

DECISION



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

FILE: B-186221

DATE: May 21, 1976

MATTER OF: Teledyne Brown Engineering

DIGEST:

Subcontract protest will not be considered on merits where only Government involvement is approval of subcontract award and no fraud or bad faith is shown in approving award.

Teledyne Brown Engineering protests the award of a subcontract to Northrop Aviation Corporation by Raytheon Corporation resulting from Raytheon's prime contract No. DAAH01-76-C-0493 with the U.S. Army Missile Command (MICOM).

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, our Office held that generally we will not consider protests against the awards of subcontracts, except where (1) the prime contractor is acting as the Government's purchasing agent; (2) the Government's active or direct participation in the subcontractor's selection has a net effect of causing or controlling the rejection or selection of potential subcontractors or of significantly limiting subcontractor sources; (3) there is fraud or bad faith in the Government's approval of the subcontract award, or (4) a subcontractor award is "for" the Government.

By letter dated April 20, 1976, we furnished both Teledyne Brown and MICOM a copy of Optimum Systems, Inc., and requested their views whether the protested subcontract award fell within one of the four enumerated situations when we consider protests against subcontract awards.

Teledyne Brown has responded that it was advised by the contracting officer that he had not reviewed the protested subcontract but had merely approved it based on Raytheon's representation that it represented the lowest responsible proposal. Teledyne Brown concludes that this

" * * * failure of the Contracting Officer to review and approve or disapprove the subcontract award to Northrop in accordance with applicable law, regulation and prime contract requirements not only shows bad faith but

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represents a degree of disregard for and neglect of duty bordering on fraud if it is not, in fact, a fraud on the Government."

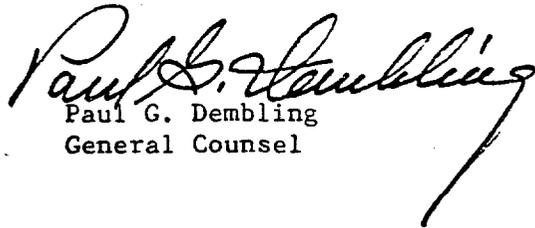
On May 10, 1976, MICOM provided this Office with its views on this protest. It is reported that the Government did not perform technical evaluations of the subcontract proposals, although copies of the proposals were requested from Raytheon for information purposes. MICOM reviewed both subcontractor proposals and recommended that the award to Northrop as proposed by Raytheon be approved. The administrative contracting officer reviewed the Raytheon file and consented to the award of the subcontract to Northrop.

We stated in the Optimum Systems, Inc. decision, supra:

" * * * where the only Government involvement in the subcontract selection process is its approval of the subcontract award or proposed award * * *, we will only review the agency's approval action if fraud or bad faith is shown."

The protester has argued that the administrative contracting officer did not review the subcontract and that such failure is tantamount to bad faith or fraud. It is not clear to this Office how fraud or bad faith would be involved if the contracting officer had not reviewed the proposed subcontract award. In fact, however, the record indicates that the contracting officer not only reviewed the proposed subcontract but also received assistance from MICOM in conducting this review.

Accordingly, since there is no showing of fraud or bad faith in the Government approval of the subcontract award, we are closing our file on the matter without any consideration of the merits of the protest.


Paul G. Dembling
General Counsel