

DECISION

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

FILE: B-210766**DATE:** February 22, 1983**MATTER OF:** M G L Construction, Inc.**DIGEST:**

Protest of agency decision to award contract under section 8(a) of the Small Business Act is not for consideration by GAO in absence of showing of possible fraud or bad faith on the part of government officials or a failure by agency officials to follow applicable regulations.

M G L Construction, Inc., protests the Corps of Engineers' decision to award a contract for drainage improvements under section 8(a) of the Small Business Act, 15 U.S.C. §637(a) (Supp. IV 1980). M G L alleges that it is a small business company and that this and other anticipated 8(a) awards will create a "major hardship" for it since it now receives all of its business from the Corps. We dismiss the protest.

Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and to arrange for performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The agency contracting officer is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to award contracts under section 8(a) unless there is a showing of possible bad faith or fraud on the part of Government officials or that applicable regulations have not been followed. Wakon Redbird & Associates, B-205995, February 8, 1982, 82-1 CPD 111; Kings Point Mfg. Co., Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264.

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M G L does not allege fraud or bad faith on the part of Government officials or that regulations have not been followed. Accordingly, the protest is dismissed. We point out, however, that it is SBA policy to consider any adverse impact on small businesses before agreeing to accept procurements under the 8(a) program. Therefore, the protester may, if it desires, provide appropriate information concerning the adverse impact on it of 8(a) awards to SBA for that agency's consideration.

Harry R. Van Cleve
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Acting General Counsel