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**DECISION**



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

**FILE: B-190647**

**DATE: February 1, 1978**

**MATTER OF: Capital-York Construction Corp.  
and J. N. Futia Co., Inc.**

**DIGEST:**

Request for review of procurement funded by Federal grant involving 10-percent minority business enterprise requirement mandated by Public Works Employment Act of 1977, which requirement is subject of conflicting U.S. District Court opinions and other pending litigation, will not be considered until litigation is finally resolved.

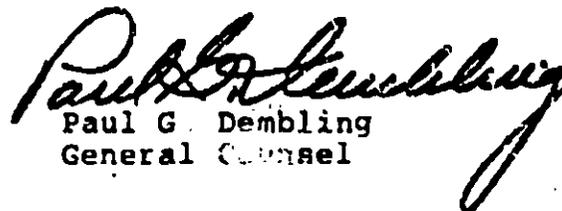
The joint venture of Capital-York Construction Corp. and J. N. Futia Co., Inc. (Futia), has requested our Office's review of the bids submitted in response to a solicitation by the State University Construction Fund (SUCF), New York, for a construction contract financed by a Federal grant from the Economic Development Administration, U.S. Department of Commerce. Futia contends that the bid submitted by the apparent low bidder, Le Peck Construction Corporation, was nonresponsive because it failed to agree to use 10 percent of the amount bid plus \$67,000 for minority business enterprises (MBE) as required by the solicitation.

The grant was authorized under the Local Public Works Capital Development and Investment Act of 1976, 42 U.S.C. §§ 6701 et seq., as amended by the Public Works Employment Act of 1977, Public Law 95-28. Under section 6705(f)(2), title 42, United States Code, the grantee is required to give the Economic Development Administration satisfactory assurance that at least 10 percent of the amount of the grant will be expended for MBE's. Since SUCF had already incurred eligible preliminary costs under the grant, it was necessary to require each bidder to agree to expend more than 10 percent of the amount bid for MBE supplies and services in order to have at least 10 percent of the total grant used for MBE's. Therefore, SUCF devised a formula which required that 10 percent of the amount bid plus \$67,000 be used for MBE participation and included it in paragraph 20 of section 01700, "Federal Special Conditions," of the solicitation.

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The MBE provision of the 1977 act has been the subject of conflicting United States District Court opinions. See Associated General Contractors of California v. Secretary of Commerce, U.S. District Court for the Central District of California, Civil Action No. 77-3738-AAH, October 31, 1977, and Constructors Association of Western Pennsylvania v. Kreps, U.S. District Court for the Western District of Pennsylvania, Civil Action No. 77-1035, October 13, 1977. The California decision has been appealed to the United States Supreme Court.

This Office generally will not rule on a matter that is the subject of litigation before a court of competent jurisdiction. Nartron Corporation and DC Electronics, Incorporated, 53 Comp. Gen. 730 (1974), 74-1 CPD 154; KDI Precision Products, Inc., B-780025, May 14, 1974, 74-1 CPD 253. In view thereof, we believe it would be inappropriate for this Office to take any action on the matter until the litigation is finally resolved. Accordingly, the complaint is dismissed.

  
Paul G. Dembling  
General Counsel