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DECISION



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

40362

FILE: B-179426

DATE: January 21, 1974

MATTER OF: Luer Packing Company

DIGEST: Claim of contractor for reimbursement for meals contracted for and actually delivered to City of Los Angeles under Federally funded 1972 Summer Food Service Program in California is not within jurisdiction of GAO in that United States was not party to contract. It is responsibility of Department of Agriculture to determine whether conditions of grant have been met and within its discretion to withhold grant funds in event of nonadherence to such conditions.

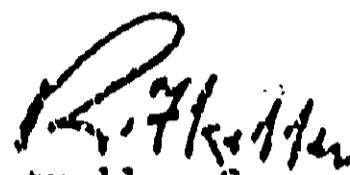
The claim of Luer Packing Company (Luer) arises out of its participation in the Federally funded 1972 Summer Food Service Program (Program) in California. On or about early June 1972, the Mayor's office, City of Los Angeles, solicited bids from Luer and other private food firms for the supplying of lunches and supplements to the Program. In response thereto, Luer submitted its bid and on July 8, 1972, entered into a contract with the City of Los Angeles. Luer now seeks reimbursement from the United States Government in the amount of \$139,976.65, plus interest, for meals contracted for and actually delivered to the 1972 Los Angeles Special Summer Food Service Program for Children in accord with the terms of its agreement with the City.

The claim which Luer presents is not within the jurisdiction or control of our Office. The United States was not a party to the contract awarded in the present case. The contract in question was not made by a Federal agency, but by an instrumentality of the State of California, with financial assistance in the form of a grant from the Department of Agriculture pursuant to the Child Nutrition Act of 1966, 42 U.S.C. 1761, as implemented by regulations contained in 7 CFR 225. Although Federal financial assistance was contemplated during the course of the contract, neither the statute nor its implementing regulations, by express terms or necessary implication, made the Federal Government a party to any contractual agreement entered into by the parties receiving the assistance. See B-173126, October 21, 1971.

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Moreover, it is the responsibility of the Department of Agriculture to determine whether the conditions of the grant have been met and it is within its discretion to determine if withholding of grant funds is required in the event it finds nonadherence to the grant conditions. See B-177118, May 24, 1973.

In view of the foregoing, our Office must decline to rule on the validity of Luer's claim.


Deputy Comptroller General
of the United States