



**Issue Date: 23 June 2010**

Case No. 2010-WIA-00003

In the Matter of:

OUR SAVIOR'S BUSINESS, INC.,  
Complainant,

v.

UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

### **DECISION AND ORDER GRANTING MOTION FOR SUMMARY DECISION**

This matter arises under the Workforce Investment Act, 29 U.S.C. § 2801 *et seq.* and 20 C.F.R. Part 667, Subpart H. By motion dated May 27, 2010, the Grant Officer has moved for summary decision. Complainant has not responded to that motion.

#### **Findings of Fact**

On June 24, 2009, the Employment and Training Administration (ETA) issued a notice in the Federal Register announcing the availability of approximately \$150 million in grant funds authorized by the American Recovery and Reinvestment Act of 2009 for “pathways out of poverty,” and solicited applications for those funds. [AR<sup>1</sup> 5, pp. 4-18.] The solicitation was amended on July 22, 2009 and August 14, 2009 in ways that are not material to this decision. [AR 5, pp. 1-3.] The Federal Register notices established the eligibility, procedure and requirements for an award of a grant. To be eligible for a grant, an applicant was required to be either a national entity or a local entity. [AR 5, p. 6.] In either case, the applicant was required to have experience serving at least one of the following groups: unemployed individuals, high school dropouts, individuals with criminal records, and/or disadvantaged individuals within areas of high poverty. [*Ibid.*] A national entity was eligible for a grant if it was a private nonprofit organization that (a) delivered services through networks of local affiliates or other established partners, and (b) the local affiliates or partners had the ability to provide services in four or more states. [*Ibid.*] A local entity was defined as a public organization or private nonprofit organization with a service area limited to a single sub-State geographic area. [AR 5, p. 7.] The projects to be funded under the program were required to provide training, education, and job placement assistance for individuals seeking “pathways out of poverty” into employment

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<sup>1</sup> “AR” refers to the Administrative Record in this matter.

opportunities in certain “green” industries (industries generally involving energy conservation, renewable electric power, energy-efficient vehicles, biofuels, deconstruction, energy efficiency assessment, and manufacture of sustainable products using environmentally sustainable processes and materials). [AR 5, pp. 7 and 5.]

The solicitation specified the content and form of applications under the “pathways out of poverty” program. [AR 5, pp. 9-15.] An application was required to include:

1. A statement of need, including the poverty rate in the Public Use Microdata Area (PUMA) for each community to be served and an overview of the current economy and workforce in each designated community;
2. The applicant’s project management and organizational capacity, including the staff capacity to implement the proposed program; the fiscal, administrative, and performance management capacity to administer the proposed program; and the experience of the applicant (and its proposed partners, if any) in leading or participating significantly in a comprehensive partnership;
3. A strategy and project work plan with a complete and “very clear” explanation of its proposed strategy and its plans to implement that strategy, including addressing the conditions described in its statement of need, the roles and level of commitment of the project partners, proposed recruitment, training, placement and retention strategies, leveraged resources, and a project work plan; and
4. Outcomes and deliverables, including demonstration of a results-oriented approach to managing and operating their project by providing projections for applicable outcome categories relevant to measuring the success of the program, projected performance outcomes, appropriateness and feasibility of the program with degrees or certificates resulting from training, and suitability for a rigorous Department of Labor evaluation of the proposed program.

[AR 5, pp. 11-15.] Each of the four criteria described above was assigned a number of points ranging from 5 to 20, and totaling 100, and the notice explained that the applications would be evaluated for adherence to the required factors. [AR 5.]

On September 29, 2009, Complainant Our Savior’s Business, Inc. submitted an application for a grant of \$8 million. [AR 4.] In its application, Complainant described its proposed program as follows:

With the \$8 million dollars, The Wealth bank Group proposes to utilize our Nationwide Wealth Creation Program to perform the following during our first year of Operation November 27, 2009 until November 27, 2010: we shall raise \$50 million dollars from the general public, and it shall be utilized to cost share with the Federal Government to request \$200 million for the purpose of funding, sustaining, providing Permanent Employment Opportunities to

approximately 23,000 Participants; in addition, during the second year of program from November 27, 2010 until November 27, 2011, management plans to duplicate our success by performing the same task of qualifying another 20,000 participants for Permanent Employment Opportunities. Moreover, because management is projecting to collaborate with the US Federal Government to appropriate more than \$510 million dollars to uplift the disadvantaged in distressed communities throughout America, we also propose to assist 20,000 homeless participants to become qualified homeowners as part of our supportive services. Furthermore, management shall provide a transportation voucher worth over \$3000.00 to more than 7000 participants. Last, but not least, we plan to empower 1 million participants to obtain a Wealth Creation Card so that they may qualify according to their numbers to Save 100% as they Spend.

When this Wealth Creation Program is successfully implemented during this two year period, the General Public shall receive a minimum of \$3000.00 per Federal dollar and a maximum of \$6000.00 per Federal dollar obligated: To illustrate, when \$1 million dollars of Federal dollars are committed within this Wealth Creation Program, a minimum of \$3,000,000,000.00 and a maximum of \$6,000,000,000.00 shall be made to up lift American Citizens. Hence, I believe that this Wealth Creation Program possesses greater value for the public than anyone of my competitors' applications submitted; In addition, our program may in fact have more financial value than combining all of my competitors programs which have been submitted together. In conclusion, management would also become empowered to establish approximately 100 Partners with \$125,000,000.00 to assist those who are in the greatest need such as the populations of the long term unemployed, high school dropouts, individuals with criminal records and disadvantaged individuals living in areas of high poverty.

[AR 4, p. 8.] Complainant's application included a 10-page description of its Wealth Creation Card [AR 4, pp. 9-18], a description of its "Play to Win!" international fundraising program [AR 4, p. 19], a 13-page description of its Asset Building Program (AR 4, pp. 20-32), a 3-page description of its nationwide fundraising membership program (AR 4, pp. 33-35<sup>2</sup>), a copy of an advertisement for the purchase of sponsorship certificates from the Office of Small Businesses, Incorporated (AR 4, pp. 36-40), a Foundation Membership Offer from the Wealth Bank Group (AR 4, pp. 41-43), a description of the Office of Small Businesses, Inc.'s Students' Guaranteed Employment and Ownership Program (AR 5, pp. 44-46), and a solicitation for contributions to the Office of Small Business, Inc.'s charitable fundraising program (AR 4, pp. 47-51).

Complainant's application was reviewed by a panel chaired by Alvin Gordon, and including Susan Piergallini and Jacklynn Otis. [AR 3, pp. 1-23.] Each member of the panel assigned scores of 0 for each of the four criteria described above, and a total score of 0 for Complainant's application. [AR 4, pp. 7, 12, 19.] Based on the panel's recommendation, James W. Stockton, the Grant Officer assigned to award grants under the solicitation, advised Complainant that it had not been selected for an award. [AR 2, p. 1; Declaration of James W.

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<sup>2</sup> Page 35 is blank, although it includes a page number indicating that it is part of a 3-page document together with pages 33-34 of AR 4.

Stockton, Exhibit 1 to Motion for Summary Decision, ¶ 6.] Complainant contacted Mr. Stockton by telephone on February 4, 2010 regarding its non-selection for an award, and Mr. Stockton sent Complainant an email on the same day explaining Complainant's appeal rights. [Stockton declaration, ¶¶ 8-9.] Mr. Stockton issued his final determination by letter dated March 3, 2010, with a fuller explanation of the perceived deficiencies in the grant application. [AR 2, pp. 2-4; Stockton declaration ¶ 11.]

By letter dated February 23, 2010, Complainant submitted a request for hearing or review of the denial of its grant application. Complainant identified the following issues for resolution: (1) failure of the panel to comply with a presidential directive to "protect those in the greatest need"; (2) failure of the panel to follow a presidential instruction to use merit-based selection criteria; (3) failure of the panel to comply with equal opportunity laws and principles; (4) failure of the Department to follow a presidential order to promote local hiring and to maximize the economic benefits of a Recovery Act-funded investment by supporting projects that ensure residents of the local community to receive job opportunities accompanying the federal investment; (5) failure of the panel to follow a presidential command to provide maximum practicable opportunities to small businesses; (6) failure of the panel to meet a presidential mandate to provide equal opportunity for disadvantaged business enterprises; (7) concerns over treatment of employees by corporate America; and (8) failure to follow affirmative action guidelines.<sup>3</sup> [AR 1.]

### **Conclusions of Law**

Under 20 CFR § 667.825(a), the review of a grant decision is "to determine whether there is a basis in the record to support the decision." My review is not a de novo review, but is limited to determining "whether the relevant factors were considered by the Grant Officer in making his decision and whether the ultimate decision reflects reasoned decision-making in accordance with the governing statutes, rules and regulations." *Edna Mills Restoration Project*, 2005-WIA-005 at p. 2 (ALJ October 5, 2009), quoting *County of Los Angeles Community and Senior Citizen Services v. DOL*, 87-JTP-17 at p. 4 (ALJ June 29, 1988). Under 20 CFR § 667.800, "only alleged violations of the [Workforce Investment] Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review." The burden on the Grant Officer is one of production, and to that end, the submission of the Administrative Record shifts the burden of persuasion to Complainant to overturn the Grant Officer's decision. The burden is a heavy one, and requires a showing that the Grant Officer's decision was arbitrary and capricious, or was an abuse of discretion, or was not in accordance with the Act and its regulations.

Based on my review of the Administrative Record, the Grant Officer's motion for summary decision and accompanying declaration, I conclude that Complainant has not shown that the decision not to award a grant was arbitrary, capricious, an abuse of discretion, or not in accordance with the Act and its regulations. A thorough review of Complainant's grant application shows that it is deficient in many respects, and that the panel acted reasonably in assigning it a score of 0.

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<sup>3</sup> Although Complainant identified 10 separate issues, some are redundant and all have been captured in the above summary.

First, applicants for grants under the solicitation were required to show that they would provide training for employment in “green” industries. Complainant’s grant application made no reference to that requirement.

Second, applicants for grants were required to include information pertaining to each of the four criteria for evaluation described above. Complainant’s grant application contained none of the required information. Complainant did not include any information regarding its experience, staffing, or performance management; did not include any information regarding the PUMA in which it intended to operate or the PUMA’s economy, workforce, or poverty rate; did not include a strategy and project work plan; and did not include any information pertaining to outcomes and deliverables.

In short, Complainant’s application failed to meet any of the requirements for an award under the solicitation. Accordingly, I find that Complainant has not met its burden to show that the Grant Officer’s decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the law. The Grant Officer’s motion for summary decision will therefore be granted.<sup>4</sup>

**ORDER**

Based on the foregoing, IT IS ORDERED that the Grant Officer’s motion for summary decision is GRANTED and Our Savior’s Business, Inc.’s petition for review is DENIED.

**SO ORDERED.**

**A**

PAUL C. JOHNSON, JR.  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file exceptions (“Exception”) with the Administrative Review Board (“Board”) within twenty (20) days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 667.830. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Exception must specifically identify the procedure, fact, law, or policy to which exception is taken. You waive any exceptions that are not specifically stated. Any request for an extension of time to file the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days

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<sup>4</sup> I find that the issues raised in Complainant’s request for hearing are irrelevant to my decision. Each issue identified by Complainant requires the application of principles that are not included in the Act or its implementing regulations, such as presidential directives and case law regarding affirmative action. My review is limited to violations of the Act, its regulations, grant or other agreement under the Act. 20 CFR § 667.800. Accordingly, I will not further address the issues identified by Complainant.

before the Exception is due. *See* 20 C.F.R. § 667.830; Secretary's Order 1-2002, ¶4.c.(42), 67 Fed. Reg. 64272 (2002).

A copy of the Exception must be served on the opposing party. *See* 20 C.F.R. § 667.830(b). Within forty-five (45) days of the date of an Exception by a party, the opposing party may submit a reply to the Exception with the Board. Any request for an extension of time to file a reply to the Exception must be filed with the Board, and a copy served on the other party, no later than three (3) days before the reply is due. *See* 20 C.F.R. § 667.830(b).

If no Exception is timely filed, the administrative law judge's decision becomes the Final Decision and Order of the Secretary of Labor pursuant to 20 C.F.R. § 667.830(b) unless the Board notifies the parties within thirty (30) days of the date of issuance of the administrative law judge's decision that it will review the decision. Even if an Exception is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the filing of the Petition notifying the parties that it has accepted the case for review. *See* 20 C.F.R. § 667.830(b).