



508838

13018

J. Lee
Page 1COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197772

DO NOT WRITE IN THESE SPACES

MAR 4 1980

The Honorable Gary A. Lee
House of Representatives

Dear Mr. Lee:

We refer to your letter dated February 6, 1980, requesting our review and advice on a matter raised by a constituent of yours concerning Environmental Protection Agency (EPA) regulations for minority business enterprise (MBE) involvement in the supply of goods and services under EPA grants for construction of water treatment works pursuant to Title II of the Clean Water Act of 1977 (P.L. 95-217).

Essentially, your constituent questions the legality of the EPA regulations which mandate set-asides for MBE's ranging from 10 percent to 25 percent of the dollar value of any work performed in connection with the construction of water treatment facilities. In this regard, your constituent contends that the provisions of P.L. 95-507 contradict the EPA regulations.

P.L. 95-507 is, in large part, intended to expand subcontracting opportunities for both small businesses and economically and socially disadvantaged businesses by requiring large business offerors and bidders to submit subcontracting plans which will become part of contracts awarded as the result of the Federal procurement process. P.L. 95-507 deals only with direct Federal procurements.

Here, however, we are dealing with work being performed under a contract let by either a State or local government pursuant to a grant of monies to it by the EPA under the authority of the Clean Water Act of 1977 and not a direct Federal procurement under which P. L. 95-507 would be applicable. The Office of Federal Procurement Policy within the Office of Management and

lth/26 Feb 1980

Budget (OMB) has established grantor policy for procurements under grants. See Revised OMB Circular A-102, 44 Fed. Reg. 47874 (Aug. 15, 1979). Section 9 of Attachment O of the circular defines a grantee's responsibility in the area of MBE participation by requiring the grantee to take certain affirmative steps to assure that MBE's are utilized whenever possible as sources of supplies and services.

The EPA regulations being questioned by your constituent implement OMB policies regarding MBE's and also the requirements of Title VI of the Civil Rights Act of 1964. See 40 Code of Federal Regulations, part 35 (1979), and 43 Federal Register 60220 (December 26, 1978).

In view thereof, we see no basis for questioning the legality of the EPA regulations on the basis of any conflict with the provisions of P. L. 95-507.

Sincerely yours,

NILSON JACOBSON

For Comptroller General
of the United States