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DECISION



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

FILE: B-198976

DATE: February 24, 1981

MATTER OF: Johnson Products, Inc.

[Protest of Proposal Rejection for Lateness]
DIGEST:

When applicant has neither alleged nor presented evidence (1) that agency awarded grants instead of contracts to circumvent competition requirements of procurement statutes and regulations or (2) that serious conflict of interest was involved, GAO will not review complaint regarding awards.

Johnson Products, Inc. "protests" the refusal of the Department of Energy (DOE) to consider its proposal for Feasibility Studies for Alternative Fuels Production under solicitation No. DE-PA01-80RA-50185, on grounds that it was late.

The solicitation, issued February 25, 1980, was for synthetic fuels studies funded by Title II of the Department of the Interior and Related Agencies Appropriations for Fiscal Year 1980, Pub. L. 96-126, 93 Stat. 970 (1979). The Congress specifically allocated \$100 million for "project development and feasibility studies" and authorized individual awards of up to \$4 million under the Federal Non-Nuclear Research and Development Act of 1974, as amended, 42 U.S.C. § 5901 et seq. (1976). From nearly 800 proposals, DOE competitively selected and awarded grants for these studies.

Since Johnson's 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 grant awards, we are dismissing it.

Johnson states that on April 25, 1980, it hand-carried a proposal to the room designated in the solicitation at DOE headquarters in the Forrestal Building, Washington,

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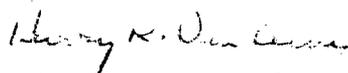
D.C. Arriving at 4:25 p.m, Johnson found a sign on the door directing offerors to another room. Consequently, its proposal (as well as two others which Johnson was carrying) was not stamped in until 4:45 p.m. The agency refused to evaluate it, since closing time for receipt of initial proposals had been 4:30.

Johnson argues (1) that DOE's use of the Federal Procurement Regulations (FPR), including "the most rigid of the late proposal provisions," to implement a grant program violated the Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. §§ 501-509 (Supp. III 1979), as well as the agency's own regulations, and (2) that its proposal should have been accepted for evaluation under the policy objectives of the synfuels statute.

The Department of Energy responds that the grants in question are discretionary and our Office therefore should not depart from its usual policy of not interfering with the functions and responsibilities of grantor agencies in making and administering such grants. In support of this argument DOE cites our Public Notice, 40 Fed. Reg. 42406 (1975) and a number of recent decisions, including Fishermen's Marketing Association of Washington, Inc., B-199247, August 21, 1980, 80-2 CPD 138.

We agree. Johnson has neither alleged nor presented any evidence that DOE chose to award grants, rather than contracts, in order to circumvent the competition requirements of the procurement statutes and regulations or that there was a serious conflict of interest involved. Consequently, the complaint does not fall within any of the exceptions to our stated policy of declining to review grant awards. See Burgos & Associates, Inc., 58 Comp. Gen. 785 (1979), 79-2 CPD 194; Bloomsbury West Inc., B-194229, September 10, 1979, 79-2 CPD 205; Burgos & Associates, Inc., 59 Comp. Gen. 273 (1980), 80-1 CPD 155.

The complaint is dismissed.


For Milton J. Socolar
General Counsel