



DAB Upholds Termination for Failure to Meet Grant Terms and Conditions

Brownsville Community Development Corp., DAB No. 1910 (Feb. 2004)

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The Office of Community Services (OCS) was justified in terminating a \$500,000 discretionary grant awarded under the Community Services Block Grant program, according to a recent decision of the U.S. Department of Health and Human Services (HHS) Departmental Appeals Board (DAB). The DAB based its conclusion on a finding that the grantee, Brownsville Community Development Corporation (Brownsville), had materially failed to meet the terms and conditions specified in the grant award.

According to the uniform administrative requirements for HHS grants, HHS may terminate a grant in whole or part, without the consent of the grant recipient, if a recipient materially fails to comply with the terms and conditions of an award.¹ A grant award's terms and conditions may be stated in a federal statute or regulation, an assurance, an application, or a notice of award.²

Grant Application, Changes and Termination

Brownsville applied for a grant from OCS to aid in forming Brooklyn Cabling, LLC (Brooklyn Cabling), a company that was to provide employment opportunities to participants in the Temporary Assistance for Needy Families program. According to Brownsville's grant application, Brooklyn Cabling was to be a joint venture with Thornhill Communications, Inc. (Thornhill), a regional communications firm that would bring its knowledge of the telecommunications industry and expertise in telephone network design to the venture and, among other things, provide Brooklyn Cabling with 85% of its sales in the first year of business.

Before OCS acted on Brownsville's grant application, HHS recommended that Brownsville be placed on a departmental alert list and monitored due to identified financial weaknesses. As a result, OCS notified Brownsville that it would deny funding for the project. Brownsville sought a review of this decision and addressed OCS's concerns about its financial viability.

After Brownsville provided OCS with additional documentation on the project showing changes in the number and identity of equity partners and in how Brooklyn Cabling would finance its acquisition of vehicles, OCS awarded Brownsville a \$500,000 grant subject to special terms and conditions. In an attempt to satisfy these terms and conditions, Brownsville submitted additional documentation showing a further change in the project's vehicle financing arrangements and indicating that Thornhill had decided not to participate in the venture, but that the new equity partners identified in Brownsville's

previous submission would still participate, albeit on different terms. OCS raised concerns about these changes and Brownsville responded with further information. Subsequently, OCS decided to terminate the grant and Brownsville appealed the termination.

The DAB's Analysis

OCS argued before the DAB that the termination was justified because Brownsville was unable to show that the project, as it had evolved, was still in accord with the representations in the grant application and that it represented a sound and feasible business. OCS contended, and the DAB agreed, that in spite of numerous requests, Brownsville had failed to provide a clear and consistent description of either how grant funds were to be used or how the project was to be run. The DAB concluded that Brownsville failed to make any viable progress toward the stated grant purpose and continually altered elements of the original grant application by adding and removing equity partners, changing their respective obligations, and "reinventing" the financing for vehicles necessary for the grant purpose. The DAB also determined that Brownsville failed to comply with virtually all of the special terms and conditions governing the grant, including supplying OCS with updated information documenting commitment of all financial support for Brooklyn Cabling and explaining satisfactorily changes in the project's vehicle financing. Moreover, the DAB found fault with the third party agreements concerning equity investments in the venture, including the fact that they did not contain information required by the grant's program announcement.

Among other things, Brownsville asserted that Thornhill had withdrawn from the venture because OCS had erroneously advised Brownsville that it would deny funding. In response, the DAB observed that, even if OCS's actions contributed to Brownsville's difficulties with the project, the record contained ample evidence of delays caused by Brownsville's own failures to provide required information on a timely basis. The DAB also noted that, since Brownsville was inexperienced in the cable installation industry and because of the benefits Thornhill would have brought to the project, it was particularly important after Thornhill withdrew for Brownsville to provide a clear explanation of the roles the replacement partners were to play and to establish solid commitments for sales and other contracts.

¹ 45 C.F.R. § 74.61(a)(1).

² 45 C.F.R. § 74.62(a).