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DECISION



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

FILE: B-203885

DATE: December 15, 1981

MATTER OF: Lac Courte Oreilles Tribe Governing Board and
Lac Courte Oreilles Development Corporation

DIGEST:

Indian Self-Determination and Education Assistance Act does not mandate that the Secretary of the Interior enter into a road construction contract with an Indian tribal organization upon the tribe's request.

The Lac Courte Oreilles Tribe Governing Board (LCO Tribe) and the LCO Development Corporation, which is an element of the LCO tribal government, protest the award of a contract for the construction of a road on the tribe's reservation to Roffer's Construction Company under an invitation for bids issued by the Department of the Interior's Bureau of Indian Affairs.

The protest is denied.

The protesters contend that Interior violated the Indian Self-Determination and Education Assistance Act (Self-Determination Act), 25 U.S.C. § 450f (1976), by not awarding the road construction contract to the LCO Development Corporation as requested by the LCO Tribe. The Self-Determination Act directs that the Secretary of the Interior, upon an Indian tribe's request, contract with a tribal organization to plan, conduct, and administer programs provided for in 25 U.S.C. § 13 and §§452-457. The protesters also complain that the Secretary of the Interior did not follow the procedures required by the Self-Determination Act when the Secretary declined the request for the contract. In this respect, the statute provides that the Secretary initially may decline to enter into a requested contract, but that in such a case the Secretary must state his objections in writing,

attempt to help the tribe or tribal organization overcome his objections, and provide the tribe a hearing on the objections. In response to the protest, Interior argues that the Act does not apply to construction contracts.

As stated above, the Self-Determination Act directs the Secretary to enter a contract with a tribal organization upon the request of a tribe when the contract involves a program provided for in 25 U.S.C. § 13 and §§452-457. None of the programs provided for in those sections specifically includes road construction. Moreover, we note that the regulations promulgated by the Secretary of the Interior for the application and approval process for contracts under the Self-Determination Act provide that contracts under 25 U.S.C. § 450f involve "business-related functions," which include "programs or parts of programs connected with construction projects but exclusive of the actual construction of the project," 25 C.F.R. § 271.2(d) (1980). The regulations further provide that 25 U.S.C. § 450f does not apply to contracting for individual construction projects, 25 C.F.R. § 271.12(a)(5).

We distinguish another case that also involved the Self-Determination Act and construction contracts, Ritchie-Wick, B-199358, September 24, 1981, 81-2 CPD 248. There, the Secretary of Health and Human Services (HHS) had canceled a solicitation for the construction of hospital staff living quarters at the Alaska Area Native Health Service

* On the other hand, the Secretary does appear to have the discretion to contract with tribal organizations for this type of requirement pursuant to 25 U.S.C. § 450h, which provides:

"The Secretary of the Interior is authorized upon the request of any Indian tribe * * * to contract with * * * any tribal organization for -

(1) the strengthening or improvement of tribal government (including, but not limited to " * * the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources) * * * ."

Hospital in Bethel, Alaska in order to award a contract for the work to a tribal organization as requested by the tribe. We denied a protest by a non-Indian firm against the cancellation because we agreed with HHS that the Self-Determination Act mandated award of a construction contract to the tribal organization. The mandate there, however, was in 25 U.S.C. § 450g, which directs the Secretary of HHS to contract with an Indian tribal organization, at a tribe's request, to maintain and operate hospital and health facilities for Indians, functions which reasonably include the construction of related facilities. In contrast, we see no basis to find that the mandate to the Secretary of the Interior in 25 U.S.C. § 450f contemplates road construction contracts.

Therefore, the Self-Determination Act does not require that the Secretary of the Interior contract with the LCO Development Corporation for road construction at the LCO Tribe's request. The protest is denied.

for 
Comptroller General
of the United States