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IN THE MATTER of. :

UNITED STATES DEPARTMENT :
OF LABOR, :

v. :

COUNTY OF SUFFOLK :

. :

Case No. 84-JTP-1

VINCENT C. COSTANTINO, ESQ.
Office of the Solicitor
U.S. Department of Labor
Room N-2101
200 Constitution Avenue, N.W.
Washington, D.C. 20210
For the Department of Labor

PATRICK J. BARTON, ESQ.
Department of Law
County of Suffolk
H. Lee **Dennison** Building
Veterans Memorial Highway
Hauppague, New York
For the County of Suffolk

Before: ROBERT J. FELDMAN
Administrative Law Judge

DECISION AND ORDER

This is a proceeding arising under Section 166(a) of the Job Training Partnership Act, as amended, 29 U.S.C. §1576 (hereinafter referred to as the Act), and the pertinent regulations promulgated thereunder, as a result of the County of Suffolk's protest of its non-selection as a sponsor for the Migrant and Seasonal Farmworker (MSFW) Program for Suffolk County, New York.

Statement of the Case

On May 27, 1983, a Solicitation for Grant Applications was published in the Federal Register requesting pre-application for Fiscal Year **1984** migrant grants. On July 8, 1983, the County of Suffolk (hereafter "Petitioner") submitted its proposal to the U.S. Department of Labor. The proposal was forwarded to the grant selection panel, Employment and Training Administration, and was rated in accordance with the criteria in the Solicitation for Grant Applications.

There were three proposals for the same geographical area in New York. Petitioner and the State University of New York (hereinafter "**SUNY**") applied only for Suffolk County while the other applicant, Rural New York Farmworkers Opportunities, Inc. (hereinafter "Rural New York") applied for a grant for the entire state. Petitioner received a score of 46.6 and SUNY received a score of 40.3 from the rating panel. The high scorer, Rural New York, received a score of 70.0, and based on its high score, Rural New York was recommended for selection and was subsequently awarded the MSFW grant.

On August 26, 1983, the Grant Officer notified Petitioner of its non-selection and informed the organization of its right to petition the Deputy to the Special Counsel, Employment and Training Administration, for reconsideration, pursuant to 20 C.F.R. **§689.503**.

A petition for reconsideration was duly filed and the Deputy to the Special Counsel reviewed the Grant Officer's determination. On September 23, 1983, the Deputy to the Special Counsel informed Petitioner that he had affirmed the Grant Officer's decision to award the grant to Rural New York. Pursuant to 20 C.F.R. **§676.88(f)**, Petitioner requested a hearing before the U.S. Department of Labor's Office of Administrative Law Judges. Thereafter, a hearing was duly held before the undersigned. At the hearing, Grant Officer's Exhibits B, C, and D, all marked for identification only, were submitted for in camera inspection. By order dated January 9, 1985, Exhibits B and D and a portion of Exhibit C were received in evidence, with appropriate provisions for rebuttal evidence. Subsequently, the parties submitted post-hearing briefs; the Grant Officer forwarded

a Motion for Leave to file a Reply Brief together with his Reply Brief. In response thereto, Petitioner stated that it does not oppose the Grant Officer's motion, provided that its own Reply Brief is similarly considered. The motion and cross-motion have been granted, and the Reply Briefs of both parties have been considered.

Findings of Fact

1. The grant proposal submitted by Rural New York was for a statewide program, whereas the Petitioner's proposal pertained only to a local, countywide program.

2. Both of the grant proposals, as well as the SUNY application, were evaluated by three reviewers, on the basis of four criteria: (a) administrative capability; (b) program experience; (c) program approval and delivery system; and (d) linkages and coordination.

3. Two of the reviewers downgraded the Petitioner's proposal, in part, because it was a countywide, not a statewide, proposal.

4. The handwritten summary of the panel report for migrant proposals analyzes the strengths and weakness of each application. In pertinent part, it states the following:

Farmworkers Opportunities
New York - Rural New York

Strengths

Overall track record is good
Good knowledge of labor market
Sound rationale for program mix
Very good list of linkages

Weaknesses

Needs more detail on staffing
and evaluation
Did not meet all goals for 1982
and 1983

New York - Suffolk County

Strength

Fair job in assessing needs of MSFWS

Weaknesses

Staffing is vague

No substantiation of their experience
in serving **MSFWS**

Poor description of program
activities and labor market

No information on types of
training to be provided

Linkages are not documented

5. The final aggregate average ratings were:
Rural New York - 70
County of Suffolk - 46.6

6. Rural New York was awarded the MSFW grant, and the two competing proposals were not selected.

Conclusions of Law

Administrative agencies are accorded a considerable element of discretion in the awarding of grants of federal funds. As in government procurement cases, the validity of an exercise of such discretion may be challenged only upon a clear showing that the agency action was arbitrary or capricious, an abuse of discretion, or was not in accordance with law. See Tackett & Schaffner, Inc. v. United States, 633 F.2d 940 (Ct. Cl. 1980); Broaden v. Harris, 451 F.Supp. 1215 (W.D. Penn. 1978). To overturn an agency action, a petition must show that it lacks any rational basis. Wroblaski v. Hampton, 528 F.2d 825 (7th Cir. 1976).

In weighing the evidence according to these standards, it should be noted that the non-selected applicant has the burden of establishing the facts and its entitlement to the relief requested. 20 C.F.R. §676.90. See also Henry v. Immigration and Naturalization Service, 552 F.2d 130 (5th Cir. 1977).

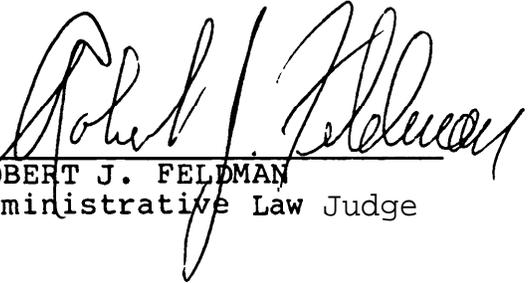
Petitioner alleges that the Grant Officer's evaluation of its proposal, under the same criteria as those used in considering Rural New York's application was arbitrary, capricious, and without lawful authority, because it improperly penalized local, as opposed to statewide, applications. It also asserts that the Grant Officer's stated preference for statewide applications does not provide specific guidelines for fair competitive point evaluations. It further contends that the reviewers' deduction of points was arbitrary and capricious, and that one reviewer, in particular, incorrectly penalized it, in that he failed to note that it was limited to countywide impact.

Petitioner's case is based largely upon its sincere belief that its proposal was more meritorious than that selected. In reviewing administrative action, however, we do not determine the wisdom of such action or substitute our judgment for that of the agency. See Simeon Management Corp. v. Federal Trade Commission, 579 F.2d 1137, 1142 (1978); Wyoming Hospital Association v. Harris, 527 F.Supp. 551 (D. Wyo. 1981) aff'd, 727 F.2d 936 (10th Cir. 1984). In the present case, the three grant applications which had been submitted were carefully reviewed and evaluated in a multi-tier process. Though reasonable minds may differ as to the number of rating points that a statewide proposal, rather than a countywide one, is worth, it is within the Grant Officer's discretion to regard the former as a factor in making his selection. The "statewide" factor is only one of many which were considered by the Grant Officer, and it was not so dispositive as to effectively prevent meaningful competition. See, e.g., In re State of Maine, 84-JTP-2 (Final Decision and Order, December 31, 1984). Furthermore, the selection of Rural New York has not been shown to be the result of bias, prejudice, undue influence or favoritism.

I am constrained to conclude that it has not been established that the Grant Officer's determination was

ORDER

In view of the foregoing, the non-selection of Suffolk County Department of Labor as a sponsor for the Migrant and Seasonal Farworker program for Fiscal Year 1984 is hereby in all respects confirmed.



ROBERT J. FELDMAN
Administrative Law Judge

Dated: 28 **MAY** 1985
Washington, D.C.

RJF/mml

SERVICE SHEET

Case Name: USDOL v. County **of Suffolk**

Case No. : 84-JTP-1

A copy of the foregoing DECISION AND ORDER
was mailed to each of the **following** persons at the addresses
listed below on the following date:

Date: _____

By: _____
Legal Technician

Vincent C. Costantino, Esq.
Office of the Solicitor/USDOL
Room N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

Harry L. Sheinfeld, Esq.
Counsel for Litigation/USDOL
Room N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

Patrick J. Barton, Esq.
Department of Law
Counsty of Suffolk
H. Lee **Dennison** Building
Veterans Memorial Highway
Hauppague, NY

Mr. Edward A. Tomchich
Grant Officer/USDOL/ETA
Room 7122 Patrick Henry Bldg.
601 D Street, N.W.
Washington, D.C. 20213

Annelies Prudenti, Director
County of Suffolk Dept. of Labor
455 Wheeler Road
Hauppauge, NY 11788

Mr. David O. Williams
Office of the Special
Counsel/USDOL/ETA
Room 5100, Patrick Henry Bldg.
601 D Street, N.W.
Washington, D.C. 20213

Douglas Cochennour, Director
Division of Financial Policy,
Audit & Closeout, **USDOL/ETA**
Room 5106, Patrick Henry Bldg.
601 D Street, N.W.
Washington, D.C. 20213