

DECISION



DIGEST - L - Cont
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

79-2 CPD 298 734

FILE: B-196296

DATE: October 26, 1979

MATTER OF: Herzog Contracting Corporation

*"But see" on B-196296.2,
3-20-80*

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 United States District Court opinions and is currently before United States Supreme Court, will not be considered until matter is finally adjudicated.

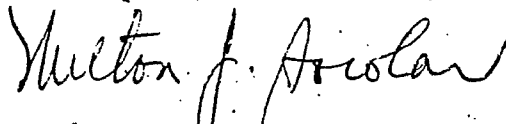
Herzog Contracting Corporation (Herzog) has requested our Office's review of the low bid submitted in response to invitation No. XO-04-09 issued by the Mass Transit Administration, Baltimore Region Rapid Transit System, Baltimore, Maryland. The contract in question is financed in part by a Federal grant.

Herzog contends that the low bidder for the project did not comply with section 106(f)(2) of ^{42 USC} the Public Works Employment Act of 1977, which ⁶⁷⁰⁷ 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, 441 F. Supp. 955 (C.D. Cal. 1977); Constructors Association of Western Pennsylvania v. _____, 441 F. Supp. 936 (W.D. Pa. 1977).

The question is currently before the United States Supreme Court.

In view of the above, we will take no action on the request for review until the matter is finally decided and, therefore, the complaint is dismissed. Campanella Corporation, B-190601, December 27, 1977, 77-2 CPD 507.



Milton J. Socolar
General Counsel