

01491

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20543

A. J. Boyle
Per I

FILE: B-188032

DATE: January 28, 1977

MATTER OF: Philadelphia Gear Corporation

DIGEST: Since protest involves procurement pursuant to Foreign Military Sales Act and will not involve use of appropriated funds, matter is not subject to settlement by General Accounting Office and is dismissed.

Philadelphia Gear Corporation protests a procurement action for nine Patrol Gunboats Missile (PGC) which are to be built for the Royal Saudi Naval Forces (RSNF). The procurement is being administered by the United States Navy pursuant to an agreement with the Government of Saudi Arabia under the authority of the Foreign Military Sales Act.

The Navy reports that the payment terms of the agreement call for a "Dependable Undertaking," as this term is defined in paragraph B.1b in the "Conditions" portion of the agreement. The agreement thus provides for a cash sale of the PGCs and is consistent with the requirements of 22 U.S.C. § 2762(a)(Supp. III, 1973). No expenditure of appropriated funds is involved.

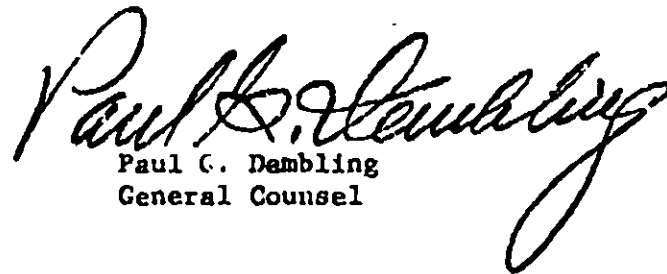
The Navy argues that our Office has consistently held that we are without authority to render authoritative decisions with respect to procurements which do not involve the expenditure of appropriated funds (B-171067, March 18, 1971) and on this basis recently denied a protest where the procurement was based on a substantially identical dependable undertaking. Tele-Dynamics, Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPL 60. Accordingly, the Navy concludes that our Office should likewise decline to render a decision in this instance.

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.

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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 does not render decisions with respect to procurements which do not involve expenditure of appropriated funds since 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). See e.g., B-171067, supra. Where we do not have such settlement authority over the account concerned, we have declined to consider protests. See Equitable Trust Bank, B-181469, July 9, 1974, 74-2 CPD 14; Kelco, Inc., B-183686, May 5, 1975, 75-1 CPD 276; Tele-Dynamics, Division of AMBAC Industries, supra.

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


Paul C. Dembling
General Counsel



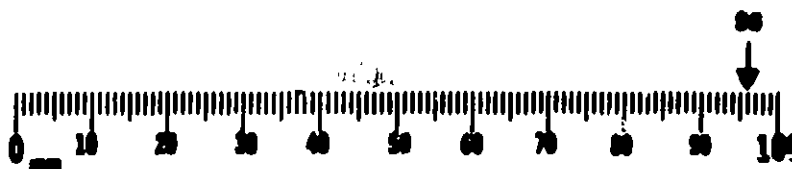
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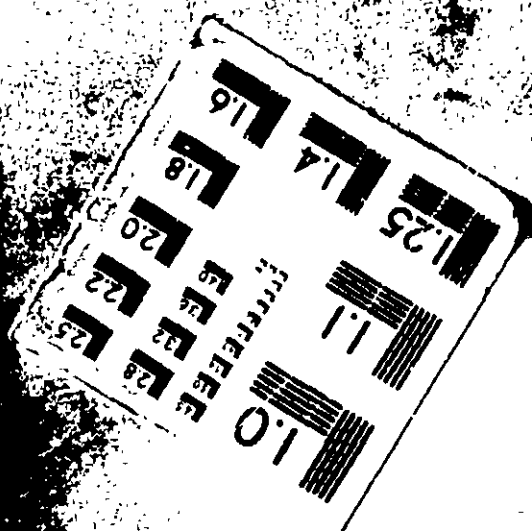


BY

MARION C. SHIPMAN



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DOCUMENT RESUME

01491 - [A0751111]

[Protest Involving Procurement Pursuant to Foreign Military Sales Act]. B-188032. January 28, 1977. 2 pp.

Decision re: Philadelphia Gear Corp.; by Paul G. Desbaling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy.

Authority: Foreign Military Sales Act (22 U.S.C. 2762(a) (Supp. III)). 31 U.S.C. 71. 31 U.S.C. 74. 55 Comp. Gen. 674.

Corporation protested a procurement action for nine patrol gunboat missiles to be built for the Royal Saudi Naval Forces. Since the protest involved a procurement under the Foreign Military Sales Act and did not involve use of appropriated funds, the matter was not subject to settlement by GAO and was dismissed. (RRS)

01491

DECISION



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

*A. J. Boyle
Part I*

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MATTER OF: Philadelphia Gear Corporation

DIGEST: Since protest involves procurement pursuant to Foreign Military Sales Act and will not involve use of appropriated funds, matter is not subject to settlement by General Accounting Office and is dismissed.

Philadelphia Gear Corporation protests a procurement action for nine Patrol Gunboats Missile (PGG) which are to be built for the Royal Saudi Naval Forces (RSNF). The procurement is being administered by the United States Navy pursuant to an agreement with the Government of Saudi Arabia under the authority of the Foreign Military Sales Act.

The Navy reports that the payment terms of the agreement call for a "Dependable Undertaking," as this term is defined in paragraph B.1b in the "Conditions" portion of the agreement. The agreement thus provides for a cash sale of the PGGs and is consistent with the requirements of 22 U.S.C. § 2762(a) (Supp. III, 1973). No expenditure of appropriated funds is involved.

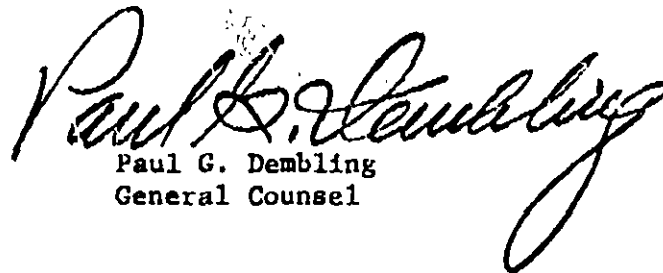
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Since no useful purpose would be served by our consideration of the matter, the protest is dismissed.


Paul G. Dembling
General Counsel

