

GAO

United States General Accounting Office
Washington, DC 20548

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Proc #
Winkoff

Office of
General Counsel

In Reply
Refer to: B-195771

February 11, 1980

Mr. Marvin J. Prothe, President
Kansas Iron Works DLG 03865
P.O. Box 146
Paola, Kansas 66071

[DISCRIMINATION ALLEGATION]

Dear Mr. Prothe:

In your letter dated August 9, 1979, you allege that discrimination against your firm has prevented it from obtaining contracts for Federally funded projects and request that we "help" in any way we can. We regret that we are not in a position to assist you.

Your complaint concerns three general areas:

--The Farmers Home Administration (FmHA) has financed several contracts, apparently awarded in 1977, for local water projects which you allege were improperly awarded or administered. *AGC 00358*

--The Small Business Administration (SBA), while guaranteeing loans to a competitor, has declined to issue your firm a loan or to guarantee its bid bond. *AGC 00002*

--The Gas Service Company (GSC) (the local natural gas distributor) has banned any new gas hookups, resulting in your firm's having to use more expensive propane and having to bid higher than your competitors receiving natural gas services. *DLG 03866*

This Office does consider protests of awards or proposed awards of contracts by or for an agency of the Federal Government whose accounts are subject to review by this office. 4 C.F.R. § 20.1 (1979). Pursuant to the notice published at 40 Fed. Reg. 42406 (1975), we also consider complaints concerning contracts under Federal grants. However, we do not consider complaints



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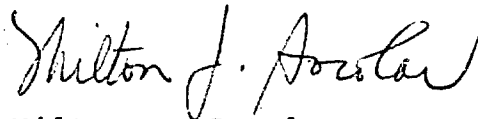
of a contract award where only Federal loan funds are involved, and we do not consider complaints involving the performance of a contract, as opposed to the awarding of a contract, because such matters involve contract administration which is the responsibility of the contracting agency or grantee. Applied Financial Analysis, Ltd., B-194388.2, August 10, 1979, 79-2 CPD 113; City Council of Reading, Pennsylvania, B-192921, October 17, 1978, 78-2 CPD 283. Moreover, to minimize disruption to procurements and to protect protesters and other parties by reviewing allegations when the salient facts are fresh and clear, we will not consider protests and complaints that are not timely filed.

Your complaints regarding the FmHA concern alleged irregularities in the performance as well as the award of contracts. Furthermore, it appears from your submission that FmHA's only involvement in at least one of the water projects was limited to loaning funds to the locality. Although some of the projects did involve grant funds made available by the FmHA, a large part of your complaints concern contractors' alleged failure to perform in accordance with contract specifications or instances wherein your firm's performance of a contract became more difficult or expensive than expected through circumstances you consider no fault of your own. Other aspects of your complaints concerning contract awards pertain to contracts which were apparently awarded more than two years ago, in 1977. As indicated, these all involve matters which we do not consider.

Similarly, we must also decline to review the propriety of the SBA's refusal to issue your firm a loan or to guarantee its bid bond, since these actions do not involve a procurement by or for a Federal agency or by a Federal grantee. See Celtech, B-193063, November 13, 1978, 78-2 CPD 341. We have however, referred your letter to our audit staff for use in their ongoing review of the SBA's activities.

Your complaint regarding GSC also does not involve a Federal procurement. However, we informally asked GSC to apprise us of the circumstances occasioning your complaint, and GSC explained that, while there was a moratorium on new natural gas service, the moratorium has now been lifted. GSC further explained that the moratorium was necessary because the Panhandle Eastern Pipeline Company, which distributes gas to GSC, had curtailed its deliveries in accordance with a plan approved by the Federal Energy Regulatory Commission (FERC) due to shortages of natural gas. By statute, FERC (previously the Federal Power Commission) is authorized to order curtailment plans for gas supplies during gas shortages. 15 U.S.C. § 717(b) (1976); see Federal Power Commission v. Louisiana Power & Light Co., 406 U.S. 621 (1972). Our Office is not the proper forum to challenge the fairness of such plans.

Sincerely yours,



Milton J. Socolar
General Counsel