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UNITED STATES GENERAL ACCOUNTING OFFICE
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March 29, 1976

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Lieutenant General James T. Stewart
 Commander, Headquarters
 Aeronautical Systems Division
 Wright-Patterson Air Force Base
 Ohio 45433

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Dear General Stewart:

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As part of our [review of the negotiation of contract prices] under the provisions of Public Law 87-653, we examined a firm fixed-price subcontract awarded by the Boeing Company to Northrop Corporation, C764 Precision Products Department, Norwood, Massachusetts. Boeings' pur-P.4694 chase order R-844556-7054 was for 1,362 rate gyros for the FY 1974 Short Range Attack Missile (SRAM) program. We examined the reasonableness of the subcontract estimates included in the prime contract price in relation to cost or pricing data available at the time of prime contract negotiations.

Our review showed that Northrop (1) refused to provide Boeing and the Government with cost data for the rate gyro on the basis that the rate gyro was proprietary and (2) excluded a required Armed Services Procurement Regulation (ASPR) clause regarding DOD audit rights from the subcontract. We found that the Administrative Contracting Officer (ACO) at Boeing failed to comply with ASPR in responding to Boeing's inability to furnish the required subcontractor cost data. Further, we found that the ACO was unaware of the exclusion of the required ASPR clause from the subcontract. Our examination did not disclose any substantial overpricing of the subcontract or of the price estimate for the subcontract which was included in the prime contract price.

Northrop's proposal for \$1,258,482 was submitted to Boeing on January 29, 1973. The prime contract between Boeing and the Air Force was negotiated on June 8, 1973, and included \$1,068,067 for Northrop's subcontract. On November 6, 1973, Boeing negotiated a firm fixed-price purchase contract with Northrop for \$1,139,994. Northrop refused to provide Boeing and the Government with cost and pricing data supporting \$432,517 for the rate gyro because it considered the rate gyro to be

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proprietary. The Air Force Price Negotiation Memorandum disclosed that Boeing made repeated attempts to obtain the cost data but failed to obtain it, and that this was a recurring situation in SRAM and other military procurements. In addition, Northrop excluded required ASPR clause 7-104.41 (Audit by Department of Defense) as a condition of accepting the Boeing subcontract.

The ACO informed us that he did nothing to establish the validity of Northrop's claim that the rate gyro was a proprietary item. We examined ASPR 3-807.3 (Cost or Pricing Data) dealing with the requirement for the submission of subcontractor cost data and noted that proprietary data is not one of the authorized exceptions to the requirement. Section 3-807.3 (b) (1) requires cost or pricing data to be submitted by a prospective subcontractor unless the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. Section 3-807.3 (b) (2) requires that the cost data be accurate, complete, and current as of the same date specified in the contractor's certificate.

ASPR also provides that the Government should take certain steps to obtain the required cost data. Section 3-807.3 (e) (1) provides that if the contracting officer feels the analysis of the subcontract proposal is inadequate he will return it to the prime contractor for additional analysis, and section 3-807.3 (e) (3) provides that the Government will assist in the additional analysis if the prime contractor submits evidence to the contracting officer that the additional analysis cannot be accomplished because the subcontractor's competitive position would be jeopardized or proprietary data is involved.

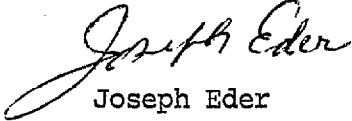
The ACO also informed us that he was unaware that ASPR clause 7-104.41 was excluded from the purchase order. The exclusion of the clause could adversely affect DOD's rights to make a post-award audit for determining whether or not defective cost or pricing data was submitted. The ACO told us that the Air Force Plant Representative is presently taking action to reach an agreement with Boeing to preclude this situation from recurring by requiring that all purchase orders involving the exclusion of any standard ASPR clause be sent to the ACO for review and action.

We recommend that the Procuring Contracting Officer (PCO), in consideration of ASPR 3-807.3 (e) (3), take appropriate action to obtain required cost and pricing data from those subcontractors who refuse to submit the data. Concerning the exclusion of ASPR clause 7-104.41, we realize that

the ACO at Boeing is taking action to preclude this situation from recurring, but we feel that the PCO should consider giving notice about this situation to the appropriate procurement personnel at all the locations under his jurisdiction so that this situation may not be repeated under other sub-contracts.

We would appreciate being advised of actions taken or contemplated on the matters discussed in this letter.

Very truly yours,


Joseph Eder
Regional Manager