

To Dir, B-12

DECISION



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

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FILE: **B-192764** DATE: **September 26, 1978**
MATTER OF: **Pen Foam Insulation Co.**

DIGEST:

Although GAO will consider protests involving subcontracts under limited circumstances stated in Optimum Systems, Inc., protest will not be considered where selection of subcontractor was choice of prime contractor and Government's approval was directed not to selection of subcontractor, but to its compliance with specifications, and review of action would result in GAO involvement in contract administration.

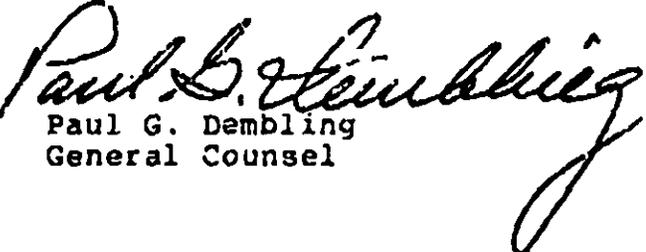
Pen Foam Insulation Co. (Pen Foam) protests against award of a subcontract under solicitation No. N-62470-76-B-6574, issued by the Department of the Navy, Norfolk, Virginia, to Davenport Insulation, a subsidiary of Washington Gas and Electric.

Our Office will consider subcontract protests only in limited circumstances as set forth in our decision Optimum Systems, Inc., 4 Comp. Gen. 767 (1975), 75-1 CPD 166. The circumstances are: (1) where the prime contractor is acting as the purchasing agent of the Government; (2) where the active or direct participation of the Government in the selection of a subcontractor has the net effect of causing or controlling the rejection or selection of potential subcontractors, or of significantly limiting subcontractor sources; (3) where fraud or bad faith in the approval of the subcontract award by the Government is shown; (4) where the subcontract award is "for the Government"; or (5) where a Federal agency entitled to the same requests an advance decision. Optimum Systems further stated:

"However, where the only Government involvement in the subcontractor selection process is its approval of the subcontract award or proposed award (to be contrasted with the circumstances set out above where direct or active Government participation in or limitation of subcontractor selection existed), we will only review agency's approval action if fraud or bad faith is shown.
* * *

In the present case, the selection of the subcontractor was the choice of the prime contractor subject to Government approval. Since neither fraud nor bad faith has been alleged or demonstrated concerning the award to the lowest subcontract bidder and review of this action would result in our becoming involved in contract administration, this is not the type of subcontract case where we would assume jurisdiction. See Industrial Boiler Co., B-187750, February 25, 1977, 77-1 CPD 142.

Therefore, we must decline to consider Pen Foam's protest on the merits.


Paul G. Dembling
General Counsel