

DECISION



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

FILE: B-218816

DATE: June 2, 1986

MATTER OF: Council on Environmental Quality and Office of
Environmental Quality--Cooperative Agreement
with National Academy of Sciences

DIGEST:

1. A proposed study has been developed and submitted by the National Academy of Sciences to the Council on Environmental Quality for funding at the request of the Environmental Protection Agency. The purpose of the study is to provide information on risks and benefits of certain pesticides to help Federal regulatory agencies, such as EPA, in analyzing prospective regulations. The proper funding mechanism should be a procurement contract, rather than a cooperative agreement, as required by 31 U.S.C. § 6303 (1982), since the primary purpose of the study is to acquire information for the direct benefit or use of the Federal Government.
2. The Council on Environmental Quality has no authority to use its Management Fund to provide grants or analogous assistance and therefore cannot enter into a cooperative agreement, which is a form of assistance under 31 U.S.C. § 6305.

The Executive Officer of the Council on Environmental Quality and the Office of Environmental Quality^{1/} has requested a decision on whether the Council has authority to

^{1/} The Council on Environmental Quality, 42 U.S.C. §§ 4341-47, was established by the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., to oversee the Act's implementation. The Office of Environmental Quality was established by the Environmental Quality Improvement Act of 1970, 42 U.S.C. §§ 4371-74. This Act made the Chairman of the Council on Environmental Quality the Director of the Office of Environmental Quality and enunciated as one of the Office's duties the provision of staff and support for the Council. 42 U.S.C. § 4372(d)(1). Since its creation, the Council and the Office of Environmental Quality have operated as a single entity under both statutes. Hereinafter, we will refer to these two agencies as "the Council."

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enter into a cooperative agreement with the National Academy of Sciences. According to the submission, the Council received a proposal from the National Academy of Sciences for funding, in order for the Academy to conduct a study on "Analytic Methods for Estimating Pesticide Benefit." The proposed study would be financed via interagency agreements from the Council's Management Fund. Although such a study clearly comes within the Council's program authority, the Executive Officer was uncertain whether the Council has authority to use a cooperative agreement as the mechanism to fund the proposed study. See 42 U.S.C. § 4372(d)(4). The Executive Officer also asked whether the Management Fund can accept grant money from another Federal agency and provide assistance with those funds under a cooperative agreement.

As explained below, we find that the proper funding vehicle for the proposed study is a "contract" rather than a "cooperative agreement." There is no problem with the Council entering into a contractual relationship with the National Academy of Sciences for the project as described, as long as applicable Federal procurement regulations are met. However, we find that the Council has no authority to enter into a cooperative agreement with the National Academy of Sciences to carry out the proposed study.

Discussion

The Academy states that the purpose of the proposed project is--

"* * * to assist regulatory agencies and researchers in developing sound analyses of the economic impacts of prospective regulat[ions] impacting pesticide use patterns." National Academy of Sciences, National Research Council Board on Agriculture, "A Proposal for a Study on Analytic Methods for Estimating Pesticide Benefits" (Proposal No. 85-224).

The proposed study was developed and submitted to the Council at the request of the Environmental Protection Agency (EPA). EPA bases its pesticide regulatory decisions on a balancing of risks and benefits of particular pesticides and is concerned over existing limitations in methodologies and data for the estimation of comparative benefits of pesticide uses. The key focus of the study will be to develop methods for calculating comparative benefits of chemical and non-chemical pesticides.

As mentioned earlier, we have no question about the Council's authority to sponsor this type of study. The scope of its program authority is quite broad. See 42 U.S.C. § 4372. The only question is whether the Council is free to fund the project via a cooperative agreement or whether it must enter into a contractual relationship with the Academy instead. The Federal Grant and Cooperative Agreement Act, 31 U.S.C. §§ 6301-08 (1982), established the criteria which agencies must follow in deciding which legal instrument to use when entering into a funding relationship with a state, locality, or other recipient for an authorized purpose. Under these criteria, a contract is the proper funding vehicle when the services being acquired are for "the direct benefit or use of the United States." 31 U.S.C. § 6303.

Grants and cooperative agreements,^{2/} on the other hand, reflect

"a relationship between the United States Government and a State, a local government, or other recipient when-

(1) the principal purpose of the relationship is to transfer a thing of value to the state, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease or barter) property or services for the direct benefit or use of the United States Government." 31 U.S.C. §§ 6304 and 6305.

The results of the proposed study are clearly intended primarily for the direct benefit of the EPA as well as other regulatory agencies concerned in the development of regulatory policy on pesticide use. Therefore, under the directives of the Federal Grant and Cooperative Agreement Act, discussed above, the proper funding vehicle for the proposed study is a contract and not a cooperative agreement, as proposed. Providing applicable Federal procurement regulations are met, we see no problem with the Council entering into a contractual

^{2/} The quoted description in paragraph (1) is the same for both grants and cooperative agreements. The principal difference is that a grant does not usually involve substantial participation by the Federal agency (31 U.S.C. § 6304). "Substantial involvement" is expected when cooperative agreements are used. 31 U.S.C. § 6305(2). It is customary to refer to both instruments as evidencing "assistance relationships."

relationship with the Academy to perform the proposed study and financing it through the Management Fund.

The Executive Officer's second question was whether the Council's Management Fund can accept grant money from another agency and "provide assistance with those funds under a cooperative agreement." We assume, for purposes of this question, that the hypothetical study sought to be funded, unlike the National Academy proposal, is one intended primarily to support a public purpose rather than providing goods or services which the Federal Government wishes to procure for its own purposes.

In general, every agency has inherent power to enter into contracts to provide for its needs. However, we cannot assume that agencies have the power to donate Government funds to assist non-Government entities to accomplish their own purposes, however meritorious, without clear evidence that the Congress intended to authorize such an assistance relationship. B-210655, April 14, 1983. Therefore, in order to provide assistance through a cooperative agreement, there must be some affirmative legislative authorization. Id.

We have examined the Council's statutory authority but are unable to find any specific authority for it to enter into a cooperative agreement. The Management Fund of the Council was established by an amendment to the Environmental Quality Improvement Act. Pub. L. No. 98-951, 98 Stat. 3093, Oct. 30, 1984, to be codified at 42 U.S.C. § 4375. By law, the Fund can only participate in: "(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and (2) Federal interagency environmental projects (including task forces) in which the Office participates."

With respect to the first authority, we find nothing in the Fund's legislative history that would support a broader interpretation for the words "study contract" than the plain meaning of the words would suggest. Therefore, we think that paragraph (1) merely authorizes the Council to enter into jointly sponsored contracts through the Management Fund.

The second authority, "Federal interagency environmental projects", does not involve the use of a "cooperative agreement" (as the term is defined in the Federal Grant and Cooperative Agreement Act), since the intended relationship is between Federal agencies, one or more of which may itself conduct the study in question. Fund transfers between Federal agencies are not accomplished by awarding grants or entering into cooperative agreements. By statute, when an agency wishes to

acquire goods or services from another agency, the transaction would be funded under the Economy Act (31 U.S.C. § 1535) or some other statute on a reimbursable basis. Since the Fund cannot be used to make assistance awards, such as cooperative agreements, even if it receives an order from another agency that has grant assistance authority, it remains limited to act within the scope of its own authority.

for Milton F. Houtar
Comptroller General
of the United States