



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

30980

B-177781

May 29, 1973

AIR MAIL

Lockheed Propulsion Company
1500 Crafton Avenue
Redlands, California 92373

Attention: Mr. G. Graham Whipple
President

Gentlemen:

Further reference is made to your telefax dated January 9, 1973, and subsequent correspondence, protesting the partial termination by The Boeing Company of your purchase order R-816730-9556, under Boeing's Air Force contract F33(57-73-C-0006 for the production of the Short Range Attack Missile system.

Upon receipt thereof, we initially observed that the protest was filed in your capacity as a subcontractor and was precipitated by a partial termination for convenience by your prime contractor, factors which ordinarily militate against the exercise of jurisdiction by this Office. However, in order that we might make an informed judgment concerning our jurisdiction, we developed the protest under our established procedures, pursuant to which we were provided a report by the Air Force. Those portions of the report appropriate for release were made available to all interested parties, all of whom were extended an opportunity for comment thereon, and at Lockheed's request a conference concerning the protest was held on May 3, 1973.

Pursuant to our review of the entire record, we continue to be of the opinion that our Office is not the proper forum to consider the merits of your protest.

The first jurisdictional limitation to our review of this protest is that Lockheed is a subcontractor. Since Boeing did not act in the instant case as a purchasing agent for the Government, we do not

[Protest of Termination of Subcontract]

718353

091857

B-177761

deem it appropriate to adjudicate the protest under our bid protest procedures. Compare 51 Comp. Gen. 803, 806 (1972).

The second limitation is that your complaint resulted from Boeing's partial termination of its purchase order to you pursuant to the termination clause contained therein. In this regard, we held in B-168624, January 5, 1970, that:

* * * the determination whether a contract should be terminated for the convenience of the Government is a matter of administrative decision which does not rest with our Office. See 47 Comp. Gen. 1 (1967), and cases cited. * * *

This holding is equally applicable to terminations by prime contractors pursuant to appropriate clauses in their subcontracts. While we will give appropriate attention in our audit functions involving the prime contract to any evidence indicating that the cost to the Government was unduly increased because of improper procurement actions by the prime contractor or the Government, in view of the foregoing, we must decline to consider the merits of your protest against the partial termination of your subcontract with Boeing.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States