



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Native American Trading Corp.

File: B-236212.2

Date: August 22, 1989

DIGEST

Protest that Indian firm was entitled to an award preference under the Buy Indian Act is without legal merit where the solicitation did not provide for such preference.

DECISION

Native American Trading Corp. (NATC) requests reconsideration of our dismissal of its protest of the award of a contract to LEECO Diagnostics by the Navajo Area Indian Health Service, Department of Health and Human Services, under invitation for bids (IFB) No. S89-0060/JT. We affirm our prior dismissal.

We initially dismissed the protest because we interpreted NATC's protest as complaining that the solicitation failed to include a preference for Indian firms. Since NATC's protest concerned an alleged solicitation impropriety and was filed after award, it was dismissed as untimely. See 4 C.F.R. § 21.2(a)(1) (1988).

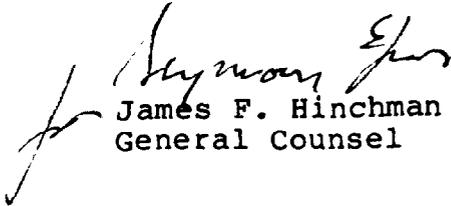
In its request for reconsideration, NATC states that it was certified as a qualifying Indian firm and, as such, was entitled to an award preference under the Buy Indian Act, 25 U.S.C. § 47 (1982), even without an Indian preference contained in the solicitation.

NATC's argument that it should have received a preference in these circumstances is without legal merit. The Buy Indian Act permits a preference for Indian firms by allowing certain requirements to be negotiated exclusively with such Indian firms. Department of Health and Human Servs.-- Request for Advance Decision, B-232364, Oct. 5, 1988, 88-2 CPD ¶ 325. However, where, as here, the solicitation does not contain such a preference for Indian firms, no such

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preference can be given. See Orion Food Servs. Ltd.,
B-233145, Dec. 5, 1988, 88-2 CPD ¶ 563.

Since the protest, as clarified in the request for recon-
sideration, is on its face without merit, we affirm our
prior dismissal.


James F. Hinchman
General Counsel