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[B-183670] 1/29/76

**General Accounting Office—Jurisdiction—Contracts—Nonappropriated Fund Activities**

Since protested award of procurement pursuant to section 22(a) of Foreign Military Sales Act will not involve use of appropriated funds, matter is not subject to settlement by General Accounting Office and is dismissed.

**In the matter of Tele-Dynamics, Division of AMBAC Industries, January 29, 1976:**

This protest concerns a noncompetitive contract award by the Department of the Navy, Naval Sea Systems Command (NSSC) to Nelson Electric Division of Sola Basic Industries under request for proposals No. N00024-75-C-4425(S).

By a letter received in this Office on December 12, 1975, from NSSC the Navy raised, *inter alia*, a question concerning our jurisdiction to render an authoritative decision on the merits of this protest. The Navy states that the transaction in the instant case represents a cash sale of defense articles pursuant to section 22 of the Foreign Military Sales Act, as amended, 22 U.S. Code 2762 (Supp. III, 1972).

Section 22(a) authorizes the President, without requirement for charge to any appropriation or contract authorization otherwise provided, to enter into contracts to procure defense articles or services for cash sale to a foreign country upon a dependable undertaking by that country to make available in advance sufficient funds to cover payments, damages, and other costs due under the contract.

The Navy indicates that the instant transaction was based upon such a "dependable undertaking" pursuant to section 22(a), i.e., advance payment. According to NSSC, the contract costs are charged against Navy's Foreign Military Sales Trust Fund, consisting of payments made by foreign governments.

From the foregoing record it is sufficiently clear that this contract will not involve payments from appropriated funds. It is well established that this Office is without authority to render authoritative decisions with respect to procurements which do not involve expenditure of appropriated funds. B-171067, March 18, 1971. Our bid protest jurisdiction is based upon our authority to adjust and settle accounts and to certify balances in the accounts of accountable officers under 31 U.S.C. 71, 74 (1970). Where we do not have such settlement authority over the account concerned, we have declined to consider protests on the grounds that we could not render an authoritative decision on the matter. See *Equitable Trust Bank*, B-181469, July 9, 1974, 74-2 CPD 14 and *Relco, Inc.*, B-183686, May 5, 1975, 75-1 CPD 276.

Since no useful purpose would be served by our consideration of the matter, the protest is dismissed.

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