

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-183785

DATE: May 28, 1975

MATTER OF: Leslie and Elliott Company, Inc., et al.

### DIGEST:

GAO is precluded from rendering authoritative decision on protest filed against procurement conducted on behalf of nonappropriated fund activity, since bid protest jurisdiction is based on account settlement authority under 31 U.S.C. 71 and 74 and General Accounting Office Act of 1974 provides GAO with audit but not settlement authority over nonappropriated fund activities.

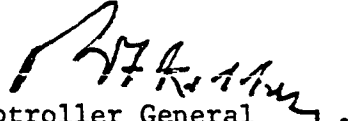
Leslie and Elliott Company, Incorporated, and Leslie-Elliott Contractors, Incorporated, co-principals, have protested the action of the Navy in refusing to consider the protester's bid under invitation for bids (IFB) No. N62472-74-B-0200 issued by the U.S. Navy, U.S. Submarine Base, New London, Groton, Connecticut. The protester's bid was rejected as late because it was filed more than 90 minutes after the scheduled bid opening. The record indicates that the protester's bid was delayed by an unscheduled Radiological Contamination drill which prevented timely submission of the bid.

We are informed that the procurement, calling for the construction of a hobby shop at the U.S. Submarine Base, does not involve the expenditure of appropriated funds. With respect to our consideration of protests involving nonappropriated funds, we stated in ACS Construction Company, Inc., B-183034, April 18, 1975, as follows:

"\* \* \* We have previously held that this Office is without authority to render authoritative decisions with respect to procurements conducted by or on behalf of nonappropriated fund activities. B-181469, July 9, 1974; B-179854, October 29, 1973; B-178786, July 16, 1973; B-171417, December 17, 1970. Although recently this Office was authorized to review and audit the operations and funds of certain nonappropriated fund activities, see section 301 of the General Accounting Office Act of 1974, Public Law 93-604, approved January 2, 1975, our bid protest jurisdiction is based on 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). Wheelabrator Corp. v. Chafee, 455 F. 2d 1306, 1313 (D.C. Cir. 1971); 46 Comp. Gen. 441 (1966); B-167782, January 21, 1970. Where we do not have such settlement authority, we have declined to consider protests on the grounds that we could not render an authoritative decision on the matter. See B-181469, supra (involving a DOD nonappropriated fund activity); B-180725, March 12, 1974 (involving the TVA); B-179310, October 10, 1973 (involving the Government of Puerto Rico); B-181961, B-182280, November 26, 1974 (involving a Government corporation); and B-172323 (various dates) (involving the Postal Service)."

Since we do not have settlement authority over nonappropriated fund activities, this Office is unable to render an authoritative decision on the protest. Relco, Inc., B-183686, May 5, 1975. However, the correspondence from the protester will be retained for consideration in audit pursuant to section 301 of Public Law 93-604.

  
Deputy Comptroller General  
of the United States