

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

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FILE: B-182097

DATE: May 28, 1975

MATTER OF: Bennett Box and Pallet Company, Inc.
Ozark Box and Crating Company**DIGEST:**

Protest by subcontractors against default terminations by prime contractor because of their alleged failure to furnish ammunition boxes conforming to the specifications is not for consideration by GAO since there is no privity between the United States and the subcontractors.

The Army Armament Command (ARMCOM) awarded contract DAA09-70-C-0245 to Day and Zimmerman, Inc. for the operation of the Kansas Army Ammunition Plant at Parsons, Kansas. This contract required Day and Zimmerman to load, assemble and pack 105 mm cartridges. Day and Zimmerman placed a purchase order with Ozark Box and Crating Company for ammunition packing boxes for 105 mm projectiles in accordance with certain Government specifications made a part of the prime contract. Another purchase order was placed with Bennett Box and Pallet Company, Inc. for boxes of the same description.

Bennett Box delivered seven lots of boxes to the prime contractor, Day and Zimmerman, and Ozark Box delivered 13 lots. All of the deliveries were rejected by the prime contractor for failure to conform to the specifications. Both box manufacturers requested waivers from the specifications. The waivers were forwarded by the prime contractor to the cognizant technical activity, Picatinny Arsenal, which denied the requests for deviations. The prime contractor then terminated its subcontractors for default. The subcontractors protested to our Office, seeking relief from the default terminations.

The Army maintains that there is no privity of contract between it and the protesters, who were subcontractors to Day and Zimmerman, since the responsibility for selection of subcontractors, pricing and administration of subcontracts rests with the prime contractor. The Army also argues that the GAO position declining review of subcontract awards is also applicable to matters involving the prime contractor's administration of its subcontracts.

Counsel for the protesters has argued that the GAO should take jurisdiction in this case since the specifications according to which the protesters were to build the boxes were originally prepared by the Government and made part of the prime contract. After the default terminations of the subcontractors, the boxes were reprocured under specifications which were relaxed to the extent previously requested by the protesters. Accordingly, it is alleged, the subcontractors have a claim against the prime contractor for the commercial impossibility of performance of the specifications. The prime contractor would then have a right of action against the Government on the same theory. It is argued that since the Government would be the party ultimately responsible for the practical impossibility of performance of the specifications, the GAO should take jurisdiction in this instance.

The request for action by this Office relates to the question of the protesters' compliance with the provisions of their contracts with Day and Zimmerman. It does not appear that the United States is a party to these contracts. Normally where the Government enters into a prime contract there is no privity of contract between the Government and a subcontractor. See Merritt v. United States, 267 U.S. 338 (1925) and Brister & Kroester Lumber Corp. v. United States, 90 F. Supp. 695 (Ct. Cl. 1950). As a result, this Office has no jurisdiction to resolve disputes between a prime contractor and its subcontractors. B-170681, October 22, 1970; Needham Hydraulics, Inc., B-180850, April 15, 1974.

Accordingly, we find no basis upon which we may pass on the merits of the termination of the protesters' contracts.


Deputy Comptroller General
of the United States