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**DECISION**



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

FILE: B-198295.3

DATE: October 28, 1981

MATTER OF: Mark A. Carroll & Son, Inc.--  
Reconsideration

**DIGEST:**

Prior decision holding that VA had reasonable basis to consider bid ineligible for award is affirmed where request for reconsideration makes no showing of erroneous legal conclusions or information not previously considered.

Mark A. Carroll & Son, Inc. (Carroll), requests reconsideration of our decision in Mark A. Carroll & Son, Inc.--Reconsideration, 60 Comp. Gen. (B-198295.2, July 29, 1981), 81-2 CPD 65. In that decision, we denied Carroll's request for reconsideration of the rejection of its bid submitted in response to a reprocurement solicitation issued by the Veterans Administration (VA) Medical Center for projects 78-003 and 78-004, under which Carroll was the prior contractor.

Carroll was terminated for default under the original contract. The termination was subsequently converted to a termination for the convenience of the Government by the VA Board of Contract Appeals. During the time Carroll's appeal was pending, the reprocurement was conducted and Carroll's low bid was rejected because the bid price was higher than the defaulted contract price.

We held that the VA had a reasonable basis to consider Carroll's bid ineligible for award under the rule set forth in MKB Manufacturing Corporation, B-193552, January 11, 1980, 80-1 CPD 34, that a reprocurement contract may not be awarded to the defaulted contractor at a price higher than the defaulted contract price because to do so would be tantamount to modifying the defaulted contract without consideration. PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213.

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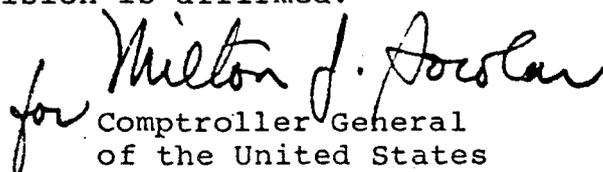
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In this request for reconsideration, Carroll contends that the PRB decision is inapplicable because the reprocurement is an entirely new procurement. In addition, Carroll alleges that individuals at the VA had actual knowledge that the default was improper and, therefore, had no reasonable basis to consider the bid ineligible. Carroll bases this allegation on testimony given by the contracting officer before the VA Board of Contract Appeals that, in his opinion, the VA had attempted to force Carroll to perform additional work without additional compensation.

These matters are basically restatements of the arguments raised by Carroll in its initial request for reconsideration. They were fully considered by our Office in reviewing the record on reconsideration and, based upon the record, we find no basis which would cause us to change our prior decision. In the original decision, Mark A. Carroll & Son, Inc., B-198295, August 13, 1980, 80-2 CPD 114, we stated that since Carroll's low bid was properly rejected under the PRB decision, we need not decide whether it was properly rejected because it was based on six drawings and not on a seventh clarifying drawing. Similarly, we declined to consider Carroll's argument about the reprocurement contract being an entirely new contract because such matters constitute a dispute as to a matter of fact, which is for resolution by the VA Board of Contract Appeals.

With regard to the contention that the VA's decision not to consider Carroll's bid was improper, Carroll challenges the reasonableness of the decision based on the subsequent determination that the default was improper. However, as we noted in our July 29, 1981, decision, until such time as a default is overturned by an appeals board, the contract is legally in default. See Down East, Inc., B-196654, December 19, 1979, 79-2 CPD 422. Therefore, at the time of rejection that decision was reasonable.

For the above reasons, Carroll has failed to demonstrate any error of law or information not previously considered. See 4 C.F.R. § 21.9 (1981). Accordingly, our decision is affirmed.

for   
Comptroller General  
of the United States