

DECISION

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

FILE: B-210959, B-211208 **DATE:** April 25, 1983
MATTER OF: Union City Plumbing
DIGEST:

GAO will not consider a complaint that a prime contractor with an Indian Housing Authority did not comply with Department of Housing and Urban Development regulations and contract provision requiring a preference in awarding subcontracts be given to Indian-owned enterprises unless it is shown the subcontract award was "for" the Indian Housing Authority.

Union City Plumbing complains about a subcontract award in connection with the construction of low-income Indian housing under Southern Puget Sound Inter-Tribal Housing Authority Project No. 19-B0-52-006. The Housing Authority entered into a prime contract with Walsh Construction Co. for the project, which is funded by the Department of Housing and Urban Development (HUD) and is subject to HUD regulations directing, among other things, that the Housing Authority's contracts include a provision requiring that preference in the award of subcontracts be given to Indian organizations and Indian-owned economic enterprises to the greatest extent feasible. 24 C.F.R. 805.204(b)(1982). Union City Plumbing, apparently an Indian-owned enterprise, complains that Walsh Construction refused to award it a subcontract and instead made an award to a non-Indian firm, thus failing to implement the Indian preference.

We dismiss the complaint.

We have previously ruled that, under our Public Notice entitled "Review of Complaints Concerning Contracts under Federal Grants," 40 Fed. Reg. 42406 (1975), we will consider complaints concerning contract awards made by inter-tribal housing authorities for construction of low-income

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housing where HUD provides the funding. Curtiss Development Co. and Shipco, Inc., 61 Comp. Gen. 85 (1981), 81-2 CPD 414. Thus, the Inter-Tribal Housing Authority involved here is tantamount to a grantee for the purpose of our review.

The complaint does not involve a contract award by the Housing Authority, however, but a subcontract award made by the Housing Authority's prime contractor. In this regard, we generally decline to consider subcontractor complaints unless it is shown that the subcontract award was made "for" the grantee. See Copeland Systems, Inc., 55 Comp. Gen. 390, 395 (1975), 75-2 CPD 237; Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Basically, a subcontract may be considered to have been awarded "for" a grantee if the grantee's participation in the award process had the effect of causing the selection of the subcontractor in question. Copeland Systems, Inc., supra.

The complainant has not shown such participation by the Inter-Tribal Housing Authority. Moreover, HUD has advised us informally that the Inter-Tribal Housing Authority does not participate in the selection of a subcontractor except to certify the eligibility of potential subcontractors for the Indian preference at their request. We therefore decline to consider the complaint. See J & A, Inc., B-196137.2, February 20, 1980, 80-1 CPD 146.

Furthermore, we note that once Walsh Construction made a commitment in its offer to comply with the solicitation provision requiring that preference be given to Indian-owned enterprises in subcontracting, Walsh was obligated to comply with that commitment upon the acceptance of its offer. Whether Walsh actually complies with its commitment is a matter of contract administration, which is the responsibility of the grantee and HUD, not this Office. See DeRoche & Thomas Construction, B-209169, October 21, 1982, 82-2 CPD 358.

The complaint is dismissed.

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