

DECISION



11204 Proc I
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194643.2

DATE: August 20, 1979

MATTER OF: Pettibone Corporation - Reconsideration

[Protest Not Involving Agency of Federal Government]
DIGEST:

Prior decision dismissing protest against procurement being conducted with Agency for International Development loan funds is affirmed as procurement is not by or for agency of Federal Government but being conducted by foreign government and is not governed by procurement regulations, thereby distinguishing instant situation from Foreign Military Sales procurements.

Pettibone Corporation (Pettibone) has requested reconsideration of our decision in the matter of Pettibone Corporation (B-194643, May 2, 1979, 79-1 CPD 307) in which our Office declined to consider the merits of Pettibone's protest against invitation for bids No. 78/04 issued by the Alexandria Port Authority, Alexandria, Arab Republic of Egypt. (The procurement is being conducted by the Government of Egypt using funds borrowed from and repayable with interest to the Agency for International Development) (AID).

We dismissed the protest since the procurement involved neither a procurement by or for an agency of the Federal Government, nor a procurement by a Federal grantee.) Allis-Chalmers Corporation, B-188514, April 5, 1977, 77-1 CPD 235, and Bethlehem Steel Export Corporation, B-189803, August 22, 1977, 77-2 CPD 139.

(the protest firm's)
Pettibone's request for reconsideration is grounded on the contention that procurements under the AID loan program are no different than procurements conducted under the auspices of the Foreign

~~006225~~

GAO has considered private
Military Sales Program, and, therefore, our Office should follow the same reasoning as that employed in our decision, Procurements Involving Foreign Military Sales, 58 Comp. Gen. 81 (1978), 78-2 CPD 349. In that decision we reconsidered our position relating to the review of procurements under Foreign Military Sales (FMS) and decided that we would entertain private party complaints in connection with the FMS procurements.)

While both FMS procurements, especially section 23 transactions, and AID loan-funded procurements utilize appropriated funds, we believe there is a significant distinction which justified our not accepting jurisdiction over the latter category.

As was noted that
In FMS procurements, the Department of Defense conducts the procurements and, as noted in the 1978 FMS decision, the Defense Acquisition Regulation is applicable to the procurements. In the AID loan procurements, the foreign government which has secured the loan, repayable with interest, conducts the procurement. Therefore, the factual situation is more like that in International Research Associates, Inc., B-192376, August 10, 1978, 78-2 CPD 113, wherein we declined jurisdiction of the protest of an award by the Federal Republic of Germany, financed with a loan of appropriated funds to NATO to be repaid by Germany, since it was not a procurement by or for an agency of the United States Government. See also Central Construction, Inc., B-187699, February 23, 1977, 77-1 CPD 130.

Moreover, we acknowledge that 22 U.S.C. § 2393a (1976) provides that funds may not be expended after 35 days have elapsed following a request by our Office for any document, paper or other material in the custody of an agency carrying out a provision of the Foreign Assistance Act of 1961 (22 U.S.C. § 2251, et seq.) unless the document is furnished or the President certifies that he has forbidden the furnishing thereof and his reason for doing so. While that section would apply where a request for documents is made by our

Office in an appropriate situation, we do not consider that section to require our Office to take jurisdiction of a complaint in circumstances as exist in this case. Further, we have not taken jurisdiction in the past in this kind of a case and we do not view the situation as requiring our involvement now.

Accordingly, we affirm our decision of May 2, 1979.


Deputy Comptroller General
of the United States