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DECISION



L. Pelgion, C.G.A.
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-191890

DATE: July 28, 1978

MATTER OF: New England Regional Commission; Proposed Contract with Northeast-Midwest Research Institute, Inc.

DIGEST:

1. New England Regional Commission is authorized under 42 U.S.C. § 3185(a)(2) to contract with Northeast-Midwest Research Institute Inc., a private corporation, to provide funds for research by the Institute concerning impact of Federal policy options on regional economy. The Commission cannot provide funds to the Institute for "seed money" or general support, but may award a contract for distinct research tasks or projects, 42 U.S.C. § 3175 (a)(2).

2. Questions of violation of criminal statutes are matters for consideration of Department of Justice. Questions of congressional propriety and ethics are for determination of appropriate Committees. However, GAO sees no illegality or impropriety in contract between New England Regional Commission and private research institute having some relationship with congressional regional caucus assuming, as appears to be the case, that institute is not financed by moneys appropriated to Congress and that no financial benefit inures, directly or indirectly, to any Member of Congress from contract.

Charles C. Tretter, General Counsel of the New England Regional Commission (Commission), requested the opinion of this Office on the legality and propriety of a proposed contract between the Commission and the Northeast-Midwest Research Institute, Inc. The request was made because the State Cochairman of the Commission, on the advice of his Attorney General, is reluctant to sign the contract until a ruling has been rendered by this Office. The specific concern of the State Cochairman was not identified.

The New England Regional Commission is one of a number of multi-State regional bodies established pursuant to section 502(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. § 3182(a). Except for a Federal Cochairman, the Commission is entirely composed of representatives from each participating State in the region.

The Northeast-Midwest Research Institute, Inc. (Institute) is a District of Columbia non-profit corporation without members or shares. It was organized in March 1977, according to its self-description, "to perform appropriate research into Federal policy impacts on the 16 States of the Northeast and Midwest." The proposed contract states that the Institute would perform research projects for the Commission concerning the regional impact of Federal policy options in several fields, including energy, transportation, import competition, rural development, economic development, and the expenditure patterns of the Army Corps of Engineers and the Interior Department. The contract would provide for payment to the Institute of \$50,000 for a 1-year period. The contract is authorized by section 505(a)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3185(a)(2) (1970)).

In pertinent part, section 505(a)(2) (as added by Pub. L. No. 91-123, 88 Stat. 216, and as amended by Pub. L. No. 93-423, 88 Stat. 1162), authorizes regional commissions:

"* * * to engage in planning, investigations, studies, demonstration projects, training programs, and the payment of administrative expenses to sub-State planning and development organizations (including economic development districts), which will further the purposes of this Act and which have been approved by the Secretary [of Commerce]. Such activities may be carried out by the commissions * * * through the employment of private individuals, partnerships, firms, or corporations, or suitable institutions under contracts entered into for such purposes or through grants-in-aid to agencies of State or local governments. * * *"

We concur in the opinion of the General Counsel of the Department of Commerce (as set forth in a letter from the Deputy Assistant General Counsel for Administration) whose views were requested by Mr. Tretter, that since the Institute is not a "sub-State planning and development organization or district," the Commission cannot provide funds to the Institute "for its seed money or general support". This would amount to payment of administrative expenses. The Commission is limited by section 505(a)(2) "to provide such assistance [payment of administrative expenses] only to sub-State planning and development organizations."

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We also concur in the opinion of the General Counsel of the Department of Commerce that, under section 505(a)(2), the Commission may award a contract for planning, investigations, studies, demonstration projects, or training programs to the Institute so long as such services are for "distinct tasks or projects." The award of a contract by the Commission must be "on the basis of a proposed scope of work in accordance with the Commission's requirements and applicable laws, and not for general support purposes." Whether the contract is for distinct tasks or projects is, in the first instance, to be determined administratively by the Commission. Assuming that the contract is properly determined to meet this condition and that the Secretary of Commerce approves, as required by section 505(a)(2), we find no apparent basis in the record to question the propriety or legality of the contract.

The record submitted to us by Mr. Trotter includes a copy of a memorandum from the American Law Division of the Congressional Research Service of the Library of Congress, dated September 29, 1976, to the Honorable Michael J. Harrington, in answer to his request for an opinion on the creation of a research organization or group among Members of the House of Representatives and whether such a research group could receive Federal funds to carry out research projects. That memorandum states, in part, that there are no laws, rules, or regulations concerning the establishment of such a group but without specific authority, Member research groups "may not receive federal funds since the members might be deemed to benefit from a contract with the Government and thus be in violation of the law."

There is no indication from the information submitted to us that any Member of the Congress is a member of the Institute. However, it appears from the listings in the current Congressional Staff Directory that the Institute and the Northeast-Midwest Economic Advancement Coalition (Coalition), a regional caucus (of which Representative Harrington is the Chairman) of over 200 Members of the House, share the same room in a House of Representatives office building. Mr. Trotter has requested the advice and assistance of the following House committees with regard to the proposed contract:

1. Committee on Standards of Official Conduct;
2. Committee on House Administration; and
3. Select Committee on Ethics.

These circumstances suggest some concern that the Coalition and Institute may in some way be connected with Members of the House.

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Apparently with this possible congressional involvement in mind, the General Counsel of the Department of Commerce discussed the application to this contract of sections 431 and 432 of title 18, United States Code (1970), which prohibit generally the making of contracts by or on behalf of the United States, directly or indirectly, with Members of Congress. An exemption from the application of these provisions is found in 18 U. S. C. § 433 for any contract or agreement made by "any incorporated company for the general benefit of such corporation." The General Counsel opined that "such provisions [sections 431 and 432], would not be invoked if the Institute remains incorporated and any benefits from any contract inure to the general benefit of the corporation and not to any Member of or Delegate to Congress."

Sections 431 and 432 of title 18 are criminal statutes, the enforcement of which is primarily a function of the Department of Justice. Our Office is, therefore, without jurisdiction to issue any binding determinations as to the application of the provisions in 18 U. S. C. §§ 431-433 to any contract with the Institute. We believe, however, that the Commerce Department is correct that the statutes would not apply to contracts with a corporation where the financial benefits of the contract inure to the corporation rather than to a Member of Congress. There is no indication in the record before us that contract proceeds would inure to the benefit of a Member. The Articles of Incorporation show that the Institute is a District of Columbia non-profit corporation without members or shares and the record shows that neither its incorporators nor directors are Members of Congress. In any event, as already noted, the question of the application of those sections is a matter for the Department of Justice.

There are finally the questions, in effect raised by Mr. Tretter's inquiries to the House Committees mentioned above, whether there may be in the relationship between the Institute and the Coalition some indication either of violation of the House Code of Official Conduct or of misapplication of Federal funds. The Code of Conduct is a matter for consideration by the House Committees whose advice Mr. Tretter has requested.

However, assuming (1) that the contract complies with section 505 (a)(2) of the Public Works and Economic Development Act of 1965, as discussed above, and (2) that the staff salaries and other funds of the Institute are not disbursed by the Clerk of the House from funds appropriated to the House of Representatives, we are aware of no basis for objection to the proposed contract, either on legal or ethical grounds.

Deputy 
Comptroller General
of the United States