

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA BAY WORKFORCE)
ALLIANCE, INC.,)
)
Petitioner,)
)
vs.) Case No. 10-8311
)
AGENCY FOR WORKFORCE)
INNOVATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case commencing on June 7, 2011, in Tampa, Florida, then continuing via video teleconferencing on June 8, 2011, with sites in Tallahassee and Tampa, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles M. Harris, Jr., Esquire
Stephanie Smith Leuthauser, Esquire
Trenam, Kemker, Scharf, Barkin,
Frye, O'Neill & Mullis, P.A.
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For Respondent: Karen S. Bishop, Esquire
Agency for Workforce Innovation
The Caldwell Building, MSC 110
107 East Madison Street
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STATEMENT OF THE ISSUE

The issue in this case is whether certain enumerated expenditures by Petitioner, Tampa Bay Workforce Alliance, Inc. ("TBWA"), were compliant with governing rules, and, if not, whether the expended funds must be repaid to Respondent, Agency for Workforce Innovation (the "Agency").

PRELIMINARY STATEMENT

In November 2009, the Agency's inspector general began an investigation of spending practices at TBWA. The investigation was predicated on informational reports suggesting that TBWA may have misused federal funds. The investigation was conducted in two tiers. The first tier addressed food purchases; the second tier addressed expenditures for activities, meetings, sponsorships, and the purchase of promotional materials by TBWA. A Final Determination letter was issued by the Agency on July 14, 2010, resulting in a finding of \$147,128.18 of disallowed costs. TBWA is contesting \$125,834.75 of the disallowed costs, claiming they are allowable costs and should be approved.

At the final hearing, TBWA called one witness: Edward Peachey, president and chief executive officer ("CEO") of TBWA.^{1/} TBWA offered the following exhibits, which were admitted into evidence: 1, 10 through 16, and 19 through 21. Official recognition was taken of Exhibits 17 and 22.

The Agency called five witnesses: Lois Scott, program manager; James Mathews, inspector general; Philip Wilcox, investigations manager; Laura McKinley, early learning coalition specialist; and Kevin Thompson, director of Administration. The Agency's Exhibits 1 through 4, 7, 8, and 11 were admitted into evidence.

A transcript of the final hearing was ordered by the parties. The Transcript was filed at the Division of Administrative Hearings on July 13, 2011. By rule, parties were allowed ten days to submit proposed recommended orders. Each party timely submitted a Proposed Recommended Order, and each was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Florida's workforce system is a unique three-tiered system governed by state and federal law. The Agency is the workforce strategy and policy-setting board for the statewide workforce system. It provides oversight to 24 regional workforce boards in designing and implementing programs to develop a skilled workforce. TBWA is one of those 24 regional workforce boards.

2. The Agency is the state administrative entity responsible for the receipt and distribution of federal workforce grant funds. The Agency receives funds from the

U.S. Departments of Labor, Health and Human Services, and Agriculture. Those funds are distributed to the 24 regional boards for use in the performance of their services. Grant funds must be expended in compliance with state and federal guidelines.

3. TBWA receives grants through the Workforce Investment Act, which serves adult, youth, and dislocated workers, and through the Wagner-Peyser Act, which funds Florida's job exchange which matches employers with job seekers. On an annual basis, TBWA receives grants from: Workforce Investment Act Cluster, which covers adult, youth, and dislocated workers, economically-disadvantaged adults and youth; Employment Services Cluster; and Welfare Transition Program grants, which are funded from a block grant and are focused on training and job assistance for individuals receiving government financial assistance. TBWA also receives grants targeted to veterans.

4. TBWA provides a variety of services in its geographical area to persons seeking jobs and to employers seeking employable workers. TBWA operates four one-stop career centers in the Tampa Bay area. These are places where job-seekers can access a variety of employment and training services. The one-stop career centers provide job search, referral, and placement assistance; career counseling and educational planning; support services, including child care and transportation assistance to

gain employment; employability skills training; adult education and basic skills training; technical training leading to a certification and degree; claim-filing for unemployment compensation services; and temporary income, health, nutritional, and housing assistance.

5. TBWA is a Florida not-for-profit corporation that operates in the Hillsborough county area. It is responsible for assuring that all federal funds it receives are used in accordance with the requirements set forth in federal regulations, specifically the guidelines in Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Non-Profit Organizations. TBWA is also subject to OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. The two circulars will be referred to as Circular A-122 and Circular A-110, respectively.

6. In November 2009, the Agency's inspector general began an investigation of spending practices by TBWA. The investigation commenced as a result of "informational reports" received by the Agency. At about the same time, a report was published by local media concerning spending practices by non-profit entities, such as TBWA. It is the belief of TBWA that the media report instigated the Agency's investigation, but

whether it did, or not, is not relevant to the findings made by the Agency.

7. The Agency's investigation was done in two tiers: The first tier addressed certain food purchases made by TBWA for events that it had hosted. The Agency posted its findings for the Tier I investigation in a Final Report dated April 12, 2010.

8. The second tier addressed expenditures discovered during the investigation of the Tier I matter. The newly discovered expenditures included costs for TBWA's Business Excellence Awards program, sponsorships or donations to public entities, money spent for entertainment and guest speakers at events, public outreach expenditures, and the purchase of certain promotional materials. The findings from the Tier II investigation were published in a letter dated April 29, 2010. The Agency reviewed \$394,211.82 in expenditures by TBWA. Of the expenditures, \$224,178.17 was initially questioned by the Agency as being potentially improper.

9. TBWA allocates its costs to the various grants it receives through a cost allocation plan that is submitted to and approved by the Agency each year. The TBWA cost allocation plans submitted for the years relevant to this case were approved by the Agency. Nonetheless, the Agency went back and reviewed those years' expenditures as part of its investigations.

10. As a result of its investigations, the Agency made a determination to disallow costs expended by TBWA in the following categories:

- \$34,028.29 for unallowable expenditures related to food purchases (Tier I);
- \$60,468.89 for unallowable costs associated with the Business Excellence Awards;
- \$13,195.00 for disallowed sponsorships that were determined to be donations to support various events;
- \$11,967.00 for disallowed entertainment costs for various events;
- \$22,800.00 for unallowable public outreach expenditures; and
- \$4,669.00 for unallowable expenditures for promotional materials; for a total of \$147,128.18 in disallowed expenditures.

11. TBWA challenged some of the disallowed costs in each of those categories. The challenged dollar amounts for each category of disallowed costs were as follows:

- \$18,905.12 in costs related to various purchases of food items;
- \$58,448.63 spent by TBWA in connection with its Business Excellence Awards, an internal awards program;
- \$13,195.00 expended by TBWA to purchase sponsorships in various public endeavors;
- \$7,817.00 used to purchase entertainment at various functions and corporate meetings;
- \$22,800.00 expended for the purpose of funding public outreach efforts; and

- \$4,669.00 spent to purchase promotional materials; for a total of \$125,834.75 of challenged disallowances.

12. Regional workforce boards have considerable responsibility and authority for establishing local service priorities, local service delivery design, and overseeing one-stop career centers. TBWA operates, in part, according to a strategic plan which it developed in 2003 (the "Strategic Plan") to fulfill its responsibilities to establish local service priorities. The Strategic Plan has been updated over the years and is still in full force and effect. The Strategic Plan sets out the goals of the organization and provides a strategy and roadmap for how TBWA will achieve its goals.

13. TBWA attempts to engage in spending practices that are consistent with its Strategic Plan and with all federal and state regulations. Generally, if items or services are purchased to further the goals set forth in the Strategic Plan, TBWA considers them appropriate. The Strategic Plan addresses the following goals of TBWA:

- Improving employee relations;
- Improving communications among TBWA employees to ensure that grants and other resources are being utilized fully and properly;
- Improving employer penetration, i.e., identifying the number of employers within the geographic area actually using the workforce board's services; and

- Developing an integrated and cost-efficient media plan, including aggressive outreach and development of strategic partnerships.

The Disallowed Expenditures

14. An overview of the expenditures disallowed by the Agency follows: TBWA spent \$8,138.78 for a year-end celebration held the evening of December 12, 2008. According to the documentation TBWA provided, the dinner menu for that event included rosemary grilled chicken breasts, mashed potatoes, vegetables, and black forest chocolate cake at a cost of \$29.00 per person, a beverage fee of \$7.00 per person, and a 21 percent service charge in the amount of \$1,610.28.

15. TBWA spent \$5,161.25 for a corporate staff meeting held on January 24, 2009, and provided food from Caterings by the Family, including breakfast, lunch, beverages and dessert at a cost of approximately \$49 per person. The documentation provided indicates that the meeting began at 9:00 a.m., concluded at 3:40 p.m., and was attended by TBWA staff. Breakfast was served from 8:45 a.m., to 9:00 a.m., i.e., before the meeting began.

16. TBWA spent \$5,673.00 for a corporate meeting held on March 30, 2009, at the Quorum Hotel. The event was scheduled from 8:15 a.m., to 12:25 p.m., and was attended by TBWA staff. This event included a brunch buffet at a cost of \$19.00 per person, plus a 22-percent service charge. The agenda indicates

that there was a 15-minute "star of the quarter" presentation, a 15-minute presentation about the American Recovery and Reinvestment Act, and a 15-minute presentation about the summer employment model. The remaining three hours and 25 minutes of the meeting was spent as follows: registration, welcome and remarks, military salute, introductions and acknowledgements, team-building activity, brunch, and a presentation by David Glickman, a full-time comedian and professional speaker.

17. TBWA held two events called the Business Excellence Awards ("BEA"). In the 2008 BEA meeting, TBWA spent \$17,476.50 on the Intercontinental Hotel, at a cost of approximately \$87.00 per person and served a menu that included \$3,200.00 for chocolate; \$1,800.00 for a chilled raw bar; \$1,150.00 for roast beef; and \$2,400.00 for a potato martini bar, with a 22-percent service charge of \$3,151.50. TBWA also spent \$3,210.00 for table and chair covers, \$81.76 on marketing items, \$989.00 on invitations, \$566.89 on awards, \$265.00 on a photographer, \$84.33 on sheer bags to distribute marketing items, and \$1,200.00 on a solo pianist and string quartet.

18. In the 2009 BEA meeting, TBWA spent \$22,612.50 on the Intercontinental Hotel, at a cost of approximately \$113.00 per person, spent \$1,910.25 on awards, \$10,000.00 on a video featuring award winners, \$52.40 for supplies, and \$500.00 on a solo pianist and string quartet.

19. TBWA has a copy of the 2009 BEA video which was produced. However, TBWA did not produce the video at the final hearing or provide sufficient evidence as to its contents. TBWA said the purpose of the video was to produce high-energy video vignettes that would mirror the energy and excitement of a world class awards show. TBWA said it could use the video for outreach. However, TBWA did not specifically demonstrate how a video of award winners benefits one of its grants.

20. TBWA suggests the expenditures to various vendors-- Cheers (table and chair covers), Uline (gift bags), Shorter Childs (invitations), John Kantor (photography), Tricycle Studios (2009 BEA video), IBEX (musicians), the Levy Awards, and costs of supplies--are allowable as costs incidental to a meeting. Peachey acknowledged that entertainment costs are not allowable, but said music is allowable because the music was incidental to the event. Peachey justified the Levy Awards as allowable public outreach, because employers put the awards in their offices and they could be a topic of conversation.

21. TBWA paid \$2,500.00 to Tampa Bay Technology Forum on July 1, 2007, for its Entrepreneurial Boot Camp. TBWA contends that this event provided entrepreneurial training for individuals through Tampa Bay Technology Forum. The sponsorship included having TBWA's logo published on the printed materials

for the event. There is no indication that a representative or an employee of TBWA attended or participated in the program.

22. TBWA gave \$500.00 to the Tampa Organization of Black Affairs in November 2007 and \$500.00 again in January 2009. TBWA provided some information about the events to the Agency. TBWA showed, for example, that it had reserved a table for its employees at the event. There is no other evidence as to whether a TBWA employee actually attended the event.

23. TBWA paid \$1,000.00 to the American Red Cross on April 5, 2008, indicated as a "donation" on the corresponding invoice. A table for eight persons was reserved, but there is no evidence that a TBWA employee attended the event.

24. TBWA submitted documentation for the \$4,500.00 it gave to the Tampa Bay Academy of Hope on April 5, 2008, and the \$2,500.00 it gave on June 12, 2009. The funds were designated as sponsorships on the respective invoices provided by TBWA. The recipient of the funds provided TBWA a description of the advertising, marketing, and promotion opportunities the sponsorships would purchase. There was no evidence that TBWA engaged in any of the advertising or promotion activities.

25. TBWA submitted documentation for the \$1,100.00 it gave the Tampa Bay CEO Magazine on December 7, 2008, and the \$575.00 it gave on January 30, 2009. The sponsored events were touted as an opportunity to mingle with influential business leaders in

the community. No evidence was presented as to how the mingling would further the purposes for which grants had been given.

26. TBWA spent \$5,555.00 for a winter corporate meeting at the Tampa Improv Comedy Club on March 14, 2008. The documentation provided for this event indicates that the cost included \$3,750.00 for food, \$300.00 for room rental, and \$750.00 for entertainment. The documentation that TBWA submitted in support of these costs indicates that the event was scheduled from 12:30 p.m., to 4:50 p.m., and was attended by the TBWA staff. The first item listed on the agenda is "[e]njoy food and refreshments" from 12:30 p.m., to 1:30 p.m. The agenda and speaking points make clear that the primary purpose of this event was not to disseminate technical information. These costs are directly associated with a social event, i.e., food and a show at the comedy club.

27. TBWA spent \$950.00 for a solo pianist and string quartet at the Scholars Reception on April 17, 2008. The purpose of the reception was to award youth with scholarships. TBWA contends that this cost is for recreation and that it is incidental to a meeting itself. TBWA documentation, including letters sent to attendees, established that this event was a bona fide business meeting. The musicians were incidental to the purpose of the meeting.

28. TBWA spent \$587.00 for a violin-guitar duo at the Governor's Diversification Awards on September 30, 2009. TBWA contends that this event was a meeting and, also, constituted outreach, and that the music was an incidental cost to the event. There is no evidence in the record to establish that this was a bona fide meeting. There is no agenda, and TBWA's documentation clearly indicates that it is a "networking breakfast." Likewise, there is no evidence in the record to establish how this was an outreach event.

29. TBWA paid Issue Media Group \$22,800 in July of 2009. At the time of payment, Issue Media Group had not launched its online magazine; it was seeking founding partners to provide initial funding for the project. Website pages taken from the magazine once it went on-line show the TBWA logo on the webpage; however, no information is included about any of TBWA's grant programs. A user could, however, click on the link to get to the TBWA website and find information about the programs that TBWA provides. TBWA does not have any documentation to show that TBWA received job postings as a result of this expenditure. Because the website pages contained only a link to the TBWA website and no information about any of the grant programs that TBWA administers, the website pages seem to primarily promote TBWA, rather than the grant programs.

30. TBWA spent \$2,283.81 to purchase 200 blankets that were given to staff as part of a corporate meeting to enhance employee morale.

31. TBWA spent \$2,085.19 to purchase 200 Tervis tumblers. Peachey testified that initially the tumblers may have been purchased to give to staff at a corporate meeting, but that they will now be used for outreach to employers.

TBWA's Stated Rationale for the Expenditures

32. Regional workforce boards have a responsibility and authority to establish local service priorities. They also establish local service delivery design and oversee one-stop career centers. To fulfill its responsibility, TBWA developed the Strategic Plan and strives to implement it. TBWA expects the Agency to consider the Strategic Plan when looking at the appropriateness of expenditures made by TBWA.

33. All of the grants received by TBWA have a common singular purpose: To provide employers with a skilled workforce. To achieve that purpose, TBWA interacts regularly with the area business community. One of the ways it chooses to do that is by way of public meetings, e.g., its BEA events. The BEA dinners were used by TBWA to launch its employer outreach campaign and as a platform for one of its signature programs, the Competitive Edge Award. TBWA tracked the list of BEA

invitees each year and the number of jobs orders placed by the attendees.

34. TBWA identified improved employee relations as one of its targets in the Strategic Plan. Specifically, TBWA felt that it needed to improve employee morale and staff motivation to serve grant purposes through enhanced interaction with employers and job seekers. To that end, TBWA held parties and gatherings for its employees, with entertainment, food, and gifts (as set forth above).

35. The BEA dinners catered to employers and public figures in TBWA's service area. It was TBWA's intent that the event would attract business, political and community leaders for the purpose of disseminating information about TBWA's programs. According to Peachey, the event had to be very upscale to attract these people. There was no credible evidence to support that contention.

36. In order to minimize costs, TBWA did a cost benefit analysis and comparison shopping on many of the items and services associated with its BEA gatherings. TBWA does not consider the BEA gatherings to be entertainment, per se, because the event was not specifically directed to amusement or diversion of TBWA staff.

37. The Tampa Bay Technology Forum sponsorship included the printing of the TBWA logo on event materials and an

opportunity for a TBWA representative to make a presentation to attendees. However, there is no evidence that a TBWA representative attended the function or spoke to the attendees. Further, the TBWA logo does not necessarily address any of TBWA's programs paid for by grants.

38. TBWA payments of \$1,000.00 to the Tampa Organization of Black Affairs for two Martin Luther King, Jr., breakfasts were contemplated as a marketing tool. Although a table was purchased, there is no evidence that a TBWA employee actually attended the breakfasts.

39. TBWA paid \$1,000.00 as a Blue Sponsor for the American Red Cross dinner, but, again, there is no evidence that any employees attended the function. The same is true of the donations to the Tampa Bay Academy of Hope for its event; money was paid for a "sponsorship," but there is no evidence of active involvement.

40. TBWA sponsored the CEO of the Year banquets in 2008 and 2009. While there is no evidence that an employee attended those events, there is evidence that some attendees actually posted jobs with TBWA.

41. The on-line publication, 83 Degrees, to which TBWA contributed \$22,800.00, is one medium chosen by TBWA for gaining exposure. It is part of the on-going public outreach that TBWA engages in regularly.

42. The food provided at its corporate meetings was done for the purpose of employee morale. Further, TBWA believes the meetings were for the primary purpose of dissemination of technical information. There is, however, scant evidence to support that position.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes. Unless specifically stated otherwise herein, all references to the Florida Statutes will be to the 2010 codification.

44. The burden of proof in a chapter 120 administrative proceeding is on the party asserting the affirmative of the issue. Fla. Dep't. of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In this case, the Agency disallowed \$147,128.18 of TBWA's charges to grant funds, because the costs were not compliant with OMB Circular No. A-122 and/or because the costs do not benefit the grants charged. TBWA, as the Petitioner challenging the disallowed costs, has the burden of proving by a preponderance of the evidence that the disallowed grant funds were spent for grant purposes and that its expenditures were allowable.

45. The Agency is the state administrative entity for receipt of federal workforce development grants and other federal funds and is the designated agency for each federal workforce development grant assigned to it for administration. §§ 20.50(2)(a) and 20.50(3), Fla. Stat. The Agency has the level of authority necessary to be the designated recipient of each federal grant assigned to it. § 20.50(3). The Agency is responsible for ensuring that the state appropriately administers federal workforce funding. § 20.50(1).

46. TBWA is subject to OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. 2 C.F.R. §§ 215.1, 215.5. TBWA's financial management system must provide for "[w]ritten procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award" and "[a]ccounting records including cost accounting records that are supported by source documentation." 2 C.F.R. § 215.21(b)(6), (7).

47. OMB Circular No. A-122, Cost Principles for Non-Profit Organizations, codified as 2 C.F.R. Part 230, provides the cost principles that non-profit organizations must apply when expending federal grant funds.

48. Attachment A of OMB Circular No. A-122, General Principles, provides that costs must meet the following criteria to be allowable:

2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.

* * *

g. Be adequately documented.

2 C.F.R. Part 230, App. A § A.2. (2010).

49. OMB Circular No. A-122 defines reasonable costs as follows:

3. Reasonable costs. 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. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the

organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

2 C.F.R. Part 230, App. A § A.3.

50. OMB Circular No. A-122 provides that public relations costs are allowable to communicate with the public and press about specific activities or accomplishments which result from performance of Federal awards. These costs are considered necessary as part of the outreach effort for the Federal award. However, costs of advertising and public relations designed solely to promote the non-profit organization are not allowable.

1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the non-profit organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

* * *

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

* * *

e. Costs identified in subparagraphs c and d if incurred for more than one Federal award or for both sponsored work and other work of the non-profit organization, are allowable to the extent that the principles in Attachment A to this part, paragraphs B. ("Direct Costs") and C. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

* * *

(4) Costs of advertising and public relations designed solely to promote the non-profit organization.

2 C.F.R. Part 230, App. B.

51. Regional workforce boards are established pursuant to section 445.007, Florida Statutes, and they are responsible for overseeing the one-stop delivery system in their local area.

§ 445.007(4)(d).

52. One-stop services are described in section 445.009(1) and include the following: job search, referral and placement assistance; career counseling and educational planning; support services, including child care and transportation assistance to gain employment; employability skills training; adult education and basic skills training; technical training leading to a certification and degree; claim filing for unemployment compensation services; and temporary income, health, nutritional, and housing assistance. § 445.009(1).

53. Pursuant to section 445.007(9), TBWA, as a regional workforce board, must "[a]pply the procurement and expenditure procedures required by federal law for the expenditure of federal funds." § 445.007(9). This statutory requirement emanates from federal requirements for the use of federal funds

and is incorporated in the parties' Master Cooperative Agreement. TBWA is, therefore, bound by the spending principles of Federal law for its various grant funds.

54. Section 445.007(9) allows regional workforce boards to:

[A]uthorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by units of the workforce system. Regional workforce boards; their administrative entities, committees, and subcommittees; and other workforce units may authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting Florida's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds.

§ 445.007(9).

55. Section 445.007 was amended in 2010 to prohibit the purchase of food by regional workforce boards. That prohibition did not exist during the period of time that expenditures at issue in this case were made.

56. Applying the OMB circulars and state law to the facts of this case, the following conclusion concerning the challenged expenditures are made:

Disallowed Entertainment Costs

- December 2008 end of year celebration: There was insufficient evidence presented by TBWA to support

the contention that the meeting was anything other than an employee party. The expenditures relative to that event are disallowed. (\$8,138.78)

Disallowed Food Cost

- January 24, 2009, corporate staff meeting: There is insufficient evidence to support the need for providing food at this meeting. The expenditure for food is disallowed. (\$5,161.26)

Disallowed Food Cost, Entertainment Cost

- March 14, 2008, corporate meeting: This meeting was a mixture of dining, entertainment, and employee recognition. There was no discernible dissemination of technical information set forth in TBWA's documentation. The expenditure is disallowed. (\$5,555.00)
- September 30, 2009, Governor's Diversification Awards: The musicians hired for this event were specifically hired for a reception. The expenditure is disallowed. (\$587.00)
- March 30, 2009, corporate meeting: This meeting was a mixture of business and social. It is impossible to accurately allocate the division of time between the two, but at least part of the meeting was not consistent with the directives set forth for

allowable expenditures. One half of the expenditure is disallowed. (\$2,836.50)

Disallowed Business Excellence Award Cost

- BEA events have some legitimate business basis. However, the manner in which the events were conducted by TBWA is not entirely consistent with prudent expenditure of government grant funds. Further, there is no evidence that the video produced at the event has any marketing value. One-half of the expenditures for these events is disallowed. (\$20,044.50)

Disallowed Sponsorships

- Tampa Bay Technology Forum: Absent any proof that TBWA did anything more than write a check to the organization, this expenditure would be a donation or contribution, not a sponsorship. The expenditure is disallowed. (\$2,500.00)
- Tampa Organization of Black Affairs: Absent any proof that a TBWA employee actually attended the events and was actively involved in marketing or outreach, the payments must be considered donations. The expenditures are disallowed. (\$1,000.00)
- American Red Cross: Absent any proof that a TBWA employee actually attended the event and was

actively involved in marketing or outreach, the payment must be considered a donation. The expenditure is disallowed. (\$1,000.00)

Disallowed Promotional Materials

- Blankets and tumblers: Although purchase of these items may be a way to improve employee morale, there is insufficient evidence that they were purchased or used for that purpose. The expenditure is disallowed. (\$4,369.00)
- The total amount of disallowed expenditures is \$55,192.04.

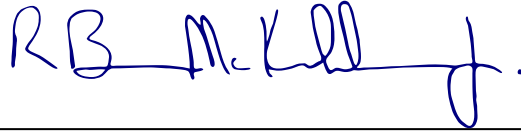
57. The remainder of the challenged expenditures were proven to be consistent with the requirements for use of government grant funds as set forth in the OMB circulars.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Respondent, Agency for Workforce Innovation, partially upholding its decision to disallow the challenged expenditures by Petitioner, Tampa Bay Workforce Alliance. The total amount of disallowed expenditures is \$55,192.04, to be paid within 90 days of the entry of a final order.

DONE AND ENTERED this 12th day of August, 2011, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of August, 2011.

ENDNOTE

^{1/} Peachey was not the CEO of TBWA during the period of time at issue in this proceeding. He had no personal knowledge about the expenditures at issue, but has information based upon his review of documentation and discussions with the prior CEO. The value of his testimony is weighted accordingly.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.