

**DECISION**

12365  
PL-11  
Mr. Martin  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-196654

DATE: December 19, 1979

MATTER OF:

1 Down East, Inc. D 3517

DIGEST:

[Contract Award Protest]

Protest of agency's failure to make award upon resolicitation to protester whose bid, although low, was higher than price in its defaulted contract is denied since protester provided no basis for departure from well established rule that repurchase contract may not be awarded to defaulted contractor at price greater than that in terminated contract.

2 Down East, Inc. (Down East) protests award of a contract to any bidder other than itself under invitation for bids No. N00024-80-B-4072, issued by the Naval Sea Systems Command (Navy). This solicitation was issued 175 to procure sea water valves which had previously been the subject of contract held by Down East which was terminated for default. Down East contends the default was precipitated by its request to the Navy to reform the contract on the basis of mistake. Although it concedes it failed to deliver the first article on schedule, it contends the default action was arbitrary, capricious, fraudulent and malicious. Down East asks our Office to take punitive action against the Navy and require it to make an award to Down East at its low bid price which is substantially higher than its price under the defaulted contract.

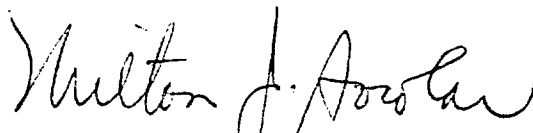
It is well settled that the question of whether a contract should be terminated for default is a matter of contract administration and that any disagreements with respect thereto are for consideration under the Disputes clause of the contract and not for resolution under our Bid Protest Procedures, 4 C.F.R. Part 20 (1979), which are reserved for considering whether an award,

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or proposed award, complies with all legal requirements. Mark A. Carroll and Son, Inc., B-194705, May 11, 1979, 79-1 CPD 340. Relief for Down East, if any is due, with respect to the propriety of the termination, lies with the Armed Services Board of Contract Appeals <sup>300</sup> or in a court of competent jurisdiction.

Although we do consider whether a reprocurerment action is conducted in accordance with applicable procurement procedures, Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703 (1978), 78-2 CPD 117, Down East does not allege improprieties regarding the reprocurement award. Rather, it seeks to have award made to it, without regard to the rules applicable to reprocurements, because of the alleged fraud, malice, bad faith and capricious action by the Navy with respect to the default. Thus, Down East asserts that the well settled rule that a repurchase contract may not be awarded to a defaulted contractor at a price greater than the terminated contract price, PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213, should not prevent an award to it at its bid price. We do not agree. Until such time as an appropriate forum finds merit to the allegations, the prior contract legally is in default and there is no basis in law for permitting award to the defaulted contractor at a price higher than the defaulted contract price. Moreover, the recognized remedy for an improper termination for default is the conversion of the termination to one for the convenience of the Government, thereby entitling the contractor to termination costs. See William Green Constr. Co. v. United States, 477 F. 2d 930 (Ct. Cl. 1973).

The protest is denied.



For The Comptroller General  
of the United States