

**DECISION**

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

60730

FILE: B-186158

DATE: April 8, 1976

MATTER OF: Kaufman De Dell Printing, Inc.

99092

**DIGEST:**

Protest questioning whether reprourement for account of defaulted contractor was conducted in manner reasonably calculated to mitigate damages is not for consideration by GAO.

In May 1975, Kaufman De Dell Printing, Inc. (Kaufman), was awarded a Government Printing Office contract for the printing of "Questionnaires for Military Occupational Data Bank" for use by the Army. The contract contained the Standard Disputes clause. In November of 1975, Kaufman was found in default and the contract terminated. Subsequently, the requirement which was the subject of Kaufman's contract was resolicited in November of 1975. Kaufman apparently did not bid on the resolicitation.

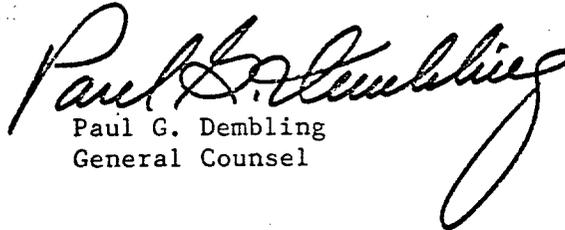
By letter dated March 17, 1976, Kaufman has protested to our Office. Kaufman alleges that when the requirement was resolicited in November 1975, the second low bidder on the initial solicitation, Cato Show Printing (Cato), was not solicited and therefore did not bid on the resolicitation. Consequently, Kaufman alleges that the resolicited contract was awarded at a higher price than if Cato had bid. Kaufman apparently assumes that if Cato had bid on the reprourement, its bid would have been the same as its original bid in November 1975. Essentially, therefore, Kaufman is contending that the reprourement was not conducted in a manner reasonably calculated to mitigate damages.

International Harvester Company, B-181455, January 30, 1975, 75-1 CPD 67, involved the protest of a defaulted contractor excluded from consideration for award on the reprourement, although the low offeror, because of a determination of nonresponsibility by the agency. We held that the question of whether the contracting officer acted in a reasonable manner in not accepting the contractor's low offer for award of the reprourement contract

B-186158

was an issue for resolution under the Disputes clause of the contract. Further, in view of the Supreme Court's decision in S & E Contractors, Inc. v. United States, 406 U.S. 1 (1972) (namely: there is not another tier of administrative review for complaints resolvable under the Disputes clause), we held that protests of this nature "\*\*\* are no longer for our consideration." International Harvester Company, supra.

Although the facts of the instant protest differ from those of International Harvester Company to the extent that the instant case does not involve the exclusion of the protester from consideration for award on the reprocurement, the issue is the same in both cases: whether the reprocurement was conducted in a manner reasonably calculated to mitigate damages. As such, and in view of our holding in International Harvester Company, supra, we must decline to decide the issue in controversy in the instant case.

  
Paul G. Dembling  
General Counsel