

Court rules Native contractors be given preference

Anchorage - A federal judge ruled Monday that the rights of non-Native contractors were not violated by the U.S. Department of Housing and Urban Development (HUD) last month when HUD excluded them from bidding on \$60 million in subsidized Native Housing contracts.

District Court Judge James Fitzgerald ruled that HUD's decision was acceptable because it applies only to contracts involving Native housing authorities, and because it is a direct attempt to correct previous discrimination against Native contractors.

The ruling is certain to be appealed.

"I conclude that it is a constitutionally permissible means of allowing Indians participation in their own affairs," Fitzgerald ruled. He added that the preference did not violate the constitution since the racial classification serves a compelling government interests.

The Alaska Chapter of the Associated General Contractors had asked the court to block the NANA Regional Housing Authority, Kodiak Island Regional Housing Authority and the Association of Village Council Presidents from awarding any of the contracts unless all contractors - both Native and non-Native - could bid on the housing projects.

At issue are contracts for \$60 million in low-cost housing scheduled for construction in villages across rural northcentral Alaska.

Attorneys for the contractors argued that the preference is illegal because it discriminates by race, but attorneys for the native groups contended that the preference is legal because of the Natives' "special trust relationship" with the federal government since the 1800's.

Fitzgerald agreed that the exclusion was based solely on race, but he held the preference for Native contractors to be just one step toward the antonement for past treatment of Natives.

"That sufficient findings of adverse effects of prior discrimination against Indians have been made is clear," ruled Fitzgerald. "The federal policy of controlling the political and economic affairs of Indians has served to exclude them from opportunities generally available to other citizens."

He said that the U.S. Congress has slowly attempted to improve the Native's plight with preferential legislation. Congress made such an attempt in 1975 when it passed the Indian Self-Determination and Education Assistance Act. HUD backed the move with an administrative rule requiring, whenever possible, the use of Native-owned business for federally funded Native projects.

Last week Fitzgerald said he expected an appeal regardless of who he ruled for. He has already asked the Ninth Circuit Court of Appeals to expedite its review of any appeal.