

DECISION

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

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FILE: B-215104**DATE: August 14, 1984****MATTER OF: Fast Food Y.K.****DIGEST:**

GAO will not review the award of a contract for mess attendant services where no contract payments are made from appropriated funds and no funds flow to the government as a result of the award. The fact that appropriated funds may be used to provide support services to the nonappropriated fund activity and to administer the contract is not a sufficient basis for review.

Fast Food Y.K. protests the Department of the Navy's award of a contract to Nihon Kokuminshoku Co., Ltd. under request for proposals (RFP) No. N6249-84-R-0011. We dismiss the protest.

The RFP was for food and beverage services at the consolidated open mess in Yokusuka, Japan, a nonappropriated fund instrumentality. The contract specifically provides that it shall not be construed to obligate any appropriated funds of the United States in any way.

This Office considers protests of contract awards pursuant to its authority under Pub. L. No. 97-258, § 3526, 96 Stat. 964 (1982) (to be codified at 31 U.S.C. § 3526) to adjust and settle appropriated fund accounts of the United States. Consequently, we have no legal authority to take exception to a contract award which does not involve the direct expenditure of appropriated funds. Landscapes Unlimited, Inc., B-212131, Aug. 25, 1983, 83-2 CPD ¶ 251.

The protester argues, however, that we should review this protest because Secretary of the Navy Instruction No. 7000.23 (March 2, 1979) authorizes the use of appropriated funds in support of open messes. For example, appropriated funds are authorized for funding auditing and financial management services; procurement office assistance and administration; minor construction, and electronic communications and postal services under certain circumstances.

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We have held that it would be inappropriate for this Office to take exception to a contract award merely because appropriated funds may be used in administering the contract. Jets Services, Inc., B-202246, July 2, 1981. Further, we consider the fact that appropriated funds may be used to provide support services to the nonappropriated fund activity too remote for us to invoke jurisdiction. The contractor here receives no payment from appropriated funds, nor do funds flow to the government as a result of the award. Accordingly, we find no adequate basis for considering the protest. See The Georgia Gazette Publishing Company, B-210009, Dec. 23, 1982, 82-2 CPD ¶ 574.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel