



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-222857

May 1, 1986

Bank and Shore Protection Division
Wessel, Duval & Co., Inc
One World Trade Center
New York, New York 10048-0241

Attention: [redacted]

Gentlemen:

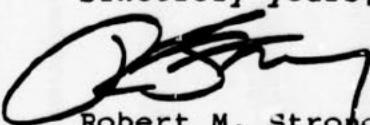
This responds to your letter dated April 16, 1986, in which you request our Office to review the policy of the government which permits a suspended contractor to supply prime contractors competing for contracts in connection with federally funded projects. You state that this practice allows the contractor to continue doing business with the government as though never suspended. In the particular circumstances you cite, you allege that a contractor created a monopoly in the gabion industry which violated the Sherman Anti-Trust Act and that this contractor is the only domestic source of the item. Therefore, as a potential foreign supplier of gabions, you request that our Office waive the Buy American Act so that the government will have an alternative to the suspended contractor.

We do not have the authority to grant a waiver of the Buy American Act, 41 U.S.C. § 10A (1982), because the statute specifically provides that supplies manufactured in the United States are to be acquired by the United States government unless the head of the procuring agency determines it to be inconsistent with the public interest or the cost to be unreasonable. Thus, only the agency head has the discretion to make the decision as to whether or not to grant a waiver of the Buy American Act in any given set of circumstances.

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In addition, we generally have held that we will not review the agency's decision not to grant a waiver. See Israel Military Industries, B-211761, Nov. 21, 1983, 83-2 C.P.D. ¶ 598. In light of this, we suggest that you pursue your request with the appropriate official of the procuring agency.

Sincerely yours,



Robert M. Strong
Deputy Associate General Counsel