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**DECISION**



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

FILE: B-200048

DATE: May 20, 1981

MATTER OF: Del Manufacturing Company

*06695*

**DIGEST:**

[Complaint regarding award of cooperative agreement] will not be considered where complainant has not shown that agency awarded cooperative agreements to circumvent procurement laws or that conflict of interest was involved.

Del Manufacturing Company (Del) complains of the Department of Energy's (DOE) refusal to award it a cooperative agreement for the development of solar collectors under Program Research and Development Announcement (PRDA) No. DE-RA02-80CS30249.

Since Del'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 the award of Federal assistance agreements, we are dismissing it. Hometech, B-200359, April 16, 1981, 81-1 CPD \_\_\_\_\_; Johnson Products, Inc., B-198976, February 24, 1981, 81-1 CPD 129.

Del argues that DOE violated established Federal procurement norms by using evaluation criteria other than those set forth in the PRDA, by using a technical consultant in proposal evaluation that had a predetermined bias against Del's technical approach, and by refusing to enter into meaningful discussions with Del.

We will consider complaints from prospective contractors concerning the award of contracts by grantees under Federal grants in order to foster compliance with grant terms and with statutory and

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agency regulations. GAO Public Notice, 40 Fed. Reg. 42406 (1975); Hometech, supra. However, as the Public Notice indicates, it is not our intention to interfere with the functions and responsibilities of grantor agencies in the actual award of grants. Fisherman's Marketing Association of Washington, Inc., B-199247, August 21, 1980, 80-2 CPD 138. While the Federal assistance instrument in this case is a cooperative agreement rather than a grant, we have recently held that for the purposes of our review cooperative agreements and grants will be treated alike. Xcavators, Inc. (B-198297, September 29, 1980), 59 Comp. Gen. \_\_\_\_\_ (1980), 80-2 CPD 229.

We will consider the propriety of a grant award where there is a showing that the agency is using the grant award process to avoid the competitive requirements of procurement laws, or that a conflict of interest exists. Solid Energy Systems Corporation, B-201877, May 5, 1981, 81-1 CPD \_\_\_\_\_; Burgos & Associates, Inc., 59 Comp. Gen. 273 (1980), 80-1 CPD 155; Bloomsburg West, Inc., B-194229, September 10, 1979, 79-2 CPD 205; Burgos & Associates, Inc., 58 Comp. Gen. 785 (1979), 79-2 CPD 194. Del argues that we should consider its complaint because "[t]hese two issues are raised in the present protest." We disagree. Del has not shown that a cooperative agreement was used instead of a contract in order to avoid the competitive requirements of procurement laws, but rather has argued that competitive procurement norms were not properly adhered to in the award of the cooperative agreement. Also, Del has not shown that a conflict of interest existed, but has merely alleged that DOE's technical consultant preferred solar collector designs that were similar to its own. Del has neither provided supporting evidence nor shown how the consultant would gain by the alleged preference.

The complaint is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel