

B-231011

April 20, 1988

The Honorable Lawton Chiles  
United States Senator  
Federal Building  
Lakeland, Florida 33801

Dear Senator Chiles:

This responds to your letter of March 31, 1988, on behalf of MESA Group, requesting our comments on a problem the firm has encountered in a procurement conducted by the Corps of Engineers. MESA Group, in a March 17 letter to you, complained that the Corps was going to award a contract in the procurement to another firm even though MESA Group was the low bidder.

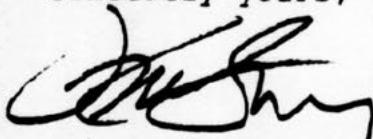
The Corps of Engineers has informed us that MESA Group was found nonresponsible, i.e., not capable of performing the contract at the bid price, and thus ineligible for award, and that the matter then was referred to the Small Business Administration pursuant to the certificate of competency (COC) procedures. The contract was awarded to another firm on March 31, after the SBA declined to issue MESA Group a COC.

The Small Business Act gives the SBA conclusive authority to determine the responsibility of a small business by issuing, or deciding not to issue, a COC. Therefore, it consistently has been our position that, absent a showing of possible fraud or bad faith on the part of government officials, our Office will not review either the underlying determination of nonresponsibility, or the SBA's decision to endorse that determination by not issuing a COC, since such a review in effect would substitute our Office for the SBA. MESA Group's disagreement with the Corps of Engineers' evident concern about the firm's ability to perform, as expressed in

its March 17 letter, does not suggest that the findings by either the SBA or the Corps of Engineers are tainted by fraud or bad faith.

As requested, we are returning the enclosure to your letter. If you need any further information, my telephone is

Sincerely yours,



Robert M. Strong  
Deputy Associate  
General Counsel

Enclosure