



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fred Schreiber; V. David Pique & Associates; Francene Tearpock-Martini & Associates, Inc.; Georgette Gerbin; Crawford & Company; Gary A. Peterson; Wilson Rehabilitation Services; Jane Boyer McGuigan; Rehabilitation Planning, Inc.

File: B-272181; B-272181.2; B-272181.3; B-272181.4; B-272181.5; B-272181.6; B-272181.7; B-272181.8; B-272181.9

Date: August 16, 1996

Fred Schreiber; V. David Pique for V. David Pique & Associates; Francene Tearpock-Martini for Francene Tearpock-Martini & Associates, Inc.; Georgette Gerbin; Kevin W. Bortnyik for Crawford & Company; Gary A. Peterson; Marian Wilson for Wilson Rehabilitation Services; Jane Boyer McGuigan; and Robert D. Cipko for Rehabilitation Planning, Inc., protesters.

Vaughn E. Hill, Esq., Department of Labor, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests against nonselection of vocational rehabilitation counselors (VRCs) for participation in certification program is dismissed since agency's actions in selecting which VRCs to include in certification program do not constitute a procurement of goods or services over which the General Accounting Office exercises jurisdiction.

DECISION

Fred Schreiber, V. David Pique & Associates, Francene Tearpock-Martini & Associates, Inc., Georgette Gerbin, Crawford & Company, Gary A. Peterson, Wilson Rehabilitation Services, Jane Boyer McGuigan, and Rehabilitation Planning, Inc. protest their nonselection for a certification program offered by the Department of Labor (DOL) for vocational rehabilitation counselors (VRC). The protesters contend that the agency erred in evaluating their applications for this program.

We dismiss the protests for lack of jurisdiction.

Under the provisions of the Federal Employees' Compensation Act, 5 U.S.C. § 8104 (1994), and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 939 (1994), the Secretary of Labor is required to arrange for vocational rehabilitation counseling services for eligible individuals. Pursuant to this overall direction, DOL has established a certification program for VRCs to ensure their availability. Under

this program, the agency obtains application packages from VRCs interested in becoming certified; those applicants deemed qualified are required to attend a 2-day course, at the conclusion of which the applicants receive the DOL certification. The certified VRCs are then included on a list and, when the need arises, an individual eligible for such services is referred to a certified VRC for purposes of receiving vocational rehabilitation services. If the certified VRC is willing to accept the referral, he or she advises the agency of this fact. The VRC then provides the services, and receives compensation from the agency.

Here, the protesters timely responded to DOL's Commerce Business Daily announcement calling for application packages. After reviewing all of the application packages, DOL selected a number of individuals to attend the 2-day course and become certified; none of the protesters was selected for certification, and each maintains that the nonselection was due to an erroneous evaluation.

The agency action complained of here does not constitute a procurement of goods or services, and thus is beyond our jurisdiction. The Competition in Contracting Act, 31 U.S.C. §§ 3551-3556 (1994), which establishes the procurement protest system under which we review the contracting actions of federal agencies, limits our review to consideration of objections to solicitations, proposed awards, and awards of contracts for the procurement of property. Where an agency has merely rejected an applicant under a prequalification procedure that does not involve the issuance of a solicitation or the award or proposed award of a contract, our Office does not have bid protest jurisdiction over the agency's actions.

A selection procedure such as this that does not guarantee successful applicants an opportunity to perform the work in question, require that they perform any particular work, or obligate the government to pay for any services is a type of prequalification procedure, not the award of a contract. See Michael J. O'Kane; Lorna H. Owens, B-257384; B-257384.2, Sept. 28, 1994, 94-2 CPD ¶ 120 (General Accounting Office does not have jurisdiction to consider protest against agency procedure for creating list of attorneys eligible to represent defendants pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A (1994), since such procedure is merely a preliminary screening process that does not guarantee any attorney an appointment as defense counsel, does not obligate the attorney to provide representation in a specific case, and does not obligate the government to pay the attorney for any services).

In this regard, the procedure at issue here clearly is only for the prequalification of VRCs. Successful applicants are only afforded an opportunity to attend a course and become certified VRCs. Those applicants who become certified VRCs are not guaranteed any work as a result of the procedure, and certified VRCs properly may decline any particular referral from the agency; the certification arrangement also does not create an obligation on the part of the government to pay a certified VRC.

In these circumstances, DOL's selection or nonselection of VRCs for certification under the procedure at issue here does not involve the solicitation for, or the award or proposed award of, a contract and therefore is not subject to our bid protest jurisdiction.¹

The protests are dismissed.

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¹We considered DOL's actions in connection with its VRC certification procedures in Sevdy and Lockett, Vocational Consultants--Recon., B-225825.2, July 20, 1987, 87-2 CPD ¶ 66. There, however, the issue of our jurisdiction was not raised or considered. Pursuant to this decision, we will no longer consider a bid protest challenging nonselection for the VRC certification program.