

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-185073

DATE: June 14, 1976

MATTER OF: Charles Capone Construction Company, Inc.--
Reconsideration

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DIGEST:

1. Complainant's suggestion that review be made of adverse decision of Massachusetts State Court is rejected because of lack of authority to review orders or decisions of State and Federal courts and since suggested review role raises serious constitutional objections.
2. Although State court may not have expressly decided issue concerning alleged nonresponsiveness of questioned bid, since issue was raised in complaint which is no longer pending in court, issue is considered to have been conclusively settled to complainant's disadvantage by final court action on complaint.

Charles Capone Construction Company, Inc. (Capone) has requested reconsideration of our decision in Charles Capone Construction Company, Inc., B-185073, April 30, 1976, 76-1 CPD 290. Our decision stated that we would not act on Capone's complaint against a contract awarded by the Department of Public Works, Commonwealth of Massachusetts. The award was financed, in significant part, by a Federal grant made by the Department of Transportation.

Our decision noted that Capone had also sought judicial relief against the award in the Superior Court, Commonwealth of Massachusetts. We observed that Capone's complaint in Superior Court had raised the same issue (that is, the alleged nonresponsiveness of the bid submitted by Wes Construction Corporation, the concern awarded the contract in question) which it raised in its complaint filed with our Office. We also noted that the Superior Court by order dated September 24, 1975, had denied Capone's requests for appropriate injunctive relief concerning the questioned contract.

Because the court's order appeared to be a final adjudication on the merits of Capone's complaint, we informed the company that we would not act on its complaint before our Office. We furnished this advice pursuant to our policy of not considering issues which are the subject of litigation or which have been decided on the merits by a court of competent jurisdiction.

Capone's request for reconsideration is based primarily on the argument that "* * * actions of state courts must * * * be reviewed by [GAO]" in carrying out our Office's review of complaints concerning contracts awarded under Federal grants. This argument is apparently predicated on the assumption that the court's order was a sufficiently final adjudication of the company's complaint as to enable a reviewing authority to decide the propriety of the order.

Not only do we lack express authority to review orders or decisions of State and Federal courts, we also consider the authority urged on us by Capone to be subject to serious constitutional objections. We therefore reject the company's argument.

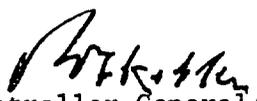
In the alternative, Capone argues that the court's order (although presumably conceded to be "final" by the company) did not expressly decide the issue of the alleged nonresponsiveness of the questioned bid. Therefore, the company urges that we consider the issue.

Although Capone so argues, it is clear that a final court order resulting in a dismissed complaint (it is our understanding from the company's counsel that "nothing further" by way of an outstanding complaint is pending before Superior Court) is generally conclusive not only as to matters which were decided, but also as to all matters which might have been decided. See, for example, Perth Amboy Drydock Company, B-184379, November 14, 1975, 75-2 CPD 307. Although the Superior Court may not have expressly decided the question of the alleged nonresponsiveness of Wes' bid, this question, since it was expressly raised in Capone's complaint, must be considered a matter

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which the court might have decided. Thus, we consider the court's order to have conclusively settled this question to Capone's disadvantage.

Prior decision affirmed.


Acting Comptroller General
of the United States