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**DECISION**



*Has further Proc I*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-124899**

**DATE: December 23, 1976**

**MATTER OF: Trinity Services, Inc.**

**DIGEST:**

1. Where grant agreement stipulates that grantee-State will comply with all pertinent rules and regulations of grantor-agency, State is responsible for assuring consistency with certain Federal procurement policies under award by city-subgrantee, and it is duty of agency to ensure that State is enforcing application of such policies pursuant to grant agreement.
2. Grantor-agency is expected to monitor compliance by grantee-State with grant agreement condition stating that, at certain future time, State will ensure that fair proportion of awards will go to minority firms.

Trinity Services, Inc. (Trinity), protests the manner in which the city of Jacksonville, Florida, is permitted to conduct procurements with Federal grant funds, as a subgrantee of the State of Florida, a grantee of the United States Department of Health, Education, and Welfare (HEW) under Title VII of the Older Americans Act of 1965, 42 U.S.C. § 3001, et seq. (1975), for nutritional services.

According to the Acting Deputy Assistant Secretary for Grants and Procurement Management, after HEW releases the grant funds to the State of Florida the agency does not oversee the use of the funds during the formation of contracts so as to ensure that certain principles of Federal procurement law are followed. Instead, the HEW maintains that formation of contracts with grant monies belongs to the State and that the only concern of the HEW is of an audit nature. The State of Florida maintains that it has no jurisdiction over the city of Jacksonville, and, consequently, the State provides no supervision over the use of these Federal funds by the city as a subgrantee.

Counsel for Trinity also maintains that the State of Florida improperly makes no attempt to see that a fair proportion of the contracts let by or for the State goes to minority enterprises.

Regulations governing the Administration on Aging, specifically 45 C.F.R. § 909.50 (1975), Standards for Nutrition Projects, made applicable by the grant to the State, provide as follows:

"(c) The State plan shall provide that recipients of grants or contracts obliged by State or local law to employ competitive bidding or other procedures for purchases shall employ such procedures in purchases for the project. Other recipients of grants or contracts shall employ purchase procedures prescribed for projects by the State agency."

Since no State or local law exists for application in this instance, under the above provision the State of Florida is obliged to prescribe acceptable purchase procedures for subgrantees. While 45 C.F.R. § 74.151 permits grantees—States to apply their own procurement policies on procurements whose cost is borne in whole or part as a direct charge against HEW grants, these policies may not be contrary to those Federal procurement policies as set forth in 45 C.F.R. § 74.152, et seq. One of these Federal policies is that "All procurement transactions of the grantee \* \* \* shall be conducted in a manner so as to provide maximum open and free competition." 45 C.F.R. § 74.153. In the Florida State Plan (the basis upon which the grant is made) for fiscal year 1976, it was agreed that the Florida Aging and Adult Services Program Office would fulfill all requirements set forth in the rules and regulations of the Administration on Aging for the social and rehabilitative services nutrition programs for the elderly.

In view of the above, we believe that the State of Florida is bound to ensure that the grant funds obtained from the HEW and expended on nutrition projects, as here, are not expended in a manner inconsistent with the Federal procurement policies mentioned in 45 C.F.R. § 74.152, et seq. The argument that the State has no jurisdiction over the city of Jacksonville is of no consequence since 45 C.F.R. § 909.50 states that, in these circumstances, the State is to prescribe purchase procedures for use by the city. As regards HEW's view that its role merely is one of a post-event audit nature, the agency is not enforcing the above terms of the grant agreement with the State of Florida, which, as noted above, states that Florida will comply with all pertinent rules and regulations. Thus, we believe that active enforcement by the HEW is required in this area.

With respect to letting a reasonable amount of contracts to minority firms, 45 C.F.R. § 909.24(b) provides that:

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"(b) The State agency will, to the extent feasible, make awards to projects, or provide for subcontracts within such awards, to be operated by minority individuals, at least in proportion to their numbers of eligible individuals in the State."

It is estimated in the Florida State Plan that by March 1976 "Each District will assure conformity to Section 909.24(b) before approval of new or continued grant awards." We expect that, in view of the above-cited stipulation in the Florida State Plan, the HEW will monitor compliance by Florida with the stipulation made regarding minority persons.

*R. M. Keenan*  
Deputy Comptroller General  
of the United States