

99m

DECISION



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

10,815

FILE: B-192132

DATE: July 23, 1979

MATTER OF:

Dine, Inc. -- *DLG 07218* [Liability for Debts *Incurred by Contractor*]

DIGEST:

Bureau of Indian Affairs is not responsible for debts to private creditors incurred by its contractor, Dine, Inc., where there was no express commitment by the Bureau to guarantee payment of Dine's debts.

AGC 00000

The former Commissioner of Indian Affairs has requested our opinion on whether the Bureau of Indian Affairs is liable for various debts incurred by Dine, Inc., a general contractor of the Bureau.

The Bureau entered into cost reimbursable contracts with Dine for fiscal years 1972 and 1973 by which Dine agreed to conduct the educational program for Navajo children at Rough Rock Demonstration School in Chinle, Arizona. Dine had operated the school on a "grant award contract" for the three previous fiscal years. While operating the school, Dine incurred obligations in excess of the amounts of its contract, and became heavily indebted to several governmental and nongovernmental creditors. The Bureau did not renew the contract with Dine when it expired at the end of fiscal year 1973, instead contracting with a new corporation to operate the school. Dine is currently insolvent and the Bureau is concerned about possible liability for the corporation's debts.

The record before us contains a copy of the fiscal year 1973 contract between the Bureau and Dine, (Contract No. N00 C 1420 5718, dated August 15, 1972.) Although the fiscal year 1972 contract is not in the record, we assume that its terms are similar to those of the 1973 contract.

The 1973 contract between the Bureau and Dine was a cost reimbursement type contract. Section 316 provided that the Bureau would pay Dine an amount not to exceed \$925,257.00 of which \$136,375.00 was to be in the form of goods and services.

Subsection (c) of section 316 stated that for the purposes of reimbursement, Dine would submit monthly invoices showing the cost it incurred in carrying out the contract, along with receipts for payment. The expenditures were to be coded to identify them with items in the budget for the operation of the school, which was made a part of the contract.

005935

The contract also contained a provision for an "advance payment" of \$200,000 to Dine. The procedures by which the advance payment was to be made were set forth in section 332, which was added to the contract when the advance payment was approved. This section required that Dine segregate the advance payment from its other corporate funds by placing it in a special bank account from which funds could be withdrawn only with the approval of the contracting officer or his representative.

Those supplying goods or services to prime Government contractors are considered subcontractors. There is generally no contractual relationship between a subcontractor and the Government. There is thus no legal way the subcontractor can assert a claim against the United States based on the failure of the prime contractor to pay for supplies or services, unless the Government has expressly agreed to assume an obligation to pay. See Putnam Mills Corp. v. United States, 202 Ct. Cl. 1, 479 F.2d 1334, 1337 (1973); Warrior Constructors, Inc. v. Harders, Inc., 387 F.2d 727, 729 (5th Cir. 1967); Beacon Construction Co. v. Prepakt Concrete Co., 375 F.2d 977, 981 (1st Cir. 1967); Johnson Corp., B-180591, Jan. 17, 1975; 52 Comp. Gen. 377, 381 (1972); 32 Comp. Gen. 174, 175 (1952). The fact that the Government may have been instrumental in inducing the subcontractor to perform its contract is not enough by itself to establish the assumption of an obligation to pay. Johnson Corp., supra; B-171255, Sept. 3, 1971.

In this case, the record contains no evidence of a direct commitment by the Bureau to guarantee the payment of Dine's debts. The fact that Dine had a cost reimbursement type contract with the Bureau does not establish any commitment on the part of the Government to pay Dine's creditors. The Government's contractual obligations to reimburse prime contractors for costs extends only to the prime contractor and not to any subcontractor with whom the prime may have dealt. B-175550, Dec. 19, 1972.

As we stated above, the 1973 Dine contract provided for an advance payment of \$200,000. Advance payment provisions are a contract financing tool designed to facilitate the performance of a Government contract by providing working capital to allow the contractor to meet currently maturing debts arising throughout the performance of the contract. The advance payment agreement in the Dine contract and the special bank account designed to implement it constituted a financing arrangement between Dine and the Bureau and did not create any direct commitment on the part of the Bureau to Dine's creditors.

Some of Dine's debts to nongovernmental creditors were incurred prior to fiscal year 1972, during which time Dine was

B-192132

operating the Rough Rock School under a "grant award contract". The record does not indicate the nature of the "grant award contract" or its terms. However, unless it contained a specific provision by which the Bureau assumed an obligation to insure that Dine's creditors were paid, we can conceive of no basis upon which the Bureau can be liable for these debts.

We conclude that the Bureau of Indian Affairs is not responsible for any of the unpaid debts to private creditors incurred by Dine, Inc.


Deputy Comptroller General
of the United States