



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

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D-179153

October 10, 1973

McDonough, Schneider, Marcus and Cohn
866 Third Avenue
New York, New York 10022

Attention: L. Richard Marcus, Esquire

Gentlemen:

This is in response to your letter of August 15, 1973, and prior correspondence, protesting on behalf of Public Improvements, Incorporated (PII), against any award of a subcontract on Project No. 72, Metro North Residential Project, sponsored by the New York State Urban Development Corporation (UDC), which is a "governmental agency of the state" of New York. The Department of Housing and Urban Development (HUD) has approved and reserved contract authority on the Metro North project for mortgage interest reduction payments pursuant to section 236(b) of the National Housing Act, 12 U.S.C. 1715z-1, and for rent supplement payments pursuant to section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701a.

Quest Construction Corporation, the Metro North project's general contractor, proposed to award the subcontract for electrical work to PII. However, UDC did not approve this proposed award, since PII was not a minority-owned or -controlled firm. UDC directed that award be made to a qualified minority-owned firm.

The record shows that the subcontract in question does not directly require the use of federally appropriated funds. HUD's involvement is limited here to a reservation of funds for mortgage interest reduction payments and for rent supplement payments. These programs are designed to reduce the rental payments by lower income occupants of the project.

In the absence of a provision in the authorizing statute or in the terms of the assistance agreement, there is no legal basis for either this Office or HUD to question UDC's selection of a subcontractor. In this connection, it seems that the only related commitment obtained from UDC was that the standard equal employment opportunity clause (41 CFR 60) would be included in each contract and subcontract for the construction work.

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As to UDC's additional requirement that its contractor award the subject subcontract to a minority firm, neither the authorizing statute nor the assistance agreement with HUD would seem to preclude such action.

In view of the above, we must deny your protest.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States