

5623
DECISION



Wotherspoon
P.O. #1
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191290

DATE: March 9, 1978

MATTER OF:

**Colonie Builders, Inc./Norflor
Construction Corp., A Joint Venture**

DIGEST:

Request for review of procurement under grant solicitation involving 10-percent minority business enterprise provision of Public Works Employment Act of 1977, which is subject of conflicting U.S. District Court opinions, will not be considered until matter is finally resolved by courts.

Colonie Builders, Inc./Norflor Construction Corp., A Joint Venture (Colonie/Norflor), has protested the proposed award of a contract for additions and alterations to the Poultney, Vermont, High School, financed by a Federal grant from the Department of Commerce, Economic Development Administration.

Colonie/Norflor contends that the bid of the apparent low bidder is nonresponsive due to noncompliance with minimum minority business enterprise requirements. This concerns section 106(f)(2) of the Public Works Employment Act of 1977, which requires bidders to have 10 percent of 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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In view of the above, we will take no action on the request for review until the matter is finally decided by the courts and, therefore, the complaint is dismissed. Campanella Corporation, B-190601, December 27, 1977, 77-2 CPD 507.

Milton J. Fowler
for Paul G. Dembling
General Counsel