

is identified as Facility #63 by the SLA. The current permit listing items to be sold by Facility #63 provided that both hot and cold beverages may be sold. However, the permit did not specify the nature of the beverage nor were there restrictions on the type of container.

Located on the same floor with Facility #63 is another Randolph-Sheppard facility identified as Facility #54. Facility #54 was permitted to sell canned and bottled beverages in May of 1987.

In May 1990, the vendor at Facility #54 filed a grievance against Mr. Travers alleging unfair competition due to the sale of similar products. The SLA's regulations pursuant to the Code of Maryland Rules (COMAR) Section 13A provides for a committee of peers to review complaints between two or more blind vendors managing facilities on the same property. A peer review was conducted in June of 1990. On July 11, 1990, the peer review panel ruled in favor of complainant.

Subsequently, the vendor of Facility #54 appealed this decision and requested an administrative review, which was held on October 30, 1990. On November 9, 1990, the Director of the Office of Program and Administrative Support Services issued a determination that competition existed between Facilities #63 and #54. The decision of the SLA was to take steps to minimize the competitive situation between Facility #63 and Facility #54. The Director decided that Facility #54 should be authorized to sell canned and bottled sodas and that Facility #63 should be authorized to sell fountain sodas. The Director further decided that both Facility #54 and Facility #63 should be authorized to sell bottled water and canned and bottled juices.

On December 4, 1990, complainant requested a full evidentiary hearing to appeal the Director's decision. The hearing officer affirmed the Director of Office Program and Administrative Support Services' decision that Mr. Travers should not be permitted to sell bottled sodas. On April 10, 1992, the SLA affirmed the decision of the hearing officer.

The complainant, Albert Travers, on May 22, 1992, filed a request with the Secretary of Education to convene an arbitration panel to hear an appeal of his grievance. An arbitration hearing was conducted on March 16, 1993, pursuant to the Act. The complainant was challenging the SLA's actions on the grounds that (1) the SLA lacked the legal authority to act unilaterally to effectively amend the operating permits without the concurrence of either the

Federal property managing agency, GSA, or complainant and over the objections of both; (2) no basis was shown to restrict complainant's sale of non-natural bottled sodas, given the lack of any evidence concerning the impact of competition upon the operations conducted by complainant or by another program vendor; (3) the SLA failed to adhere to its own regulations and internal Administrative Manual in the handling of the unfair competition claim; and (4) the SLA improperly attempted to retroactively apply its Administrative Manual against complainant.

Arbitration Panel Decision

The majority of the panel found that the Randolph-Sheppard Act is silent on the issue of limiting competition between two or more program vendors at a single Federal installation. The Act does provide for a sharing of vending machine income in cases of more than one program vendor operating at a single Federal installation. The panel found that the SLA does have a legitimate interest in restricting "ruinous competition" between program vendors since "ruinous competition" would deprive one or both program vendors of the ability to survive economically and would be contrary to the intent of the Act.

The panel ruled that, based upon the record of evidence viewed in its entirety, the SLA's actions were arbitrary and capricious and unsupported by any specific factual evidence as to the impact of competition between Mr. Travers and the vendor of Facility #54 relating to the sale of bottled sodas. The panel reasoned that, absent that factual evidence, no conclusion could be drawn regarding the competition as unfair or ruinous. The SLA's actions were not supported procedurally or substantively or by its Administrative Manual or by any other cited regulatory or statutory authority that would allow the SLA to retroactively eliminate the sale of products that were authorized by the operating permit and that were not restricted by a valid operating agreement.

The panel found that the SLA failed to adequately take into account the fact that Mr. Travers had been selling bottled sodas for an extended period of time before the vendor of Facility #54 attempted to compete with him. The panel found that the final decision of the SLA arbitrarily and capriciously drew a distinction between "natural" bottled sodas and "non-natural" bottled sodas, which led to the absurd results of complainant selling exclusively bottled

7-Up and bottled Birch Beer and the vendor of Facility #54 selling bottled Diet 7-Up and bottled Root Beer. No rationale was provided for distinguishing between "natural" and "non-natural" sodas.

The panel directed the SLA to rescind its final agency determination regarding the restriction of complainant to sell bottled sodas. The SLA was precluded from attempting to force the complainant to sign an operating agreement that would contain such a restriction. The panel specifically noted the SLA's authority pursuant to State regulations to insist that complainant enter into a valid operating agreement governing the operation of his facility.

A panel member issued a concurring opinion but disagreed with the panel's findings that complainant's request for reimbursement for costs and attorney's fees was outside the jurisdiction of the panel. That panel member urged the panel to award costs of the arbitration to the complainant.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 6, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF ENERGY

Nevada Operations Office; Acceptance of an Unsolicited Proposal

AGENCY: Nevada Operations Office (DOE/NV), Department of Energy.

ACTION: Acceptance of an Unsolicited Proposal.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 C.F.R. Section 600.14(f), it is awarding a grant to the Corporation for Solar Technology and Alternative Resources (CSTAR) of Las Vegas, Nevada, on the basis of acceptance of an unsolicited proposal.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Kevin Thornton, P.O. Box 98518, Las Vegas, NV 89193-8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to CSTAR who will pursue highly leveraged renewable energy development, especially the commercialization of new technologies looking for market entry projects.

This project is to advance the competitive position of solar-power generation technologies by constructing facilities capable of generating up to 1000 megawatts of solar-generated electrical power and to create a sustaining manufacturing and technology infrastructure in southern Nevada. The mix of types of solar generation will be determined through a competitive process and will potentially include photovoltaics, dish/Stirling, solar trough, power tower, and other renewable technologies.

The unsolicited proposal submitted by CSTAR is considered to be meritorious and the proposed project represents a unique and innovative idea, method, and approach which would not be eligible for financial assistance under a recent current, or planned solicitation.

The project is of value to the DOE, other Federal agencies, the scientific and technological communities, and the general public through growth of a new manufacturing and technology industry in the southern Nevada area.

The project period of this grant is for four and one-half years and will commence on June 15, 1995, through December 31, 1999. The total estimated cost of the award is \$7,722,027 of which \$4,700,000 is Federal funding and \$3,022,027 non-Federal.

Issued in Las Vegas, Nevada, on May 22, 1995.

Joseph N. Fiore,

Acting Deputy Manager, DOE Nevada Operations Office.

[FR Doc. 95-14207 Filed 6-8-95; 8:45 am]

BILLING CODE 6450-01-M

Office of Economic Impact and Diversity; Guidelines for Department of Energy Mentor Protege Initiative

AGENCY: U.S. Department of Energy (DOE).

ACTION: Final Guidelines.

SUMMARY: On August 22, 1994, the Department of Energy (DOE) published proposed guidelines for its Mentor-Protege Pilot Initiative. The Mentor-Protege Pilot Initiative is designed to encourage Department of Energy management and operating contractors, Environmental Restoration management contractors and DOE prime contractors to assist energy-related small disadvantaged, (8a), and women-owned businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department.

EFFECTIVE DATE: June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Eugene Tate at (202) 586-4556.

SUPPLEMENTARY INFORMATION:

Purpose and Program Overview

The Department of Energy Mentor-Protege Pilot Initiative is designed to encourage Department of Energy management and operating contractors, Environmental Restoration management contractors and DOE prime contractors, to assist energy related small disadvantaged, 8(a), and women-owned businesses in enhancing their business and technical capabilities to ensure full participation in the mission of the Department. The use of this integrated working arrangement between companies will promote economic and technological growth, foster the establishment of long term business relationships and increase the number of small disadvantaged, 8(a), or women-owned businesses that receive Department of Energy, other Federal and commercial contracts.

Comments to Proposal Guidelines

On August 22, 1994, the Department of Energy published proposed guidelines for its Mentor-Protege Pilot Initiative and requested written comments on the draft guidelines and supporting materials on or before September 21, 1994 (59 FR 43098). Although the Department received numerous telephone inquiries regarding the Initiative, only 22 written responses or comments were received.

Issues raised by respondents were distilled into the following relevant issues:

(1) Expand the mentor base to include more than Department of Energy management and operating contractors.

DOE reviewed the Mentor-Protege Pilot Initiative mentor participation limitations and decided to expand the mentor base to include Environmental Restoration management contractors and DOE prime contractors.

(2) Separate funding to operate the Initiative should be provided to approved mentor firms.

Unlike other mentor-protege programs which have appropriated funds, the Mentor-Protege Pilot Initiative is a program conceived by the Department of Energy and operated within the constraints of available resources. The Initiative does not have any appropriated funding. The Initiative does not provide cost reimbursement.

(3) A clear definition of "energy-related" should be given when the final guidelines are published.

"Energy-related" refers to any business relevant to the mission of the Department of Energy.

A. General Policy

(1) Department of Energy management and operating contractors, Environmental Restoration management contractors and prime contractors who are approved as mentor firms may enter into agreements with eligible small disadvantaged, 8(a), and women-owned businesses as protege firms to provide appropriate developmental assistance to enhance the business and technical capabilities of small disadvantaged, 8(a), and women-owned businesses to perform as contractors, subcontractors and suppliers.

(2) The mentor-protege initiatives described in these regulations constitutes a pilot program that will have a duration of two years from the date of the published final notice. During this period, management and operating contractors, Environmental Restoration management contractors and prime contractors which have received approval by the Department of Energy to participate in the program may enter into agreements with protege firms.

B. Incentives for Mentor Participation

(1) Active participation in the Department of Energy Mentor Protege Initiative may be a source selection factor in the awarding of Department of Energy contracts.

(2) The award fee evaluation plans contained in all Department of Energy Performance-Based Management contracts may include a factor for evaluation of a contractor's performance associated with Mentor-Protege Initiative participation.

(3) Mentor firms shall receive credit toward Department of Energy subcontracting goals contained in their subcontracting plan.

C. Incentives for Protege Firms

(1) Protege firms may be eligible for noncompetitive subcontracting procurement opportunities with the Department.

(2) Technical and developmental assistance provided by the mentor.

(3) Development of business relationships with Department of Energy, its contractors, and procurement personnel.

D. Mentor Firms

Department of Energy mentor candidates must be:

(1) Management and operating contractors of Department of Energy facilities.

(2) Environmental Restoration management contractors.

(3) DOE prime contractors.