

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

FILE: B-186139

DATE: April 16, 1976

MATTER OF: Precision Service & Sales Co.

60771

99050

DIGEST:

1. Termination of contract for electric typewriter service is matter of contract administration and therefore primarily function and responsibility of contracting agency.
2. Where contractor has disagreement with contracting agency concerning contract performance, matter should be pursued for resolution pursuant to contract Disputes clause, and GAO therefore has no jurisdiction to consider matter.

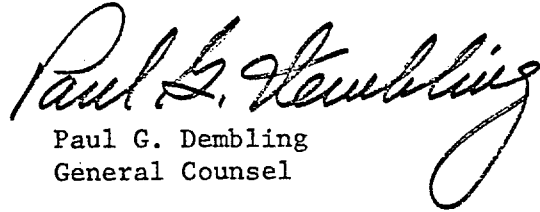
By letter dated March 15, 1976, Precision Service & Sales Co. (Precision) requests termination of General Services Administration contract GS-06W-00270 for electric typewriter service with payment in full plus payment for the option to extend the contract for a 90-day period as provided in the contract. Precision further requests a full audit of the activities under the contract of the Strategic Air Command and Offutt Air Force Base Contract Maintenance whose complaints contributed to the contracting officer's decision to charge Precision with unsatisfactory service. Precision was also charged with untimely service.

Subsequently, by a letter dated April 1, 1976, Precision was advised by the contracting officer that its right to proceed with performance of the contract was thereby terminated for default pursuant to Article 11(a)(ii) of the General Provisions (Standard Form (SF) 32), because of its failure to perform in a timely manner. The question whether a contract should be terminated is a matter of contract administration and is, therefore, primarily a function and responsibility of the contracting agency. National Flooring Company, B-183844, July 31, 1975, 75-2 CPD 71. Further, the request for the audit would not be germane in view of the actual basis for the termination. Moreover, if the activities complained of are relevant, the Disputes clause of the contract (Article 12 of SF 32) provides, in effect, that disputes between the parties on factual issues arising

B-186139

under the contract are for resolution in accordance with the administrative procedure set out in the clause. Our Office has no jurisdiction to consider such matters. It is well established that when a contract sets out a procedure under which disputes are to be settled administratively, the remedy thereby provided must be exhausted by the contractor. United States v. Joseph A. Holpuch Company, 328 U. S. 234 (1946). Furthermore, following the Supreme Court decision in S&E Contractors, Incorporated v. United States, 406 U.S. 1 (1972), we no longer review Board of Contract Appeals decisions absent a showing of fraud or bad faith.

In the circumstances, we will not act on Precision's request.


Paul G. Dembling
General Counsel