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**DECISION**



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

FILE: B-190580

DATE: February 7, 1978

MATTER OF: Pete Smith Co., Inc.

**DIGEST:**

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

Pete Smith Co., Inc. (Pete Smith) requests our review of the award of contracts by the cities of Malvern and Hot Springs, Arkansas. The contracts involve two EDA - assisted local public works projects for which the City of Malvern was the grantee in project number 08-51-20103 and the City of Hot Springs under project number 08-51-20069.

Pete Smith contends that the two contract awardees for the project were ineligible for the awards because of their failure to comply with section 106(f)(2) of the Public Works Employment Act of 1977, which requires bidders to have 10 percent of the grant in a federally funded project performed by a Minority Business Enterprise (MBE).

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.

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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. We have therefore taken the position that it would be inappropriate for this Office to take any action on complaints regarding the MBE requirement until the litigation is finally resolved. Jack E. Kessner Construction; Lee C. Nelson, Inc., B-190828, December 23, 1977, 77-2 CPD 503; Campanella Corporation, B-190601, December 27, 1977, 77-2 CPD 507; Just-Tran Construction, Inc., B-191101, January 31, 1978, 78-1 CPD \_\_\_\_\_. Accordingly, the complaint is dismissed.

  
Paul G. Dombing  
General Counsel