

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

B-179187

NOV 29 1973

Mr. Nissel A. Rose
Attorney at Law
526 I Street
Anchorage, Alaska 99501

Dear Mr. Rose:

We refer to your letter of August 20, 1973, and prior correspondence on behalf of Rafo Builders (Rafo) requesting our decision on the amount of scrap metal it was entitled to remove under Sales Contract 49-3002-002, awarded to that firm on June 23, 1973, by the Defense Surplus Sales Office (DSSO), Elmendorf AFB, Alaska.

The record reveals that this matter is properly one for consideration by the Armed Services Board of Contract Appeals (ASBCA) under the Disputes Clause of the contract, and that your appeal to that forum is presently pending under ASBCA No. 18653. It is the policy of our Office not to render a decision on a protest where the material issues are also involved in litigation before the Board. Therefore we will take no action on the protest.

In view of the holding in S&E Contractors, Inc. v. United States, 406 U.S. 1 (1972), this Office will not consider an appeal from the ASBCA ruling absent a showing of fraud or bad faith.

Accordingly, we are closing our file on the matter.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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