

**DECISION**

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

C1074

FILE: B-183825

DATE: July 2, 1976

MATTER OF: Joseph A. Chesanek

098351

**DIGEST:**

Complaint against cancellation of solicitation by local housing authority--recipient of Federal funds via annual contributions contract with HUD under 42 U.S.C. § 1401, et seq.--is denied. Contract required local housing authority to comply with State and local law in procuring services. No basis is seen for conclusion that it failed to comply or that any other terms of contract were violated.

Joseph A. Chesanek has requested that we review a procurement action of the College Park, Maryland, Housing Authority (CPHA) under an annual contributions contract between CPHA and the Department of Housing and Urban Development (HUD).

HUD enters into annual contributions contracts with local housing authorities under the U.S. Housing Act of 1973, as amended (42 U.S.C. § 1401, et seq. (1970)), to provide financial assistance for low-rent public housing. Under such contracts, HUD may permit a local housing authority to engage the services of an independent public accountant to conduct an audit.

In the present case, CPHA solicited bids or proposals (the terms are used interchangeably in the record) from independent public accountants to perform an audit of its books. Three proposals were received. The lowest-priced proposal, submitted by J. K. Lasser & Company, was unsigned and was rejected as nonresponsive. Mr. Chesanek's proposal was second lowest. HUD advised CPHA to reject all proposals, cancel the procurement and resolicit, on the basis that HUD's Housing Management Circular HM 7476.1, July 26, 1972, paragraph 8, required that CPHA obtain proposals from at least three independent public accountants. HUD interprets this provision as requiring at least three responsive proposals. Mr. Chesanek disagrees with HUD's interpretation.

At the outset, we note that the Federal Government is not entering into a contract with any of the accountants. Rather, the procurement is by CPHA, a local housing authority receiving Federal funds under an annual contributions contract with HUD. When the Federal Government

makes grants, it may include in them conditions which must be followed by the grantee--for example, procurement procedures to be used by the grantee in purchasing goods or services. See, generally, Lametti & Sons, Inc., 55 Comp. Gen. 413 (1975), 75-2 CPD 265. In the present case, the annual contributions contract between HUD and CPHA provides as follows in part two, section 306:

"In the purchasing of equipment, materials, and supplies, and in the award of contracts for services or for repairs, maintenance, and replacements, the Local Authority shall comply with all applicable State and local laws, and in any event shall make such purchases and award such contracts only to the lowest responsible bidder after advertising a sufficient time previously for proposals, except:

- (1) When the amount involved in any one case does not exceed \$2,500; or
- (2) When the public exigencies require the immediate delivery of the articles or performance of the service; or
- (3) When only one source of supply is available and the purchasing or contracting officer of the Local Authority shall so certify; or
- (4) When the services required are (a) of a technical and professional nature, or (b) to be performed under Local Authority supervision and paid for on a time basis."

Further, section 311 of the contract provides that no cost of any audit shall be charged to the Federal Government unless the Government has approved such audit. However, we find nothing in the contract between HUD and CPHA which incorporates or otherwise makes applicable to CPHA the procurement procedures for obtaining an outside audit contained in HM 7476.1, supra. Even if the HM 7476.1 provisions were regarded as regulations implementing the Housing Act of 1937, as amended, and therefore as having the force and effect of law, they would not in our view be self-executing; their applicability depends upon their inclusion or incorporation into the HUD-CPHA contract. See Planning Research Corporation

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Public Management Services, Inc., B-184926, March 29, 1976, 55  
Comp. Gen. \_\_\_\_\_, 76-1 CPD 202.

Therefore, we regard section 306 of the HUD-CPHA contract, supra, as the operative provision in this case. Under its terms, the local housing authority is required first of all to comply with State and local law. The complainant in this case has not presented any basis, nor is any apparent, which would justify a conclusion that cancellation and resolicitation of the procurement contravened State or local law. Section 306 also establishes certain other guidelines-- for example, that contracts shall be awarded to the lowest responsible bidder after advertising. However, an exception is specifically provided for where the services are of a technical or professional nature. We see no reason why the cancellation and resolicitation in this case would violate any of the provisions of section 306.

Accordingly, the complaint is denied.

  
Deputy Comptroller General  
of the United States