

DECISION



McConnell plm
18984
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198295.2

DATE: July 29, 1981

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

DIGEST:

Where agency rejects bid from defaulted contractor on reprocurement contract because bid price exceeds defaulted contract price, subsequent alteration of default termination to termination for convenience pursuant to decisions and orders of board of contract appeals does not render improper rejection of reprocurement bid since at time of rejection agency had reasonable basis for its action.

Mark A. Carroll & Son, Inc. (Carroll), requests reconsideration of our decision in the matter of Mark A. Carroll & Son, Inc., B-198295, August 13, 1980, 80-2 CPD 114. In that decision, we denied Carroll's protest against the rejection of its bid submitted in response to a reprocurement solicitation issued by the Veterans Administration Medical Center for projects 78-003 and 78-004. We also denied Carroll's claim for bid preparation costs. Projects 78-003 and 78-004 were originally awarded to Carroll in October 1978. Carroll's contract was terminated for default on September 21, 1979.

This Office denied Carroll's protest in our earlier decision on several grounds. First, we declined to consider Carroll's contentions that the termination of its contract was improper because that was a matter for resolution of the contracting parties. Similarly, we dismissed Carroll's argument relating to the similarity of work under the reprocurement and the defaulted contract, because those matters were then pending before the Veterans Administration Board of Contract Appeals.

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We agreed with the Veterans Administration's assertion that our decision in PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213, barred the award of the contract to Carroll based upon its low bid. In that case, we held, as we had in earlier cases, 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. Aerospace America, Inc., 54 Comp. Gen. 161 (1974), 74-2 CPD 130.

Finally, we denied Carroll's claim for bid preparation costs on the grounds that rejection of Carroll's bid was not arbitrary or capricious.

Since our earlier decision, the Veterans Administration Board of Contract Appeals has issued several opinions and orders relating to the default and has awarded compensation to Carroll, converting the termination for default to a termination for convenience of the Government. Carroll has requested our reconsideration based upon the decision of the Board of Contract Appeals.

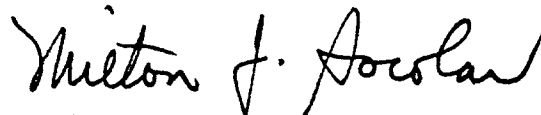
The central issue presented by Carroll's reconsideration request is whether a contractor whose default termination has been converted to a termination for convenience of the Government is subject to the rule set forth in PRB Uniforms, Inc., supra.

In this regard, we have stated that there is no authority to permit the award of a reprocurement contract at a higher bid price to a defaulted contractor until such time as that contractor seeks and receives a termination for convenience of the original contract in the appropriate forum. Until such a ruling is made, the prior contract is legally in default. Down East, Inc., B-196654, December 19, 1979, 79-2 CPD 422.

In this instance, the Veterans Administration Board of Contract Appeals did not issue its decisions and orders regarding the termination for default until several months after the reprocurement contract was awarded. Therefore, at the time the reprocurement contract was awarded, the Veterans Administration had

a reasonable basis to consider Carroll's bid ineligible for award solely under the rule set forth in PRB Uniforms, Inc. MKB Manufacturing Corporation, B-193552, January 11, 1980, 80-1 CPD 34. Accordingly, we find no basis to object to the rejection of Carroll's bid.

The request for reconsideration is denied.

A handwritten signature in dark ink, reading "Milton J. Aocolan". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

Acting Comptroller General
of the United States