share requirement by more than \$5,401. Based on SAMHSA’s allegations here, we conclude that SFLDC met its non-federal share requirement for FY06 under the DFC grant and does not have to return the value of this unallowable in-kind contribution to SAMHSA.

2. We uphold SAMHSA’s disallowance of SFLDC’s payments to Gail Cook, Elsie Jacobs, and the Hunter Memorial AME Church on the basis of conflict of interest. We reverse SAMHSA’s disallowance of non-federal share in-kind service donations by the Suitland Civic Association.

SAMHSA disallowed the remainder of the costs at issue and an in-kind non-federal share contribution on the ground that the associated transactions violated conflict of interest standards. The transactions involved Gail Cook, Elsie Jacobs, Hunter Memorial AME Church (Hunter), and the Suitland Civic Association (SCA).

a. Gail Cook and Elsie Jacobs

SAMHSA disallowed \$30,360 for consultant payments for services provided by Gail Cook as a logistics coordinator. SFLDC claimed these payments for the period January 1, 2006 to March 31, 2006 (SAMHSA Att. J) under the DFC-Mentor grant and October 1, 2005 to August 15, 2007 under the DFC grant (SAMSHA Atts. Q-X). SAMHSA disallowed \$33,816 claimed by SFLDC as wages and fringe benefits paid to Elsie Jacobs as a community liaison between October 1, 2005 and June 1, 2007 under the DFC-Mentor grant. SAMHSA Atts. I-P.

We uphold this portion of the disallowance because, as discussed below, the circumstances involved in these hirings evidence conflicts of interests, or at a minimum, the appearance of conflicts of interests, and constitute a material failure to comply with 45 C.F.R. § 74.42 and SFLDC's Financial Management Manual.

The circumstances of these hirings were as follows. SAMSHA first awarded the DFC grant to SFLDC in 2003. SFLDC Ex. U at 1. The grant enabled SFLDC to hire a logistics coordinator and a community liaison. According to the resulting job announcement, the logistics coordinator was to be responsible for "event and activities planning and support for the [STEP] Network" and the community liaison was to be responsible for "connecting the [STEP] Network to resources in Prince George's County." SFLDC Ex. R at 5.

Ms. Quinton, who was also the Executive Director of SFLDC and the DFC grant Project Director in 2003, handled the hiring process. Ms. Quinton represented that she advertised these positions by distributing the job announcements at a meeting of the SCA and a meeting of the Suitland Crime Action Team (SCAT). TR at 85.⁹ SFLDC submitted minutes of the October 20, 2003 SCA meeting reflecting distribution of the job announcements but no minutes reflecting distribution at any SCAT meeting or when such a meeting occurred. SFLDC Ex. U at 4-5. Applications for the jobs were required to be submitted by November 15, 2003. SFLDC Ex. R at 5.

Only two people responded to these job announcements. Gail Cook applied for the logistics coordinator position. *Id.* at 2. At this time, Gail Cook was the President of the Board of SCSA, Ms. Quinton's consulting company. *Id.* at 2. Elsie Jacobs applied for the community liaison position. At this time, Ms. Jacobs was President of SCA. SFLDC Ex. R at 6. SCA was identified on SFLDC's DFC grant application as one of two "key stakeholders" in the STEP Network for which this funding was requested. SAMHSA Att. LL at 6. In a letter to SAMHSA, Ms. Quinton stated that "[a]ny organization serving

⁹ Ms. Quinton described SCAT as "an ad hoc group that meets monthly to discuss crime and neighborhood improvements issues in Suitland" (SFLDC Ex. T) and asserted that "more than 60 individuals attend the [SCAT] meetings" representing a range of public, non-profit, resident, and business groups. TR at 85.

the Suitland community or activity to be conducted in Suitland must [have] developed relations with the [SCA].” SFLDC Ex. S at 2; *see also* TR at 77.

Additionally, while Ms. Quinton stated at the informal conference that Ms. Jacobs did not work for SCSJ during this period (TR at 79-81), Ms. Quinton admitted that SCSJ identified Ms. Jacobs as the prospective “Project Manager” in a March 2003 grant application filed by SCSJ for the “H2P Program” (TR at 78; SFLDC Ex. I at 3) and as the person responsible for “Community Organizing” for SCSJ in an SCSJ “Organizational Chart” (*id.* at 4). (SCSJ was awarded the H2P grant but did not ultimately hire Ms. Jacobs as the grant project manager. TR at 80.) In addition, Ms. Quinton stated during the informal conference that she did hire Ms. Jacobs to work at SCSJ from time to time, though not “during this entire period of time.” *Id.* at 79; *see also* 70-81.

The SFLDC Board minutes from November 2003 report that Ms. Quinton told the Board that “[a]t the October Civic Association the two staff positions were announced.” *Id.* at 1. The minutes do not state that the jobs were also announced at the SCAT meeting. The minutes state: (1) Ms. Quinton explained why the job announcements were “written to target individuals with direct connections to Suitland”; (2) Ms. Quinton told the Board that Ms. Cook and Ms. Jacobs were the only two applicants for the two positions; and (3) Ms. Quinton presented their resumes. *Id.* at 1-2. After a short discussion (as reflected in the minutes) at which Ms. Quinton was present, the Board hired Ms. Cook and Ms. Jacobs.

Section 74.42 of 45 C.F.R. provides in pertinent part:

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved.

SFLDC’s Financial Management Manual provided:

No director, officer, employee, or consultant shall use their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others such as those with whom they have family, business, or other ties.

SFLDC Ex. A at 7.

Here, the minutes demonstrate that Ms. Quinton participated in the meeting in which the Board decided to hire Ms. Cook and Ms. Jacobs rather than removing herself from this meeting, at least for the Board’s discussion and decision. SFLDC Ex. U at 1-2. Ms. Quinton’s failure to recuse herself violated section 74.42 and the SFLDC policy in the

following ways. *See Kansas Advocacy & Protective Services*, DAB No. 2079, at 15-16 (2007).

- As for Ms. Cook, she was the Chair of the Board of SCSI, the corporation that Ms. Quinton founded and for which Ms. Quinton served as executive director. Therefore, Ms. Cook had an ongoing relationship with Ms. Quinton and was someone who Ms. Quinton would have reason to treat favorably. Thus, Ms. Quinton's conduct gave at least the appearance of being "motivated by a desire for private financial gain for others," i.e., Ms. Cook, "with whom [Ms. Quinton] "had other ties." *Id.*
- As for Ms. Jacobs, Ms. Quinton worked with Ms. Jacobs at SCA, used Ms. Jacobs' name in filing other grant applications, and hired her periodically as a consultant. At a minimum, this illustrates that Ms. Quinton had an ongoing relationship with Ms. Jacobs that might cause her to treat Ms. Jacobs favorably in regards to the position at SFLDC.

Additionally, the role of the SCA in Suitland and Ms. Jacobs' role as President there raise serious questions as to whether there was actually an arm's length transaction in hiring Ms. Jacobs or whether the Board hired Ms. Jacobs as a favor to an influential Suitland organization rather than determining whether there were more qualified individuals.

Even if Ms. Quinton had removed herself from the Board's process, this would not have cured the conflict of interest problem because the record raises additional questions regarding other aspects of the hiring process. Thus, while Ms. Quinton represented that she adequately published these job announcements, the fact that the announcements generated only one application for each of the positions indicates that the publication was not in fact adequate or that Ms. Quinton intentionally limited distribution of the announcement so as to increase Ms. Cook's and Ms. Jacobs' chances of being hired. This is a particular concern because there is no evidence that the announcement was even made at a SCAT meeting, and the SFLDC minutes mention distribution only at the SCA meeting. SFLDC Ex. U at 1. Additionally, the lack of response raises a question as to whether it was understood by those associated with SFLDC and SCA (and perhaps SCAT) that Ms. Cook's and Ms. Jacobs' hirings were essentially predetermined.

For both these hires, we reject SFLDC's position that the nature of the grant and the community required it to hire people "with longstanding ties to the community" and "attempt to utilize all qualified individuals that seek compensation for services to support the DFC grants." SFLDC Ex. R at 2. While such people may ultimately be determined to be the best qualified candidates for particular jobs, such determinations must be made in the context of a genuine search for qualified candidates and pursuant to a process that involves individuals who do not have personal interest in the selection of a particular person. SFLDC failed to show here that it conducted such a search or process in hiring Ms. Cook and Ms. Jacobs.

b. Hunter Memorial AME Church

This part of the disallowance involved a consulting contract executed on April 10, 2006 by Ms. Quinton on behalf of SFLDC and the Pastor of Hunter Memorial AME Church (Hunter) and the subsequent payment to Hunter of \$10,660 in FY06 DFC grant funds for services based on a June 24, 2006 invoice. SFLDC Ex. R at 21-22; SAMHSA Att. K at 6. As explained below, this transaction involved a conflict of interest because the Pastor was a member of the SFLDC Board during this time. Moreover, even if he was not, the transaction involved the appearance of a conflict because it appears to have been made to induce Hunter to “reengage” with SFLDC in a “community partnership.” SFLDC Ex. R at 3. The following evidence supports these findings.

SAMHSA asserted that the Pastor was a member of the SFLDC Board of Directors as of December 2005 and became President of the Board in May 2006. SAMHSA Atts. B, at 7; F at 12. At the informal conference (and elsewhere), Ms. Quinton stated that the Pastor did not officially join the Board or become President until December 2006, at which time the commercial relationship with Hunter was “immediately discontinued.” TR at 113; *see also id.* at 114-115; SFLDC Ex. M at 1-2.

Contrary to Ms. Quinton’s assertions, the December 19, 2005 SFLDC Board minutes indicate that the Pastor joined the Board in December 2005, i.e., prior to April 2006 when the consulting contract was executed and prior to SFLDC’s payment to Hunter of \$10,660. Those minutes state:

[The Pastor] became pastor of [Hunter] in 2001. He was fully focused on operations of the new church and was not able to focus on the SFLDC. Today [the Pastor] has joined the Board because as the pastor of Hunter he is automatically a Board member. Now, that the operations of the new church are stabilized, [the Pastor] has more time to work with the SFLDC and reestablish the linkage of Hunter’s social programs to SFLDC to meet the original purpose for the establishment of SFLDC by members of Hunter in 1996.

SAMHSA Att. RR at 1. These minutes demonstrate that there was a conflict of interest because the Pastor was a member of the SFLDC Board prior to the execution of the consulting contract.

However, even if the Pastor did not establish formal Board membership as of December 2005, the following additional evidence establishes, as SAMSHA asserted, an appearance of a conflict of interest associated with the payment of the \$10,660. SAMHSA Att. F at 12.

- According to Ms. Quinton, SFLDC had been created “from the efforts” of a Hunter initiative (SAMHSA Att. EE at 1), but Hunter and SFLDC had been “estranged” for some years prior to 2005 (SFLDC Ex. R at 3).
- Further, according to Ms. Quinton, in November 2005 SFLDC applied for a Center for Substance Abuse Prevention (CSAP) Faith Initiative Grant, partnering with the Redeeming Love Christian Fellowship Tabernacle, which was “not located in and [did] not have ties to the Suitland or Landover community.” *Id.* “Leaders” in Suitland and Landover (the other community to be served by the grant) “recommended that SFLDC . . . make a last effort attempt to reengage [Hunter] to participate in the redevelopment of Suitland because the new pastor appeared to be open to community partnerships.” *Id.* “Thus,” Ms. Quinton stated, “in December 2005, she sent a letter to [Hunter] to introduce SFLDC to the new Pastor and explore opportunities for a community partnership in light of the new CSAP Faith Initiative and the DFC grant.” *Id.*; *see also* SAMHSA Ex. EE (letter from Ms. Quinton to the Pastor dated December 6, 2005).
- On December 19, 2005, the Pastor attended the SFLDC Board meeting, at which it was decided, according to the Minutes, that “Ms. Quinton would have a series of meetings with [the Pastor] to determine where linkages between Hunter and SCLC can be made.” SAMHSA Att. RR at 1.
- On April 10, 2006, Ms. Quinton, on behalf of SFLDC, signed a “Consultant Agreement” effective through September 2008 with Hunter Memorial AME Church pursuant to which Hunter was to be paid a daily rate of \$250 “to serve as the Faith and Youth Coordinator for the STEP Network.” *Id.* at 21-22. The agreement was signed by Hunter’s Pastor. The entire description of the scope of Hunter’s duties as coordinator was to “work with the STEP Network to increase the awareness for substance abuse and HIV/AIDS prevention services and support the development and operation of a Youth Council.” *Id.* at 21.
- Thereafter, SFLDC submitted to SAMHSA a SF-270 reporting that, some time between April 5 and June 30, 2006, it had paid Hunter \$10,660 for a range of services. It attached an “invoice” dated June 24, 2006 from Hunter for \$10,660 in services. SAMHSA Att. K at last page.

This evidence indicates first that Ms. Quinton wanted Hunter to work with SFLDC. SFLDC Ex. R at 3. To this end, she initiated contact with Hunter’s Pastor in December 2005. He attended the Board’s meeting in December 2005, and in April 2006 Ms. Quinton entered into the consulting contract with Hunter which resulted, by June 2006, in Hunter’s charging SFLDC for \$10,660 of services. There is no indication that SFLDC sought other people or organizations to provide these services. These circumstances create the appearance that SFLDC contracted with Hunter as a means of inducing Hunter’s further cooperation.

Second, the consulting contract between SFLDC and Hunter did not comply with the standards of 2 C.F.R. Part 230, Att. B, ¶ 37.b.8 in that it contained only general terms and the barest “description of the service” to be rendered and no “estimate of time required” or other performance criteria by which Hunter’s services could be evaluated. *See* SFLDC Ex. R at 21. The consulting contract also does not contain any terms regarding the provision of services that are specifically tied to either of the grants at issue. *Id.* The inadequacy of the terms of this contract tends to show that SFLDC’s interest here was in ensuring Hunter’s future cooperation rather than securing needed services under reasonable and definite terms.

Finally, the invoice submitted by Hunter for the \$10,660 in compensation was inadequate in the following ways and raises questions as to whether a reasonably prudent business person would pay for services based on this invoice. First, \$1,200 of the charges was for “refreshments” for “organization meetings of SFLDC Youth Council and Faith Partners Initiative.” SAMHSA Att. K at 6. The consulting contract did not call for provision of refreshments or provide any means for determining reasonable charges for refreshments, and the invoice does not state the dates of the meetings, how many meetings there were, or how many people attended. Moreover, any charges for refreshments for the Faith Partners Initiative, if allowable, would appear to be allocable to the Initiative, not to the DFC grant. The remaining two charges are \$4,460 for “needs assessment” (“Facilitated focus groups for planning of the 2007 UAD [Under Aged Drinking] Summit”) and \$5,000 for “training” (“Trained new youth members of the SFLDC Youth Council on issues related to UAD”). *Id.* The invoice gives no information on how many focus groups or training sessions were involved or the dates or durations of such events.

Thus, the dealings between Ms. Quinton and the Pastor preceding this payment, the lack of specificity in the consulting agreement, and the lack of detail and questionable nature of the information on the invoice all support SAMHSA’s determination that, at the very least, there was an appearance of conflict of interest. They also indicate that SFLDC’s payment was intended as an inducement to Hunter to “reengage” (SFLDC Ex. R at 3) with SFLDC rather than as a payment for a reasonable cost, i.e., a cost that would be incurred by a “prudent person under the circumstances prevailing at the time the decision was made to incur the costs” as required by 2 C.F.R. Part 230, Att. A, ¶ A.3.

c. Suitland Civic Association

SAMHSA disallowed SCA’s \$15,000 contribution of in-kind services under the DFC-Mentor grant for “public relations [and] resource development” trainings allegedly provided by members of SCA in FY06. SAMHSA Atts. R and S. SAMHSA stated that it disallowed this non-federal share contribution “for the same [conflict of interest] reasons” that it disallowed salary payment to Ms. Jacobs, President of SCA. SAMSHA Att. F at 11.

SAMHSA has not shown why these contributions should be disallowed on the basis of conflict of interest. Ms. Jacobs' position at SCA, SCA's influence in the community, and the apparent lack of a robust hiring effort by SFLDC supported SAMHSA's finding of a conflict of interest with respect to Ms. Jacobs. However, if SCA chose to contribute services to SFLDC, we see no apparent conflict so long as the in-kind contribution was consistent with applicable cost principles, such as those having to do with valuation and documentation. Here, SFLDC's DFC-Mentor grant application specifically called for in-kind training contributions from SCA. SAMHSA Att. NN at 5, § G. Moreover, the services were not provided by Ms. Jacobs. SFLDC Ex. X.

At the informal conference, SAMHSA questioned whether SFLDC had adequate documentation for these non-federal share contributions. TR at 101-104. After the informal conference, SFLDC submitted "STEP Network Non-Federal In-Kind Contribution" forms and other documentation in support of the services. SFLDC Ex. X. SAMHSA then raised concerns about the integrity and adequacy of this documentation. SAMHSA letter of July 1, 2010. The Board has allowed the agency to raise new grounds for a disallowance in the course of a disallowance proceeding where the appellant had an adequate opportunity to respond. *See, e.g., West Virginia Dept. of Health and Human Resources*, DAB No. 2017 (2006). However, we conclude that it is not appropriate to consider the new ground raised by SAMHSA here. SAMHSA first raised the documentation issue late in the proceeding; consequently, reviewing it would require, at a minimum, allowing SFLDC to engage in further briefing after extensive briefing has already occurred.¹⁰ Moreover, because we have upheld SAMHSA's disallowance of \$51,985 in federal reimbursement under the FY06 DFC-Mentor grant, which reduces SFLDC non-federal obligation under this grant by \$51,985, and because SAMHSA challenged only \$15,000 of SFLDC's non-federal share, SFLDC would not be required to refund \$15,000 on this basis even if we determined that the documentation was not adequate.

Conclusion

For the reasons discussed above, we uphold the disallowance of the following federal reimbursement received by SFLDC under these grants: \$29,876 under the DFC grant in FY06; \$16,600 under the DFC grant in FY07; \$51,985 under the DFC-Mentor grant in FY06; \$45,375 under the DFC-Mentor grant in FY07. We find the documentation inadequate to support a \$5,401 non-federal share contribution under the DFC grant in FY06, but do not require SFLDC to refund this amount to SAMHSA. We reverse

¹⁰ Similarly, we do not need to reach an issue SAMSHA raised in post-conference briefing about whether Ms. Quinton could write grant applications for SFLDC and then be paid as a consultant or contractor under a resulting grant. SAMHSA letter of July 1, 2010, citing 45 C.F.R. §§ 74.43, 74.45.

SAMHSA's determination with respect to a \$15,000 non-federal share contribution from SCA under the DFC-Mentor grant in FY06.

_____/s/
Judith A. Ballard

_____/s/
Sheila Ann Hegy

_____/s/
Stephen M. Godek
Presiding Board Member