UNITED SIOUX TRIBE DEVELOPMENT CORPORATION, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	Docket No. IBIA 89-12-A
CONTRACTING OFFICER, PHOENIX AREA OFFICE, BUREAU OF INDIAN AFFAIRS, Appellee	:	March 8, 1989

On February 21, 1989, the Board of Indian Appeals received a notice of appeal from the United Sioux Tribe Development Corporation, through counsel, Keith A. Tidball, Esq., Pierre, South Dakota. Appellant stated that it was appealing the award of a contract by the Phoenix Area Contracting Officer to White Shield, Inc. The contract is identified as Contract No. H50C14208306 (RFP N-88-0050), Ash Creek Cattle Association, Biological Analysis, San Carlos Apache Reservation. Appellant's notice of appeal does not allege any basis for Board jurisdiction.

The Board requested the Phoenix Area Office, Bureau of Indian Affairs, to furnish it with copies of correspondence between appellant and the Area Office concerning appeal procedures applicable to this matter. The documents were received by the Board on March 6, 1989. They indicate that, after appellant attempted to file a notice of appeal with the Contracting Officer pursuant to 25 CFR Part 2, the Contracting Officer advised it, by letter dated October 25, 1988, that it could file a protest of the award in accordance with procedures set out in the solicitation package. 1/ A copy of the relevant clause, showing how the protest should be served, was sent to appellant with the letter. Instead of filing a protest, appellant filed a document entitled "appeal" with the Area Director. Appellant was again advised, by letter of the Contracting Officer dated November 23, 1988, of the protest procedures. No decision was issued by the Area Director. Apparently, appellant has never filed a protest. Instead, it attempts to appeal this matter to the Board.

1/ Regulations concerning protests of awards of Federal procurement contracts are found in the Federal Acquisition Regulations, 48 CFR Part 33.1, and the corresponding Interior Department regulations, 48 CFR Part 1433.1.

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The Board of Indian Appeals may exercise only such jurisdiction as is vested in it by regulation. See 43 CFR Part 4, Subpart D. In this case, appellant seeks to have the Board review the award of a Federal procurement contract by a BIA Contracting Officer. No regulation vests the Board with jurisdiction over appeals from such decisions. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed for lack of jurisdiction.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

2/ Even if this appeal was properly filed under 25 CFR Part 2, the Board would lack jurisdiction because the matter would still be subject to appeal to a higher official in BIA. 43 CFR 4.331.

The Board notes that this same appellant filed an apparently similar appeal of a Contracting Officer's award with the Aberdeen Area Director, who issued a decision affirming the award and advising appellant that it could appeal the decision to the Commissioner of Indian Affairs pursuant to 25 Part 2. See Aberdeen Area Director's decision dated December 14, 1988, affirming award of Contract No. A00C14202997 (RFP No. A00-634) to Trail Blazers Services, Inc. Appellant also attempted to appeal that decision to the Board. By memorandum dated February 21, 1989, the Board referred the appeal to the Washington, D.C., office of BIA, pursuant to 25 CFR Part 2 and the concluding paragraph of the Area Director's decision.

The Board expresses no opinion as to whether the procedures observed by the Phoenix Area Office or the Aberdeen Area Office were correct. It holds only that, under the circumstances present here, tile Board lacks jurisdiction over this appeal.

By copy of this decision, the Board brings this matter to the attention of the Assistant Secretary--Indian Affairs and recommends that the Area Offices be advised as to correct procedures.

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