

James Peaco
roc. I

01607
DECISION



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

FILE: B-185802
B-187235

DATE: March 11, 1977

MATTER OF: Kings Point Mfg. Co., Inc; Dowling Textile
Manufacturing Company; ACM Cargo-Ties, Inc;
Small Business Administration

DIGEST:

1. Protest against determination of Committee for Purchase from Blind and Other Severely Handicapped to set aside number of items for exclusive purchase by Government from designated workshops is not reviewable by GAO under Bid Protest Procedures.
2. Authority of Committee for Purchase from Blind and Other Severely Handicapped under 41 U.S.C. § 48 (Supp. V 1975) to set aside items for workshops for blind and severely handicapped is paramount to that of SBA under 15 U.S.C. § 644 (1970) to set aside programs for small business concerns, since former statute makes it mandatory upon Government entities to procure items designated by Committee from workshops, whereas latter statute leaves it discretionary with contracting agency as to whether there will be small business set-aside.

Kings Point Mfg. Co., Inc., Dowling Textile Manufacturing Company, ACM Cargo-Ties, Inc., and the Small Business Administration (SBA) have protested the determination of the Committee for the Purchase from the Blind and Other Severely Handicapped (Committee) to set aside a number of items for exclusive purchase by the Government from designated workshops.

However, whether certain products should be designated for manufacture by qualified workshops is not reviewable by our Office under the Bid Protest Procedures. Barrier Industries, Inc., B-187554, March 2, 1977.

SBA has protested also that the Committee's determination to set aside certain items for the workshops has overridden its authority to set aside the items for small business concerns.

We are of the opinion that under the current statutes the authority of the Committee is paramount to that of the SBA and the set-aside programs for the workshops for the blind and severely handicapped take precedence over the SBA set-aside programs for small business concerns. The basis for this conclusion is that the portion of the Small Business Act providing for small business set-asides, 15 U.S.C. § 644 (1970), leaves it discretionary

B-185802
B-187235

with the contracting agency as to whether there will be a set-aside, whereas section 1 of the Javits-Wagner-O'Day Act, 41 U.S.C. § 48 (Supp. V 1975), makes it mandatory, with certain exceptions not applicable here, that Government entities procure items designated by the Committee from the workshops for the blind and handicapped. In this regard, compare the provision in 15 U.S.C. § 644 (1970) with that in 41 U.S.C. § 48 (Supp. V 1975). The former states:

"* * * Whenever the Administration and the contracting procurement agency fail to agree [on a small business set-aside] the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator."

The latter states:

"If any entity of the Government intends to procure any commodity or service on the [Committee] procurement list, that entity shall * * * procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such an agency for other severely handicapped * * *."
(Emphasis supplied.)

Unlike the congressional grant of authority to the Committee, SBA has no power under its statute to require small business set-asides by Federal agencies.

Further, it has been our view that 15 U.S.C. § 644 (1970) clearly recognizes that the final determination of whether to make a set-aside for small business concerns is discretionary with the agency, since under its provisions a contracting officer is not required to accept an SBA recommendation that a set-aside be made for a particular procurement or class of procurements, and SBA may only appeal the matter to the head of the agency. See American Air Filter Company, Inc., B-184543, February 5, 1976, 76-1 CPD 73. In the cited decision, we noted also that the primary purpose of the Small Business Act is only to insure that small business concerns receive a "fair proportion" of the total purchases and contracts of property and services made by the Federal Government.

In view of the foregoing, the SBA protest is denied.

Acting

R. J. Kell
Comptroller General
of the United States