

13185 J. Vickers  
Proc I



**DECISION**

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

*Request for Review of Low Bid Submitted Under Mass Transportation Administration (TFB)*

**FILE:** B-196296.2

**DATE:** March 20, 1980

**MATTER OF:** Herzog Contracting Corporation -  
Reconsideration

**DIGEST:**

Prior decision dismissed request for review of low bid to ascertain compliance with Minority Business Enterprise (MBE) provision of solicitation since legality of MBE portion of Public Works Employment Act is currently before United States Supreme Court due to conflicting United States District Court opinions. Request for reconsideration of dismissal and reinstatement of complaint filed by grantor agency, contending its grant is not under act, which is true based on later information, is not for consideration as complainant has advised that it is no longer interested in pursuing matter.

The Urban Mass Transportation Administration (UMTA), Department of Transportation, has requested reconsideration of our decision in the matter of Herzog Contracting Corporation (B-196296, October 26, 1979, 79-2 CPD 298).

Herzog had requested our Office to review the low bid submitted under invitation for bids XO-04-09, issued by the Mass Transit Administration, Baltimore Region Rapid Transit System, Baltimore, Maryland, pursuant to an UMTA grant, contending that the bid did not comply with the Minority Business Enterprise (MBE) provisions of the solicitation. It was stated in the complaint that these provisions were included in the solicitation pursuant to the Public Works Employment Act of 1977, 42 U.S.C. § 6705(f)(2).

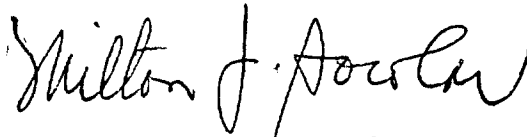
We dismissed the request for review since the legality of the MBE provisions of the Public Works Employment Act of 1977 has been the subject of conflicting United States District Court opinions and

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the question is currently before the United States Supreme Court.

UMTA, in its request for reconsideration, states that it is not subject to the above-noted act, that its MBE requirements derive from the Urban Mass Transportation Act of 1964 (49 U.S.C. §§ 1615 and 1616) and, therefore, Herzog's complaint should not have been dismissed and requests that we consider the merits of the complaint.

In view of the length of time which elapsed between the issuance of our prior decision and UMTA's request for reconsideration (over 3 months), we have been advised by Herzog that it is no longer interested in pursuing its request for review. Based on the information now provided by UMTA, we agree with the UMTA position that it is not under the Public Works Employment Act. However, without deciding whether the complaint would still be for dismissal considering the new information, we are taking no further action in this matter, since we have no viable request for review before our Office.



For The Comptroller General  
of the United States