

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

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FILE:

B-213823

DATE: April 6, 1984**MATTER OF:**

Black Construction Corporation

DIGEST:

Federal grant complaint is dismissed when the issue in the complaint is pending before a court of competent jurisdiction and the court has not expressed an interest in obtaining the views of GAO.

Black Construction Corporation (Black) complains about the proposed award of a contract to Reliable Builders, Inc. (Reliable), by the Department of Public Works, Government of Guam, for the construction of a public health center. Black complains that an award to Reliable would violate federal and local law and regulation which require that award be made to the responsible bidder having the lowest cost.

The Guam Northern Area Health Center project has been partially supported by several grants from the Department of Health and Human Services, Public Health Service. Following several years in the selection of an appropriate construction site and the design of the facility itself, the Public Health Service approved the construction plans of the Government of Guam on September 8, 1982, and advised it to proceed with the advertisement, bidding, and contractor selection.

A solicitation for the construction work was issued in October 1982. On the bid opening date, November 9, 1982, only bids from Black and Reliable were received. Subsequently, the Government of Guam rejected the bids for lack of sufficient funds.

On August 24, 1983, the Government of Guam advertised its intent to enter into competitive negotiations with Black and Reliable.

Both Black and Reliable responded in September 1983 with price proposals. The Government of Guam selected Reliable's offer.

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On November 14, 1983, Black protested the award selection to the Government of Guam. By mailgram dated November 30, 1983, and received by us on the same date, Black filed a complaint with our Office, alleging that it had submitted the lowest price for the health center construction project.

Shortly after filing its complaint, Black brought suit in the Superior Court of Guam in the Territory of Guam against the Government of Guam, the Director of Guam's Department of Public Works, and Reliable. (Civil Case No. 959-83.) Black has filed a motion in the suit for summary judgment and permanent injunction against award of a contract to Reliable.

The issue presented in Black's complaint with our Office is the same as that raised by Black in its suit filed in the Superior Court of Guam. It is the policy of our Office not to decide protests or complaints where the material issues are also pending before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision. Dan Caputo Company and Wagner Construction Company, a Joint Venture, B-209864, January 27, 1983, 83-1 CPD 95. Here, there has been no such expression of interest by the court in obtaining the views of our Office. Accordingly, Black's complaint is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel