



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sevdy and Lockett, Vocational Consultants--
Request for Reconsideration
File: B-225825.2
Date: July 20, 1987

DIGEST

1. Where protester knew or should have known that its certification as a vocational rehabilitation counselor was about to expire CBD notice which calls for applications for certification by the agency was not ambiguous simply because it stated that the agency wished to "add to its list" of certified individuals since it had actual notice that the requirement to apply for certification also applied to previously certified individuals whose certification was to expire.

DECISION

Sevdy and Lockett, Vocational Consultants, request that we reconsider our March 16, 1987, dismissal of its protest against the conduct of a procurement action for vocational rehabilitation counselors (VRCs) by the Department of Labor, Office of Worker's Compensation Programs (DOL). Sevdy and Lockett had essentially complained that DOL's synopsis of the proposed procurement action in the Commerce Business Daily (CBD) neglected to advise them, and other already certified VRCs, that their present certifications would expire in 1987 unless renewed by the date specified in the CBD notice. Since Sevdy and Lockett, along with some 120 other VRCs failed to submit their names for renewal in time, they will not be eligible for recertification before 1989 at the earliest.

Our original dismissal of the protest was based on grounds that the protest was untimely filed. DOL has urged us to affirm our prior dismissal, while Sevdy and Lockett has argued that we should either consider the protest timely or in the alternative that we reach the merits of the protest by invoking the significant issue exception contained in our Bid Protest Regulation, 4 C.F.R. § 21.2(c) (1986). We developed the record because of our concern that Sevdy and Lockett may have been improperly excluded from contracting with the DOL for an extended period.

The protest is denied.

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BACKGROUND

In August 1984, the DOL published a notice in the CBD inviting qualified individuals to submit their names to DOL for purposes of becoming certified VRCs. Sevdy and Lockett responded to the notice and, after attending a certification class in April 1985, became certified VRCs with whom the DOL later contracted for purposes of referring eligible clientele.

Subsequently, on June 20, 1986, the DOL again published notice in the CBD calling for qualified individuals to submit their names for becoming certified VRCs. The 1986 CBD notice provided in pertinent part as follows:

The U.S. Dept. of Labor, Office of Workers' Compensation Programs (OWCP), Division of Vocational Rehabilitation (DVR), is soliciting the names and home addresses of individual Vocational Rehabilitation Counselors (VRCs). The OWCP DVR intends to add to its list of VRCs and certify and contract with them to provide direct vocational rehabilitation services for injured workers covered by the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act. * * * Names and home addresses of interested VRCs must be received by 30 Sept. 86.

In addition, the DOL published notice of the certification program in the July, August, September issue of the Journal of Rehabilitation. Because of a publisher's error, the notice in the Journal of Rehabilitation erroneously stated the deadline for receipt of prospective VRCs' names and addresses as October 30, 1986. However, because the Journal of Rehabilitation is a quarterly publication, a correction could not be published until after the September 30, 1986, deadline had passed.

However, in July the DOL sent to currently certified individuals, including Sevdy and Lockett, a notice which reiterated the contents of the CBD notice in full and correctly stated the deadline for submission of names as September 30, 1986. The mailed copies of the CBD notice also contained the following legend "[i]t applies only to vocational rehabilitation counselors not currently certified . . . or with an OWCP certification that expires in 1987." Sevdy and Lockett acknowledge having received this notice in a timely fashion, but state that they "overlooked" it due to their understanding that their initial certification was for a 5-year period. Accordingly, they did not submit their names before the September 30, 1986, deadline.

On October 14, however, they sent a letter to DOL stating that there was some confusion regarding the deadline for submissions under the solicitation and that they had understood their certification to extend through 1990; they nonetheless asked that their names be included on the list of individuals who sought certification. DOL responded shortly thereafter refusing to include their names on grounds that they had failed to submit their names by the deadline stated in the CBD and reiterated in the mailed notice. After a number of unsuccessful attempts to have their names included on the list of eligible applicants, Sevdy and Lockett filed their protest in our Office on March 16, 1987. We dismissed the protest as untimely because it was filed several months after DOL's refusal to reconsider its decision.

ANALYSIS

Sevdy and Lockett argue first that the DOL erroneously led them to believe that their certification in 1985 was for a 5-year period and that as a result of being misled, they failed to respond to the solicitation in a timely fashion. As evidence of this alleged misrepresentation, the protesters have submitted 4 affidavits--those of Messrs. Sevdy and Lockett as well as 2 other VRCs who attended the 1985 certification class--all attesting to the allegation that the DOL representative who conducted the class stated that certification was for a 5-year period. Additionally, the protesters have submitted copies of the contracts executed between the agency and the 4 VRC/affiants, none of which bear a termination date. According to the protesters, these contracts point to the conclusion that certification was for longer than the 2-year period suggested by DOL.

The agency has submitted evidence which it argues supports their contention that certification was only for a two-year period. The record contains a copy of the 1984 CBD notice calling for interested VRCs to submit their names for certification. This notice states that certification will be for a two-year period. Additionally, there is an affidavit from the DOL employee who taught the certification class which Sevdy and Lockett attended in 1985. He states that at no time did he represent the duration of the certification period to be other than two years. The record also contains copies of certificates, which were obtained from two VRCs who attended the certification class along

with Sevdy and Lockett.^{1/} These certificates, which were issued to all VRCs who completed the certification training, show clearly upon their face that the certification was valid only through 1987 (i.e. for a two-year period). Sevdy and Lockett have not submitted copies of their certificates in support of the proposition that certification was to be for 5 years. We therefore conclude that the evidence proffered clearly weighs in favor of the agency and that in fact, the protesters should have known that the certification was for a 2-year period.

We turn next to the question of whether the CBD notice here in question was ambiguous in light of the conclusion reached above that Sevdy and Lockett should have known that their certification was for a 2-year period. Sevdy and Lockett argue that the CBD notice was misleading in that it stated that the DOL intended to "add to its list" of certified VRCs.

We conclude that the announcement requiring recertification was not ambiguous. First, although the CBD announcement stated that the DOL intended to "add to its list of VRCs," Sevdy and Lockett (and presumably all other VRCs) were on actual notice that it also applied to those whose certification expired in 1987 as a result of the July 1986 mailing. Sevdy and Lockett admit they received this mailing. As to the fact the CBD notice and the notice in the Journal of Rehabilitation had different deadlines stated, we believe that the actual notice which Sevdy and Lockett received should have apprised them of the conflict between the different deadlines and should have led them to inquire with DOL as to the correct deadline.

In the final analysis, the record in this case satisfies us that Sevdy and Lockett knew or should have known that their certification expired in 1987. Consequently, the CBD notice, coupled with the mailed notice of July, should have alerted Sevdy and Lockett to the necessity of filing for recertification before September 30, 1986. While it is true that the protesters, along with some 120 other VRCs responded late to the solicitation, we are informed that

^{1/}The agency's report contains a roster of attendees at the 1985 certification class. This roster contains the names of Sevdy and Lockett as well as the individuals whose certificates DOL submitted as examples.

2,183 VRCs did respond to the notice in a timely fashion. In our opinion, this is a strong indication that full and open competition was achieved.

The protest is denied.

Harry R. Van Cleve
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General Counsel