

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 13 June 2005

CASE NO.: 2004-WIA-00003

In the Matter of:

UNITED AMERICAN INDIAN INVOLVEMENT, INC.,
Complainant,

vs.

U.S. DEPARTMENT OF LABOR,
Respondent,

and

SOUTHERN CALIFORNIA INDIAN CENTER, INC.,
Interested Party.

Appearances: John Arai Mitchell, Esquire
For the Complainant

Stephen R. Jones, Esquire
For the Respondent

Gerald A. Wolf, Esquire
For the Interested Party

Before: Jennifer Gee
Administrative Law Judge

DECISION AND ORDER DENYING RELIEF

INTRODUCTION

This matter arises under the Workforce Investment Act ("WIA"), 29 U.S.C. § 2911 *et seq.* and the implementing regulations contained at 20 C.F.R. §§ 626-668. The WIA, which was enacted in 1998 to supersede the Job Training Partnership Act ("JTPA"), 29 U.S.C. § 1501 *et seq.*, governs the awarding of grants for the purpose of providing employment and training services to Native American Indians, Alaskan Natives, and Hawaiian Natives. *See* 29 U.S.C. § 2911(a)(1). Section 166 of the WIA gives the United States Department of Labor ("DOL") the primary responsibility for administration of funding for these services and serves the

employment and training needs of the aforementioned Natives through the award of grants.¹ The Employment and Training Administration (“ETA”) of the DOL solicits grant applications every two years from the Native American community. A Solicitation for Grant Applications (“SGA”) is drafted by ETA’s program office, the Division of Indian and Native American Programs, and implemented by an ETA Grant Officer. Grant recipients implement employment and training programs in specified geographic areas. Unsuccessful grant applicants have the option of requesting review of the DOL’s decision by the Office of Administrative Law Judges (“OALJ”).

In this matter, the Complainant, United American Indian Involvement, Inc., (“UAI”) seeks review of the decision of the Respondent, DOL, to designate Southern California Indian Center, Inc. (“SCIC”), the Interested Party, as the Section 166 grantee for Los Angeles County for the Program Years 2004 and 2005.

For the reasons set forth below, the DOL’s decision to award the WIA Section 166 grant for Los Angeles County, for the Program Years 2004 and 2005, to Southern California Indian Center, Inc. is AFFIRMED.

PROCEDURAL BACKGROUND

This matter was heard in Long Beach, California, on March 9, 2005. Counsel for the Complainant, the Respondent, and the Interested Party all appeared and participated in the trial. At the trial, the Complainant’s Exhibit (“CX”) 1 and the Respondent’s Exhibits (“RX”) 1 and 2 were admitted, for a total of 3 Exhibits.² After the trial concluded, I received post-trial briefs on May 6, May 12, and May 13, 2005, from the Interested Party, the Complainant, and the Respondent, respectively. On May 27 and May 31, 2005, I received Reply Briefs from the Complainant and the Respondent respectively.

ANALYSIS AND FINDINGS

Issue

The only issue in this case is whether the decision of the Grant Officer was reasonable, and not arbitrary or capricious, an abuse of discretion, or not in accordance with the law.

Factual Background

The Solicitation for Grant Applications for the WIA Section 166 grant at issue was published in the Federal Register on December 31, 2003, as a “Notice of Final Designation Procedures for Grantees.” 68 Fed. Reg. 75643 (2003).³ The Federal Register notice listed applicant instructions for the WIA Section 166 grant for the Program Years 2004 and 2005. It also provided five factors, with subcategories, to be used in evaluating applicants for the WIA Section 166 grant. (RX 1, p. E82.) Both SCIC, which had the Section 166 grant for the preceding two years, and UAI submitted applications for the WIA Section 166 grant.

¹ References to Section 166 of the WIA made throughout this decision refer to 29 U.S.C. § 2911.

² In its prehearing statement, SCIC identified 18 Exhibits. However, it did not offer any of the Exhibits at trial.

³ The entire Federal Register notice was introduced into the record as part of the Grant Officer’s Administrative File in this case, which is RX 1. The Notice is found at pages E78-E84 of RX 1.

Eric D. Leutkenhaus, the Grant Officer for the ETA in this case, received the applications and convened a three-member review panel to rate and score the applications using the criteria listed in the SGA. The grant procedures required the panelists to have “knowledge of or expertise in programs dealing with Indians and Native Americas.” (RX 1, p. E83; HT⁴, pp. 16, 27, 70.)

The panel members reviewed the applications of SCIC and UAII and scored each application utilizing the point system set forth in the SGA. After the panel members reviewed and tabulated numerical scores for the applicants, they reported that UAII received a total score of 80.67 (RX 1, p. E38) and SCIC received a total score of 87.33. (RX 1, p. E2.) Mr. Leutkenhaus reviewed the score sheets and noticed a mathematical error in the calculation of SCIC’s score, requiring that it be increased from 87.33 to 88.67. (HT, p. 24; RX 1, pp. E1-E2.) He determined that the panelists had applied the five factors accurately and had only made the minor arithmetic error. (HT, pp. 37-38, 66.) Mr. Leutkenhaus then selected SCIC, the applicant with the higher score, as the grant recipient. (HT, pp. 25, 32, 64; RX 1, p. B2.)

On June 18, 2004, Mr. Leutkenhaus notified UAII that it had not been selected as the Section 166 grant recipient. (RX 1, pp. B11-B12.) The June 18, 2004, notification also informed UAII of its right to appeal Mr. Leutkenhaus’ determination to the OALJ under 20 C.F.R. § 667.800. On July 12, 2004, the OALJ received a letter of appeal from UAII, in which UAII requested an administrative review under 20 C.F.R. § 667.800(a). (RX 1, pp. A5-A7.) On July 21, 2004, the OALJ issued a Notification of Receipt of Request for Hearing and Prehearing Order. (RX 1, pp. A1-A4.) The OALJ then received letters providing notices of intent to participate in the hearing from UAII and SCIC on August 6, 2004, and August 20, 2004, respectively.

Standard of Review

The standard of review for WIA grant selection cases is “whether there is a basis in the record to support the Department’s decision.” 20 C.F.R. § 667.825(a). Review is limited to determining whether the Grant Officer’s decision was arbitrary and capricious, an abuse of discretion, or not in accordance with the law. *See Sloan v. HUD*, 231 F.3d 10, 15 (D.C. Cir. 2000); *United Tribes of Kansas and Southeast Nebraska, Inc.*, ARB 01-026, 2000-WIA-3 (ARB Aug. 6, 2001); *MaChis Lower Creek Indian Tribe of AL (MLCITA) v. U.S. Dept. of Labor*, 2000-WIA-2 (ALJ Oct. 5, 2000).

This standard of review sets a very high threshold and is only overcome when a decision is based on an erroneous view of the law or a clearly erroneous assessment of the evidence. *MLCITA, supra*. The Supreme Court described the abuse of discretion review in another context, stating “the scope of review is a narrow one... the court is not empowered to substitute its judgment for that of the agency...[w]e will uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned. *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-86 (1974). In *Lifelines Foundations, Inc. (LFI) v. U.S. Dept. of Labor*, 2004-WIA-2 (ALJ, March 23, 2005), the administrative law judge stated that this standard of review sets “a high threshold for a party to overcome, and occurs only when a decision is based on an erroneous view of the law, or a clearly erroneous assessment of the

⁴ References “HT” are to the hearing transcript.

evidence,” stating “[e]ven if I disagree with the grant officer’s decision, I must uphold it if I find it to be reasonable.” *Id.*

Discussion

When two or more entities apply for a WIA Section 166 grant for the same service area, it is first determined whether any of the entities is entitled to priority. 20 C.F.R. § 668.210. If no entity is entitled to priority, then each is given an opportunity to describe its service plan and submit additional information. 20 C.F.R. § 668.250(b)(2)-(3). In selecting the WIA Section 166 grantee, the Grant Officer has the responsibility of choosing the entity that demonstrates the capacity to produce the best outcomes for its customers. 20 C.F.R. § 668.250(b)(4). (RX 1, p. E79.) Section 166 grant applicants are rated on the following five factors, A through E, and their subcategories:

Factors	Maximum Points
A.(i.) Previous experience or demonstrated capabilities in successfully operating an employment and training program established for and serving Indians and Native Americans	30
A.(ii.) Previous experience in operating or coordinating with other human resources development programs serving Indians and Native Americans	10
A.(iii.) Approach to providing services, including identification of the training and employment problems and needs in the requested area, and approach to addressing such needs	10
B. Demonstration of the ability to maintain continuity of services to Indian or Native American participants consistent with those previously provided in the community	10
C.(i.) Description of the entity’s planning process and demonstration of the involvement with the INA community	5
C.(ii.) Demonstration of involvement with local employers within the service area, and with local workers	5
D. Demonstration of coordination and linkages with Indian and non-Indian employment and training resources within the community, including, but not limited to, community and/or faith-based organizations, and One-Stop systems (as applicable), to eliminate duplication of effort	15
E. Demonstration of support and recognition by the Native American community and service population, including local tribes and adjacent Indian organizations and the client population to be served	15

TOTAL **100**

Notice of Final Designation Procedures for Grantees, 68 Fed. Reg. at 75647. (RX 1, p. E82.)

In this case, both UAI and SCIC applied for the Section 166 grant for Los Angeles County for the Program Years 2004 and 2005. (RX 1, pp. C1-C418.) Neither organization was entitled to priority status and both submitted a service plan and additional information to the Grant Officer, as required under 20 C.F.R. § 668.250(b)(3). The Grant Officer, having the burden of production under 20 C.F.R. § 667.810(e), submitted the applications and supporting materials into evidence as part of the administrative file⁵ in this case.

While the Grant Officer has the burden of production in this case, the Complainant has the burden of persuasion. *Id.* UAI claims that it is the organization able to produce the best outcomes for the Native American population in Los Angeles and that Mr. Leutkenhaus erroneously selected SCIC as the Section 166 grant recipient for the Program Years 2004 and 2005 for Los Angeles County. Mr. Leutkenhaus and SCIC assert, however, that Mr. Leutkenhaus' decision to award SCIC the Section 166 grant was reasonable, and therefore should be affirmed.

UAI lists the following as flaws in Mr. Leutkenhaus' decision to award the Section 166 grant to SCIC: he failed to review the grant applications and instead relied on the evaluation of a review panel; he instructed the panel to select the application that was "most advantageous to the government" rather than to select "the entity that produces the best outcomes for its customers" under 20 C.F.R. § 668.250(b)(4); he failed to oversee a complete responsibility review of SCIC as a potential grantee of the Section 166 grant; and he failed to recognize as a disadvantage the fact that SCIC's headquarters are located in Orange County, not Los Angeles County.

Reliance on Review Panel

UAI claims that Mr. Leutkenhaus' decision to award the Section 166 grant to SCIC was arbitrary and an abuse of discretion because Mr. Leutkenhaus did not personally review the grant applications but instead relied on the determinations of a panel. However, the grant procedures specifically allow for reliance on a panel, stating:

Where competitive evaluation is required, the Grant Officer will use a formal panel review process to score the information submitted with the complete Notice of Intent (Part A and B), using the criteria listed in Section V(1). The review panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, based on its application (including the supplemental information required in Part B), to provide services to a specific Native American community, to rate the proposals in accordance with the rating criteria described in Section V(1), and to make recommendations to the Grant Officer.

RX 1, p. E83.

In this case, Mr. Leutkenhaus did not err by relying on the panel's evaluations when he awarded the Section 166 grant to SCIC. Rather, he followed the aforementioned procedures set out in the Federal Register. Mr. Leutkenhaus oversaw the panelist selection process, and

⁵ The entire administrative file is RX 1.

testified at the hearing to choosing panelists knowledgeable in programs dealing with Indians and Native Americans. (HT, pp. 16, 27).⁶

Mr. Leutkenhaus provided the panel with materials to guide them in the selection process (RX 1, pp. E73-E77) and informed the panelists of their role in evaluating each application against the five evaluation criteria listed in the SGA. (HT, pp. 15-16, 28-29). The panel was then given an opportunity to review the applicant proposals and to deliberate and discuss their findings. (HT, p. 58.) The scoring of the proposals by the three panel members was expected to, and did, vary. Thus, an averaging method was used in which the high and low scores were dropped, and the middle score was used to compute the total scores for each applicant. (HT, p. 70.) Although Mr. Leutkenhaus was not required to, and did not, review the applicant proposals, he did scan the panelists' score sheets for any significant discrepancies, and in this case, did not find any. (HT, pp. 17-18, 37-38; 81-82.) He found only one mathematical error, which, once corrected, gave SCIC approximately 2 additional points. (RX 1, p. E1.) After reviewing the score sheets, Mr. Leutkenhaus solicited comments and information from the Division of Indian and Native American Programs. (HT, pp. 18-19.) DINAP informed Mr. Leukenhaus that SCIC was meeting its performance goals. (HT, p. 25; RX 1, pp. B8-B10.) I find Mr. Leutkenhaus followed standard procedures by using a panel to evaluate and score the applications of UAIL and SCIC. Thus, there is no merit to UAIL's contention that he erred by failing to personally review the Section 166 grant applications in this case.

Mr. Leutkenhaus reviewed the panel reports and determined that the scores assigned to the applicants in each category were consistent with the listed strengths and weaknesses of the competing organizations. (HT, p. 66.) A review of one of the scores assigned by the panel shows that the score yielded a result that was appropriate. SCIC was more qualified, especially in criteria A(i), which allocates a maximum of 30 points for "Previous experience or demonstrated capabilities in successfully operating an employment and training program established for and serving Indians and Native Americans." (RX 1, p. E82; HT, pp. 22-23.) Though Mr. Leutkenhaus testified that SCIC's incumbent status played no role in its designation as the grant recipient (HT, p. 48), its incumbent status contributed to the experience and resource funding available to it. SCIC had much more experience. providing employment and training services to Indians and Native Americans in Los Angeles County. It had over 30 years of experience in providing those services. (HT, p. 292-93.) UAIL, on the other hand, only began offering employment and training services in 1997. (HT, pp. 91-92, 193, 218-19.) For criteria A(i), the panel assigned a perfect score of 30 to SCIC (RX 1, p. E2) and a score of 24.33 to UAIL. (RX 1, p. E38.)

Thus, Mr. Leutkenhaus, with the ultimate authority to designate the Section 166 grantee for the 2004 and 2005 Program Years (HT, p. 20), selected SCIC as the Section 166 grant recipient (RX 1, p. B2), stating the following: "Based on all of the information that I had in front

⁶ At the trial, Mr. Leutkenhaus was asked whether a peer member of SCIC, another grantee or an organization that SCIC had mentored, sat on the panel in this case. He responded that he did not know, and that such an inquiry is made by the DOL when it checks for a conflict of interest. He explained that if there is a peer serving on a panel to determine a grant award, the peer is placed on a panel to review applications at the other end of the country from the organization there was an affiliation with. He stated, "We made it very clear and very careful about conflict of interests." (HT, pp. 51-53.)

of me, the regulations, the proposals, the score sheets, the scores, they were, in my mind, clearly the best organization to provide services to the population of LA County.” (HT, p. 25.)

“Most Advantageous to Government” versus “Best Outcomes for Customers”

UAI claims that the decision-making process of the panelists was flawed because they were instructed by Mr. Leutkenhaus to select the application that was “most advantageous to the government” rather than the application “that produces the best outcomes for its customers” under 20 C.F.R. § 668.250(b)(4).

Mr. Leutkenhaus provided the panelists with a document entitled “Procedural Guidance for Panel Review for Solicitation for Grant Applications (SGA).” The first page of the document included the following sentence: “Indian and Native American Employment and Training Programs grant selections should be those whose proposals are most advantageous to the Government in terms of technical quality.” (HT, pp. 29-30; RX 1, p. E73.) Mr. Leutkenhaus also mentioned to the panelists that they should choose the proposal “most advantageous to the Government in terms of technical quality” when he met with them to stress the importance of evaluating each application against the five evaluation criteria stated in the SGA. (HT, p. 32.) Mr. Leutkenhaus testified that in choosing the proposal most advantageous to the government, the panelists would in effect be choosing the proposal designed to produce the best outcomes for its customers. (HT, pp. 33, 83.)

Although the panelists should have been instructed to select the proposal “that produces the best outcomes for its customers” under 20 C.F.R. § 668.250(b)(4), rather than the proposal “most advantageous to the Government in terms of technical quality,” the actual instruction the panelists received did not affect their scoring of the applicant proposals. The role of the panelists, as stressed by Mr. Leutkenhaus in the very same meeting where he used the terms “most advantageous to the Government...,” was to evaluate each proposal against the five evaluation criteria articulated in the SGA and assign each applicant a numerical score based on their total number of points from the evaluation criteria. (HT, pp. 28-32.)

The instruction regarding whose interests would be served addresses the broad scope and purpose of the Section 166 grant, whereas the selection process is ruled by the specific scores assigned to applicants based on the five evaluation criteria in the SGA. It would have been beneficial for the panelists to have a clear understanding of the purpose behind the five criteria, but it was not necessary for them to understand whose interests would be better served, the customers or the Government, while scoring the applicant proposals. Their sole responsibility was to hone in on the specifics of the selection process by assigning scores to the applicants for each evaluation criteria from the SGA. If the applicants had been assigned the task of drafting the evaluation criteria, however, and had been told to draft criteria “most advantageous to the Government in terms of technical quality” instead of “that produces the best outcomes for its customers,” then there would have been the possibility that they could affect the grantee selection process by creating criteria that favors the government’s interests over the customers’ interests. However, here, the evaluation criteria in the SGA serves the interests of the customers, and the only task of the panelists was to score the proposals according to the evaluation criteria. There was no room for the panelists to consider whether the Government’s interests or the customers’ interests were better being served. The panelists assigned numerical scores to the

proposals based on the designated evaluation criteria (RX 1, pp. E2-E72), which in effect, produced the best outcome for the customers.

Requirement for Responsibility Review

UAII claims that Mr. Leutkenhaus' decision to award the Section 166 grant to SCIC is in violation of the law because an incomplete responsibility review of SCIC had been performed at the time SCIC was awarded the grant.

The Division of Indian and Native American Programs conducts responsibility review (HT, p. 19) of potential Section 166 grantees "to assess the organization's overall responsibility to administer Federal Funds." 20 C.F.R. § 667.170(a). The regulation describes the level of responsibility review as follows:

As part of this review, we may consider any information that has come to our attention and will consider the organization's history with regard to the management of other grants, including DOL grants. The failure to meet any one responsibility test, except for those listed in paragraphs (a)(1) and (a)(2) of this section, does not establish that the organization is not responsible unless the failure is substantial or persistent (for two or more consecutive years).

Id.

An organization will not meet the responsibility requirement if it is established that the organization has failed to recover debts or comply with an approved repayment schedule under 20 C.F.R. § 667.170(a)(1), or that it has been involved in fraud or criminal activity of a significant nature under 20 C.F.R. § 667.170(a)(2). After reviewing the panelists' scores, Mr. Leutkenhaus met with the Chief of the Division of Indian and Native American Programs, Athena Brown, who told him that SCIC had satisfied responsibility reviews in the past and had met performance goals and that there were no issues concerning SCIC. (HT, pp. 41-42, 67, 73-75.) After Ms. Brown gave Mr. Leutkenhaus these verbal assurances, she provided him with the Responsibility Review worksheet for SCIC which turned out to be incomplete because some sections of the Review worksheet, including those covering 20 C.F.R. § 667.170(a)(1) and § 667.170(a)(2), were left blank.⁷ (HT, pp. 41; 73-75; RX 1, pp. B3-B7.)

Although the Responsibility Review worksheet was incomplete at the time Mr. Leutkenhaus selected SCIC as the Section 166 grant recipient for the 2004 and 2005 Program Years, Mr. Leutkenhaus had already verified with Ms. Brown that SCIC had satisfied responsibility reviews in the past and had met performance goals. (HT, pp. 41-42, 73-75.) Also, after discovering the omissions, Mr. Leutkenhaus spoke with the person who prepared the Responsibility Review form and confirmed that the missing information was not negative. (HT, pp. 20, 39-48.) Thus, though the Responsibility Review worksheet was incomplete at the time Mr. Leutkenhaus made his decision, Mr. Leutkenhaus had been provided the necessary information by Ms. Brown, and the omissions were oversights that would not have yielded a

⁷ Some of the omissions, however, were addressed in SCIC's application materials. (HT, pp. 67-70.)

different result or conclusion with regard to the responsibility review of SCIC. I find this is not a basis for reversing Mr. Leutkenhaus' decision.

Location of Applicant Headquarters

As its primary reason for believing that it is entitled to the Section 166 grant, UAII claims that it is better suited to serve Los Angeles County than SCIC because UAII is headquartered in Los Angeles County while SCIC is headquartered in Orange County. (HT, pp. 99, 297; RX 1, p. C306.) UAII asserts that SCIC, with headquarters in Orange County, is less capable of providing services to the Native American community in Los Angeles County. However, under the terms of the SGA, any organization controlled by Indians and Native Americans, including any out-of-state organization, is eligible for a Los Angeles County Section 166 grant. (HT, pp. 26, 60.) The requirement is merely that the organization be controlled by Indians and Native Americans. There is simply no requirement relating to an applicant organization's principal place of business or headquarters location. Thus, the fact that SCIC is headquartered in Orange County, in and of itself, is not relevant to whether it has the ability to produce the best employment and training services for Native American Indians, Alaskan Natives, and Hawaiian Natives in Los Angeles County.⁸

In Los Angeles County, SCIC provides employment and training services to Indians and Native Americans at its two office locations and also through satellite services at more than 30 workforce centers. (HT, pp. 298, 303-05, 307-16.)⁹ In Los Angeles County, SCIC additionally conducts career workshops at colleges and universities, provides referrals to the State of California Department of Rehabilitation, assists the Veterans Long Beach Health Care System in providing jobs, cooperates with the State of California Employment Development Department in posting job listings, and maintains networking relations with the Department of Public Social Services, the Workforce Investment Network, Harbor One-Stop Career Center, Torrance One-Stop Career Center, and Joint Efforts, Inc. (HT, pp. 317-26.) SCIC's employment and training program has been so successful that it has been used as a model to other grantees throughout the United States. (HT, pp. 337-38.)

UAII stresses that it has memoranda of understanding ("MOUs") with 14 workforce centers located throughout Los Angeles County, giving it the ability to offer employment and training services to the Indian and Native American population throughout Los Angeles County. (HT, pp. 119, 121-27, 158-59; RX 1, pp. C-329, C387-C399, C419.) A UAII Program Director and a former UAII Workforce Investment Supervisor testified at trial that UAII formed these MOUs when it was contacted by workforce centers that were unable to get any response from SCIC. (HT, pp. 162, 187, 201-06, 226-27.) In addition, it conducts a job training program for veterans and is involved with local Indian tribes and churches. (HT, pp. 93-95, 197-98.)

⁸ SCIC submitted into evidence an administrative law judge's decision affirming a grant officer's selection of SCIC over its competitor, County of Los Angeles Community and Senior Citizens Services, for a JPTA grant for Los Angeles County. SCIC's application had received a higher score as a result of SCIC's superior experience in administering employment and training services. (RX 2.)

⁹ Although SCIC provides employment and training services at more than 30 workforce centers throughout Los Angeles County, it only has memoranda of understanding ("MOUs") with the Los Angeles City Workforce Investment Board and the South Bay Workforce Investment Board. (HT, p. 345.)

However, the evidence shows that UAII has less of a presence in Los Angeles County with respect to providing employment and training services. It provides these services at its one office location and through satellite services at 14 workforce centers in Los Angeles County.¹⁰ (HT, pp. 101, 121-35, 152-53.)¹¹ SCIC, on the other hand, offers services at more than 30 workforce centers as well as through other organizations. Thus, although UAII has its headquarters in Los Angeles County, SCIC provides employment and training services to Indians and Native Americans in more areas of Los Angeles County than UAII does. Thus, SCIC's ability to provide employment and training services in Los Angeles County is not hampered by the fact that it is headquartered in Orange County.

UAII Request for Specific Language

UAII has requested that, in the event I find for SCIC in this decision, I make reference to 20 C.F.R. § 667.825(d), which provides the following:

A successful appellant which has not been awarded relief because of the application of paragraph (b) of this section is eligible to compete for funds in the immediately subsequent two-year grant cycle. In such a situation, we will not issue a waiver of competition and for the area and will select a grantee through the normal competitive process.

Id. This section is inapplicable to this case because it refers to a successful appellant. In this instance, based on my findings, UAII is not a successful appellant. Thus, a reference to this section is inappropriate.

I was very impressed with both organizations' concern for the Native American community in Los Angeles County and their dedication to providing the best service possible to Native Americans. Both SCIC and UAII demonstrated that they were highly qualified and impressive candidates for the Section 166 grant. Either applicant would have performed well if awarded the grant, and certainly, UAII, with its headquarters in Los Angeles County, may undoubtedly feel a closer tie to the Native American community in Los Angeles. However, I can only reverse the Grant Officer's decision if I find it was arbitrary or capricious or an abuse of discretion. I do not find that to be the case.

CONCLUSION

The Grant Officer did not err in relying on a review panel. The panel's results were not affected by the Grant Officer's instruction to select the application "most advantageous to the government." The accuracy of the Grant Officer's conclusion with respect to the Responsibility Review aspect of his decision was not affected by the fact that the Responsibility Review worksheet was incomplete. SCIC's ability to provide the services under the grant is not affected by the fact that it is headquartered in Orange County. In summary, UAII has failed to meet its burden of persuasion to show that the Grant Officer's decision was unreasonable, arbitrary or capricious, an abuse of discretion or not in accordance with the law.

¹⁰ The services offered by UAII at the workforce centers are generally by appointment only due to lack of funding for on site UAII staff. (HT, pp. 131, 149, 209.)

¹¹ The Program Director of UAII testified that UAII may work with additional centers, but she could not identify any such affiliations by name. (HT, pp. 116-17, 178-79.)

In conclusion, the Grant Officer's designation of SCIC as the WIA Section 166 grantee for the Program Years 2004 and 2005 in Los Angeles County is supported by the record and is in accordance with the law. Accordingly, I find that the decision of the Grant Officer was reasonable and in accordance with the law, and not arbitrary or capricious, or an abuse of discretion.

ORDER

Based on the findings and conclusions set forth above, it is hereby ORDERED that the Grant Officer's decision to award SCIC the WIA Section 166 grant for the Program Years 2004 and 2005 in Los Angeles County is AFFIRMED.

A

JENNIFER GEE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

This decision and order shall constitute final action by the Secretary of Labor unless, within 20 days of receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed a petition for review with the Administrative Review Board specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the administrative law judge constitutes final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the Administrative Review Board must be decided within 180 days of acceptance. If not so decided, the decision of the administrative law judge