

U.S. Department of Labor

Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036



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In the Matter of :

U.S. DEPARTMENT OF LABOR :

v. :

ILLINOIS MIGRANT COUNCIL :
.....

Case No. 84-JTP-10

ORDER

Discussion

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U.S. DEPARTMENT OF LABOR
DIVISION OF
ADMINISTRATIVE
SERVICES
ILLINOIS

This matter concerns the nonselection of the Migrant Council (hereafter "IMC") for participation as a sponsor of Migrant and Seasonal Farmworker Youth Programs under Title IV, Part A, subparts 2 and 3 of the Comprehensive Employment and Training Act (hereafter "CETA") at §§433(a)(4) and 423(b) and §181 of the Job Training Partnership Act (hereafter "JTPA") for Program Year 1983.

IMC was one of 39 organizations that submitted proposals for obtaining these grants under JTPA. The memorandum dated June 7, 1983 from Robert Jones, - CETA Administrator to Joyce Kaiser, Associate Assistant Secretary for the Employment and Training Administration (hereafter "ETA"), outlines the procedures followed in the selection of these applicants for funding (AF-Tab B). 1/

The initial step of the selection process consisted of a review of all proposals by the Review Panel. The Review Panel numerically scored each of the proposals on the basis of ranking criteria set forth in the Solicitation for Grant Application (AF-Tab E). This step conformed with the procedures outlined in the Solicitation for Grant Application Proposal Review Panel Instructions (hereafter "SGA") (AF-Tab E). Following that scoring the Panel Chair was to prepare a Panel Report listing the scores and including the comments of the panel members concerning their ratings (AF-Tab E, Chapt. 1C). According to the June 7 memorandum, however, the panel engaged in a further screening of the proposals. The panel chose a cutoff score of 63 and recommended that only those

1/ All references to the Administrative File shall be designated by the letters AF.

proposals with a higher score should be funded (AF-Tab C). There is no provision in the SGA for such action **and**, in fact, the SGA required further steps before the making of any funding decisions. Twenty-six of the proposals including that of IMC scored below the cutoff score of 63 (AF-Tab C). According to the June 7 memorandum, those 26 proposals were given no further consideration.

The remaining 13 proposals were reviewed by the Program and Contracting Offices. Those offices were to select the winners based on the previous Review Panel scores and separate scores for past performance. **2/** Thus, according to the June 7 memorandum only the remaining-13 organizations were given consideration of their past performance. The SGA procedures indicate that selection is to incorporate the panel scores and past performance for all of the proposals (AF-Tab E, Chapt. **1C**).

Ten of the thirteen proposals were recommended for funding by the Program and Contracting Offices following their ranking according to both Panel Review scores and past performance scores (AF-Tab B). **3/** The thirteen organizations were also reviewed by the Office of Special Counsel as a final step in their selection.

According to the SGA, the Review Panel is to rank the proposals according to the criteria. It is not authorized to make recommendations. More importantly, here, each organization's past performance is to be incorporated into the overall score **before** any selection is made. According to the June 7 memorandum, 26 of the 39 organizations were excluded prior to any consideration of their past performance. Conceivably a high score on past performance could be a determinative factor in this selection process. Indeed, **IMC** contends it was harmed by the failure of ETA to consider what IMC asserts as its outstanding past performance.

Thus, on the basis of a comparison of the procedures outlined in the SGA with the actual procedures set forth in the June 7 memorandum leads to the conclusion that the SGA procedures were not followed. This conclusion is based

2/ The Past performance of each organization was to be compiled by the Program and Contracting Offices through desk reviews. (AF-Tab E, Chapt. **1C**).

3/ Three of the organizations were *rejected* due to their-past performance.

entirely upon the contents of the administrative file forwarded by the Grant Officer.

A final discrepancy remains concerning the September 30, 1983 letter of Special Counsel David Williams. In that letter Mr. Williams states that the Grant Officer, by letter dated August 17, 1983, conditioned **IMC's** selection as a sponsor upon satisfactory resolution of debts arising from two previous grants.

The Grant Officer's August 17, 1983 letter is not in the administrative file. Moreover it is unclear how the question of **IMC's** indebtedness became relevant to its nonselection in view of the June 7 memorandum assertion that IMC was not selected on the basis of the Panel Review score.

Order

The Grant Officer is hereby ordered to have the Program and Contracting Office undertake an assignment of a past performance score for each applicant and a selection of winners based thereon as described in the SGA, and by the close of business on April 25, 1984 to compile and file with this Office, together with proof of service-upon counsel for IMC the following documents showing information for all applicants, not just for IMC:

1. A compilation of the scoring process which shows:
 - a. The scores assigned by the Review Panel to each application.
 - b. The past performance score computed by the Program and Contracting Office as ordered above, together with the calculations upon which the score is based.
 - c. A breakdown showing the 85 percent weighting for the past performance scores, together with the combined **final** score resulting from both weightings.
2. A statement of which applicants would not be selected as winners by the Program and Contracting Office on the **basis** of the document described in item 1, above.

3. A statement from the Office of Special Counsel of the results of a background check run on all successful applicants designated in the document described in item 2., above.
4. Any determination by the Grant Officer that any successful applicant is not responsible as a result of information disclosed in the document described in item 3., above.
5. If any applicants are eliminated by the Grant Officer as not responsible, a statement as to whether the Contracting Office has decided to select other applicants or to distribute the available funds among the remaining applicants. Note that if additional applicants are selected Office of Special Counsel reviews will be needed for any such applicants.
6. A copy of the August 17, 1983 letter to **IMC's** counsel from the Grant Officer, which letter is discussed above.

Ruling on **IMC's** request for the production of documents relating to the selection process actually conducted under the Grant Officer's authority is deferred pending the Grant Officer's compliance with the correct selection procedures as required by this Order.


CHARLES P. RIPPEY
Administrative Law Judge

Dated: 22 MAR 1984
Washington, D.C.

CPR/mml

CERTIFICATE OF SERVICE

Case Name: Illinois Migrant Council

Case No. : 84-BLA-10

A copy of the **foregoing ORDER** was mailed to each of ~~the~~ following persons at the addresses listed below on the following date.

Date March 22, 1984

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