

**DECISION**

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

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**FILE:** B-216207**DATE:** October 22, 1984**MATTER OF:** Oregon Paiute Contractors, Inc.**DIGEST:**

Buy Indian Act does not require that particular contracts be set aside for exclusive participation of Indian firms and, therefore, GAO will not consider protest that procurement should have been restricted to Indian firms absent a clear showing of an abuse of the broad discretion conferred by the act.

Oregon Paiute Contractors, Inc. (OPC), protests that invitation for bids (IFB) No. IHS-428-9-10-84, issued by the Department of Health and Human Services, Portland Area Indian Health Service, was not set aside for Indian-owned firms under the Buy Indian Act, 25 U.S.C. § 47 (1982). The IFB is for the construction of a welded steel water storage tank with associated water and electrical appurtenances.

The Buy Indian Act permits the negotiation of contracts for Indian products with Indians to the exclusion of non-Indians. See Bartow Associates, Inc., B-204287, Aug. 17, 1981, 81-2 C.P.D. ¶ 151. OPC argues that, under the act and its regulations, the procurement should have been restricted to Indian firms and should not have been issued competitively. However, as a matter of law, while the Secretary of the Interior has broad discretionary authority to negotiate exclusively with Indian contractors, there is nothing in the Buy Indian Act that requires particular procurements to be set aside for Indians. Under 41 C.F.R. § 3-4.5705(b) (1983), contracting officers for the Indian Health Service are vested with this discretion for procurements such as the one at issue here. Our Office has held that we limit review of a decision not to restrict procurements to Indian firms only to cases where there has been a prima facie showing that there has been an abuse of the broad discretion conferred by the Buy Indian Act. Vallie Enterprises, B-200339, May 29, 1981, 81-1 C.P.D. ¶ 423.

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In this case, OPC simply objects to the unrestricted nature of the procurement, which in OPC's view should have been restricted to Indian firms, because of the statutory policy contained in the Buy Indian Act. Accordingly, the protest provides no basis for our Office to conclude that there was any abuse of the discretion provided for under the act.

We dismiss the protest.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel