



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Air Inc.  
**File:** B-233501  
**Date:** November 22, 1988

### DIGEST

A repurchase contract may not be awarded to the defaulted contractor at a price greater than the terminated contract price because this would be tantamount to modification of the existing contract without consideration.

### DECISION

Air Inc., protests the rejection of its bid on a reprocurment contract under solicitation No. FCEP-BT-J3011-S issued by the General Services Administration (GSA). Air Inc. is the defaulted contractor.

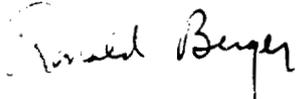
GSA rejected Air Inc.'s bid because it was higher than the price of Air Inc.'s original contract. Air Inc. argues that GSA could withhold or set off against amounts due under the reprocurment contract the difference between the reprocurment price and the original price so that the net amount actually paid to the protester would be no higher than the original terminated contract price.

The issue, however, is not simply a matter of the net amount paid to a defaulted contractor under a repurchase contract. A repurchase contract may not be awarded to a defaulted contractor at a price greater than the terminated contract price because such an award would be tantamount to a modification of the original contract without consideration, notwithstanding any assertion by the government of its right to excess reprocurment costs. Preston-Brady Co., Inc., B-211749, Oct. 24, 1983, 83-2 CPD ¶ 479; Coast Canvas Products II Co., Inc., B-211351, Aug. 26, 1983, 83-2 CPD ¶ 258. Because Air Inc. bid a higher price on the

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repurchase contract than that contained in the defaulted contract, GSA properly rejected its bid.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Associate General Counsel