



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DSV GmbH
File: B-253724
Date: June 16, 1993

Reed L. von Maur for the protester.

DIGEST

General Accounting Office (GAO) is without jurisdiction to consider a bid protest of a procurement by a nonappropriated fund activity of the Army since such activity, even though an Army instrumentality, is not a federal agency over which GAO has bid protest jurisdiction.

DECISION

DSV GmbH protests the award of a concessionaire contract by the Army's 29th Area Support Group under solicitation No. NAFYC1-93-R-0011.

We dismiss the protest because we have no jurisdiction over procurements by the 29th Area Support Group since it is not a federal agency.

Our bid protest jurisdiction is limited to procurements of federal agencies. 31 U.S.C. § 3551 (1988); 4 C.F.R. § 21.1(a). A federal agency is:

"any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction." 4 C.F.R. § 21.0(c).

Although the protester asserts that the 29th Area Support Group should be viewed as a federal agency because it is a unit of the Army and because "appropriated fund resources are being provided by the U. S. Army," the Group is a nonappropriated fund activity of the government. That it is an instrumentality of the Army does not change the fact that as a nonappropriated fund instrumentality it is not a

federal agency as that term is used in the law authorizing our bid protest review role. 4 C.F.R. § 21.3(m)(8); see Liquipharm, Inc.--Recon., B-245069.2, Aug. 28, 1991, 91-2 CPD ¶ 212; The Brunswick Bowling and Billiards Corp., B-224280, Sept. 12, 1986, 86-2 CPD ¶ 295. Accordingly, since the procuring entity here is not a federal agency, we are without jurisdiction to consider the protest. Centex Construction Co., Inc., B-238812, Mar. 7, 1990, 90-1 CPD ¶ 256.

Accordingly, the protest is dismissed.



Ronald Berger
Associate General Counsel