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DECISION



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

FILE: B-203149

DATE: June 5, 1981

MATTER OF: Renewable Energy, Inc.

DIGEST:

1. Complaint which does not involve award of Government contract or fall within one of exceptions to GAO policy of declining to review award of Federal assistance agreements will be dismissed; for purpose of review, grants and cooperative agreements will be treated alike.
2. GAO will consider propriety of award of grant or cooperative agreement only when there is showing that agency is using this form of Federal financial assistance, instead of contract, to avoid statutory and regulatory requirements for competition or when it appears that conflict of interest exists.
3. Federal Procurement Regulations do not apply to cooperative agreements.

Renewable Energy, Inc. of Denver, Colorado, formerly Technology International, Inc., complains of the refusal of the Department of Energy (DOE) to award it a cooperative agreement for a biomass-fueled, 4.5 million gallon fuel alcohol plant.

Since the complaint does not involve the award of a Government contract and does not fall within one of the exceptions to our usual policy of declining to review the award of Federal assistance agreements, we are dismissing it. See Del Manufacturing Company, B-200048, May 20, 1981, 81-1 CPD ___; Johnson Products, Inc., B-198976, February 24, 1981, 81-1 CPD 129.

Proced. of DOE Refusal to Award Cooperative Agreement

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Renewable Energy alleges that DOE's source selection official violated a number of procurement regulations and DOE policies as to use of the funds. Specifically, Renewable Energy asserts that although there were 126 responses to DOE's solicitation, only six projects were selected for award. Of these, four are for retrofit of existing distillery or brewery operations, which the complainant alleges have limited applicability for the nation at large and which will not stimulate the development of new technology using off-the-shelf equipment. In addition, Renewable Energy alleges that at least four of the projects selected use straight coal of good quality, rather than biomass or waste coal.

Other bases of complaint include the fact that of the six firms selected, one, Publicker Industries, has already received one award from DOE and will be receiving 38 percent of total funds available for this competition; that despite a directive to demonstrate a breadth of technology and geographic diversity, only nine percent of the funds are going to innovative technology and only one of the projects selected is west of the Mississippi; and that only one of the awards is to a small business. Renewable Energy also objects to the fact that after selecting the two highest-rated firms, the source selection official chose firms rated 7, 19, 30, and 37, justifying this selection on grounds of obtaining the greatest productive capacity at the lowest cost to the Government.

Renewable Energy's proposal was rated 10; it involved use of biomass rice hulls, straw, and coal fines (waste left after processing), and offered optional equipment for a total cost of \$1.68 per gallon of annual capacity, as opposed to selected projects which will cost up to \$3.33 per gallon. The firm therefore requests an investigation by our Office and reevaluation of its proposal, based upon our findings.

As we stated in our Public Notice on grant complaints, we will consider complaints concerning the award of contracts by Federal grantees in order to foster compliance with grant terms and with statutory and regulatory requirements. 40 Fed. Reg. 42406 (1975). However, as the

notice indicates, we do not intend to interfere with the functions and responsibilities of Federal agencies in making grants. While the assistance in this case is in the form of a cooperative agreement, rather than a grant, for purposes of our review, the two are treated alike. Del Manufacturing Company, supra.

In either case, we will consider the propriety of an award only when there is a showing that the agency is using a grant or cooperative agreement, instead of a contract, to avoid the statutory and regulatory requirement for competition, or when it appears that a conflict of interest exists. Id. There has been no such showing here. Moreover, the Federal Procurement Regulations which Renewable Energy apparently believes have been violated do not apply to cooperative agreements. We therefore decline to review the complaint under the procedures outlined in our Public Notice.

We note, however, that at the request of several members of the Congress, our Energy and Minerals Division (EMD) is reviewing the Department of Energy's alternative fuels program, concentrating on the alcohol fuels portion of the program. See Large Businesses Dominated Awards Made Under DOE's Alternative Fuels Program, EMD 81-86, May 15, 1981, dealing with non-alcohol fuels and stating that results of an investigation of the alcohol fuels program will be presented in a subsequent report. We have therefore forwarded a copy of Renewable Energy's complaint and supporting documents to EMD for possible consideration in its review of the alcohol fuels program.

The complaint is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel