

12/31/81

THE UNDER SECRETARY OF LABOR

WASHINGTON, D. C.
20210



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In the Matter of)	
STATE OF MAINE)	
v.)	Case No. 84-JTP-2
U.S. DEPARTMENT OF LABOR)	

FINAL DECISION AND ORDER

Statement of the Case

This case arose under the Job Training Partnership Act (Act or JTPA), 29 U.S.C. 1501 et seq. The State of Maine (through its Department of Labor, and hence hereinafter referred to as the MDOL) protests the award of a JTPA Migrant and Seasonal Farmworkers (MSFW) program grant to the Penobscot Consortium (Consortium). The MDOL contends that the grant awarded to the Consortium by the Grant Officer was improper. The U.S. Department of Labor (USDOL) Administrative Law Judge (ALJ) hearing this case supported the **MDOL's** contention and directed that the Fiscal Year (FY) 1984 grant for MSFW program services in Maine be awarded to the MDOL for the remainder of the grant period. Following receipt of the exceptions, the case was accepted by the Secretary for review.

To insure that grants would be awarded in a fair and competitive manner, the Grant Officer established a panel to review and rate the applications of potential service delivery agents. Each application was then independently rated on a

series of factors detailed in the published solicitation of grant applications. To preclude the replacement of an incumbent service delivery agent when the application rating scores were minimally different, a bonus of three points was awarded to each **incumbent** within three points of the otherwise highest scoring applicant. This bonus was above the 100 points each applicant could earn pursuant to the announcement factors. The Grant Officer's reasoning in support of the bonus allocation was that selection of an incumbent would not incur start up costs and a continuation of existing services would entail no disruption of the participants' programs.

The ALJ concluded that there was "no legal basis in the record to support [the Grant Officer's] decision to award the grant to [the consortium], and . . . that the grant should have been awarded to **MDOL**"; and, accordingly, ordered the Grant Officer "to take appropriate action specified in 20 C.F.R. **633.205(e)**," i.e., to take the grant away from the Consortium and award it to the MDOL for the remainder of the grant period.

Findings and Conclusions

I find and conclude that I may consider the question of whether the Grant Officer's selection procedures and ultimate selection of the Consortium as the Maine FY 1984 MSFW grantee were in substantial compliance with the Act; that the Grant

Officer's procedures and selection were in substantial compliance; and that his determination should be affirmed.

In adjudicating this matter, I have an obligation not only to those immediately involved but also to the migrant **and** seasonal farm workers in Maine who are the ultimate intended beneficiaries of the MSFW grant here in question. At the very least, a transfer of management of MSFW program service before the completion of a grant period on the ground of improper selection of the grantee, would potentially disrupt the delivery of that service to the target population. In view of that, it is my responsibility to determine whether actual wrong has been done before contemplating corrective measures that could cause harm to the ultimate intended beneficiaries of the Act.

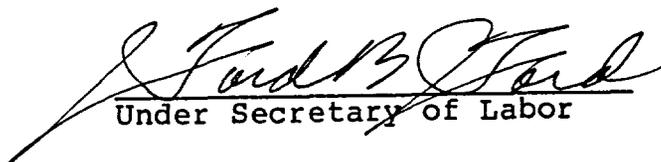
The JTPA specifies, at 29 U.S.C. 402(c)(1), that, "[i]n awarding any grant or contract for services under this section, the Secretary shall use procedures consistent with standard competitive government procurement policies" (emphasis supplied). This is the standard to be used by the Grant Officer in selecting a grantee. It does not require rigid adherence to the detailed regulations pertaining to competitive procurement. **It** insists only that the procedures used are consistent with the policies that underlie those regulations. It recognizes that the delivery of social services involves a process which deals with different problems than those confronted in ordering

materials. The subtleties and complexities of dealing with this type of service delivery entail greater reliance on the expertise and judgment of the Grant Officer.

Recognizing that, the standard allows the Grant Officer flexibility in developing selection processes. While others might differ as to the number of bonus points incumbency might be worth in rating applicants, it is within a Grant Officer's discretion to regard actually "being in place" as a factor in selecting a service delivery agent. Provided that any one factor should not be so dispositive as to effectively choke off meaningful competition, I do not find the inclusion of that element to be arbitrary and capricious.

Order

Accordingly, it is Ordered that the decision of the Administrative Law Judge IS REVERSED.


Under Secretary of Labor

Dated: **DEC 31 1984**
Washington, D.C.

CERTIFICATE OF SERVICE

'Case Name: Department of Labor v. State of Maine
Case No.: 84-JTP-2
Document: Final Decision and Order

This is to certify that all listed parties have been served
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