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

B-145136 APR 14 1978

The Honorable Joseph P. Addabbo, Chairman
Subcommittee on Minority Enterprise
and General Oversight
Committee on Small Business
House of Representatives

Dear Mr. Chairman:

This is in response to your question about the effect of a recent House-passed amendment to section 15 of the Small Business Act, 15 U.S.C. § 631 et seq. in the event the amendment is enacted into law. You ask, in effect, whether a new subsection (g), added by section 222 of H.R. 11318, will serve to overcome a subsequent reenactment of the perennial so-called "Maybank amendment," which this Office has in the past construed as prohibiting the Department of Defense (DOD) from making awards on a total set-aside basis to firms performing substantially in labor surplus areas or areas of concentrated unemployment or underemployment. If subsection (g) won't accomplish this purpose, you ask us to suggest language that will.

Proposed subsection (g) reads as follows:

"(g) No award of any contract referred to in Subsection (d) shall be construed as being made for the purpose of relieving economic dislocations."

Subsection (d), which was added to the Small Business Act by section 502 of Pub. L. No. 95-89, 91 Stat. 553, August 4, 1977, provides in pertinent part: Title V Sec. 502(d)

"(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A CFR Chapter 1) or any successor policy shall

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be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. * * *"

Finally, the Maybank amendment, if enacted in its traditional form, would state:

"Provided further, that no funds herein appropriated [for fiscal year 1979] shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations."

Usually, when this Office is asked to constr statutory provisions, it is because the language is ambiguous or congressional intent is unclear. In this case, however, proposed subsection (g) is explicit and its intent is unmistakable. It seeks to cover prospectively any later expression of congressional intent that tal set-asides for labor surplus areas should not be made by DOD.

If the total set-aside program had been bor in 1977 with the enactment of Pub. L. No. 95-89, supra, and the Mbank amendment had been included for the first time in the fiscal ye 1978 DOD Appropriation Act, Pub. L. No. 95-111, we could agree at your Committee's interest was protected by proposed subsection). We could argue that the Maybank amendment prohibition appli to a class of contract awards made for the purpose of relieving "ecomic dislocation", whatever that might mean, but it in no way affts contract awards made to firms in labor surplus areas for somther purpose. However, we cannot consider the Maybank amendint without regard to its legislative history to reach that result. s a general rule of statutory construction, resort to legislative hory is not necessary when the plain meaning of the statutory langu is manifest and there is no doubt about congressional intent. this case, however, the dictionary definition of the term "economislocations" is of no help in figuring out which group of contracare subject to the Maybank amendment prohibition. Congress r never be presumed to have enacted a nullity, and we are therefore uired to study the context in which the term was first used in or to understand how the amendment was intended to be applied.

The origin of giving special considerathe allocation of Government contracts to areas that have laburpluses is found not in legislation but in executive branch policie War Production Board Directive Number 2 of March, 1942, origina varned agencies to avoid, wherever possible, contracting with is in areas where labor

shortages were known to exist. Later amendments specifically directed agencies to make "special efforts" to award contracts to firms in areas certified by the War Manpower Commission as having labor surpluses. Executive Order No. 10193, issued by President Truman on January 17, 1951, and paragraph 7(i) of a National Manpower Mobilization Policy Statement, issued on the same date, formally enunciated Administration policy to locate "production facilities, contracts, and significant subcontracts * * * at the sources of labor supply in preference to moving the labor supply." Thus "dislocation" of firms and personnel could be avoided.

When former Senator Maybank introduced his original amendment to the DOD Appropriation Act for 1954, Defense Manpower Policy Number 4 (DMP No. 4) had been in effect for a little over a year. DMP No. 4 (with refinements not now relevant) authorized negotiated awards to firms in areas reported by a Surplus Manpower Committee as having a labor surplus (on the basis of certifications provided to the Committee by the Department of Labor.) Among the stated purposes of DMP No. 4 was the following:

> "b. To minimize strains and dislocations in the economy resulting from such conversion [conversion from civilian to military production];"

This appears to be the origin of the reference in the Maybank amendment to "contracts hereafter made for the purpose of relieving economic dislocations."

The extensive floor debate that led to a Senate-passed bill which would have totally prohibited preferential treatment of the labor surplus areas in Government procurements (section 643 of H.R. 5969, 83d Congress), the subsequent modification of the provision in Conference to prohibit such preference only if it would result in a price differential, (H. Rept. No. 1015, 83d Cong., 1st Sess.), followed by additional protracted debates in both houses, and finally, enactment of the amendment in the form it has taken each year since, is referenced in our previous decisions. See 40 Comp. Gen. 489 (1961); 57 id. 34 (1977). Our point is that the legislative history leaves no doubt that Senator Maybank and his supporters did not think that the invocation of the "national interest" exception in section 2(c)(1) of the Armed Services Procurement Act of 1947, as amended, to permit negotiated contracts to be awarded to firms operating primarily in labor surplus areas was justified if the result was a higher cost ("price differential") to the Government for the goods or services procured. The "economic dislocation" language was not meant to describe the purpose of his amendment but was only

a handy reference to the particular policy to which he objected, since at that time, DMP No. 4 stated that one of its objectives was "to minimize strains and dislocations in the economy." Although the current version of DMP No. 4 (32A CFR Part 134 (1977)) no longer lists the minimizing of economic dislocations as an objective, it is still concerned with placement of procurement and facilities contracts in areas of high unemployment.

It is this longstanding administrative policy, which section 502 of Pub. L. No. 95-89, supra, broadened to permit total labor surplus areas set-asides, that the annual DOD appropriation proviso (the Maybank amendment) was designed to counteract. We cannot now endorse a literal interpretation of the Maybank language which, ignoring its history, would conclude that it is aimed at some other type of contract unrelated to labor surplus area concerns. If it is enacted after proposed subsection (g), it must prevail as the latest expression of the congressional will. See B-160032, September 13, 1966; United States v. Dickerson, 310 U.S. 554, 555 (1940).

It may be possible, however, to require a subsequent Congress to make its intent more explicit by amending subsection (g) as follows:

> "No other provision of law shall be deemed to supersede, modify, or repeal the authorization provided in subsection (d) of this section unless it refers specifically to subsection (d) of this section or states explicitly that it is intended to apply to a program of total set-asides for labor surplus areas."

There is a presumption each time the Congress passes a law that it acts with full knowledge of applicable provisions of law previously enacted. Our suggested amendment puts the Congress on notice that if it intends the Maybank amendment to continue to apply to labor surplus area set-asides, it must so state explicitly. See 22 U.S.C. § 1476, §§ 2680(a)(3)(A), 2151, and 2751 (Supp. V, 1970) for other instances in which this type of language has been utilized in legislation. Without this type of amendment, the Congress has a right to assume that its appropriation limitation will be given the same interpretation it has always been given in the past and that its later expression of intent will overrule any statement of inapplicability made in earlier legislation. While adoption of our suggestion is certainly not a foolproof safeguard to protect the labor surplus area set-aside program, if it is enacted, and if the Maybank amendment is again enacted in its traditional form, with no clarifying legislative history, we would

not be compelled to object to implementation of the program by the DOD should the matter be presented to us for consideration.

Sincerely yours,

B.F.KELLER

Deputy Comptroller General
of the United States