

DECISION

24898
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211138

DATE: April 14, 1983

MATTER OF: American Indian Technical Services, Inc.

DIGEST:

GAO will review the Bureau of Indian Affairs' decision not to limit procurements to Indian contractors under the Buy Indian Act only where there is a prima facie showing of an abuse of the broad discretion conferred by the Act. Implementing policy in the Bureau of Indian Affairs Manual to restrict procurements to Indian firms when practicable does not limit the discretion to waive the policy for a particular procurement.

American Indian Technical Services, Inc. (AITS) protests the Bureau of Indian Affairs' (BIA) refusal to set aside under the Buy Indian Act the acquisition of historical research services concerning Indian lands in New Mexico. The Buy Indian Act, 25 U.S.C. § 47 (1976), gives the Secretary of the Interior broad authority to contract exclusively with Indian-owned firms to the extent practicable. The BIA Manual states that it is the BIA's policy to contract with qualified Indian contractors to the maximum practicable extent and to contact non-Indian contractors only after determining there are no qualified Indian firms within the normal competitive area that can meet the BIA's requirement and are interested in doing so. AITS alleges it and other Indian firms are interested in the contract, and complains that the contracting officer nonetheless requested that BIA's central office waive its policy in order to conduct an unrestricted procurement. The protester contends that BIA's actions violate the Buy Indian Act and the BIA's own manual.

We dismiss the protest.

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As a matter of law, the Secretary of the Interior, acting through the Commissioner of Indian Affairs, has broad discretionary authority under the Buy Indian Act to negotiate exclusively with Indian contractors. There is nothing in the law, however, that requires particular procurements to be set aside for Indians. We therefore will review individual BIA decisions not to limit procurements to Indian firms only where there is a prima facie showing that there has been an abuse of the broad discretion conferred by the Buy Indian Act. See Vallie Enterprises, B-200339, May 29, 1981, 81-1 CPD 423. We also have held that the policy expressed in the BIA Manual does not establish legal rights and responsibilities such that a waiver of the policy in a particular procurement would be illegal and subject to objection by our Office. Id.

BIA has advised us informally that the policy has been waived for this particular procurement, as requested by the contracting officer. The protester relies only on the Act and the BIA Manual to challenge BIA's refusal to limit this acquisition to Indian firms; as stated above, however, neither requires a set-aside. We therefore will not consider the matter further.

The protest is dismissed.

F. H. Barclay, Jr.
for Harry R. Van Cleve
Acting General Counsel