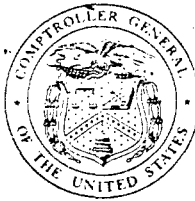


Robert
Proc II

DECISION



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

8867

FILE: B-193600

DATE: January 16, 1979

MATTER OF: Washington State Department of
Transportation

DIGEST:

*Denial of Grant Application is Discretionary Matter Not Subject
To Review by GAO*

State agency request for review of Federal agency decision denying grant is dismissed because denial of grant application is discretionary matter and Federal agency does not request review by GAO.

DLG 00657

The Washington State Department of Transportation (the State) requests our review of a decision by the U.S. Department of Transportation's Urban Mass Transportation Administration (UMTA) which denied the State's grant application. The denial stems from the contracting procedures followed by the State in awarding a contract for six new ferry vessels to be used for the transportation of commuters and other foot passengers across Puget Sound within urban areas of the State of Washington. UMTA has determined that it will not participate in the funding of the ferries pursuant to a capital facilities grant under Section 3 of the Urban Mass Transportation Act, 49 U.S.C. § 1602 (1970 and Supp. V 1975).

With regard to our review function in the area of Federal grants, we have noted that the General Accounting Office, upon receipt of complaints from prospective contractors, "will undertake reviews concerning the propriety of contract awards made by grantees" pursuant to grants awarded by Federal agencies, in order to "foster compliance with grant terms, agency regulations, and applicable statutory regulations." 40 Fed. Reg. 42406 (1975). However, the instant situation, in which the State challenges UMTA's discretionary decision not to award a grant, is not for our consideration. We held in All Indian Pueblo Council, Inc., B-190092, September 22, 1977, 77-2 CPD 219 that:

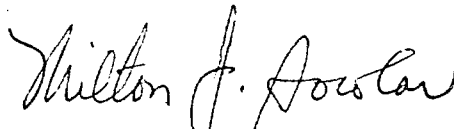
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"* * * '[i]t is not the intent of the General Accounting Office to interfere with the functions and responsibilities of grantor agencies in making and administering grants,' 40 Fed. Reg. 42406 [(1975)], * * * and for that reason the Office does not consider individual complaints concerning the propriety of a particular grant award."

National Technical Services, Inc., B-191096, February 16, 1978, 78-1 CPD 138 and Tracy Trombley Construction Company, Inc. - Reconsideration, B-192464, September 21, 1978, 78-2 78-2 CPD 216, are two recent decisions in which our policy not to consider complaints concerning the propriety of grant awards is reaffirmed.

Although the State argues that in our decision of Tri-County Metropolitan Transportation District of Oregon [Tri-Met], B-190706, July 21, 1978, 78-2 CPD 58, we did review the propriety of a grant award, the Tri-Met case is clearly distinguishable from the instant situation. In Tri-Met our review was limited to the propriety of a grantor agency's funding of a grant already awarded to the grantee. The grantor agency had requested our advice as to whether it could properly provide the grant funds notwithstanding the grantee's alleged nonconformance with the grant agreement. Whether or not a grant agreement should have been made was not in issue in Tri-Met, as it is in this case. Where, as here, it is apparent that an agency chooses not to make an expenditure by grant of appropriated funds, this Office does not interject itself in this discretionary decision making function even though the propriety of the contracting procedures followed by the applicant for the grant may have caused the rejection of the application. We, of course, would provide UMTA our views regarding the contracting procedures in question if UMTA makes such a request. However, we have been informally advised by an UMTA representative that UMTA is not desirous of our review in the instant case.

For the above-stated reasons we must decline to consider this matter.

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the typed name and title.

Milton J. Socolar
General Counsel