

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 July 2004

CASE NO.: 2003-WIA-00015

IN THE MATTER OF

CATHOLIC COMMUNITY SERVICES

Complainant

v.

UNITED STATES DEPARTMENT OF LABOR

Respondent

and

MOTIVATION, EDUCATION & TRAINING, INC.

Party-In-Interest

Appearances:

V. Charles Cusimano, Esq.
For Complainant

R. Peter Nessen, Esq.
For Respondent

Steven D. Cundra, Esq.
For Party-In-Interest

Before:

LARRY W. PRICE
Administrative Law Judge

DECISION AND ORDER

This case arises under the provisions of the Workforce Investment Act ("WIA" or "the act"), 29 U.S.C. § 2801 et seq. and the regulations contained at 20 C.F.R. § 660 et seq. The WIA provides funding for employment programs and job training for migrant and seasonal farmworkers. 29 U.S.C. § 2912(d). Grants aimed at migrant and seasonal farmworkers are overseen by the federal government, and parties interested in receiving such grants apply directly to the Department of Labor, pursuant to Solicitations for Grant Applications published in the Federal Register. Grants are made to specified geographic areas, and the recipient oversees the program in those areas. Parties which apply unsuccessfully for grants may request review of the

grant officer's decisions by the Office of Administrative Law Judges. 20 C.F.R. §§ 667.800, 667.325.

In this case, Catholic Community Services ("CCS" or "Complainant") applied to be the grant operator for the United States Department of Labor Migrant and Seasonal Farm Worker Program ("MSFW") in the state service area of Louisiana but was rejected in favor of the incumbent grant operator, Motivation, Education & Training, Inc. ("MET"). CCS appealed this matter to the Office of Administrative Law Judges. A formal hearing on this matter was scheduled for May 20, 2004, but I issued an order canceling the hearing because the parties agreed to have the case decided on the record.

The parties submitted joint stipulations (Jt. Stips. 1-20) and supporting exhibits (EX A-G)¹ on May 19, 2004, and MET and CCS have submitted briefs.

The findings and conclusions which follow are based on a complete review of the evidence submitted by the parties, applicable statutory and regulatory provisions, and pertinent precedent.

ISSUES

The issues to be decided in this case are 1) whether MET complied with the requirements of Section 167(e) of Title 1 of the WIA and Executive Order No. 12372 (the E.O.); and 2) assuming *arguendo* that MET's application was not properly submitted, should MET be disqualified from consideration for the grant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STIPULATIONS

The parties have stipulated, and I find, as follows:

1. On April 17, 2003, pursuant to section 167 of the WIA, the United States Department of Labor ("DOL" or "Respondent") published a Solicitation for Grant Applications ("SGA") in the Federal Register. See Solicitation for Grant Applications; Nat'l Farm Worker Jobs Program; Housing Assistance for Migrants & Seasonal Farm Workers, 68 Fed. Reg. 19,012 (April 17, 2003). The SGA asked for applications in the National Farm Workers Job Program.

¹ The following are citations to the record:

EX – Joint Exhibit;
Jt. Stip. – Joint Stipulation; and
AF – Administrative File.

2. MET and CCS applied for funding for Program Year ("PY") 2003 under section 167 of WIA for the Migrant and Seasonal Farm Worker Program ("MSFW") in the state service area of Louisiana.
3. MET was the incumbent applicant for the state service area of Louisiana.
4. MET filed its application with DOL in a timely manner as set fourth in the April 17, 2003 SGA.
5. As part of its application, MET appended several letters of support from various state agencies, including local Louisiana Workforce Investment Boards (EX A).
6. As part of its application, CCS appended letters from the Governor of Louisiana, the Chairman of the Workforce Investment Board, and the assistant secretary of the Office of Workforce Development. (EX B).
7. DOL panels scored MET's application and CCS's applications. MET received a score of 99 and CCS received a score of 92.
8. Grant Officer Lorraine H. Saunders awarded the PY 2003 grant to MET for the state service area of Louisiana and notified MET of the award on July 3, 2003.
9. By letter dated July 23, 2003, CCS was notified that it had not received the grant.
10. When MET forwarded its application for funding to DOL, it also forwarded a copy of its application to "Contact State Workforce Development Liason Ms. Sujuan Boutte, Assistant Secretary, Office of Workforce Development" at the Louisiana Workforce Commission on Friday, May, 16, 2003. (EX C).
11. The Louisiana Workforce Commission received MET's application on the next business day, Monday, May 19, 2003. T.W. Lathers signed for Ms. Boutte and the Louisiana Workforce Commission on that date. (EX C).
12. MET received the return receipt from the Louisiana Workforce Commission on May 21, 2003. (EX C).
13. The Louisiana Workforce Commission serves as the "human resource investment council for the State [of Louisiana] and has been designated as the State Workforce Investment Board within the meaning of the Federal Workforce Investment Act of 1998." (EX D).
14. The DOL Workforce Investment Development Board directory lists Ms. Sujuan M. Boutte as the governor's liason in Louisiana with the Workforce Development Board. (EX E).
15. The Louisiana Department of Labor web site contains an organizational chart of the Louisiana Department of Labor's executive staff that lists Ms. Boutte as the Assistant Secretary for the Office of Workforce Development. (EX F).

16. CCS also submitted a copy of their application to the Louisiana Workforce Development Board.
17. Prior to the award of the PY 2003 WIA 167 grant in Louisiana, the Workforce Development Board did not comment to DOL on MET's or CCS's applications.
18. On April 6, 2004, the Office of the Governor for the State of Louisiana notified the executive director of MET, Mr. Frank Acosta, that the Louisiana Workforce Commission serves as the State Workforce Investment Board for the State of Louisiana by Executive Order. (EX G).
19. The April 6, 2004 letter states that the Louisiana Workforce Commission received and reviewed MET's and CCS's applications. Id.
20. The April 6, 2004 letter states as follows: "The [Louisiana Workforce] Commission has asked that I write to inform you that in accordance with the pertinent sections of the Workforce Investment Act, we have received and reviewed the applications. However, the Commission took no further action concerning your applications. You may, however, submit this letter to the United States Department of Labor as evidence that the applications were received and reviewed by this office and presented accordingly to the Commission." Id.

DISCUSSION

CSS asserts that because the application of MET was not properly submitted to the Workforce Investment Commission, MET's application should not have been considered for the grant. Executive Order No. 12372 requires an applicant to provide a copy of the funding proposal for comment to the states that have established a consultation process under the E.O. Applications must be submitted to the state's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the USDOL. For states that have not established a consultative process under the E.O. but have a State Workforce Investment Board (State Board), the State Board is the SPOC. For WIA implementation purposes, this consultative process fulfills the requirements of WIA Section 167(e) concerning consultation with Governors and Local Workforce Investment Boards.

The record establishes conclusively that the Louisiana Workforce Commission received MET's grant application in a timely manner. The record further establishes that the Louisiana Workforce Commission has been designated as the State Workforce Investment Board. MET is in compliance with the requirements of section 167(e) of the WIA and the implementing requirements of SGA-Part I, Consultation with Governors and Local Boards. MET has complied fully with the requirements of section 167(e) and the E.O. Accordingly, I find that CCS's complaint is without merit, and I affirm the grant officer's determination to award the PY 2003 grant to MET.

Assuming arguendo that MET's grant application was not received by the State Workforce Investment Board, MET would not be disqualified from competition for the PY 2003 grant. The regulation implementing Executive Order 12372, 29 C.F.R. § 17.1(c) explicitly provides that the implementing regulations confer no right on aggrieved parties to challenge the actions of DOL or its officers. See 29 C.F.R. § 17.1(c). The regulation states that "These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers." Id. By its plain terms, section 17.1(c) confirms that neither the regulation nor E.O. 12372 provides a basis for disqualifying a DOL grant officer's award of a WIA section 167 grant.

Furthermore, at least one administrative law judge and the Secretary of Labor have previously rejected the argument that E.O. 12372 provides any basis for overturning a grant officer's award of a WIA grant.

In Tennessee Opportunity Programs, Inc. v. United States Department of Labor, the administrative law judge reviewed the above-cited regulation and found that failure to comply with any of the regulations under E.O. 12372 "does not appear to be a legally valid challenge to a Grant Officer's decision to award the grant . . ." Tennessee Opportunity Programs, Inc. v. U.S. Dep't of Labor, 95-JTP-14 at 7 (ALJ June 18, 1996).

In Lake Cumberland Community Services Organization, Inc. v. United States Department of Labor, 89-JTP-20 (Sec'y Nov. 20, 1990), appeal dismissed for lack of jurisdiction, 929 F.2d 701 (6th Cir. 1991) (Table), the Secretary of Labor also considered this issue. The Secretary's Final Decision and Order cited E.O. 12372 and noted that there was a four-step timeframe to be followed for the state's comments concerning applications it received, with the first step requiring the reviewing state agency to provide its comments to DOL within sixty days after the deadline for receipt of applications. Id. at 5. The Secretary found that the grant officer consulted with the state point-of-contact ("SPOC") and that Kentucky Farmworker Programs's ("KFP") late filing of its application with the SPOC did not interfere with the consulting process. Id. at 8. Further, the Secretary found that there was no prejudicial conduct toward any party and that nothing of "statutory or regulatory substance occurred" that would require the Secretary to set aside the grant officer's decision to award the grant to KFP. Id. at 9. Specifically, the Secretary found that the ALJ erred in dismissing the grant officer's argument that the state filing date was directory rather than mandatory, and stated:

The Grant Officer's responsibility to select a MSF grantee is singular. The SPOC's recommendation is not binding on the Secretary, although it provides information that facilitates a reasoned decision. It was therefore error for the ALJ to elevate a procedural rule in a preamble concerning the filing of KFP's submission to the SPOC to a deadline which could act as a jurisdictional bar to consideration of the project by the Grant Officer. Ample case law establishes that an agency always has the discretion to relax procedural rules that are adopted to aid in the exercise of its discretion, barring a showing of substantial prejudice to the complaining party."

Id. at 9-10 (internal citations omitted). In Lake Cumberland, no such prejudice was shown.

Likewise, in the present case, CCS has not demonstrated prejudice, much less substantial prejudice, as a result of the consultative process between the DOL and the Louisiana Workforce Commission. The most that can be established on basis of the record before me is that the Louisiana Workforce Commission did not comment to DOL on any of the PY 2003 section 167 grant applications for the State of Louisiana. However, as the prior case law clearly explains, the lack of comment by the Louisiana Workforce Commission cannot provide the basis for disturbing the grant officer's award of the PY 2003 section 167 to MET. There being no other basis in the record for disturbing the grant officer's decision, I will deny CCS's request to reverse the grant officer's decision awarding the PY 2003 section 167 grant to MET.

ORDER

It is hereby ORDERED that the request by Catholic Community Services to reverse the July 3, 2003 decision of the grant officer is DENIED.

A

LARRY W. PRICE
Administrative Law Judge

LWP
Newport News, Virginia

Notice of Appeal Rights: This initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the ARB serves notice that it will review the decision. A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the ARB and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof. Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding. Requests for extensions for the filing of exceptions or replies must be received by the ARB no later than 3 days before the exceptions or replies are due. 29 C.F.R. § 37.112(b); Secretary's Order 1-2002, ¶ 4.c.(42), Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 67 Fed. Reg. 64272 (Oct. 17, 2002).