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**DECISION**



*Control #2*

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

**FILE:** B-191244

**DATE:** March 21, 1978

**MATTER OF:** Abbott Power Corporation

**DIGEST:**

GAO declines to consider protest of procurement made on behalf of foreign government under section 22 of Arms Export Control Act because procurement was not accomplished with appropriated funds.

Abbott Power Corporation (Abbott) has protested the issuance by the United States Army Corps of Engineers of invitation for bids (IFB) Nos. DACA-87-78-B-0032, DACA-87-78-B-0081, DACA-87-78-B-0092, DACA-87-78-B-0085 and DACA-87-78-B-0086 without the incorporation of a clause providing for progress payments for small business concerns.

We have been advised by the Corps of Engineers that these IFB's represent procurements on behalf of a foreign government under section 22 of the Arms Export Control Act, as amended, 22 U.S.C. § 2751, et seq.

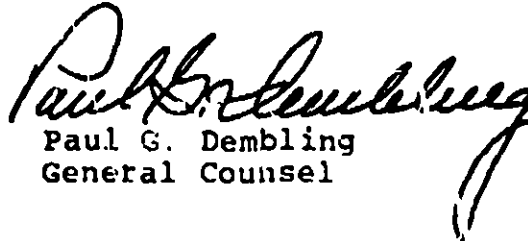
We have held that since our bid protest jurisdiction is based on our settlement authority over appropriated funds, we will decline to consider protests against procurements made under section 22 of the Arms Export Control Act (formerly the Foreign Military Sales Act) inasmuch as such procurements involve the use of nonappropriated funds. Tele-Dynamics, Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPD 60. We have also expressed the view that the use of appropriated funds in connection with the initial processing and administration of such contracts under the provisions of Public Law No. 94-329, 90 Stat. 729 (June 30, 1976), with reimbursement by the countries accepting offers under section 22 of the act as required

B-190850

under Public Law 94-329, supra, does not change the nature of the transaction so as to bring it within the authority of this Office. Keco Industries, Inc., B-184911, B-185174, June 1, 1976, 76-1 CPD 352; International Exports Packers, Inc., B-189311, September 23, 1977, 77-2 CPD 220.

For the foregoing reasons, we decline to consider this protest.

This decision exemplifies our present position on this subject. However, we are presently reconsidering our position as the result of our concern over the significant amounts involved and, in some cases, the use of appropriated funds for the short and long term financing of sales and credit sales.

  
Paul G. Dembling  
General Counsel