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DECISION



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

D. Lever PL I

FILE: B-189311

DATE: November 23, 1977

MATTER OF: International Export Packers, Inc.

DIGEST:

Prior decision declining to consider protest involving procurement pursuant to section 22 of Foreign Military Sales Act (now Arms Export Control Act) since procurement essentially involved expenditure of nonappropriated funds is affirmed.

International Export Packers, Inc. (International), has requested reconsideration of the decision in International Export Packers, Inc., B-189311, September 23, 1977, 77-2 CPD 220, which declined to consider a protest against the Government's procurement of logistics management services on behalf of a foreign nation pursuant to section 22 of the Foreign Military Sales Act (now known as the Arms Export Control Act), as amended, 22 U.S.C. § 2762 (Supp. V, 1975), since the procurement essentially involved nonappropriated funds.

Referring to a request for proposals clause providing for the examination of the contractor's records by the Comptroller General for 3 years after final payment under the contract, the authority under 31 U.S.C. § 71 (1970) for GAO to settle all claims by or against the United States, and the authority under 31 U.S.C. § 72 (1970) for GAO to examine and certify all accounts of the Department of the Army, and stating that the United States will have a claim against the foreign Government for about \$900,000 for costs for administering the contract, International maintains that this Office should consider the protest. We have previously considered our adjustment, settlement and certification functions with respect to Government accounts and determined not to consider protests against procurements under the Foreign Military Sales Act. Tele-Dynamics, Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPD 60.

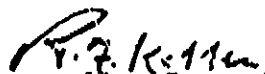
The fact that administrative costs may be paid initially from appropriated funds and then claimed from the foreign country does not change the nature of the transaction. See citations in

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International Export Packers, Inc., supra. While there is always the possibility that a foreign country will fail to reimburse the United States for administrative costs, the transaction is essentially financed by a foreign country rather than by appropriated funds of the United States. J. H. Rutter Rex Manufacturing Co., Inc., B-189931, October 18, 1977.

Accordingly, the decision of September 23, 1977, is affirmed.

Deputy


Comptroller General
of the United States