

**DECISION**



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

605266

FILE: B-184911, B-185174

DATE: February 25, 1976

MATTER OF: Keco Industries, Inc.

098558

**DIGEST:**

Since contracts awarded pursuant to section 22(a) of Foreign Military Sales Act do not involve use of appropriated funds, protests involving such contracts are not subject to settlement by GAO and are dismissed.

Keco Industries, Inc., protested the award of contract N00140-75-C-0582 by the Naval Air Systems Command (NAVAIR) for NR-8 air conditioners to be used as ground support equipment for the F-14 aircraft. Keco also protests the award of a contract under request for proposals (RFP) N68335-76-R-3006, issued by NAVAIR, to procure spare parts for the above air conditioners.

The Navy has advised us that these procurements are being conducted pursuant to section 22(a) of the Foreign Military Sales Act, as amended, 22 U.S.C. § 2762(a) (Supp. III, 1973). 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.

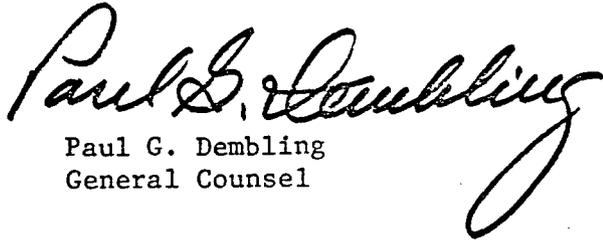
The Navy indicates that the instant transaction was based upon such a "dependable undertaking" pursuant to section 22(a), i.e., advance payment. Contract costs are charged against the Navy's Foreign Military Sales Trust Fund, consisting of payments made by foreign governments.

From the foregoing record it is clear that this contract will not involve payments from appropriated funds. In a recent case involving essentially identical funding as is involved here, we dismissed the protest since no useful purpose would be served by our consideration of the matter. Tele-Dynamics, 55 Comp. Gen. \_\_\_\_, B-183670, January 29, 1976, 76-1 CPD \_\_\_\_.

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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). Where we do not have such settlement authority over the account concerned, we have declined to consider protests on the grounds that we could not render an authoritative decision on the matter. See cases cited in Tele-Dynamics, supra.

Accordingly, the protests are dismissed.

  
Paul G. Dembling  
General Counsel