

01370

TYLER PRZYBYLAK
P.L. # 2

DECISION



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

FILE: B-186221

DATE: December 15, 1976

MATTER OF: Teledyne Brown Engineering - Reconsideration

DIGEST:

Prior decision dismissing protest against subcontract award is affirmed since record, reviewed by GAO in camera in view of classified documents therein, shows that while agency conducted independent technical review of competing subcontract proposals, subcontractor selection by prime contractor was not influenced or controlled by agency, which merely approved selection on basis of its independent review.

Teledyne Brown Engineering (TBE) has requested reconsideration of decision B-186221, May 21, 1976, 76-1 Comp. Gen. 336, in which we declined to consider the merits of TBE's protest against the award of a subcontract because the Government's involvement in the award was limited to approval of the award by the contracting officer and because there was no evidence that fraud or bad faith was involved in that approval.

TBE reiterates its initial allegations that the Army Missile Command (MICOM) directly participated in the selection of the subcontractor, and refers to a "technical evaluation" made by MICOM as evidence that MICOM took part in Northrop's selection. Participation of MICOM in the subcontractor selection, to the extent that it was not limited to subcontractor approval but instead caused the rejection or selection of potential subcontractors, would bring TBE's protest within one of the exceptions to our general policy of not considering protests against the award of subcontracts as announced in Ortimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 Comp. Gen. 166.

MICOM's response to this Office has not been made available to TBE because the materials contained therein have been classified to protect the defense interests of the United States. Consequently, this Office has conducted an in camera review of the material.

Our review of the file shows that MICOM conducted an independent technical review of the two competing subcontract proposals and that as a result of that review, MICOM concurred in the prime contractor's

B-186221

selection of TBE's competitor as its subcontractor. We see nothing in the file which indicates that MICOM influenced or controlled that selection. Rather, the file shows only that MICOM, on the basis of its own review, found the recommendation made by the prime contractor to be appropriate and consistent with the interests of the Government and approved the award on that basis. Furthermore, we again find no evidence that either fraud or bad faith was present in the approval of the subcontractor selection.

Accordingly, our prior decision is affirmed.

Deputy *R. J. K. 14.*
Comptroller General
of the United States