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Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194140 **DATE:** September 13, 1979

MATTER OF: Burgos & Associates, Inc. ⁷⁵⁰²³⁹

[Protest Alleging that Agency Made Improper Grant Award]

DIGEST:

Complaint that executive agency abandoned practice of awarding contracts under Federal procurement procedures in favor of grant awards in order to make sole-source award and avoid statutory requirements for competition is denied where record discloses agency awarded grant rather than contract for purpose of complying with requirements of Federal Grant and Cooperative Agreement Act of 1977.

PACO 525

DLG-82738

Burgos & Associates, Inc. (Burgos) protests the decision of the Department of Commerce's Office of Minority Business Enterprise (OMBE) to award a noncompetitive grant to the Greater Hartford Business Development Center, Inc. (GHBC), to operate as a Business Development Organization (BDO) providing management and technical assistance to minority business firms in the Hartford, Connecticut area. Burgos contends that it should have been given an opportunity to compete for the award, particularly since it was OMBE's incumbent BDO contractor in the Hartford area for the previous year.

This Office generally does not consider complaints concerning the propriety of grant awards. Washington State Department of Transportation, B-193600, January 16, 1979, 79-1 CPD 25; 40 Fed. Reg. 42406 (1975). However, OMBE has previously conducted competitive procurements for BDO services, see, e.g., National Puerto Rican Forum, Inc., B-189338, November 23, 1977, 77-2 CPD 400; Decision Sciences Corporation, B-183773, September 21, 1976, 76-2 CPD 260, and Burgos suggests that OMBE has abandoned that practice in favor of making grant awards to avoid the competitive requirements of Federal procurement and to deprive the protester of its right to compete.

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OMBE explains that the shift to grant awards was prompted by the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, February 3, 1978, 92 Stat. 3, 41 U.S.C.A. §§ 501 et seq. (West Supp. 1978) (the Act). The Act defines and distinguishes among the terms "contract," "grant," and "cooperative agreement," and requires agencies to adhere to those distinctions when making awards. A procurement contract is to be used whenever the principal purpose of the relationship between the agency and its awardee is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government. On the other hand, when the relationship established is for the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the Federal role is passive or no substantial agency involvement is anticipated, the agency must use a grant agreement; if the Federal role is active or substantial agency involvement is anticipated the agency must enter into a cooperative agreement. Using these statutory standards, OMBE reports it determined that use of grant agreements is appropriate for BDO awards.

We find OMBE's position to be reasonable. Under the BDO program, OMBE funds public and private organizations which in turn render technical and management assistance to minority business enterprises. OMBE's determination that a grant instrument rather than a procurement is more appropriate to effect the program clearly is consistent with the Act.

The protest is denied.

We note that one of the purposes of the Act is to "encourage competition, where deemed appropriate, in the award of grants and cooperative agreements * * *." 41 U.S.C.A. § 501(b)(3) (West Supp. 1978). Although a noncompetitive award was made in this case, we further note that OMBE in general intends to use a competitive approach and explains that it did not do so here because of its desire to coordinate this BDO program with other Department of Commerce funded programs in the Hartford area.


Deputy Comptroller General
of the United States