

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 October 2005

Case No.: 2005-WIA-00005

In the matter of:

EDNA MILLS RESTORATION PROJECT,
Complainant,

v.

U.S. DEPARTMENT OF LABOR,
Respondent.

**DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION**

This case arises under the provisions of the Workforce Investment Act, 29 U.S.C. § 2911 et. seq. (WIA or the Act) and the regulations contained at 20 C.F.R. § 660 et. seq. The WIA provides funding for job training and employment programs for migrant and seasonal farm workers under the National Farm Workers Jobs Program (NFWJP). Parties interested in receiving such grants apply directly to the Department of Labor, pursuant to Solicitations for Grant Applications (SGAs) published in the Federal Register. Grants are made to specified geographic areas, and the recipient oversees the program in those areas. The grants under this program are formula grants, with an amount appropriated by Congress proportionately allocated by the United States Department of Labor among designated state service areas. The competition for these grants is by individual state service area. Parties which unsuccessfully apply for grants may request review of the Grant Officer's decisions by the Administrative Law Judges. 20 C.F.R. § 667.800.

This appeal concerns the competition for the state of Virginia service area for the program years 2005 and 2006, for which \$885,000 was appropriated. Edna Mills Restoration Project (Complainant) and Telamon Corporation (Telamon), the incumbent, both applied for this grant. Complainant was not selected by the Grant Officer, and it appealed this determination to the Office of Administrative Law Judges. On August 12, 2005, the Grant Officer filed a Motion for Summary Decision. Complainant filed an Answer on August 24, 2005 and the Grant Officer filed a Reply on September 6, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The standard set forth under the regulations requires that I determine, not whether the Grant Officer's decision was correct, but whether there is a basis in the record to support the Grant Officer's decision. 20 C.F.R. § 667.825(a). Review is not de novo, 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." 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 to overcome and requires a finding that the Grant Officer's determination was not reasonable, was arbitrary or capricious, or an abuse of discretion, or was not in accordance with the law. After consideration of the entire record and the parties' arguments, I conclude for the reasons set forth below that Complainant has not shown that the Grant Officer's determination to designate Telamon as the WIA grantee for program years 2005 and 2006 in the State of Virginia was not a product of reasoned decision-making in accordance with the governing statutes, rules and regulations. Accordingly, I grant the DOL's Motion for Summary Decision.

Background

Section 167 of the Act requires the Secretary of Labor to provide employment and training services to migrant and seasonal farmworkers through grants awarded on a competitive basis. The regulatory requirements applicable to the expenditure of funds for this program are set forth in 20 C.F.R. Part 669. In accordance with these regulations, the DOL publishes a SGA in the Federal Register, which provides the deadlines and criteria by which interested organizations can apply for the grants. To do so, interested organizations submit an application, following the guidelines for solicitation.

The applications are reviewed by a panel of technical experts, who individually review each application against the criteria listed in the SGA, compile strengths and weaknesses, and assign scores. The criteria in the SGA includes: (1) an understanding of the problems of eligible migrant and seasonal farmworkers and their dependents; (2) familiarity with the agricultural industry and the labor market needs of the geographic area to be serviced; (3) capacity to administer a diversified program; and (4) capacity to work effectively as a One-Stop partner. 29 U.S.C. § 2912(b); 20 C.F.R. § 669.200(a). The scores of the panel are then tabulated and averaged, and the results are provided to the Grant Officer. The Grant Officer reviews the panel's recommendations, as well as the applications. The Grant Officer is not bound to follow the recommendations of the review panel.

In this case, the SGA was published in the Federal Register on April 26, 2005, which initiated the grant competition for PYs 2005 and 2006. (AF E at 1).¹ Telamon, an incumbent WIA Section 167 grantee for Virginia, and Complainant, a three-year non-profit group, both applied for the \$885,000 grant available. Each application was referred to the three-person panel for evaluation. Telamon received an average score of 95 and Complainant averaged a score of 49. Based on these findings and other considerations, the Granting Officer set aside Complainant's application and re-designated Telamon as the grantee. (AF B). On July 8, 2005,

¹ The record consists of an Administrative File which will be referred to as (AF).

the Granting Officer notified Complainant of its non-selection and its appeal rights. (AF B at 1). Included in this notification was a summary of Complainant's strengths and weaknesses, which the panelists had identified. On July 11, 2005, Complainant filed a petition for administrative review of its non-selection. (AF A at 1).

Discussion

In the Motion for Summary Decision the DOL argues the administrative file shows that Complainant's application was deficient in all four categories set by the SGA and that Complainant's appeal letter demonstrates a deeply flawed understanding of the National Farmworker Jobs Program (NFJP) and the grantee selection process. Furthermore, the DOL argues Complainant has failed to raise any specific facts disputing the deficiencies identified by the review panel and the Granting Officer. Complainant counters that the panel and the Granting Officer did not fairly evaluate its application. I agree with the DOL that the Granting Officer acted reasonably in not selecting Complainant as the recipient of the NFJP grant.

The Granting Officer denied Complainant's application because it was noticeably deficient in the four SGA criteria. The review panel and the Granting Officer first found Complainant did not demonstrate an understanding of the problems of eligible migrants and seasonal farmworkers in Virginia. Based on the material before the Granting Officer, I find this conclusion to be reasonable. Complainant clearly articulated that its goal is to restore and operate Edna Mills, a historic structure in Charles City County, Virginia. However, Complainant's application does nothing more than propose to create jobs that are merely helpers for the Complainant's personnel. There is no evidence or argument that Complainant has any employment or training program for migrant or seasonal farmworkers that conforms to that population in the state of Virginia. The record shows that Complainant did not give any consideration to the problems or interests of the migrant and seasonal farmworker, but instead was primarily concerned with obtaining a workforce to further their restoration plan for a historic site.

The DOL also argued Complainant's application was deficient in demonstrating a familiarity with the agricultural industry and the labor market needs of the geographic area to be served. I find this conclusion is supported by the record. Complainant's application focused exclusively on Charles City County, Virginia. Consequently, the vast majority of migrant and seasonal worker population in the state of Virginia would receive no benefit. Complainant also proposed the requirement that applicants speak, comprehend and write basic English. This requirement, however, demonstrates a lack of understanding regarding the labor market, since it would effectively exclude a portion of the potential service population from participation. Furthermore, the administrative file shows that Charles City County does not have a large migrant or seasonal farmworker population. In its application, Complainant even admitted that farming is not the principle occupation in Charles City County. (AF D at 13). Therefore, I find the record supports the decision by the Granting Officer that the applicant was deficient in this category as well.

I also agree that Complainant's application did not adequately demonstrate an effective administrative capacity. Under this requirement, the Granting Officer examines the applications

to determine the proposal for effective systems of such items as performance accountability, fiscal reporting and case management. Complainant's application stated that a local bank would handle their accounting, that program and fiscal reporting systems are in place to ensure program and fiscal integrity, and that a volunteer webmaster would perform on-line reporting and other services as needed. The Granting Officer found these statements were vague and an inadequate assurance that Complainant would be capable of administering the grant. (AF D). Based on the material presented to the Granting Officer, it was not an unreasonable assessment of the evidence to conclude that Complainant did not understand completely how to comply with the administrative requirements.

Another basis for denying Complainant's application was the absence of a proposed service plan that leads to a measurable impact on improving the employment and earnings of farmworkers. The activities listed in Complainant's application all revolved around the efforts to restore a historic mill, not provide services to farmworkers. Complainant's application provided no vision, strategy, goals or objectives to support SGA priorities, or any strategy for providing related assistance services. (AF C at 5, 11). I agree with the assessment that Complainant's strategy seems to be "send us the bodies and we will place them onsite." (AF C at 11). Complainant did not indicate how the restoration of a historic mill will benefit migrant or seasonal farmworkers. While Complainant may have good intentions for the grant, there were still significant deficiencies in the application and Complainant has not presented any specific facts to dispute these.

Much of Complainant's argument is that Telamon did not present an adequate application. Specifically, Complainant asserts that the selection of Telamon appears to be pre-determined. However, there is nothing in the record to substantiate this allegation. Furthermore, the burden is on Complainant to present specific facts demonstrating its eligibility for the grant, not to question Telamon's application.

I conclude that the Granting Officer's decision to not select Complainant as the WIA grantee was reasonable. The evidence available at the time the decision was made showed Complainant's application had deficiencies in each of the four SGA criteria. Complainant's program lacked the necessary understanding of the problems of eligible migrant and seasonal farmworkers, knowledge of the proposed service area, a description of an appropriate administrative capacity, and an adequate plan of services. The record does not support the allegation that the grant determination was based on an unfair advantage by the other applicant, Telamon, or that the Granting Officer's decision was unreasonable, arbitrary, or an abuse of discretion. The Granting Officer's decision is reasonable in view of the record she had available to her at the time she made her decision.

ORDER

IT IS HEREBY ORDERED that DOL's Motion for Summary Decision is GRANTED, and Edna Mills Restoration Project's petition for review is denied.

A

LARRY W. PRICE
Administrative Law Judge

LWP/TEH
Newport News, Virginia

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, Room S-4309, 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).