

DECISION



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

30325

FILE: B-218067

DATE: January 29, 1985

MATTER OF: Shelf Stable Foods

DIGEST:

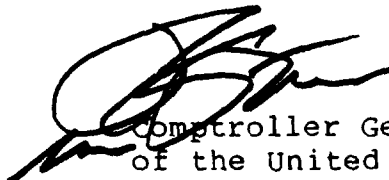
A firm that was not a party to a defaulted contract has no standing to protest that the government's reprocurement action is inconsistent with the duty to mitigate damages.

Shelf Stable Foods protests that the Defense Logistics Agency (DLA) has set half the quantities in solicitation No. DLA13H-85-R-8286 aside for small business. The protester states that the solicitation represents the reprocurement of supplies that were the subject of an earlier contract under an unrestricted solicitation, which had been terminated for default, and argues that because the set-aside may result in higher bids than those in the original procurement, the solicitation will result in unnecessarily high reprocurement costs.

We dismiss the protest.

A firm that was not a party to a defaulted contract has no standing to argue that the government, in reprocuring the supplies, is breaching its duty to mitigate the damages that resulted from the default. Rather, it is the defaulted contractor, against whose account any excess reprocurement costs will be charged, see Federal Acquisition Regulation § 49.402-6, 48 Fed. Reg. 42,102, 42,460 (1983), who has the standing to voice such a complaint. Further, our Office will not entertain a protest even from the defaulted contractor on the matter, since the mitigation of damages question is a subject for the disputes clause of the terminated contract. See Diversified Computer Consultants, B-205820, July 13, 1982, 82-2 C.P.D. ¶ 47.

Since Shelf Stable Foods suggests no other reason why a partial set-aside would be inappropriate, the protest is dismissed.


Comptroller General
of the United States

031112