



Issue Date: 26 June 2012

CASE No. 2012-WIA-00001

IN THE MATTER OF:

**MISSISSIPPI OPPORTUNITIES WORK, INC.,
Complainant**

v.

**EMPLOYMENT AND TRAINING ADMINISTRATION,
Respondent**

DECISION AND ORDER

BACKGROUND

This case arises under Title I of the Workforce Investment Act (WIA)¹ and the regulations promulgated thereto.² Section 167 of the WIA authorizes the United States Department of Labor (DOL), through the National Farmworker Jobs Program (NFJP), to award grants to eligible entities for the purpose of providing support to qualified migrant and seasonal farmworkers through employment opportunities, training programs, educational assistance, and other “workforce investment activities.”³

Parties seeking such grants apply to the Department of Labor pursuant to Solicitations for Grant Applications (SGAs), which are published in the Federal Register. The SGA establishes the eligibility, procedure, and requirements for the award of a grant. In this instance, the SGA informed potential applicants that a \$78,410,000 appropriation request was to be allocated among state service delivery areas for the operation of the NFJP in program years 2011-12.⁴ The purpose of the program was to assist eligible migrants, seasonal farmworkers, and their families to prepare for stable, year-round employment, through training and other workforce development services.⁵

To be eligible for a grant, an applicant was required to demonstrate four competencies: an understanding of the employment challenges and barriers to employment facing eligible migrant and seasonal farmworkers and their dependents; a familiarity with the geographical area to be served; a capacity to effectively administer a diverse program of workforce investment activities for eligible migrant and seasonal farmworkers; and the capacity to work effectively as a One-Stop partner.⁶ Submitted applications were required to include a Cost Proposal, a Technical

¹ 29 U.S.C. § 2801 *et seq.*

² 20 C.F.R. Parts 667, 669.

³ 29 U.S.C. § 2912; 20 C.F.R. Part 669.

⁴ 72 Fed. Reg. 14,694-14,695 (Mar. 17, 2011) (*cited as EX-E in this Order*).

⁵ EX-E at p. 2.

⁶ *Id.* at p. 3.

Proposal, and attachments to the Technical Proposal. Detailed requirements for all proposals were set forth in the SGA.

The Cost Proposal was required to contain SF-424, the Application for Federal Assistance, and the SF-424A, a Budget Information Form, as well as a Budget Narrative providing a description of costs associated with each line item on the SF-424A.⁷ The Technical Proposal had to demonstrate the applicant's capability to implement the grant in accordance with the SGA's provisions.⁸ To do so, the SGA directed applicants to provide descriptions of their programs in accordance with four separate criteria:

1. Economic Analysis of the Service Delivery Area: the application must describe the socio-economic characteristics of the proposed service area and problems faced by eligible farmworkers and their families. Applicants must explain how the economic conditions of the proposed service area, the labor market outlook, the characteristics of the eligible service population, the extent to which transportation is available, and developments in industry impact the employment prospects of eligible farmworkers seeking entry-level employment, and the analysis must be supported by reference to Bureau of Labor Statistics or service-area-level data. Scoring is based on the thoroughness of the description.
2. Strategic Partnerships and Collaboration: the application must describe key educational institutions, state/local government agencies, and other key organizations available to serve the eligible population. The applicant must describe its experience, if any, in collaborating with those key institutions, agencies, and organizations to serve the eligible population, in particular the One-Stop Career Center system. Scoring is based on the completeness of the applicant's description.
3. Administrative Capacity
 - A. Financial Management Systems: the applicant must comprehensively describe the management information, participant tracking, performance accountability and management, case management, accounting, and program and fiscal management systems that would be used to operate the NFJP program, ensure fiscal and reporting integrity, and generate reliable data. In describing those systems, the applicant must define the staff's responsibilities for managing them, and the staff's opportunities available to develop and enhance their operational skills. The applicant must also describe the eligibility determination and verification system that will provide for correct eligibility determinations and must provide a description of their participant tracking and reporting systems to demonstrate its ability to implement data validation procedures. The applicant also must describe its systems to support program integrity; how its collection and reporting systems would count participants for the purposes of common measures of tracking; its fiscal management reporting system; its capacity to provide the necessary equipment, access and staff qualified to perform Internet-based reporting; and its ability to provide case management. Scoring is based on the extent to which the applicant's descriptions of the systems for performance accountability and management (including reporting for the common measures), program and fiscal management reporting (including tracking spending for this program and any program income generated), case management (including a client-centered case management system and internet reporting

⁷ *Id.* at p. 4-5.

⁸ *Id.* at p. 5-6.

capability), eligibility determination and verification, and tracking of related assistance services and expenses demonstrate that its management systems can be expected to result in reliable data and efficient and well-managed program administration.

B. Key Personnel: applicants must describe the qualifications of the organization's key personnel, including but not limited to, the Executive Director, Financial Manager, Program Manager, Management Information System Manager, and case managers. The description should include the skills and experience established in the position description for that position, the experience and qualifications of existing personnel against those described in the position description, and current resumes for the personnel in the key positions identified. Scoring is based on evidence of how well the qualifications and experience of existing key personnel matched the qualifications necessary for the position, and was also based on how well the position description described the skills and experience needed for the job.

4. Integrated Service Delivery Strategies

A. Integrated Plan of Service: the proposal should describe the applicant's vision, strategy, goals, and objectives that guide the proposed plan of service and the results expected from implementing the proposed plan, considering the economic analysis, strategic partnerships, and administrative capacity described above. The plan of service must describe the service delivery area to be covered; the core, intensive, training and related assistance services proposed to be provided and strategies for providing them; the strategy to address an individual's needs as identified through an objective assessment and an individual employment plan; the related assistance services, including supportive services, needed by migrants and seasonal farmworkers and their dependents; the strategy for increasing the number of participants receiving employment and training services throughout the grant period, including an estimate of the total number and percent of all program participants; the training services to be provided, including the process used to determine a participant's enrollment in training services; and how the applicant proposes to promote co-enrollment of participants in WIA formula-funded programs. In describing the training services to be provided, applicants must include a description of the educational approaches to be used to assist participants in obtaining the occupational skills that lead to employment in emerging occupations. Scoring is based on the extent to which the applicant's description addresses the elements of the sub-criterion and supports a comprehensive strategy to improve career opportunities for the population in the service delivery area.

B. Outreach Activities: applicants must describe their strategies for outreach and recruitment of employers and farmworkers, including the number of employers with whom the applicant currently works, and employer-specific data on job placements, retention, and earnings. Applicants must also describe their plan for outreach and recruitment of new employers in industries appropriate for NFJP participants. Applicants must describe their strategies to effectively find and recruit eligible farmworkers, including a description of the field office structure for the organization and how it optimizes outreach and recruitment of new participants. Scoring is based on how effectively the applicant describes how relationships with employers will lead or have led to good employment opportunities for farmworkers, how effectively the applicant's strategies demonstrated it can provide improved placement opportunities, and how

effectively the applicant’s strategies for outreach to and recruitment of new participants demonstrate it can effectively serve the target population in the service area.

C. Developing Opportunities for Farmworkers in Emerging Industries: applicants must describe their strategies for developing opportunities for farmworkers in emerging industries, describe efforts in the service area, and describe the applicant’s capability to build partnerships with organizations that further opportunities for eligible farmworkers. Scoring on this factor is based on the applicant’s choice and description of emerging industry sectors in the service area, the effectiveness of its strategies, the educational approaches to be used, and the partnerships necessary to bring it to fruition.⁹

Under Section V “Application Review Information,” the SGA provided the following scoring table for the above categories:¹⁰

Criterion	Maximum Value
1. Economic Analysis of the Service Delivery Area	15
2. Strategic Partnerships and Collaboration	10
3. Administrative Capacity	25
A. Financial and Management Systems	(15)
B. Key Personnel	(10)
4. Service Delivery Strategy	50
A. Plan of Service	(20)
B. Outreach Activities	(15)
C. Opportunities for Farmworkers in Emerging Industries	(15)
Total	100

Finally, the SGA noted that a review panel would:

carefully evaluate and score all responsive applications against the criteria established in Section V of this SGA. While the ranked scores constitute an important element in the grantee selection process, the panel results are advisory in nature and not binding on the Grant Officer....The Grant Officer will make the final selection decision based on what applicant the Grant Officer determines would best meet the needs of the eligible migrants and seasonal farmworkers in the area to be served.¹¹

Therefore, the SGA as well as the applicable regulations make it clear that the GO has wide discretion in making selections of grant recipients. Moreover, the nature of the criteria requires some amount of subjectivity in order to arrive at a score in each category.

⁹ EX-E at p. 10-15 (Section V). (These are not verbatim citations, but slightly condensed versions of the expansive original criteria).

¹⁰ *Id.* at p. 10.

¹¹ *Id.* at 15.

PROCEDURAL STATUS

There were two applications to the SGA at issue in this case. The DOL grant officer (GO) awarded the NFJP grant to the Mississippi Delta Council for Farm Workers Opportunities (MDC) rather than to Complainant for the program years 2011 and 2012. Complainant appealed the GO's award.

The case was referred to the Office of Administrative Law Judges on 18 Nov 11. The parties agreed to conduct a hearing on the record. On 17 May 12, Complainant filed a Motion for Summary Judgment, urging a finding that the GO acted arbitrarily and capriciously in selecting MDC for the grant, and that the administrative record does not support the GO's decision. On 29 May 12, Respondent submitted its response to the Motion, along with a Cross-Motion for Summary Decision. In its Motion, Respondent asserts that the GO exercised her discretion reasonably, within the bounds of the applicable law and regulations, and in conformity with the Solicitation for Grant Applications (SGA).

A teleconference was held 7 Jun 12 at which the parties agreed that summary judgment was inappropriate for the matter, because there was a genuine factual dispute with respect to what materials the GO included in her assessment of Complainant's grant application. I considered the following evidence in making a determination in this matter:¹²

- EX-A p. 1-6: Request for Administrative Review
- EX-A p. 7: Email notification that application was received and validated by grants.gov
- EX-A p. 8-10: News Release of National Farmworkers Jobs Grant Awards
- EX-A p. 11: Email to Grants Management Specialist from Complainant dated 4 Aug 11
- EX-A p. 12-15: Emails between GO and Complainant dated 25 Oct to 31 Oct 11
- EX-A p. 16-17: Weaknesses identified for Complainant
- EX-A p. 18-21: Emails between GO and Complainant dated 25 Oct 11 to 8 Nov 11
- EX-A p. 22-23: Guide to the competitive grant process
- EX-A p. 24-27: Complainant's comments on the noted weaknesses from GO
- EX-B p. 1-8: Emails between GO, Grants Management Specialist, and Complainant
- EX-B p. 9-11: Pre-award response; email requesting pre-award clearance for grantees
- EX-C p. 1-78: Application pre-screening checklist; panel orientation materials; panel's completed summary review
- EX-D p. 1-57: Complainant's grant application
- EX-E p. 1-19: Solicitation for grant applications (SGA)
- EX-F p. 1-64: MDC's application
- EX-F p. 65-79: Panel workbook summary reviews of MDC's application
- EX-F p. 80: Grant agreement signed by GO 7 Jul 11
- EX-G p. 1-4: Declaration of GO executed 29 May 12
- EX-H p. 56-59(b): Panel workbook summary reviews of Complainant's application (supplement to EX-C p. 45-78)

¹² I have reviewed and considered all exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some items of evidence that I did not consider those things not specifically mentioned or cited. Complainant's Attachments I-VIII were included in the copy of the Administrative Record submitted by Respondent and have been incorporated as Exhibit A, pages 7-27.

ISSUES IN DISPUTE AND POSITIONS OF THE PARTIES

Complainant argues that the administrative record does not support the GO's selection of MDC for the Mississippi service area grant, because different review panels scored the applications. In Complainant's view, assigning the two applications to different review panels was arbitrary and prevented a competitive basis for review. Complainant also argues the grant review panelists were not provided with a standardized method for evaluating applications, resulting in wildly varying scoring practices, and that the grant panel made many factual errors that resulted in a lower score. Finally, Complainant argues that the administrative file is deficient and does not support a reasonable decision by the GO.

Respondent's position is that the GO exercised her discretion reasonably and in conformity with the SGA when she selected MDC for the grant award. Respondent notes that there is no legal requirement for competing applications to be scored by the same panelists, and that there is no standard procedure for determining how applications are to be assigned to panels for review. The GO attested that competing applications for the Mississippi area were subject to the same evaluation techniques and scoring methods via her briefing and management of the review panels. Respondent asserts that once the scores had been determined and the GO found the panels' review to be reliable, she was well within her discretion to award the grant to the higher-scoring applicant.

LAW AND STANDARD OF REVIEW

Under 20 C.F.R. Part 667, the Secretary of Labor awards grants every two years to eligible entities on a competitive basis. These grants enable the entities to carry out "authorized activities," including workforce investment activities, assistance for migrant and seasonal farmworkers, worker safety training, and more.¹³ The purpose of the NFJP "is to strengthen the ability of eligible migrant and seasonal farmworkers and their families to achieve economic self-sufficiency."¹⁴ The regulation provides that under the SGA, grantees are selected using "standard Federal Government competitive procedures."¹⁵ It also provides a non-selectee a means of appeal:

An applicant for financial assistance under title I of WIA which is dissatisfied because we have issued a determination not to award financial assistance, in whole or in part, to such applicant...may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.¹⁶

Special rules apply to reviews of NFJP and WIA INA grant selections.

- (a) An applicant whose application for funding as a WIA INA grantee under 20 C.F.R. part 668 or as an NFJP grantee under 20 C.F.R. part 669 is denied in whole or in part may request an administrative review under § 667.800(a) to determine whether there is a basis in the record to support the decision....The available remedy in such an appeal is

¹³ 29 U.S.C.A. § 2912(a), (d).

¹⁴ 20 C.F.R. § 669.100.

¹⁵ 20 C.F.R. § 669.210.

¹⁶ 20 C.F.R. § 667.800(a).

the right to be designated in the future as the WIA INA or NFJP grantee for the remainder of the current grant cycle....

- (b) If the ALJ rules that the organization should have been selected and the organization continues to meet the requirements of 20 C.F.R. part 668 or 669, we will select and fund the organization within 90 days of the ALJ's decision....¹⁷

Thus, in reviewing a GO's decision, the ALJ must determine only if there is a basis in the record to support it.¹⁸ This standard is highly deferential, and similar to the "arbitrary and capricious" standard used by federal courts.¹⁹ An ALJ may not substitute his or her own judgment for that of the GO, nor may he or she undertake *de novo* review of the GO's decision. The question on review is "whether there is a basis in the record to support the Department's decision."²⁰ The GO has "wide latitude in effectuating the purposes of the WIA INA regulations."²¹ As long as there is a *basis* in the record for the GO's decision, neither an ALJ nor the Secretary may reverse the determination because he or she might weigh the same information and balance it differently.²²

The GO has the burden of production to support his or her decision and thus prepares and files an administrative file in support of it, which must be part of the record before the ALJ. The party seeking to overturn the GO's grant award then has the burden of persuasion, and must demonstrate that the GO's decision not to select it was unreasonable, arbitrary, or not in accordance with the law.²³ An ALJ may admit evidence that is not part of the administrative file the GO created in order to fulfill his or her duty of determining if there is a basis in the record to support the GO's decision.²⁴

DISCUSSION

On 17 Mar 11, the DOL published a SGA in the Federal Register.²⁵ Complainant's and MDC's were the only applications submitted for the grant in the state of Mississippi. MDC's was a continuation application, and Complainant's was a new application. The applications were each reviewed by three-person panels. MDC's was reviewed by Panel E, and Complainant's was reviewed by Panel C.

¹⁷ 20 C.F.R. § 667.825.

¹⁸ *Commonwealth of Puerto Rico v. U.S. Dep't. of Labor and Rural Opportunities, Inc.*, No. 2008-WIA-4 (ALJ Sept. 26, 2008).

¹⁹ *United Tribes of Kansas v. U.S. Dep't. of Labor*, ARB No. 01-026 (ARB Aug. 6, 2001).

²⁰ *United Urban Indian Council, Inc. v. U.S. Dept. of Labor*, ARB No. 01-025, 2000-WIA-4 (ARB May 18, 2001); 20 C.F.R. § 667.825(a).

²¹ *United Urban Indian Council, Inc.*, ("we will not substitute our judgment for that of the agency which wrote the regulations at issue and must apply them in sometimes widely different circumstances.")

²² *Commonwealth of Puerto Rico*, ARB Nos. 09-011, 09-013 at *3 (ARB Apr. 10, 2009), quoting *North Dakota Rural Dev. Corp. v. U.S. Dept. of Labor*, 1985-JTP-004 slip op. at 5 (Sec'y Mar. 25, 1986).

²³ 20 C.F.R. § 667.810(e); *Commonwealth of Puerto Rico* at *6.

²⁴ 20 C.F.R. § 667.825(a).

²⁵ 72 Fed. Reg. 14,694-14,695 (March 17, 2011).

Each panel was comprised of three different people, with no overlap between the panels. Each person on each panel completed a “workbook,” assigning scores to the applicant in the categories listed in the above table. Complainant received scores of 80, 88, and 90 out of 100 from the three people on Panel C.²⁶ MDC received scores of 90, 93, and 95 out of 100 from those on Panel E.²⁷ Complainant’s average score was 86, and MDC’s was 92.6. In the GO’s signed declaration, she states that she ensured that all NFJP applications were subject to the same evaluation techniques and scoring methods, by giving uniform briefings to the different panels and by applying the SGA criteria consistently in her management of the panels.²⁸ Moreover, “once [she] determined that the panelists’ scores were reliable,” she decided to rely solely on the scores the panels produced to determine to whom grants would be awarded.²⁹

Complainant was emailed a copy of a list of the weaknesses of the application, which panelists had identified. These weaknesses were broken down by panelist and according to the specific criteria identified in the SGA.³⁰

Criterion	Panelist 1	Panelist 2	Panelist 3
Economic Analysis of Service Delivery Area (15 points)	Transportation issues were not addressed (12/15).	No weaknesses (15/15).	Applicant does not clearly address transportation to the participants (13/15).
Strategic Partnerships and Collaboration (10 points)	Applicant does not have established relationships with employers; unclear whether or not relationships were already established or were being proposed (5/10).	No weaknesses (10/10).	No weaknesses (10/10).
Administrative Capacity (25 points) A. Financial and Management Systems (15 points) B. Key Personnel (10 points)	Explanation of proposed management information systems, financial and management systems policies and procedures insufficient to ensure proper management and oversight. Applicant did not adequately explain	Financial and management systems section did not include reporting on the common measures. Some key personnel positions are vacant. Applicant did not explain how those positions will be advertised and filled or specifically explain the skills and	The applicant does not clearly explain that all of its reporting and financial systems meet WIA requirements (13/15 and 10/10 for 23/25 total).

²⁶ EX-C at p. 45-75.

²⁷ EX-F at p. 65-79.

²⁸ EX-G at p. 2.

²⁹ *Id.* at 3.

³⁰ See EX-A p. 16-17; EX-C p. 44-75 including p. 59-B, attached to Respondent’s Response to Complainant’s Motion for Summary Decision and Cross-Motion for Summary Decision.

	policies and plan for staffing. Applicant did not demonstrate skills and qualifications needed for the positions of running the program (15/15 and 8/10 for 23/25 total).	experience necessary for the job (13/15 and 8/10 for 21/25 total).	
Service Delivery strategy (50 points) A. Plan of Service (20 points) B. Outreach (15 points) C. Opportunities in Emerging Industries (15 points)	Applicant did not adequately explain plan for delivering services. Applicant did not supply specific methods of training and placement beyond repeating what was in SGA (15/20, 15/15, and 10/15 for 40/50 total).	Applicant did not adequately address the educational approaches that would lead participants to obtaining higher skills for higher-paying jobs. Applicant also did not describe being prepared for higher-paying jobs in the agricultural field. Applicant did not mention strategies for farmworkers to enter into career pathways, remediation or contextual learning programs leading to post-secondary education (15/20, 15/15, and 12/15 for 42/50 total).	The applicant does not address services to dependents of farmworkers. The applicant proposes to provide services in Mississippi for the first time and therefore does not identify employers or partnerships in the proposed service delivery area. The applicant does not clearly address the methods for its educational and training services in preparing for the emerging industry jobs (18/20, 13/15, and 13/15 for 44/50 total).
Total Points (100)	80	88	90
Average Score = 86			

The GO also submitted a copy of Panel E's list of weaknesses of MDC's application.³¹ These weaknesses were broken down by panelist and according to the specific criteria identified in the SGA.

³¹ EX-F at p. 65-79.

Criterion	Panelist 1	Panelist 2	Panelist 3
Economic Analysis of Service Delivery Area (15 points)	No weaknesses (15/15).	The applicant does not fully describe the emerging industries in its service area, through the use of statistical data (13/15).	Applicant does not fully describe the transportation situation and gives only a broad description of transportation issues[.] Applicant does not fully provide sources for the economic analysis of the area (13/15).
Strategic Partnerships and Collaboration (10 points)	Applicant did not provide details of collaborations (8/10).	Applicant does not provide a sufficient number of MOUs that supports that its partnerships are officially in place (9/10).	The successes and challenges in working with strategic partners were not thoroughly addressed (9/10).
Administrative Capacity (25 points) A. Financial and Management Systems (15 points) B. Key Personnel (10 points)	Applicant did not provide clear titles of positions (15/15 and 8/10 for a total of 23/25).	Applicant does not describe its staff development opportunities that will be available to enhance skills in the operation of the systems described (15/15 and 9/10 for a total of 24/25).	Applicant did not address how its financial system would deal with program income (14/15 and 10/10 for a total of 24/25).
Service Delivery strategy (50 points) A. Plan of Service (20 points) B. Outreach (15 points) C. Opportunities in Emerging Industries (15 points)	Applicant has not completed the development strategies for outreach. Applicant did not provide plan for service	Applicant does not fully describe how its employer relationships have led to good employment	Applicant did not thoroughly address its strategy to implement or increase co-enrollment (20/20, 14/15,

	delivery to the disabled (15/20, 14/15, and 15/15 for a total of 44/50).	opportunities. Applicant does not fully describe employer-specific data on job placements, retention, and earnings for program participants. Applicant does not fully describe its involvement of organizations serving people with disabilities in its outreach and recruitment efforts (20/20, 12/15, and 15/15 for a total of 47/50).	and 15/15 for a total of 49/50).
Total Points (100)	90	93	95
Average Score =	92.6		

Based on my review of the Administrative Record, the parties' motions for summary judgment and supporting evidence, I find that Complainant has not shown that the decision to award the grant to MDC was arbitrary, capricious, an abuse of discretion, or not in accordance with the Act or its regulations.

Nor has Complainant shown that the GO did not consider all of the information it presented in its grant application. A single scoring sheet for "Criterion 4: Service Delivery Strategy" of panelist Kaplan was omitted from the administrative record submitted by Respondent on 6 Feb 12. This sheet was evidently inadvertently omitted, however, and Respondent included a copy of it in its Response to Complainant's Motion for Summary Decision and Cross-Motion for Summary Decision.³² I admitted the scoring sheet into evidence, along with the declaration of the GO, over the Complainant's objection. There was no evidence presented that the GO did not see that portion of the panelist's scoring sheet that was inadvertently omitted from the administrative record; moreover, the weaknesses the panelist noted on that sheet were included by Complainant in his submission entitled "Attachment V" and by Respondent at EX-A page 16. I find that the omission of this single scoring sheet from one part of the administrative record sent to me is *de minimis* and does not prevent the record from adequately supporting the GO's decision.

³² Respondent labeled the page "C59-B;" it is included in the record as EX-H p. 56-59(b) and the page in question is entitled p. 59-b.

A thorough review of Complainant's grant application shows that while it was a strong proposal, the panel members' assessment and identification of comparative deficiencies was rational, based upon a reasonable review of the record. The GO was within her discretionary right to make a decision based solely on the panels' scores, and attested that she did so because she was confident that uniform training and management of the panels provided a standardized framework for them to assess the grant applications. The application of MDC, the grant winner, was scored at an average of 92.6, while Complainant's application rated at 86. There is no clear error or abuse of discretion in the GO's decision to award the grant to the higher-scoring applicant.

Accordingly, Complainant's petition for review is **DENIED**.

SO ORDERED.

A

PATRICK M. ROSENOW
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).