

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 September 2013

CASE NO.: 2012-WIA-00010

In the Matter of:

INSTITUTE FOR INDIAN DEVELOPMENT, INC.,
Complainant,

v.

U.S. DEPARTMENT OF LABOR,
Respondent.

DECISION AND ORDER

This matter arises under the Workforce Investment Act (WIA), 29 U.S.C. §§ 2801 *et seq.*, and the implementing regulations at 20 C.F.R. Parts 652 and 660 through 670; and 29 C.F.R. Part 37. Complainant, the Institute for Indian Development, Inc. (IID), petitions for review of a grant awarded by Respondent, U.S. Department of Labor (DOL), Employment and Training Administration (ETA) Grant Officer B. Jai Johnson, under Solicitation for Grant Applications SGA/DFA PY 11-04. For the reasons explained below I vacate the award of the Grants under SGA/DFA PY 11-04.

Background and Procedural History

The Community Service Employment for Older Americans Program, authorized under Title V of the Older Americans Act as amended, Pub. L. No. 109-365, includes the Senior Community Service Employment Program (SCSEP). SCSEP is an employment and training program targeted to low-income older individuals who want to enter or re-enter the workforce. Total funding for program year (PY) 2012 is \$346,000,000. The Solicitation for Grant Applications (SGA) anticipated between 10 and 20 award recipients, at least one of which must be an "Indian or Native American" organization. The maximum award for the Native American set-aside grant was \$6,107,847.

Grants under this section are awarded on a competitive basis. ETA publishes a Solicitation for Grant Applications (SGA) in the Federal Register to announce the deadlines and criteria by which interested organizations can apply for funding. The awards process is administered by an ETA grant officer, who is responsible for ensuring that grants are awarded in accordance with the SGA and applicable laws and regulations. Unsuccessful applicants may

appeal a grant officer's final award determination to the Office of Administrative Law Judges (OALJ). 20 C.F.R. § 667.800 (c).

The SGA specified:

A technical review panel will carefully evaluate applications against the selection criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points for general applicants or 105 points for a set-aside applicant may be awarded to an application, depending on the quality of the responses to the required information described in [the evaluation criteria section of the SGA]. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; unemployment or poverty in the areas to be served; the availability of funds; and which proposals are most advantageous to the government.

The panel results are advisory in nature and not binding on the Grant Officer. The Grant Officer may consider any information that comes to his/her attention.

Administrative (Admin) File, Tab F at 33.

ETA assigned Grant Officer B. Jai Johnson to oversee the selection process. By the close of the application period, on May 10, 2012, ETA received 23 proposals, including two for the Native American set-aside grant. (Admin File, Tab C at 12.) One three person technical review panel evaluated the grant proposals of the Native American set-aside applicants against the rating criteria outlined in the SGA. On June 25, 2012, Grant Officer Johnson forwarded a letter to Assistant Secretary Jane Oats informing her that 16 grantees were selected for grants, including two minority set-aside applicants, one for Native American applicants and one for Asian American and Pacific Islander applicants. The Native American grant recipient was the National Indian Council on Aging (NICOA). (Admin File, Tab C at 8-13.)

On July 26, 2012, Grant Officer Johnson sent IID a letter notifying it that its "application was not among those selected for funding." A second letter on July 30, 2012 stated it represented the "final determination and include[d] the significant weaknesses of your proposal as identified by the technical review panel." (Admin File, Tab B at 1-5, 7.) On August 15, 2012, IID appealed the final determination of the Grant Officer. (Admin File, Tab A at 6-167.) On October 12, 2012, NICOA requested permission to participate as an interested party. On October 17, 2012, Chief Administrative Law Judge Stephen Purcell granted NICOA's request.

On April 1, 2013, I conducted a hearing, receiving testimony from Charlotte Adams, the Deliberation Specialist for SGA 11-04. Ms. Adams is not a Department of Labor employee but is a contractor hired back after she retired doing "about 80 percent of the grant management work [she] did before [she] retired." (Tr. at 89). Donna Kelly, the Division Chief in DOL's Division of Workforce Investment and Federal Assistance, also testified during the April 1, 2013 hearing. Ms. Kelly supervises the team that is responsible for the SCSEP program. One of the technical panel members, Adriana Kaplan, testified at the hearing, as did Kevin Billiot, IID's

Executive Director. Prior to the hearing, depositions were taken from Ms. Adams, Ms. Kelly, Ms. Johnson as well as the three panel members Ms. Kaplan, Michael Capabianco and Bojan Cubela. At the hearing I received into evidence the Administrative File Tabs A through F including a new Tab C page 17 which was identified as Tab C page 17A. This page was added right before the hearing to correct mathematical errors in the scoring of the applicants. I also received into evidence IID's exhibits CX-1 through CX-25. At the conclusion of the hearing, I set briefing for June 17, 2013. IID and the Department of Labor each filed timely briefs. In addition, NICOA, as a Party in Interest, was authorized to file a brief, but did not do so.

Standard of Review

Review of Grants Awarded Under the WIA

Under 20 CFR § 667.800, "only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review." Review 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 v. DOL*, 2005-WIA-5 at 2 (ALJ October 5, 2009), quoting *County of Los Angeles Community and Senior Citizen Services v. DOL*, 87-JTP-17 at 4 (ALJ June 29, 1988). This is a high threshold, and in order to vacate the Grant Officer's award of a grant, it requires a finding that the Grant Officer's determination was arbitrary, capricious, an abuse of discretion, or not in accordance with the Act and its Regulations.

Discussion

The Grant Officer's Decision

My job is not to decide which application should receive the grant but rather to determine if ETA and the Grant Officer followed the proper procedures in deciding which organizations should receive the grants. The evidence presented supports the conclusion that the granting of the award for the Native American set-aside grant under SGA/DFA PY 11-04 did not follow the SGA.¹ Furthermore, the evidence demonstrates that the Grant Officer and the Deliberation Specialist failed to follow ETA's own procedures during the application review and grant award process.

The Grant Officer has a duty to make an independent decision regarding the appropriate grant awardee. Her obligation is to use the scores from the panel as the primary, not controlling, factor, balancing the scores with the other stated factors to determine the Award recipients.

The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban,

¹ There were 15 other grants awarded under SGA/DFA PY 11-04. This decision is limited to the Native American set-aside grant. I did not review, nor do I make any comment about, the process of selecting those other grants.

rural, and geographic balance; unemployment or poverty in the areas to be served; the availability of funds; and which proposals are most advantageous to the government.

The panel results are advisory in nature and not binding on the Grant Officer. The Grant Officer may consider any information that comes to his/her attention.

(Admin File, Tab F at 33.)

In SGA 11-04, the evidence indicates the Grant Officer awarded the Native American set-aside grant relying exclusively on the highest panel score without any other consideration. In the June 25, 2012 letter to Assistant Secretary Jane Oates the Grant Officer stated: “Applicants with a score of 75 and above were selected for an award.” (Admin File, Tab C at 10.) Although the Grant Officer indicates that the other factors identified in the SGA were considered, there is no discussion of which factors were considered in the selection of grantees. There is no mention of how various factors contributed to the process of selecting which organizations would receive a grant. The Grant Officer testified by deposition, not at the hearing. Her answers indicated she was being evasive and uncooperative. She would not address how specific factors identified in the SGA were used in the selection process. When asked about a factor, her answer was “I can’t answer that question.” (CX-18 at 20.)

The Grant Officer’s letter to the Assistant Secretary states “the ranked scores served as the primary basis for selection of applications for funding in conjunction with other factors.” (Admin File, Tab C at 9). In the letter, the Grant Officer explains how “other factors” were considered:

Urban, rural, and geographic balance; unemployment or poverty in the areas to be served: SCSEP’s statutory formula requires the equitable distribution of all SCSEP positions across the entire country through a formula that takes into account the aforementioned factors. That formula will be applied in the second step when the number of participant slots is reconciled with the number proposed by each applicant.

(Admin File, Tab C at 9.)² These factors were “applied at the second step,” that is, after the award selections had been made, not as part of the process for selecting which applicant would receive the grant. The Grant Officer’s letter to the Assistant Secretary contains nothing but an unsupported assertion that other factors were considered in the selection process. In fact, nowhere in the record is there any discussion that any factor, other than the panel scores, was used to select the organization that was to receive grants under the Native American set-aside.

² During her testimony, Ms. Kelly, who signed the letter to the Assistant Secretary, was asked what is the statutory formula. She replied “I am not familiar with the SCSEP regulations.” (Tr. at 47).

Contrary to the requirements of the SGA, I find the Grant Officer let the panel decision control. That is sufficient to find the awards arbitrary and capricious, an abuse of discretion, and not in accordance with the Act and its Regulations. Therefore, I vacate the decision of the agency and order the agency to reselect the Native American set-aside award grantees.

Technical Panel Scoring

While I will not second guess the panel decision to award a specific number of points to an applicant, I am concerned about the process this panel used to reach the scores relied upon by the Grant Officer and Assistant Secretary to award the Native American set-aside grant.

The selection process for this SGA is described in testimony by Donna Kelly:

Q. It's my understanding that the applications received for this SGA were reviewed by several panels, that each consisted of three persons, is that correct?

A. Yes.

Q. And two of those persons are generally not employees of the Department of Labor, is that right?

A. Yes.

Q. They are subcontractors, . . .

A. Yes.

Q. And the third panelist is actually a Department of Labor employee, is that right?

A. Yes.

Q. Okay. And this person who participates on the panel who is an employee, they're an equal, more or less, with the other persons. They don't supervise the panel. Their score of the application doesn't count any more, it's not weighted any -- they are essentially a co-equal with the other panelists, am I correct about that?

A. Yes.

Q. Okay. Now, as I understand the process, the panelists first review and score the applications that are assigned to them independently, on their own, is that right?

A. Yes.

Q. Okay. And then they get together on what's referred to as a deliberations call and discuss their scores, is that correct?

A. Yes.

Q. Okay. And the deliberations call is facilitated, if you will, by the person whose role from the Department is -- their title is the deliberation specialist, is that right?

A. Yes.

* * *

Q. Okay. Now, as I understand the role of the deliberations specialist, it's to facilitate the call and to record the panel deliberations, am I right?

A. Yes.

Q. Okay. And that includes recording the panelists' initial scores?

A. Yes.

Q. And including any changes in scores and changes in identified weaknesses?

A. Changes in scores.

Q. But not changes in identified weaknesses?

A. No.

Q. They don't record that?

A. (No response).

(Tr. 29-31.)

Ms. Kelly continues by describing the next step in the process.

Q. Part of the role of the deliberation specialist is to ensure that the panelists follow these instructions that you just read into the record? Is that part of the deliberation specialist's role?

A. It is.

Q. It is, okay. Thank you. Does the deliberations specialist read the applications for which he or she will serve as a facilitator?

A. No.

Q. Okay. Now, I want to understand the process of what happens after the panelists have been through their workbooks and done their scoring. As I understand it, the deliberation is -- when the deliberation calls have been completed, the panelists e-mail their workbooks to the deliberation specialist, is that correct?

A. Yes.

Q. Okay. And then the deliberation specialist verifies the recorded scores against the panelists' final rating workbooks, is that right?

A. Yes.

Q. Okay. And then the scores are recorded on a master spreadsheet, and after all those scores are recorded on the spreadsheet, the grant officer is notified that the workbooks have been posted on the appropriate computer drive, is that correct?

A. Yes.

Q. Okay. And as I understand it, part of the process at this point involves a random sample review of the rating workbooks by, I understand it's the grant officer, the division chief, deputy associate administrator and the OMAS administrator, is that correct?

A. Yes.

Q. Okay. And as I understand it, the purpose of this review is to determine whether the identified weaknesses correspond to the number of point deducted and whether the weaknesses are stated logically. Am I right in that?

A. It's a high-level review to note if there's any egregious errors.

Q. Okay. And am I correct that as part of this review process, it's only the workbooks that are reviewed, right? No one actually -- none of the people involved in this high-level review actually look at an application? They look only at the workbooks, is that right?

A. That is correct.

Q. Okay. So when the grant officer makes the decision to award or not to award a grant to an applicant, he or she would not have seen or certainly reviewed the application, any application?

A. That's correct.

(Tr. 34-36.)

The Deliberation Call

I am troubled by the technical panel scoring process in this case, particularly the Deliberation Call. As noted by Ms. Kelly, the Deliberation Call is the opportunity for the panelists to discuss the scores among themselves. The call is initiated by the Deliberation Specialist. (Tr. at 30.) The Deliberation Specialist's "job is to facilitate." (Tr. at 72.) The PowerPoint instructions to the panelists indicated that one of the roles of the Deliberation Specialist was to "Facilitate calls to ensure a fair deliberation process." (CX-15 at 10). Ms. Kelly expressed that sentiment saying "You know, we do for one applicant what we do for all." (Tr. at 45.) Ms. Adams, the Deliberation Specialist, indicated her job was limited "I don't do nothing, say nothing except when we get on deliberation calls: Did you read the PowerPoint, did you read the SGA, did you follow the instructions." (Tr. at 72.) Her testimony belies her assertion of a limited role in the deliberation call.

The evidence presented regarding the deliberation call leads me to conclude that the decision resulting from that call was arbitrary and capricious. First, I am concerned that, contrary to Ms. Kelly's statement, "You know, we do for one applicant what we do for all," (Tr. at 45,) the selection process did not treat each applicant equally. As Ms. Adams indicated that "very few" of the applicants were discussed by panels.³ (Tr. at 76.) Ms. Adams decided which applications which would be reviewed by the panel on the deliberation call. Her criteria for selecting which applications would be reviewed was confusing at best. During her deposition she stated that IID received two high scores and one low score from the panel so it required review. During the hearing Ms. Adams changed her reasoning for selecting an applicant for review indicating her earlier position was wrong. (Tr. at 75.) At the hearing she testified that she did not need "to discuss any scores under 70." (Tr. at 75.) However, when asked why she decided to have the panel review IID's application, even though the initial score was lower than 70, she answered at length:

That's why I'm here, and I wish I had not did it. But I'm going to tell you why I did it. I believe that these applicants put out a lot of money. I look at these as being my responsibility, and when I am a deliberation specialist

³ Ms. Adams as Deliberation Specialist was responsible for more than just the two Native American set-aside applicants.

and I know that the max score was 75, and he had a very low score, I said why don't we find out -- when I got the score, 58 from Adriana, 23 from Cubela, and Michael gave it a -- I think that's 69 if you add it up right, if you add the scores. But anyway, 67, because I heard him say 67. I said Cubela's score is very low. I said what I wanted to do -- I was hoping that Michael, because he gave it a, would bring the others up, because the higher the Indian -- this organization was, the better chance of being in the upper score, because as it stands now, if you would add 58, 23 and 67 or I heard you say 67, the average would only have been 50. But if I had brought them up to 67, 67, 67, that would have been 67 instead of 50, and then the scores from the Program Office would have brought it almost, like, into a -- like 67 plus 21. It would have been up there. It would have been, like, 90 something.

I was hoping that they would -- Adriana and Michael would bring Cubela up, but they didn't; it did the opposite. So that's why I -- I didn't have to discuss this, period. I was trying to help this organization's score come up so that they can fall into the competitive range, but it didn't go the way I wanted it to go because I'm not the reviewer. It went in the opposite direction; it went down. So that's why I asked the panelists to discuss that -- his proposal because I was trying to bring it up thinking that Michael saw this and Adriana saw that, that Cubela would bring his up and we'll have us a 67, 67, 67.

Q. You were trying to help the Institution --

A. Yes, I was, sir. Yes, I was, and it didn't work the way I thought it was going to work, so it went down.

(Tr. at 76-78.)

IID's initial scores from the panel were 58 from Ms. Kaplan, 23 from Mr. Cubela and 67 from Mr. Capabianco. However, after the deliberation call, the scores became 36, 31 and 37, respectively. The significant change in scores is sufficient to raise questions concerning the deliberation call. With an explanation addressing why the scores were lowered significantly by the panel, the scores could stand. However, without an explanation discussing the lower scores, the scores are arbitrary and capricious.

None of the panel members has a recollection of any specific reasons for changing any scores. (CX-20, 21, 22). Each had no memory of the discussions on the deliberation call. As one of the panel members stated "I don't recollect anything related to this applicant or the other applicants." (CX-21 at 15.) Even though there is no memory of any of the panel discussions, written notes summarizing the discussions could provide sufficient insight to support the scoring changes. However, Ms. Adams, the deliberation specialist, took no notes except the numerical scores and changes to them. (CX-8.) Furthermore, the original panel member workbooks, with the weakness statements capturing the panelists' original thoughts and comments, were not kept

by ETA nor by the panelists. Even though panelists were instructed to keep the workbooks and notes for six months, some of the panelists disposed of the immediately. As Ms. Adams testified about the deliberation call:

And then they're supposed to look in their notes because they supposed to have all these things written. When we get together, everything's supposed to be written.

Q. You're supposed to save it for six months.

A. And -- well, it doesn't turn out like that all the time, sir. And we tell them six months, but one of the person I called said I got rid of that soon as I got -- I mean, what can you do? I'm not responsible for hiring. I'm not responsible for paying. But like I say, I got rid of that one when it was over. I mean, you can't -- we don't have control over people.

Q. Which one said that?

A. Cubela. He said oh, that stuff's dumb; I got rid of that.

(Tr. at 97.) Without either personal memory of the call or notes from the call or the original workbooks to compare to the final workbooks, it is impossible to conclude the significant changes to the scores were not arbitrary and capricious.⁴

Ms. Adams also testified that during the deliberation call, when Mr. Cubela “opened his mouth,” the other two panel members listened. (Tr. at 99.) While both Ms. Adams and Ms. Kaplan testified that there was no “driving force” in the discussions, I find the testimony of Ms. Adams and Ms. Kaplan not credible on the issue. (Tr. at 96-100, 114). Therefore, I conclude, based on the evidence before me, that Mr. Cubela dominated the call and/or manipulated the discussion to bring the other panelists scores more in line with his original score, the lowest of the three panelists.

Furthermore, other testimony from Ms. Kaplan addressing the deliberation call is troubling:

⁴ During the hearing I asked Counsel for ETA and Ms. Adams if the Department of Labor had a Document Destruction Policy. They both indicated they did not know but would find out and inform me if such a policy existed. (Tr. at 95). In its post-hearing brief, ETA stated that “The only guidance on record retention that existed at the time DOL conducted the SCSEP grantee selection process was the document (CX-25),” that was discussed during the hearing, indicating that panelists were required to retain their documentation for six months. (ETA Brief (Br.) at 6.) The brief goes on to note that no effort was made to contact the panelists about documents in their possession until January 2013 when responding to IID’s interrogatories and document requests. (ETA Br. at 7.) Counsel argued in the brief, “the six-month retention period had apparently already expired at the time the Department received IID’s December 17, 2012 interrogatories and document requests.” (Br. at 7 n.6). The fallacy of ETA’s argument is that the Department of Labor has a Records Policy that includes record retention and destruction guidance. I take Judicial Notice of DOL’s Records Management Handbook. (<http://www.labornet.dol.gov/workplaceresources/policies/records/policy/index.htm>). ETA failed to retain documents as required by DOL policies. Furthermore, when this action was first filed on August 15, 2012, ETA had an obligation to protect and prevent the destruction of the federal records relating to this case. ETA failed to do that.

I tend to be very generous with grading when I read proposals, so I tend to give the benefit of the doubt to the grantee, and then when I saw that others were not as generous -- I remember there was one in particular who was very ungenerous. He was at the bottom of the scale, so the process requires you to be within ten points of each other. That's what the -- Charlotte, the panel person is supposed to get you guys to be a little bit closer.

JUDGE REILLY: Okay. The deliberation specialist's job is to get the panel members closer?

WITNESS: Well, to not be so far from each other.

JUDGE REILLY: Okay. And there is a rule that it has to be within ten points?

WITNESS: That's what we were told, yes.

JUDGE REILLY: By whom?

WITNESS: The grant -- the previous -- I think every grant -- what do you call --

JUDGE REILLY: You can't look to him.

WITNESS: Okay. Every grant --

JUDGE REILLY: Grant officer?

WITNESS: Officer.

JUDGE REILLY: You can look to me.

WITNESS: Yes, grant officer. Yes, I --

JUDGE REILLY: Is that rule written down anywhere, or is that in somebody's mind?

WITNESS: I never saw that rule written down anywhere, but it's way above my status here.

(Tr. at 109-10.)

Based on the evidence presented, including the deposition and hearing testimony, I find the panel's decision determining the scores for the grant award for the Native American set-aside grant to be arbitrary and capricious. Specifically, the factors that lead me to conclude that the score determination was arbitrary and capricious were: Ms. Adams' desire and effort to help the applicant rather than being unbiased, the apparent dominance of the deliberation by Mr. Cubela, the panelist with the lowest initial score, and one panelist's understanding, as told to her by the Grant Officer, that the three panelists' scores required to be within 10 points of each other. Any of these three factors, standing alone, is sufficient to find the scores arbitrary and capricious. There may be valid and reasonable explanations why each of these factors should not lead to a conclusion that the decision was arbitrary and capricious, but none were offered. Without a reasonable explanation for these factors, I have no recourse but to find the panel's scores were determined in an arbitrary and capricious manner.

CONCLUSION

It is difficult to understand how the Grant Officer can award a grant when she has not looked at any of the applications. Furthermore, the Grant Officer does not even look at every

workbook, but only a random sampling. Based on the testimony, it is probable that the Grant Officer made the award without even looking at the panel workbooks of the applicant receiving the award. (Tr. 41-42.) Therefore, I conclude that the Grant Officer decided which applicant would receive the Native American set-aside award by relying exclusively on the scores as determined by the panel. This in itself is sufficient to find the grant award arbitrary and capricious because of the failure to follow the SGA requirements to consider other factors. However, considering the panel scores relied upon by the Grant Officer, were themselves determined in an arbitrary and capricious manner, I conclude that the Native American set-aside grant decision was arbitrary and capricious and must be vacated.

Although I am greatly troubled by the deficiencies in the process of selecting grant awardees, I am equally concerned about the beneficiaries of these grants. These low-income older individuals are seeking to enter or re-enter the workforce. This opportunity is very important to them. Vacating the award grant is not an easy decision; however, I find it a necessary one. All we need to do is look at previous SGAs to see that ETA problems with the application review procedures is not a new phenomenon. *See, also, Northwest Community Action Programs of Wyoming, Inc., v. United States Department of Labor and Grant Officer Lorraine H. Saunders*, (2003-WIA-00005); *Black Hills Special Service Cooperative, v. United States Department of Labor and Grant Officer Lorraine H. Saunders*, (2003-WIA-00006); *Commonwealth of Puerto Rico, Dept. of Labor and Human Resources, Right to Employment Administration v. U.S. Department of Labor*, (2007-WIA-00003, 2007-WIA-00010, 2008-WIA-00004); *Rural Opportunities, Inc. v. U.S. Department of Labor*,(2003-WIA-00011). The length of this list of cases and the multiple remands on some SGAs, such as SGA 09-05, suggest that ETA has had difficulty bringing its grant award process into compliance. Hopefully ETA is aware of its flaws and will take this opportunity to bring the grant process into compliance.

Based on my finding that the award of the grants was arbitrary, capricious, an abuse of discretion, and not in accordance with the Act and its Regulations, I vacate the grant awards under SGA/DFA PY 11-04 Indian or Native American Set-Aside. However, in an effort to possibly mitigate the potential harm to the current beneficiaries, my order vacating the current award takes effect on January 6, 2014. This gives ETA time to review the process and issue the grant awards following the SGA and ETA's procedures.

I would be remiss if I did not suggest to the individuals who manage ETA that they should take a closer look at the grant award process to ensure all applicants receive a full and fair hearing following the provisions of the SGA and the policies of the Department of Labor and ETA. That did not happen in this case.

ORDER

IT IS HEARBY ORDERED THAT:

1. ETA's award grant under SGA/DFA PY 11-04 Indian or Native American Set-Aside is vacated effective January 6, 2014;

2. ETA shall reexamine the 2 applications previously considered, those of National Indian Council on Aging and Institute for Indian Development, Inc., for Indian or Native American Set-Aside grants;
3. ETA shall use a new panel, Deliberation Specialist and Grant Officer for this examination of the Indian or Native American Set-Aside grant applications;
4. ETA shall utilize the criteria identified in the SGA and discuss each criterion, including how it was applied to each applicant, in the Award Selection letter to the Assistant Secretary;
5. ETA shall award the grants prior to January 6, 2014. If ETA fails to award the grants prior to January 6, 2014, all funding under SGA/DFA PY 11-04 Indian or Native American Set-Aside shall cease until the new award is issued.

SO ORDERED.

STEPHEN M. REILLY
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 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).