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DECISION



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

FILE#-211523

DATE: May 6, 1983

MATTER OF: M G L Const., Inc.

DIGEST:

GAO does not review an agency decision to set aside or not set aside contracts for 8(a) award because of the broad discretion the Small Business Act has given contracting officials for this purpose, unless there is a showing of fraud or bad faith on the part of the Government officials.

M G L Const., Inc. (M G L), protests the set-aside by the Vicksburg District, Army Corps of Engineers (Army), under the Small Business Administration's (SBA) 8(a) program of construction on the Red River Waterway, mile 82.5 to 84.8, Rapides Parish, Louisiana. M G L alleges that the set-aside works a major hardship on it, as a small business construction company with 100 percent of its workload being Corps of Engineers' projects throughout the Mississippi River Valley, and on other contractors, if they are denied an opportunity to compete. M G L contends that the project should be released for competitive bidding.

Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV, 1980), authorizes SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The statute authorizes the procuring agency's contracting officer to award the contract to SBA "in his discretion." In light of the broad discretion given contracting officials by statute to let contracts to SBA, we do not review an agency decision to set aside or not set aside contracts for 8(a) award, unless there is a showing of fraud or bad faith on the part of Government officials. Microtech Industries, B-206501, March 2, 1982, 82-1 CPD 189.

There has been no allegation of either fraud or bad faith, but only that the set-aside would work a hardship on other contractors.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel