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PL-11
Mr. Sorett

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

[Protest Alleging Awardee Has Potential Conflict of Interest]

FILE: B-195839

DATE: February 25, 1980

MATTER OF: Burgos & Associates, Inc.

DIGEST:

1. Although GAO does not review questions concerning agency decision denying grant award unless there is allegation that agency used grant award process to avoid competitive requirements of Federal procurement, where it appears that process of selecting grantee might have been influenced by conflict of interest, GAO will undertake review to determine whether process was tainted by favoritism or fraud.
2. Record does not indicate agency acted improperly in making grant award to firm whose President had applied for agency's Regional Director position where evaluation and grant selection were performed at agency's centralized administrative office rather than by relevant regional office.

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3971- Burgos & Associates, Inc. (Burgos) objects to the decision of the Department of Commerce's Minority Business Development Agency (MBDA) to award grant No. 02-10-45080-00 to Capital Formation Management Corporation (Capital Formation) to operate as a Business Development Organization (BDO) providing management and technical services to minority business firms in the New York City area.

Burgos maintains that MBDA improperly awarded the grant to Capital Formation because its President was recently selected as Regional Director of MBDA's New York Office. According to Burgos, the existence of, or

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potential for, a conflict of interest requires that Capital Formation's President remove himself from consideration of the MBDA position. In the event Capital Formation's President were to accept the position, Burgos contends this automatically should disqualify Capital Formation from being eligible for award.

Burgos also challenges the adequacy of the process by which the grant applications were evaluated. In particular, Burgos questions the large discrepancy among the evaluators' scoring of its application and the influence that one of the evaluation panel members had on the agency's ultimate decision to award the grant to Capital Formation.

This Office, in response to increasing concern that recipients of Federal grant funds were engaging in varied and perhaps inappropriate practices and procedures involving the award of contracts in supposed furtherance of grant purposes, has been considering complaints of prospective contractors concerning those grantee awards pursuant to its statutory obligation and authority under 31 U.S.C § 53 (1976) to investigate the receipt, disbursement, and application of public funds. See Public Notice, 40 Fed. Reg. 42406 (1975). We have not, however, held ourselves out as a forum in which complaints concerning the actual award of grants or other assistance-type instruments could be aired, see, e.g., Washington State Department of Transportation, B-193600, January 16, 1979, 79-1 CPD 25, although we have considered the propriety of a grant award when it was alleged that the agency was using the grant award process to avoid the competition requirements of the Federal procurement laws and regulations. Burgos & Associates, Inc., 58 Comp. Gen. 785 (1979), 79-2 CPD 194; Bloomsbury West, Inc., B-194229, September 20, 1979, 79-2 CPD 205. See also Tri-County Metropolitan Transportation District of Oregon, B-190706, July 21, 1978, 78-2 CPD 58, where the grantor agency requested our decision as to whether it could properly provide grant funding in the particular circumstances present.

As we stated in our Public Notice, supra, it is not the intent of this Office to interfere with the functions and responsibilities of grantor agencies in making and administering grants. Accordingly, we decline to review

Burgos' challenge as to the adequacy of MBDA's evaluation process. However, we believe it would be consistent with our statutory obligation to investigate the receipt, disbursement, and application of public funds to consider the conflict of interest allegation, as we believe the grantor agency has an obligation to avoid making any grant awards which may be tainted by the existence of such a conflict. See generally 55 Comp. Gen. 681 (1976); Eglin Manor, Inc. v. United States, 279 F.2d 268 (Ct. Cl. 1960). In this regard, it has been held that contracts and other obligations between the United States and recipients of Federal funding may be rendered void and unenforceable where there is evidence that improper influence was used to secure award of a contract. See Dougherty v. Aleutian Homes, Inc., 210 F. Supp. 658 (D. Ore. 1962) citing Providence Tool Co. v. Norris, 69 U.S. 45 (1864). Accordingly, where, as here, it appears that the process of selecting a grantee could have been influenced by a conflict of interest, we think it appropriate to consider the matter to determine whether the selection process was in fact tainted by favoritism or fraud. Consequently, we will consider the conflict of interest assertion.

The agency concedes that under the circumstances a potential for conflict of interest existed. It therefore had MBDA headquarters personnel in Washington, rather than its personnel in the New York Regional Office, conduct the evaluation of applications received in response to the grant solicitation and ultimately decide whether to select Capital Formation as the grantee. The agency further advises us that although Capital Formation's President was selected as the leading candidate for the New York Regional Director position on July 12, 1979, and Capital Formation received the grant award on August 1, 1979, the individual in question has not as yet been formally offered the position. Based on this information, we do not believe the individuals who evaluated Capital Formation's offer were improperly influenced by Capital Formation's President's being considered for the position of MBDA New York Regional Director. See Iroquois Research Institute, 55 Comp. Gen. 787, 794 (1976), 76-1 CPD 123.

Burgos nonetheless maintains that MBDA was obliged to require the President of Capital Formation to cease his attempt to be selected the New York Regional Director

once his firm received the grant award. However, we are aware of no requirement which precludes an individual from seeking an award from a Federal agency for himself or his firm concurrent with his seeking employment from that agency.

It is, of course, incumbent upon the agency to avoid even the appearance of favoritism or preferential treatment by the Government towards a firm competing for a contract or assistance award. See Scona, Inc., B-191894, January 23, 1979, 79-1 CPD 43; Metro Electric, Inc., B-194201, September 26, 1979, 79-2 CPD 226. When a procurement is conducted, for example, Federal Procurement Regulations § 1-1.302.3 (1964 ed.) prohibits contracting between the Government and its employees or businesses substantially owned or controlled by its employees. Although this regulation does not apply to the present case because the competition was for the award of a grant, it nevertheless reflects well established policy that such arrangements are undesirable and should be avoided because such relationships are open to criticism as to alleged favoritism and possible fraud. 55 Comp. Gen. 681, supra; 41 Comp. Gen. 569 (1962).

We are satisfied that MBDA acted properly here. The agency took adequate measures to shield the evaluators chosen to review the grant applications from any undue influence that Capital Formation might have had over MBDA personnel in the New York Regional Office by having MBDA headquarters personnel in Washington conduct the evaluation. Moreover, the agency states that if Capital Formation's President is eventually hired, it will take appropriate measures to avoid any actual or apparent conflicts of interest.

The complaint is denied in part and dismissed as to the remainder.

Handwritten signature of R. J. K...
Deputy Comptroller General
of the United States