

DECISION



*R. Tolson*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548  
*M. I.*  
*7900*

FILE: B-191708

DATE: September 28, 1978

MATTER OF: RAJ Construction, Inc.

DIGEST:

GAO will take jurisdiction to review complaint against an award of a contract by grantee, which is recipient of Department of Housing and Urban Development block grant.

RAJ Construction, Inc. has filed a complaint against the award of a contract by the Town of Riverside, Washington under a Department of Housing and Urban Development (HUD) block grant. Funding for this project was provided through a Community Development Block Grant (block grant) authorized by the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 et seq. (Supp. V, 1975) (hereinafter "the Act").

It is HUD's contention that GAO should decline to take jurisdiction because our review would be inconsistent with the authorizing legislation of the Block Grant Program and its method of operation. HUD points out that it was the intent of Congress, through the consolidation of several categorical grant programs, to reduce the Federal involvement and supervision which had existed under the prior programs. Relying on legislative history the agency states that the block grant program was designed to ensure that "local elected officials, rather than special-purpose agencies, would have principal responsibility for determining community development needs, establishing priorities, and allocating resources." H.R. Rep. No. 1114, 93 Cong. 2d Sess. 3 (1974). HUD has noted that this Congressional Report further states at page 10:

"Since Federal application review requirements are being simplified to such a great extent, the post-audit and review requirements will serve as the basic assurance that block grant funds are being used properly to achieve the bill's objectives."

Consistent with this purpose HUD reduced Federal agency monitoring of activities under the new grant program so that decision-making responsibilities would rest in local government officials. Moreover, HUD notes that the Act provides GAO with the following authority:

"Insofar as they relate to funds provided under this title, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit." (emphasis supplied).

HUD argues that "[this] authority is of the same character as the authority given the grantor agency-- authority under which Congress clearly intended that post-performance review rather than grant monitoring during performance be emphasized." This limited review, in its opinion, would not include adjudication of complaints concerning the award of contracts under block grants.

HUD regulations require grantees of block grants to comply with the provisions of Federal Management Circular (FMC) 74-7, 24 C.F.R. § 570.507 (1977). Attachment '0' of FMC 74-7 sets procurement standards for grantees and provides:

\* \* \* \* \*

"2. \* \* \* The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a grant. This includes \* \* \* protests of award \* \* \*.

\* \* \* \* \*

"3. Grantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:

\* \* \* \* \*

"b. All procurement transactions \* \* \* shall be conducted in a manner so as to provide maximum open and free competition."

Consistent with FMC 74-7 HUD maintains no review jurisdiction of contractual disputes or precontractual protests arising out of procurements with block grant program funds, but leaves the settlement of such issues wholly within the province of the grantee. HUD urges that GAO exercise the same restraint.

As noted above, HUD regulations require block grant grantees to comply with the provisions of FMC 74-7. In addition, the Grant Agreement states that Federal grant assistance will be provided "subject to \* \* \* applicable law, regulations and all other requirements of HUD \* \* \*." Where, as here, the grant agreement stipulates that the grantee will comply with all pertinent rules and regulations of the grantor agency, it is the duty of the agency to ensure that the grantee is enforcing the application of such policies pursuant to the grant agreement, including a requirement for competitive

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bidding. Thomas Construction Company, Incorporated, et al., 55 Comp. Gen. 139 (1975), 75-2 CPD 101; Trinity Services, Inc., B-184899, December 23, 1976, 76-2 CPD 527. Consequently, HUD should ensure that proper procurement practices are followed by its grantees in this area.

HUD's review of contract awards under grants would not be contrary to the Act and we believe that a review at the time of an alleged erroneous award action will complement HUD's review function. A complainant will present its best case at an early stage of the procurement process. A complaint which is filed timely will permit the grantee and the cognizant Federal agency to review the case when the salient facts of the matter are clear. It would be difficult in a post-performance audit review to discover procurement irregularities, because interested parties would not be inclined to actively participate. There is no incentive to potential complainants possessing first hand knowledge of procurement irregularities for bringing their grievances before the appropriate authority in a post-performance audit review.

For the same reasons it is appropriate for GAO to review a complaint at an early stage of the procurement process. Furthermore, we have undertaken reviews concerning the propriety of contract awards made by grantees "consistent with [GAO's] statutory obligation \* \* \* to investigate the receipt, disbursement, and application of public funds \* \* \*." 40 Fed. Reg. 42406 (1975); 31 U.S.C. § 53 (1970). The fact that GAO's role under the Act is an audit function is not an impediment to our review of this matter. See Thomas Construction Company, Incorporated, et al., supra. Moreover, HUD regulations through the application of FMC-74-7 require that the grantee adhere to the principles of competitive bidding. As we stated in Thomas Construction Company, et al., supra:

"We recognize that under contracts made by grantees of Federal funds, the Federal Government is not a party to the resulting

contract. It is the responsibility, however, of the cognizant Federal agency, \* \* \* to determine whether there has been compliance with the applicable statutory requirements, agency regulations, and grant terms, including a requirement for competitive bidding. In such cases, we have assumed jurisdiction in order to advise the agency whether the requirements for competitive bidding have been met \* \* \*. (emphasis supplied).

For these reasons, we believe the better course is to exercise our jurisdiction in this matter.

*R. J. Keller*  
Acting Comptroller General  
of the United States