

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

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SEP 30 1976

The Honorable Ken Hechler  
Chairman, Subcommittee on Energy Research  
Development and Demonstration (Fossil Fuels)  
Committee on Science & Technology  
House of Representatives



Dear Mr. Chairman:

Your letter dated August 10, 1976, requests our comments on the position taken by the Energy Research and Development Administration (ERDA) in response to our letter dated August 5, 1976, to you, in which we suggested alternative language to the current wording of Title IX, "Organization Conflict of Interest", of H.R. 13350, as amended.

Our suggested language would require ERDA to promulgate regulations requiring prospective contractors to provide ERDA with "all relevant information" which would have a bearing on whether the prospective contractor would have a possible conflict of interest in connection with research, development, or evaluation activities.

ERDA "does not object in principle" to this alternative language. However, ERDA observes that the requirement for prospective contractors to disclose information bearing upon their ability to render "impartial, technically sound or objective assistance" would appear to require opinions or conclusions on the part of a prospective contractor as to what would constitute a conflict of interest. ERDA suggests that strictly "factual disclosures of past or planned activities in the general area covered by the prospective contract might be preferable." ERDA also observes that our alternative language does not clearly indicate whether disclosure would be required of all offerors or only those selected for contract negotiation.

We think the statutory language should be broad and general, and should be implemented by detailed regulations. We would expect that such regulations would specify the precise nature of the information to be disclosed and also would require the submission of any other "relevant" information. We would also expect that the regulations would specify when in the procurement process and from whom the information will be required.

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We notice that ERDA has recently begun to use a new disclosure clause. Request for proposals No. DSA-76-869, issued by ERDA on August 23, 1976, provides:

" DISCLOSURE OF INTERESTS

Pursuant to ERDA PR § 9-1.54, ERDA requires information so that it may determine whether or not any situations exist which might either (1) bias a contractor's judgment, or (2) provide a contractor with an unfair competitive advantage because of any interest, financial or otherwise, which it or any of its affiliate organizations have in current activities or potential procurement opportunities relating to the work involved in this solicitation.

"Therefore, proposers must provide a brief statement of any interest, financial or otherwise, which they or any of their affiliate organizations currently have, have had in the past, or might have in the future which may relate to the work to be performed under this solicitation. ERDA will use this information to determine whether or not any situations, real or apparent, exist which might either bias a contractor's judgment in relation to its work for ERDA, or provide the contractor with an unfair competitive advantage. Proposers should properly mark any information contained in their statements which they consider proprietary data according to the instructions contained in Part C above.

"Failure to provide the statement or to disclose relevant interests may result in disqualification under this solicitation."

ERDA, in a letter to us dated September 10, 1976, a copy of which is enclosed, indicated that it "presently contemplates that this disclosure clause will be used \* \* \* in subsequent solicitations when the nature of the work warrants its inclusion \* \* \*."

This provision seems to be consistent with our proposed statutory language and would provide ERDA information to resolve questions of conflicts of interest. However, we believe that the

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use of such a clause should be mandated by regulation, rather than left to the possible uneven discretion of contracting personnel, so as to insure uniformity of application.

ERDA also suggests that disclosure requirements should apply Government-wide and not merely to ERDA. We agree that regulations on a Government-wide basis would be appropriate, and we understand that such regulations are under study by the Office of Federal Procurement Policy, the General Services Administration, and the Armed Services Procurement Regulation Committee. However, we believe it would be useful for agencies to promulgate their own conflict of interest procedures, at least on an interim basis, while uniform regulations are under consideration.

We hope this information serves the purpose of your inquiry.

Sincerely yours,

R.F. KELLER

deputy  
Comptroller General  
of the United States

Enclosure

CONFLICT OF INTEREST STATUTES  
and  
Proposed regulations

ENERGY  
Energy Research and Development Administration  
Contract  
Disclosure classes  
Proposed

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