

DECISION



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

FILE: B-218227.3

DATE: March 5, 1985

MATTER OF: Corban Industries, Inc.

DIGEST:

Concerns regarding whether an agency is acting consistent with its duty to mitigate damages resulting from a contract default should be pursued under the Disputes clause of the defaulted contract.

Corban Industries, Inc., a defaulted contractor, protests the failure of the Veterans Administration (VA) to mitigate properly the damages resulting from the default by either accepting the completion contractor offered by the surety or, in the alternative, accepting either of the two lowest bids on the resolicitation for the requirement. (Those two firms have protested the rejection of their bids as nonresponsive; the VA apparently intends to award a contract to the third low bidder.)

We dismiss the protest.

We do not independently review an agency's decision on how best to mitigate damages after a default, since our forum is reserved for considering the propriety of contract awards and proposed awards. Bid Protest Regulations, § 21.1(a), 49 Fed. Reg. 49,417, 49,419 (1984) (to be codified at 4 C.F.R. § 21.1(a)). If the contractor (or the surety) is concerned that the government has acted in a manner inconsistent with its duty to mitigate damages resulting from the default, the matter should be pursued under the Disputes clause of the defaulted contract. Radix II, Inc., B-216635, Dec. 17, 1984, 84-2 C.P.D. ¶ 676.

The protest is dismissed.

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